

# IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Minister of Safety and Security v Antus van Niekerk**

**CCT 74/06**

**Judgment date: 8 June 2007**

---

## **MEDIA SUMMARY**

---

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

On 3 May the Constitutional Court heard an application for leave to appeal against a judgment of the Port Elizabeth High Court holding that the arrest and detention of the respondent (Mr Van Niekerk) by members of the South African Police Services was unlawful.

The High Court disbelieved the police version and held that Mr Van Niekerk had been pulled down and assaulted by the police. Conceding that on the facts as found by the trial court no constitutional question was raised, counsel for the Minister submitted that it was nevertheless in the interests of justice to consider an aspect of the High Court judgment that had a constitutional dimension: whether a police officer who believes that a person has committed an offence of being drunk and disorderly in a public place is entitled to summarily arrest and detain that person.

Counsel for Mr Van Niekerk pointed out that the Minister was fully alive to the dilemma of how to control the discretion of police officers, and referred this Court to Standing Order (G) 341 dealing with arrest and the treatment of an arrested person. This Standing Order makes it clear that arrest is a drastic procedure which should not be used if there are other effective means of ensuring that an alleged offender could be brought to court.

Writing for a unanimous Court, Sachs J stated that should the Minister wish to provide greater guidance to police officers concerning their powers of arrest, he has executive and legislative options available to him. He concluded that nuanced guidelines already exist and that in the circumstances it would not be desirable for this Court to attempt in an abstract way divorced from the facts of this case, to articulate a blanket, all-purpose test for constitutionally acceptable arrests. He accordingly held that it would not be in the interests of justice for the application for leave to appeal to be granted, and dismissed the application.