

Explanatory Note

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This judgment deals with the referral of the Mpumalanga Petitions Bill, 2000 by the Premier of that province to this Court for a decision on its constitutionality. The Court was asked to deal with two issues. The first was whether the legislature was permitted by the Constitution to pass the Petitions Bill. This aspect was fully argued but it emerged during the hearing that the issue had not been referred back to the provincial legislature by the Premier as required of him by section 121 of the Constitution. The Court considered whether it had jurisdiction to deal with an issue under the section 121 procedure which had not been referred to the legislature for reconsideration. It was held that the procedure requires that the Premier's reservations should first be referred to the legislature for its reconsideration before a referral is made to this Court. The Court further held that this does not prejudice anyone as any individual would have all the other constitutional remedies available should any provision in the Bill/Act be found subsequently to be a breach of the rights of such individual or of the Constitution. These remedies include interim relief if the matter is urgent or pressing.

The second issue concerned the question whether it was constitutionally correct for the legislature to confer on the provincial Speaker the power firstly, to make regulations in terms of a provincial Act and secondly, to determine the date on which the Act may come into force. The Premier argued that both these powers were inconsistent with the doctrine of separation of powers and established conventions. The Court rejected this argument. Regulations are usually made by the executive because they, as the implementers of legislation are better placed to do so. However, there is nothing in the Constitution which specifically empowers only the executive to make regulations and to set the date of their coming into operation. Because of the nature of this Bill, the Speaker was well placed to make the regulations as well as determine the date for their coming into operation.

The Court thus held that the clauses which confer these powers on the Speaker are not unconstitutional.