



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Hugh Glenister v President of the Republic of South Africa, Minister of Safety and Security, Minister for Justice and Constitutional Development, National Director of Public Prosecutions, Head of the Directorate of Special Operations, Speaker of the National Assembly, Chairperson of the National Council of Provinces, African Christian Democratic Party, Democratic Alliance, Independent Democrats, United Democratic Movement, Inkatha Freedom Party (Centre for Constitutional Rights as Amicus Curiae)

**Case CCT 41/08
[2008] ZACC 19**

Judgment Date: 22 October 2008

MEDIA SUMMARY

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.

Today the Constitutional Court handed down judgment in a case in which the applicant, Mr Hugh Glenister, sought to challenge a decision taken by Cabinet to initiate legislation dissolving the Directorate of Special Operations (DSO), commonly known as the Scorpions. Mr Glenister approached this Court for leave to appeal, on an urgent basis, against the decision of the Pretoria High Court handed down on 27 May 2008, which held that the High Court lacked jurisdiction to hear the matter. In the alternative, the applicant applied for direct access to this Court for an order compelling the government to withdraw the relevant Bills from Parliament.

In terms of directions issued by the Chief Justice on 15 July 2008, the only issue for determination was whether, in view of the principle of separation of powers, the circumstances of this case permitted the Court to consider the validity of the decision taken by Cabinet while the Bills were still before Parliament and the legislative process still underway.

The applicant submitted that the circumstances of this case were exceptional enough to warrant judicial intervention at this stage of the legislative process. He argued that Cabinet's decision had caused mass resignations within the DSO, in effect bringing about its dissolution and depriving South Africa of an effective crime-fighting unit even before the conclusion of the legislative process. The Court must intervene at this stage, he submitted, to prevent irreparable harm.

The Ministers for Safety and Security and for Justice and Constitutional Development opposed the application. They conceded that there may be exceptional circumstances which would justify intervention by the courts in the legislative process before Parliament had completed its deliberations. They argued that this was not such a case and that judicial intervention was not therefore appropriate.

In the High Court a number of political parties were admitted as *amici curiae* (friends of the court) and were cited as respondents in this Court. One of them, the United Democratic Movement, presented argument in support of the contention that this Court should intervene in this case. The Centre for Constitutional Rights was admitted as *amicus curiae* in this Court, and submitted that the doctrine of the separation of powers does not preclude this Court from intervening in the circumstances.

In a unanimous judgment by Langa CJ, the Court discussed the importance of the separation of powers doctrine implicitly recognised in our Constitution. The doctrine ensures that each branch of government – the executive, legislature and judiciary – is able to fulfil its constitutional mandate without interference by either of the other branches. Langa CJ held that, in this case, the executive had carried out its constitutionally mandated task of initiating and preparing legislation. That draft legislation is before Parliament, the body which has the primary responsibility of overseeing the executive's actions. There may be circumstances in which a court will intervene where draft legislation is still being considered by Parliament, but the circumstances that warrant judicial intervention would have to be exceptional and an applicant would need to demonstrate material and irreversible harm in the sense that no effective remedy would be available once the legislative process is complete.

The applicant failed to establish that material and irreversible harm had arisen. A causal relationship between the decision taken by Cabinet and the resignations of members of the DSO was not clearly established, and in any event, the resignations would not necessarily cause irreversible harm.

The applications for leave to appeal and direct access were accordingly dismissed.