

CONSTITUTIONAL COURT STATISTICS FOR THE 2004 TERM

I INTRODUCTION

This note provides some descriptive statistics on the work of the Constitutional Court in the past year, organised in eight tables. A ninth table looks at the expected terms of the Judges of the Court. The method of constructing each table is given in the text following the table. The objectives and methods of this annual set of statistics are more fully laid out in the 1995 edition and subsequent editions of the *SAJHR*.¹

We cover only cases in which the Court produced a written judgment. Applications that were considered in chambers and then dismissed on either substantive or procedural grounds, without a judgment being given, are excluded. These applications do not contribute to the statistical analyses that follow, hence their exclusion. It would furthermore distort the patterns that emerge from the cases in which judgments were given should these applications be included. In 2004:

- There were 32 such applications. Together with the 22 applications in which judgments were given, this brings the Court's total caseload for the year to 54. One application was withdrawn.
- Each of these 32 applications was dealt with by the Court as a whole with no individual judge being responsible.
- Among these 32 applications were 29 applications for leave to appeal and three applications for direct access.
- While no exact analysis can be made of the length of time required by the Court to dispense with these applications, it is worth noting that they are typically dealt with rapidly, with the time from application to decision generally not exceeding one month.

We present the following statistics with caution and they should be read likewise. Statistics can often be misleading, particularly when they describe only a small number of cases, as here. We do not examine the reasoning of judges, nor do we examine the facts which the cases presented. Thus, the data offered here should be taken as complementary to qualitative analyses of the decisions rather than conclusive, and should be interpreted with a high degree of care.

¹ See 'Constitutional Court Statistics for the 1995 Term' (1996) 12 *SAJHR* 39; 'Constitutional Court Statistics for the 1996 Term' (1997) 13 *SAJHR* 208; 'Constitutional Court Statistics for the 1997 Term' (1998) 14 *SAJHR* 277; 'Constitutional Court Statistics for the 1998 Term' (1999) 15 *SAJHR* 256, read with (1999) 15 *SAJHR* 446; 'Constitutional Court Statistics for the 1999 Term' (2000) 16 *SAJHR* 364; 'Constitutional Court Statistics for the 2000 Term' (2001) 17 *SAJHR* 277; 'Constitutional Court Statistics for the 2001 Term' (2002) 18 *SAJHR* 463; 'Constitutional Court Statistics for the 2002 Term' (2003) 19 *SAJHR* 506; 'Constitutional Court Statistics for the 2003 Term' (2004) 20 *SAJHR* 491.

II SUMMARY

The 2004 term sees an apparent sharp break away from the pattern of considerable unanimity in the Court's judgments that has been characteristic of the Court over the past several years. Of the 22 cases decided in 2004, only 59 per cent were unanimous, a remarkable change from the 92 per cent unanimity rate of 2003. That year, there were only two judgments that were not unanimous: *Phillips* and *Thebus*.² The 2003 term thus may have come at the end of a general trend of increasing unanimity over recent years. In 2002, 85 per cent of the Court's judgments were unanimous. In 2001, 96 per cent of the Court's judgments were unanimous, while in 2000, the proportion of unanimous cases was 89 per cent.

The number of cases decided by the Court in 2004 fits within the general trend of previous years. In 2004, the Court delivered 22 judgments. The statistics for the previous years are as follows: in 2003, the court delivered 25 judgments; in 2002, the Court delivered 34 judgments; in 2001, the Court delivered 25 judgments; in 2000, 28 judgments; in 1999, 19; in 1998, 21; in 1997, 20; 27 for 1996; and in 1995, the court handed down 14 written judgments.

