

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.*

The matter involved a challenge to s 21(1)(a)(iii) of the Drugs and Drug Trafficking Act 40 of 1992, which creates a presumption that a person found in possession of any quantity of an undesirable dependence producing substance was presumed to be dealing in that substance. In the light of an earlier decision of the Court in *S v Bhulwana; S v Gwadiso* 1996 (1) SA 388 (CC) where a similar presumption regarding the possession of dagga was declared to be unconstitutional, it was found that the presumption violated the accused's right to silence and the presumption of innocence. The Court held that the presumed fact of trafficking in drugs could in no reasonable way be said to flow from the proof of possession of a negligible quantity of that substance. In the absence of any such rational connection the Court found that, regardless of any policy considerations, the presumption could not be justified in terms of section 33(1) of the Constitution. The subsection was declared to be unconstitutional and invalid from the date of judgment. In terms of the order, the declaration of invalidity can be invoked against all convictions made after 27 April 1994, against which review or appeal is pending or can still be noted.

The judgment of the Court was delivered by Kriegler J and was concurred in by the other members of the Court.