

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Christian Education South Africa v Minister of Education

Case CCT 4/00

Decided on 18 August 2002

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.

The central question in this case is whether Parliament, by prohibiting corporal punishment in all schools, has unconstitutionally limited the religious rights of parents of children in independent schools who, in line with their religious convictions, had consented to what they termed the "corporal correction" of their children by teachers.

The appellant is a voluntary association of 196 independent Christian schools with a total of approximately 14 500 pupils. It contended that "corporal correction" was an integral part of the Christian ethos in its schools, and hence the blanket prohibition imposed by section 10 of the Schools Act should be declared invalid to the extent that it limited the individual, parental and community rights of the parents to practise their religion. The respondent, the Minister of Education, contended that it was the infliction, not the prohibition, of corporal punishment that infringed the constitutional rights of children and their rights to equality, human dignity and freedom and security of the person. Alternatively, if the prohibition limited the religious rights of the applicant, such limitation was justifiable.

Sachs J on behalf of a unanimous court said that he would assume in the appellant's favour that religious and community rights of the appellant had been limited. He said that the question then was whether such limitation was justifiable. The case raised difficult questions which required weighing considerations of faith against those of reason, and of separating out what aspects of an activity are religious and protected by the Bill of Rights and what are secular and open to regulation in the ordinary way. He stated that believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or respectful of the law.

In order to put the child at the centre of the school, he held, and to protect the learner from physical and emotional abuse, the legislature had prescribed a blanket ban on corporal punishment. The judgment emphasises that the present case does not require a decision on whether moderate corporal correction by parents in the intimate atmosphere

of the home violates the constitution. It deals only with corporal punishment in the detached and institutional environment of the school. Sachs J emphasises that he does not underestimate in any way the very special meaning that corporal correction in school has for the self-definition and ethos of the religious community in question. Yet their schools of necessity function in the public domain so as to prepare their learners for life in the broader society. Just as it was not unduly burdensome to oblige them to accommodate themselves as schools to secular norms regarding health and safety, payment of rates and taxes, planning permissions and fair labour practices, and just as they were obliged to respect national examination standards, so was it not unreasonable to expect them to make suitable adaptations to non-discriminatory laws that impacted on their codes of discipline. The parents were not being obliged to make an absolute and strenuous choice between obeying a law of the land or following their conscience. They could do both simultaneously. What they were prevented from doing was to authorise teachers, acting in their name and on school premises, to fulfill what they regarded as their conscientious and biblically-ordained responsibilities. Similarly, save for this one aspect, the appellant's schools were not prevented from maintaining their specific Christian ethos.

When all these factors were weighed together, the scales came down firmly in favour of upholding the generality of the law in the face of the appellant's claim for a constitutionally compelled exemption. The appeal was accordingly dismissed.

Sachs J added that it was unfortunate that a curator had not been appointed to represent the interests of the children. The result was that the voices of the children themselves have not been heard.