

CONSTITUTIONAL COURT COMPLEMENTARY ACT 13 OF 1995

[ASSENTED TO 8 JUNE 1995] [DATE OF COMMENCEMENT: 14 JUNE 1995]

(Afrikaans text signed by the President)

as amended by

Constitution of the Republic of South Africa Second Amendment Act 44 of 1995
Public Service Laws Amendment Act 47 of 1997
Constitutional Court Complementary Act Amendment Act 79 of 1997

ACT

To regulate matters incidental to the establishment of the Constitutional Court by the Constitution of the Republic of South Africa, 1993; and to provide for matters connected therewith.

Preamble

WHEREAS sections 97 up to and including 100 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), provide for the establishment of a Constitutional Court; the appointment of a President of the Court; the jurisdiction of the Court; and the composition of, and appointment of judges of, the Court and the engagement thereof;

AND WHEREAS the Constitution provides that the Constitutional Court shall have jurisdiction in the Republic as court of final instance over all matters relating to the interpretation, protection and enforcement of the provisions of the Constitution;

AND WHEREAS the establishment of the Constitutional Court necessitates certain ancillary provisions pertaining to the nature, powers and administrative functioning of that Court;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: -

1 Definitions

In this Act, unless the context otherwise indicates-

'Chief Justice' means the Chief Justice of South Africa;

'Court' means the Constitutional Court established in terms of section 98 (1) of the Constitution;

'member of the Court' means the President or any other judge of the Court;

'Minister' means the Minister of Justice;

'Registrar' means the registrar or an assistant registrar of the Court appointed in terms of section 14;

'rules' means the rules of the Court promulgated under section 16.

[Definition of 'rules' substituted by s. 1 of Act 79 of 1997.]

2 Nature of Court and seal

(1) The Court shall be a court of record.

(2) The Court shall have for use as occasion may require, a seal of such design as may be prescribed by the President of the Republic by proclamation in the *Gazette* .

(3) The seal of the Court shall be kept in the custody of the Registrar.

3 Scope and execution of process

The process of the Court shall run throughout the Republic, and its judgments and orders shall, subject to the rules, be executed in any area in like manner as if they were judgments or orders of the division of the Supreme Court or the magistrates' court having jurisdiction in such area.

4 Certified copies of court records admissible as evidence

Whenever a judgment, decree, order or other record of the Court is required to be proved or inspected or referred to in any manner, a copy of such judgment, decree, order or other record duly certified as such by the Registrar under the seal of the Court shall be *prima facie* evidence thereof without proof of the authenticity of the signature of the Registrar concerned.

5 Issue of process against member of Court

(1) Notwithstanding anything to the contrary in any law contained, no civil proceedings by way of summons or notice of motion shall be instituted against any member of the Court, and no subpoena in respect of civil proceedings shall be served on any member of the Court, except with the consent of the-

- (a) Chief Justice, in the case of the President of the Court; or
- (b) President of the Court, in the case of any other judge of the Court.

(2) Where consent has been granted as contemplated in subsection (1), the date upon which the member of the Court concerned must attend court shall be determined in consultation with the Chief Justice or the President of the Court, as the case may be.

6 Sitting at places elsewhere than seat

Whenever it appears to the Court that by reason of the existence of exceptional circumstances it is expedient to hold its sitting for the hearing of any matter at a place elsewhere than in Johannesburg, it may hold such sitting at that place accordingly.

7 Appointment of commissions

(1) The Court may, either at the request of any party to proceedings before it or on its own initiative, appoint commissions for the purpose of obtaining and hearing evidence which in the opinion of the Court is necessary for the determination of any issue in such proceedings.

(2) The provisions of sections 11, 12 and 13 shall *mutatis mutandis* apply to a commission appointed in terms of subsection (1).

8 Referral of order of constitutional invalidity to Court

(1) (a) Whenever the Supreme Court of Appeal, a High Court or a court of similar status declares an Act of Parliament, a provincial Act or conduct of the President invalid as contemplated in section 172 (2) (a) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), that court shall, in accordance with the rules, refer the order of constitutional invalidity to the Court for confirmation.

