

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Certification of the Constitution of the Western Cape, 1997

Case CCT 6/97

Decided on 2 September 1997

Media Summary

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

This judgment of the Court denies certification to the proposed text of the Constitution of the Western Cape but does so on narrow grounds. The Court emphasised that certification of the Western Cape constitutional text was being withheld on limited grounds of inconsistency with the national Constitution.

In terms of the Constitution of the Republic of South Africa, 1996, the provinces may adopt their own provincial constitutions (section 104(1)(a)), subject to certain requirements (sections 142 and 143). Before a provincial constitution becomes law, the Constitutional Court needs to certify it. A provincial constitution may not be inconsistent with the national Constitution and may not confer powers or functions on the province that fall outside the area of provincial competence laid down by the Constitution. Still, a provincial constitution may provide for "provincial legislative or executive structures and procedures" that differ from the national Constitution.

In February 1997 the Western Cape legislature adopted a constitutional text and its Speaker submitted it to the Constitutional Court for certification. On 14 and 15 May the Court heard supporting representations on behalf of the Speaker, while the national government and the African National Congress opposed certification.

Sixteen objections to certification were considered, relating to a variety of the provincial constitution's provisions. One objection was that the text repeated provisions contained in the Constitution falling outside the competence of provinces. The Court found that the disputed provisions of the Western Cape constitutional text, unlike those adopted by the KwaZulu-Natal legislature in its proposed constitutional text under the interim Constitution, are germane to provincial constitution making, relate to provincial governance and do not attempt to usurp national powers and functions.

The Court found that the conferral of provincial honours and the use of terms like "Provincial Parliament" in the text are not inconsistent with the national Constitution. The Court also held that the words "in humble submission to Almighty God" in the preamble to the provincial text, provisions relating to the size of the provincial legislature

and cabinet, the identification of the Leader of the Opposition and the procedure for amending the provincial constitution were all unobjectionable.

There were three grounds on which certification was denied. One related to the attempt to introduce an electoral system (to be prescribed by provincial legislation) based predominantly on the representation of geographic multi-member constituencies. The national Constitution requires that national legislation prescribe an electoral system. Secondly, the Court concluded that the provincial constitution could not take away a ceremonial power conferred on the President of the Constitutional Court by the national Constitution (relating to administering oaths of office) and confer it on the Judge President of the Western Cape High Court. Finally, the Constitutional Court ruled that a provision in the provincial text calling for provincial legislation to flesh out a prohibition against provincial cabinet members performing "paid work" was fatally inconsistent with the national Constitution.

The Court thus denied certification.
Judgment was delivered by the full court.