

DIE REG OP REGSVERTENWOORDIGING TYDENS ADMINISTRATIEWE VERRIGTINGE

SUMMARY

The question whether a person is entitled to legal representation is normally posed during disciplinary proceedings, but is also relevant to other types of administrative proceedings. No absolute right to legal representation exists beyond a court of law. The Promotion of Administrative Justice Act 3 of 2000 has confirmed the common law position, to wit that an administrative organ has a discretion to allow legal representation, should the circumstances warrant it. This discretion should be exercised properly, as held in *Hamata v Chairperson, Peninsula Technikon Internal Disciplinary Committee* 2002 5 SA 449 (SCA). The submission is that this discretion cannot be excluded either by means of contract or statute, should the Act apply. The definition of administrative action in the Act does not include proceedings before a domestic tribunal and the possibility exists that the discretion to consider allowing legal representation can be contractually excluded. It is argued that disciplinary proceedings affecting an employee should be distinguished from proceedings where a non-employee is involved. Employees should enjoy protection similar to that afforded by the Act.

Keywords

Socio-economic rights, social and economic rights, housing, shelter, children, children's rights, poverty, human dignity, enforcement, limitations, right to access to adequate housing, right to shelter, child headed households, Constitutional Court, South African Human Rights Commission.