



Collaboration Space / UCT Equality Law Database / 2008

GELDENHUYS v NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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YEAR: 2008

PLAINTIFF / APPLICANT / APPELLANT: IZAK ANDREAS GELDENHUYS Plaintiff

DEFENDANT / RESPONDENT:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	First Respondent
DIRECTOR OF PUBLIC PROSECUTIONS, TRANSVAAL	Second Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Third Respondent

COURT: CONSTITUTIONAL COURT

CITATION: (CCT 26/08) [2008] ZACC 21; 2009 (2) SA 310 (CC); 2009 (1) SACR 231 (CC); ; 2009 (5) BCLR 435 (CC)

POST / PRIOR ACTION:

Supreme Court of Appeal: S v Geldenhuys (470/2007) [2008] ZASCA 47; 2009 (1) SACR 1 (SCA); [2008] 3 All SA 8 (SCA), available at <http://www.saflii.org.za/za/cases/ZASCA/2008/47.html>

JUDGE(S): MOKGORO J.

Langa CJ, Moseneke DCJ, Madala J, Ngcobo J, O'Regan J, Sachs J, Van der Westhuizen J and Yacoob J concurred in the judgment of Mokgoro J.

GROUND(S) OF DISCRIMINATION: SEXUAL ORIENTATION

STATEMENT OF FACTS:

The case concerned an application by a 53 year old male for confirmation of an order made by the Supreme Court of Appeal which declared sections 14(1)(b) and 14(3)(b) of the Sexual Offences Act (the Act) unconstitutional. The applicant had been convicted of acts of indecency with a 14 year old boy under the above-mentioned challenged sections of the Act. The Act stipulated different ages of consent in respect of acts of indecency between, on the one hand, people of the opposite sex and, on the other hand, people of the same sex.

ISSUE OF LAW:

Whether the differentiation in sections 14(1)(b) and 14(3)(b) of the Act, as to the age of consent for indecent acts, unjustifiably infringes upon the applicant's right to equality as protected by section 9 of the Constitution.

DECISION, RATIO AND OUTCOME (including minority judgment where applicable):

The Constitutional Court upheld the Supreme Court of Appeal's order declaring the Constitutional invalidity of the relevant provisions of the Act and its remedial action.

The Constitutional Court held that there was a clear differential between the age of consent for indecent acts between same sex persons and opposite sex persons. This amounted to discrimination based on sexual orientation, which is automatically unfair in terms

of the Constitution. No evidence was adduced to prove the fairness of the discrimination. Therefore the Constitutional Court held that the relevant provisions of the Act limited the right to equality enshrined in the Constitution.

The Constitutional Court further examined whether the limitation of the right to equality was justifiable in terms of s 39 of the Constitution. It concluded that it was not justifiable. The Constitutional Court held that the relevant provisions of the Act perpetuated stereotypes associated with same sex relationships and inferred that there was 'something odd, deviant and even perverse about homosexual acts and/or homosexual people.' The latter findings contradicted the right to equality and the values that the Constitution upheld such a dignity, equality and freedom. As such, the relevant provisions amounted to unfair discrimination based on sexual orientation by stating different ages of consent for indecent acts between same sex persons and opposite sex persons.

LINK TO FULL DECISION: <http://www.saflii.org.za/za/cases/ZACC/2008/21.html>

LABELS: