

Explanatory Note

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

Section 309(4) read with s 305 of the Criminal Procedure Act provides that convicted prisoners who lack legal representation and who were convicted in a magistrates court do not have an automatic right of appeal to the Supreme Court. Such prisoners may only appeal against their convictions or sentences if a Supreme Court judge has granted a judge's certificate certifying that there are reasonable grounds for the appeal. All other types of convicted persons do not require a certificate in order to appeal from a decision of a magistrates court to the Supreme Court.

The Court found that the sections violated a person's right to a fair trial in terms of s 25(3) of the Constitution. In particular, the sections violated s 25(3)(h) -- the right to have recourse by way of appeal or review to a higher court than the court of first instance. It was found that the restriction meant that there was a real danger that the merits of an appeal which deserved to be heard would not attract judicial attention. The certificate requirement was also found to violate s 8(1) (right of equality) of the Constitution which at the very least entitled everyone to equal treatment by the courts.

The violations could not be saved by the limitations section (s 33 of the Constitution) because the reasons put forward by the state for limiting the rights in question were unreasonable and unjustifiable.

Although the Court declared s 309(4)(a) of the Criminal Procedure Act to be unconstitutional, it decided in the interests of justice and good government to give Parliament until 30 April 1997 to remedy the defect, thus suspending the declaration of invalidity until that date, or until Parliament acts to remedy the unconstitutionality.

The judgment of the Court was delivered by Didcott J and was concurred in by all the other members of the Court.