CONSTITUTIONAL COURT OF SOUTH AFRICA

Bertie Van Zyl (Pty) Ltd and Another v Minister of Safety and Security and Others

CCT 77/08
[2009] ZACC 11

Date of Judgment: 7 May 2009

MEDIA SUMMARY

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

This judgment, handed down by the Constitutional Court on 7 May 2009, deals with the constitutional validity of certain provisions of the Private Security Industry Act of 2001 (the Act), which regulates the private security industry in South Africa.

The applicants are major tomato farmers in Limpopo, who employ some of their workers as "in-house" security guards to protect their assets against theft. The first to fourth respondents (the Minister of Safety and Security, the national and provincial Commissioners of Police and a police officer) were of the view that these in-house security guards were required to register as "security service providers" in terms section 20 of the Act. They were also of the view that the applicants and their workers were bound by the Code of Conduct prescribed by section 28 of the Act, to ensure, amongst other things, the payment of minimum wages and compliance with labour standards.

Since the applicants' guards were not registered, some were arrested. The applicants consequently approached the North Gauteng High Court in Pretoria (the High Court) for an order declaring sections 20(1)(a), 28(2) and 28(3)(b) of the Act to be overbroad and therefore unconstitutional and invalid. The High Court held that section 20(1)(a) was not unconstitutional. It interpreted the provision contextually to mean that only those persons engaged in the occupation of security service provider within the private security industry is required to register. The High Court held that sections 28(2) and (3)(b) were unconstitutional insofar as they applied to in-house security personnel such as the farm workers in this matter and their employers.

The order of invalidity made by the High Court was referred to this Court for confirmation. The applicants simultaneously appealed against the High Court's interpretation of section 20(1)(a). The respondents opposed the confirmation of invalidity as well as the applicants' appeal.

The majority judgment by Mokgoro J (in whose judgment Langa CJ, Moseneke DCJ, Ngcobo J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J concurred) upheld the constitutionality of section 20(1)(a). It held that – if interpreted in the light of the purpose and context of the Act – it means that the only persons who are required to register as "security service providers" are those who are engaged in the protection or safeguarding of person or property from unlawful physical harm caused by another person. The provision is not overboard. On the facts of this case, the in-house security guards fell within this definition, and were thus required to register in terms of the Act.

The majority furthermore held that sections 28(2) and (3)(b), were not unconstitutional, since it was an important purpose of the Act that in-house security personnel and their employers be regulated by the standards in the Code of Conduct. It therefore declined to confirm the orders of invalidity made by the High Court. Having found that in-house security guards in this matter were "security service providers" for the purposes of the Act, Mokgoro J held that they and the applicants were bound to observe the Code of Conduct.

In a dissenting judgment, O'Regan J held that, whilst the meanings attributed to section 20(1)(a) by Mokgoro J and the High Court, albeit quite different, were arguably practical, both unduly strained the text of the section and constituted an exercise in legislative drafting, rather than interpretation. She held that the section was impermissibly vague (thus violating the rule of law), and since the section was coupled with a criminal prohibition, its vagueness would lead to an undesirable situation in which citizens will not know what they should do to avoid criminal prosecution; and law enforcement officers will be given too much discretion to determine whom to prosecute. O'Regan J would thus have declared section 20(1)(a) to be unconstitutional and invalid, and would have referred the matter to the legislature to rectify the defect.

In respect of sections 28(2) and 28(3)(b), O'Regan J agreed with Mokgoro J that these sections were not unconstitutional and that the declaration of invalidity should not be confirmed.

In the result, the appeal was dismissed. The order of invalidity made by the High Court was not confirmed.