



CONSTITUTIONAL COURT OF SOUTH AFRICA

Organisation Undoing Tax Abuse v Minister of Transport and Others

CCT 19/22

Date of hearing: 15 November 2022

MEDIA SUMMARY

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.

At 10:00 tomorrow, 15 November 2022, the Constitutional Court will hear an application by OUTA for the confirmation of an order made by the Gauteng Division of the High Court, Pretoria, declaring the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (AARTO Act) and the Administrative Adjudication of Road Traffic Offences Amendment Act 4 of 2019 (Amendment Act) unconstitutional and invalid. The High Court handed down its judgment earlier this year. AARTO is the legislation that provides for the penalising of drivers and operators of motor vehicles guilty of traffic or road infringements through a system of demerit points which may lead to the suspension and ultimately the cancellation of driving licences.

In its judgment the High Court explained the system under the new legislation as follows: The system brought in by this legislation is based on demerit points which are incurred for traffic offences or infringements. The Amendment Act shifts from the default system of judicial enforcement of traffic laws through criminal law to a compulsory system of administrative enforcement of traffic laws through administrative tribunals, administrative fines and demerit points system. Any person affected by the decision in that administrative process may apply to the Magistrate's Court designated by the Minister to review such administrative action in terms of the Promotion of Administrative Justice Act (PAJA).

The High Court stated that, apart from the offences determined by the Minister, all contraventions of road traffic and transport laws will be treated as infringements which are subject exclusively to administrative enforcement under the Amendment Act by two national organs of state, namely the Road Traffic Infringement Authority (the third respondent) established by section 3 and Appeals Tribunal established by section 29A of the Amendment Act. The Minister appoints the chairperson and other members of the Appeals Tribunal. In terms of section 3(1) of the AARTO Act, the Road Traffic

Infringement Authority is established as a juristic person responsible to the Minister. This effectively means that this Authority acts as an organ of state at national level of government in relation to road traffic issues through an administrative process.

The Amendment Act also provides in section 17 for different methods of service of infringement notices on the infringer which includes personal service, postage, or electronic service. The constitutional invalidity of section 17 of the Amendment Act is sought in the alternative to the primary relief sought in the notice of motion. The High Court did not find it necessary to decide the point relating to the constitutional validity of section 17.

There are two grounds on which the High Court declared the legislation unconstitutional. The first one was that the legislation usurps the exclusive executive jurisdiction of local government (under Part B of Schedule 5 of the Constitution) to enforce laws relating to municipal roads, traffic and parking. These Acts create a system in terms of which traffic laws are enforced through a national system of administrative tribunals, administrative fines and demerit points. All road traffic infringements are dealt with by the Road Traffic Infringement Authority and the Appeals Tribunal (two national organs of state that are created by section 3 and 29A, respectfully, of the Amendment Act. This means that the legislation transfers the enforcement of all road and traffic laws to the national level and thus usurps the exclusive executive competence of municipalities to enforce road traffic laws within their area of jurisdiction.

The second ground on which the High Court found the legislation unconstitutional is that it (the legislation) usurps the exclusive legislative authority of the provincial legislatures. The AARTO deals with traffic law enforcement and establishes a single national system for enforcement. Provincial and municipal road and traffic laws fall within the exclusive legislative competence of the provinces under Schedule 5, Parts A and B of the Constitution. The High Court held that Parliament could not legislate in relation to municipal road and traffic laws save in the exceptional circumstances contemplated in section 44(2) of the Constitution. The High Court held that no case had been made out that this was a case falling under section 44(2) of AARTO and Amendment Acts. The judgment of the High Court was given by Judge A Basson. She concluded that AARTO and the Amendment Act were unconstitutional because Parliament legislated in respect of matters that fell within competencies of the provincial legislatures and local government.

In this Court, the applicant submits that the above reasoning of the High Court cannot be challenged and that the Acts were correctly struck down. The applicant relies mainly on the above two grounds to seek confirmation of the order.

Before the Constitutional Court OUTA will contend that the judgment of the High Court was correct on the basis of the two grounds referred to above on which the High Court declared the legislation unconstitutional. The Minister of Transport, the Road Traffic Management Authority and the Road Traffic Management Corporation oppose OUTA's application. The Minister contends that the matters dealt with in AARTO and the Amendment Act fall within 'road traffic regulation' which he contends falls within the concurrent legislative competence of both Parliament and provincial governments. He

submits that AARTO regulates and provides for road traffic regulation. He contends that there is no provision in the Constitution that confers exclusive legislative competence to any sphere of government in respect of road traffic regulation. The Road Traffic Infringement Authority and the Road Traffic Management Corporation rely inter alia on the same contention as the Minister to oppose OUTA' application.