



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**J v National Director of Public Prosecutions and Another**

**CCT 114/13**

**Date of hearing: 6 February 2014**

**Date of judgment: 6 May 2014**

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### **MEDIA SUMMARY**

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

Today the Constitutional Court handed down a judgment declaring section 50(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (Sexual Offences Act) unconstitutional. The section provides that when a person is convicted of a sexual offence against a child or person who is mentally disabled, a court must make an order to include the offender's particulars on the National Register for Sex Offenders (Register). Having one's particulars entered on the Register entails certain limitations in employment, in licensing certain facilities and ventures, and in the care of children and persons with mental disabilities.

The applicant was convicted of sexual offences committed against children. He too was a child at the time of the offences. The trial court sentenced the applicant and made an order that his particulars be entered on the Register. On review, the Western Cape High Court, Cape Town (High Court), declared section 50(2) of the Sexual Offences Act constitutionally invalid because it unjustifiably infringes on the rights of offenders, whether children or adults. The High Court suspended the declaration of invalidity for 18 months and ordered that, in the interim, certain words be read into the provision. The matter came before the Constitutional Court for confirmation. None of the parties opposed the confirmation of the declaration of invalidity.

In a unanimous judgment, Skweyiya ADCJ held that section 50(2)(a) of the Sexual Offences Act infringes on the right of child offenders to have their best interests considered of paramount importance in terms of section 28(2) of the Constitution. The Register fulfils a vital function in protecting children and persons with mental disabilities

from sexual abuse. However, the limitation of the child offender's right is unjustifiable because a court has no discretion whether to make the order and because there is no related opportunity for child offenders to make representations. The Court limited its declaration of constitutional invalidity to child offenders. It held that the constitutionality of the provision in relation to adult offenders was not properly before the Court.

The Court suspended the declaration of invalidity for 15 months to give the Legislature an opportunity to correct the constitutional defect. The respondents were further directed to provide a report to the Court setting out the details of child offenders currently listed on the Register.