(b) Whenever any person or organ of state with a sufficient interest appeals or applies directly to the Court to confirm or vary an order of constitutional invalidity by a court, as contemplated in section 172 (2) (d) of the Constitution, the Court shall deal with the

matter in accordance with the rules.

(2) If requested by the President of the Court to do so, the Minister shall appoint counsel to present argument to the Court in respect of any matter referred to the Court as contemplated in subsection (1) (a) .

[S. 8 repealed by s. 14 of Act 44 of 1995 and inserted by s. 2 of Act 79 of 1997.]

9 Contempt of Court

(1) Any person who-

- (a) during the sitting of the Court, wilfully insults any member of the Court or any officer of the Court present at the sitting, or who wilfully hinders or obstructs any member of the Court or any officer thereof in the exercise of his or her powers or the performance of his or her duties;
- (b) wilfully interrupts the proceedings of the Court or otherwise misbehaves himself or herself in the place where the sitting of the Court is held; or
- (c) does anything calculated improperly to influence the Court in respect of any matter being or to be considered by the Court,

may, by order of the Court, be removed and detained in custody until the rising of the Court.

(2) Removal and detention in terms of subsection (1) shall not preclude the prosecution in a court of law of the person concerned on a charge of contempt of court.

10 Manner of securing attendance of witnesses or production of any document or thing in proceedings and penalties for failure

(1) A party to proceedings before the Court in which the attendance of witnesses or the production of any document or thing is required, may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules.

(2) Whenever any person subpoenaed to attend any proceedings as a witness or to produce any document or thing, fails without reasonable excuse to obey the subpoena and it appears from the return of the person who served such subpoena, or from evidence given under oath, that-

- (a) the subpoena was served upon the person to whom it is directed and that his or her reasonable expenses calculated in accordance with the tariff framed under section 42 (1) of the Supreme Court Act, 1959 (Act 59 of 1959), have been paid or offered to him or her; or
- (b) he or she is evading service,

or if any person who has attended in obedience to a subpoena fails to remain in attendance, the Court may issue a warrant directing that he or she be arrested and brought before the Court at a time and place stated in the warrant or as soon thereafter as possible.

(3) A person arrested under any such warrant may be detained thereunder in any prison or lock-up or other place of detention or in the custody of the person who is in charge of him or her, with a view to securing his or her presence as a witness or to produce any document or thing at the proceedings concerned: Provided that any member of the Court may release him or her on a recognisance with or without sureties for his or her appearance to give or to produce any document or thing as required.

(4) Any person subpoenaed in terms of subsection (1) to attend any proceedings as a witness or to produce any document or thing, who fails without reasonable excuse to obey such subpoena, shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

(5) If a person who has entered into any recognisance in terms of subsection (3) for his or her appearance to give evidence at such proceedings or to produce any document or thing, fails without reasonable excuse so to appear or to produce such document or thing, he or she shall, apart from the forfeiture of his or her recognisance, be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

11 Manner in which witness may be dealt with on refusal to give evidence or produce documents

(1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 11 or who is present and is verbally required by the Court to give evidence in any proceedings-

- (a) refuses to take an oath or to make an affirmation;
- (b) having taken an oath or having made an affirmation, refuses to answer such questions as are put to him or her; or
- (c) refuses or fails to produce any document or thing which he or she is required to produce,

without any just excuse for such refusal or failure, the Court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing to prison unless he or she sooner consents to do what is required of him or her.

(2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him or her, the Court may again adjourn the proceedings and commit him or her for a like period and so again from time to time until such person consents to do what is required of him or her.

(3) Nothing in this section contained shall prevent the Court from giving judgment in any matter or otherwise disposing of the proceedings according to any other sufficient evidence taken.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he or she actually has it in Court.

(5) When a subpoena is issued to procure the attendance of any person to give evidence or to produce any book, paper or document in any proceedings, and it appears-

- (a) that he or she is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such proceedings; or
- (b) that such book, paper or document could properly be produced by some other person; or
- (c) that the compelling of his or her attendance would be an abuse of the process of the Court,

any member of the Court may, notwithstanding anything in this section contained, after reasonable notice by the Registrar to the party who sued out of the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such

subpoena.