The 2004 term sees a continued decrease in the number of the Court's judgments made in favour of the government. Only 39 percent of the judgments were in favour of government. In 2003 the percentage of decisions in favour of the Court was 46. This shows a decrease from 2002, in which 67 per cent of the judgements were in favour of government. The 2004 and the 2003 figures are more consistent with the 2001 term, in which the Court ruled in favour of the government in 44 per cent of the cases. This was an increase from 2000, in which 31,6 per cent of the judgements were in favour of government. These figures are substantially lower than those of the years preceding 2000.³

There were no cases dismissed for lack of jurisdiction in 2004. This was also the case in 2003. Thirty two per cent of the cases were applications and referrals of orders of invalidity in terms of s 172(2)(d) and s (172)(2)(a) of the Constitution. The Court also heard thirty two per cent of its cases as direct appeals from the High Court in terms of s 167(6)(b) of the 1996 Constitution. These cases formed the bulk of the cases that the Court went on to hear. Whereas in 2003 only eight per cent

2 *Phillips v Director of Public Prosecutions (Witwatersrand Local Division)* 2003 (3) SA 345 (CC) and *S v Thebus* 2003 (6) SA 505 (CC).

3 See 'Constitutional Court Statistics for the 1996 Term' (1997) 13 *SAJHR* 208; 'Constitutional Court Statistics for the 1997 Term' (1998) 14 *SAJHR* 277; 'Constitutional Court Statistics for the 1998 Term' (1999) 15 *SAJHR* 256, read with (1999) 15 *SAJHR* 446 and 'Constitutional Court Statistics for the 1999 Term' (2000) 16 *SAJHR* 364. It should be noted, however, that the figures for 2000, 2001, 2002 and 2003 are lower than for previous years because it was decided to omit judgments that deal only with procedural issues from Tables 5 and 6. Had these been included in Table 6, they would have been counted as 'for government' if the status quo ante had prevailed.

of the cases were referrals in terms of s 172(2)(a) of the 1996 Constitution and 48 per cent of the judgments involved direct appeals from the High Court in terms of s 167(6)(b), the 2004 term represents a balanced figure between the latter two categories. There is a remarkable difference in the number of cases regarding applications for direct access to the Court in terms of s 167(6)(a) of the Constitution. In 2004 the Court heard only two such cases (9 per cent) when in 2003 these cases formed 32 per cent of the judgments and formed the bulk of the cases that the Court went on to hear. There is one 2004 case that involved a direct appeal from the Labour Appeal Court in terms of s 167(6)(b) of the Constitution read with Rule 18 of the Constitutional Court Rules. This is similar to 2003.

The average length of time between the hearing and the decision date (the date on which reasons are given) increased considerably in 2004 to 153 days. This increase represents a break from the trend of the previous years, which showed a fairly steady decrease in the number of days taken for deliberation. For instance, in 2001 the mean time was 68.5 days, in 1999 it was 58 days, in 1998, 89 days, in 1997, 120 days, in 1996 and 1995, 146 days and 119 days respectively.

III LIST OF 2004 CASES

Together with the abbreviations used in these tables, the cases decided with written judgments in 2004 are listed in chronological order based on the day the judgment was delivered. There are 22 cases covered in the 2004 statistics:

- (Nic) Minister of Home Affairs v NICRO and others
CCT 03/04; 2005 (3) SA 280 (CC)
- (Kho) Khosa and others v Minister of Social Development and others
CCT 12/03; CCT 13/03; 2004 (6) SA 505 (CC)
- (Lhr) Lawyers for Human Rights and another v Minister of Home Affairs and another
CCT 18/03; 2004 (4) SA 125 (CC)
- (Bas) S v Basson
CCT 30/03; 2005 (1) SA 171 (CC)
- (Dac) Daniels v Campbell and others
CCT 27/03; 2004 (5) SA 331 (CC)
- (Bat) Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and others
CCT 27/03; 2004 (4) SA 490 (CC)
- (Lib) Liberal Party v Electoral Commission and others
CCT 10/04; 2004 (8) BCLR 810 (CC)
- (Swa) S v Western Areas Ltd and others
CCT 4/04; 2004 (8) BCLR 819 (CC)
- (Dud) Dudley v City of Cape Town and another
CCT 5/04; 2005 (5) SA 429 (CC)

