



Doctors for Life International v. Speaker of the National Assembly & Ors.

Doctors for Life Int'l v. Speaker of the Nat'l Assembly 2006 (6) SA 416 (CC) (S. Afr.).

Country: South Africa

Region: Africa

Year: 2006

Court: Constitutional Court of South Africa

Facts

The applicant, the Doctors for Life International, filed a claim against the National Council of Provinces. The applicant contended that according to the South African Constitution and International Law, public hearings must be held in respect to all legislation under consideration by a legislative branch whether at the national or provincial level. In the case of four health acts, namely the Choice on Termination of Pregnancy Amendment Act 38 of 2004 ("the CTOP Amendment Act"), the Sterilization Amendment Act 3 of 2005, the Traditional Health Practitioners Act 35 of 2004 and the Dental Technicians Amendment Act 24 of 2004, public hearings had not been held.

Decision and Reasoning

The court reasoned that the right to political participation is a fundamental human right set out in international and regional human rights instruments and enshrined in South Africa's Constitution.

The legislative branch has a constitutional duty to take steps to provide the public with reasonable opportunities to participate effectively in the law-making process. The legislature must also take measures to ensure that people have the ability to take advantage of the opportunities provided.

The Court found that the Constitutional Court was indeed the competent court to assess whether the requisite public involvement had taken place in Parliament's legislative processes and that failure to comply would result in the invalidation of any impugned law.

The Court held that the NCOP and the provincial legislatures failed to fulfill their obligation enshrined in section 72(1)(a) of the South African Constitution to "facilitate public involvement in their respective legislative processes" regarding the CTOP Amendment Bill and the THP Bill. As a result, both were declared invalid.

Decision Excerpts

"[91] Significantly, the ICCPR guarantees not only the 'right' but also the 'opportunity' to take part in the conduct of public affairs. This imposes an obligation on states to take positive steps to ensure that their citizens have an opportunity to exercise their right to political participation. The right enshrined in article 25 must be understood in the light of article 19 of the ICCPR, which provides: '2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'" Page 49.

"[92] Both articles 19 and 25 guarantee not only the positive right to political participation, but simultaneously impose a duty on states to facilitate public participation in the conduct of public affairs by ensuring that this right can be realized. Taken together, they seek to ensure that citizens have the necessary information and the effective opportunity to exercise the right to political participation." Page 49.