

Constitutional provisions regarding juristic persons.

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Summary

The interim Constitution of 1993 and the final Constitution of 1996 contain specific provisions applicable to juristic persons. Juristic persons are also entitled to the fundamental rights contained in the Bill of Rights to the extent that these rights are applicable to them. It must be kept in mind that juristic persons have peculiar characteristics and that the fundamental rights of juristic persons differ from those of natural persons.

Juristic persons are also under the obligation to respect the fundamental rights of natural persons and other juristic persons to the extent provided for in the Bill of Rights. In the case of juristic persons acting as organs of state the vertical application of the Bill of Rights safeguards the fundamental rights of persons against state action or interference. The circumstances where juristic persons act as organs of state are discussed with reference to case law. Difference of opinion exists regarding the horizontal application of the Bill of Rights, that is the application of the Bill of Rights to private law relationships. In terms of the interim Constitution the Bill of Rights was applied horizontally in an indirect manner. Section 35(3) provided that the common and customary law must be developed by both the Supreme Court and the Constitutional Court to promote the values underlying an open and democratic society based on human dignity, equality and freedom, without completely abolishing the common and customary law.

The final Constitution provides in section 8(2) that natural and juristic persons in private law relationships are also bound by the Bill of Rights if, and to the extent that, such rights are applicable, taking into account the nature of the rights and the nature of any duty imposed by such right. The direct horizontal application of the Bill of Rights is, however, limited by section 36. The extent of the rights of juristic persons and limitations on them in private law relationships are investigated, taking into account the right of freedom of association in terms of section 18. The various

principles to be taken into consideration in the case of clubs, religious organisations, educational institutions, political organisations and trading and professional institutions are discussed.