

MACRO ISSUES OF MIKRO PRIMARY SCHOOL**E Bray****Summary**

Mikro Primary School is an Afrikaans medium public school whose governing body refused to accede to an order of the Western Cape Department of Education to change the language policy of the school so as to convert it into a parallel medium Afrikaans/English school. The Supreme Court of Appeal held that section 29(2) of the Constitution of the Republic of South Africa, 1996, means that everyone has a right to be educated in an official language of his or her choice at a public educational institution to be provided by the State if reasonably practicable, but not the right to be so instructed at each and every public educational institution, subject only to it being reasonably practicable to do so. The court held that the language policy and admission policy of Mikro were not contrary to any provision of the Constitution, the *South African Schools Act* 84 of 1996, the *Western Cape Provincial School Education Act* 12 of 1997 or the Norms and Standards. The MEC and the department were prohibited and restrained from compelling or attempting to compel the school or its principal to admit learners for instruction otherwise than in compliance with its language policy and applicable provisions of the Schools Act and the Norms and Standards. The court declared the conduct of the department's officials to be an unlawful interference with the government and professional management of the school in contravention of section 16 of the Schools Act and prohibited and restrained them from interfering unlawfully. The court rejected a previous interpretation of the term "organ of state" and relied on the Constitution which determines that any institution exercising a public power or performing a public function in terms of any legislation is an organ of state (section 239(b)(ii)). This means that the public school (acting through its governing body) is clearly an

* Department of Constitutional Law, International Law and Indigenous Law, UNISA.

E BRAY (SUMMARY) PER 2007(1)

organ of state because as an institution it exercises a public-education power and performs public-education functions in terms of the Schools Act, for example.