

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 21 (1)(a)(i) of the Drugs and Drug Trafficking Act 140 of 1992 provides that if an accused has been found in possession of more than 115 grams of dagga, he or she will be presumed to have been dealing in dagga and will be convicted of the offence of dealing (as opposed to the lesser offence of possession) unless that person proves that he or she has not been dealing in dagga.

Considering a reference of the issue of the validity of the section from the Supreme Court, the Constitutional Court held the section to be unconstitutional with effect from the date of the judgment. The Court considered the section to be an infringement of the right of an accused person to be presumed innocent in s 25(3)(c) of the Constitution. The Court found that the section was not justifiable in terms of s 33(1) of the Constitution, holding that the State had failed to prove that the presumption substantially furthered the aim of combatting the trafficking of illegal drugs.

The Court ordered that the declaration of invalidity should invalidate the use of the presumption in any criminal trial in which the verdict was given after the Constitution came into operation and in which, at the time of the judgment, either an appeal or review is pending or the time for noting an appeal has not yet expired.

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