12 Witness fees

A witness in any matter before the Court shall be paid the allowance payable to a witness appearing in civil proceedings in the Supreme Court.

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[S. 13 repealed by s. 14 of Act 44 of 1995.]

14 Appointment of officers and staff of Court

(1) The Minister shall, subject to the laws governing the public service, on the request of and in consultation with the President of the Court, appoint for the Court a registrar, assistant registrars and other officers and staff whenever they may be required for the administration of justice or the execution of the powers and authorities of the Court.

(2) (a) The President of the Court may, in consultation with the Minister, from time to time appoint for the Court one or more persons to undertake such research or perform such other duties as the President of the Court may determine.

(b) The remuneration and other terms and conditions of service of a person appointed in terms of paragraph (a) shall be as determined, either generally or in any specific case, by the President of the Court in consultation with the accounting officer referred to in section 15 (3).

(3) Whenever by reason of absence or incapacity the registrar or an assistant registrar is unable to carry out the functions of his or her office, or his or her office becomes vacant, the Minister may after consultation with the President of the Court, authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled.

[Sub-s. (3) amended by s. 35 (1) of Act 47 of 1997.]

(4) Any officer in the public service appointed under subsection (1) may simultaneously hold more than one of the offices mentioned in that subsection.

(5) The Minister may delegate to an officer in the Department of Justice any of the powers vested in him or her by this section.

15 Finances and accountability

(1) Expenditure in connection with the administration and functioning of the Court shall be defrayed from moneys appropriated by Parliament.

(2) Requests for the funds needed for the administration and functioning of the Court, as determined by the President of the Court after consultation with the Minister, shall be addressed to Parliament by the Minister in the manner prescribed for the budgetary processes of departments of state.

(3) The Director-General: Justice or an officer of the Department of Justice designated by him or her for such purpose shall, subject to the Exchequer Act, 1975 (Act 66 of 1975)-

- (a) be charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Court; and
- (b) cause the necessary accounting and other related records to be kept, which records shall be audited by the Auditor-General.

16 Engaging the Court, rules and saving

(1) (a) The President of the Court may, in consultation with the Chief Justice, by notice in the *Gazette* make rules relating to the manner in which the Court may be engaged in any matter in respect of which it has jurisdiction, including the matters referred to in section 172 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and all matters relating to the proceedings of and before the Court.

(b) Every rule and every amendment or repeal thereof shall be submitted to Parliament before the promulgation thereof and tabled as soon as possible.

(2) The rules shall, when it is in the interests of justice and with leave of the Court, allow a person-

(a) to bring a matter directly to the Court; or

(b) to appeal directly to the Court from any other court.

(3) The Constitutional Court Rules, 1995, promulgated by Government Notice R5 of 6 January 1995, as amended, shall be deemed to have been made under subsection (1).

[S. 16 repealed by s. 14 of Act 44 of 1995 and inserted by s. 3 of Act 79 of 1997.]

17 Short title

This Act shall be called the Constitutional Court Complementary Act, 1995.

CONSTITUTIONAL COURT COMPLEMENTARY ACT AMENDMENT ACT 79 OF 1997

[ASSENTED TO 26 NOVEMBER 1997] [DATE OF COMMENCEMENT: 28 MAY 1998]

(English text signed by the President)

ACT

To amend the Constitutional Court Complementary Act, 1995, so as to provide for the referral of orders of constitutional invalidity of Acts of Parliament, provincial Acts or conduct of the President to the Constitutional Court; the appointment of counsel to argue issues of constitutional invalidity before the Constitutional Court; and the prescribing of rules regulating the proceedings of the Constitutional Court; and to provide for incidental matters.

1 Amends section 1 of the Constitutional Court Complementary Act 13 of 1995 by substituting the definition of 'rules'.

2 and 3 Insert respectively sections 8 and 16 in the Constitutional Court Complementary Act 13 of 1995 .

4 Short title and commencement

This Act shall be called the Constitutional Court Complementary Act Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette* .