- (Vhe) Minister of Finance and others v Van Heerden
CCT 63/03; 2004 (6) SA 121 (CC)
- (Kau) Kaunda and others v President of the Republic of South Africa
CCT 23/04; 2005 (4) SA 235 (CC)
- (Mas) Mashavha v President of the Republic of South Africa and others
CCT 67/03; 2005 (2) SA 476 (CC)
- (Pev) Port Elizabeth Municipality v Various Occupiers
CCT 53/03; 2005 (1) SA 217 (CC)
- (Mls) Mabaso v Law Society of the Northern Provinces
CCT 76/03; 2005 (2) SA 117 (CC)
- (Mko) Mkontwana v Nelson Mandela Metropolitan Municipality
CCT 57/03; CCT 161/03; CCT 1/04; 2005 (1) SA 530 (CC)
- (Jaf) Jaftha v Schoeman and others
CCT 74/03; 2005 (2) SA 140 (CC)
- (Bhe) Bhe v Magistrate, Khayelitsha and others
CCT 49/03; 2005 (1) SA 580 (CC)
- (Zon) Zondi v Member of the Executive Council for Traditional and
Local Government Affairs
CCT 73/03; 2005 (3) SA 589 (CC)
- (Rca) Rail Commuters Action Group and others v Transnet Ltd t/a
Metrorail
CCT 56/03; 2005 (2) SA 359 (CC)
- (Rob) City of Cape Town v Robertson and another
CCT 19/04; 2005 (2) SA 323 (CC)
- (Dpp) Director of Public Prosecution, Cape of Good Hope v Robinson
CCT15/04; 2005 (4) SA 1 (CC)
- (Rpt) Radio Pretoria v The Chairperson of the Independent Commu-
nications Authority of SA and another
CCT 38/04; 2005 (4) SA 319 (CC)

**TABLE 1: VOTING PATTERNS IN JUDGMENTS DELIVERED —
2004**

Case	Judge												
	Ch	La	Ac	Go	Md	Mo	Ms	Ng	OR	Sa	Sk	Vdw	Ya
Nic	L	c	-	-	D	c	c	D	c	c	c	c	c
Kho	c	c	-	c	d	L	c	D	c	-	-	-	c
Lhr	c	c	c	c	D	c	d	c	c	c	-	-	L
Bas	C	c	L	-	L	L	L	L	L	C	-	-	c
Dac	c	c	c	-	d	c	D	C	c	L	-	-	c
Bat	c	c	c	c	c	c	c	L	L	c	-	-	c
Lib	ct	-	-	-	ct	ct	ct	-	ct	ct	ct	ct	ct
Swa	ct	-	-	-	ct	ct	ct	-	ct	ct	ct	ct	ct
Dud	ct	ct	-	-	ct	ct	ct	ct	ct	ct	ct	ct	ct
Vhe	c	c	-	-	c	C	L	C	c	C	c	c	c
Kau	L	c	-	-	-	-	c	C	D	C	c	c	c
Mas	c	c	-	-	c	c	c	-	c	c	c	L	c
Pev	c	c	-	-	c	c	c	c	c	L	c	c	c
Mls	c	c	-	-	-	c	c	c	L	c	c	c	c
Mko	c	c	-	-	c	c	c	c	C	C	c	c	L
Jaf	c	c	-	-	-	L	c	c	c	c	c	c	c
Bhe	c	L	-	-	c	c	c	D	c	c	c	c	c
Zon	c	c	-	-	c	c	c	L	c	c	c	c	c
Rca	-	c	-	-	-	c	c	-	L	c	c	c	c
Rob	-	c	-	-	-	c	L	-	c	c	c	c	c
Dpp	-	c	-	-	-	c	c	-	c	c	c	c	L
Rpt	ct	ct	-	-	ct	ct	ct	ct	ct	ct	ct	ct	ct

- 'L' indicates the leading judgment, containing the decision of the Court on the principal issue. The leading judgment will often but not always contain the order of the Court. Where several issues in different judgments are of significance, two or more judgments may be termed leading. Reasonable minds may well differ on this identification.
- 'C' indicates a separate concurrence with reasons with the order of the Court.
- 'c' indicates a concurring vote without reasons.
- 'ct' indicates a concurring vote in a unanimous Court judgment not attributed to any judge.
- 'D' indicates a separate dissent with reasons with the order of the Court. A vote to dispose of the case in any manner other than that adopted

by the Court in its order is taken as a dissent. Thus, judgments expressing both concurrence and dissent are classified as dissents. 'c' indicates that a judge did not participate in the deciding of the case. The judgments in the matters of Liberal Party, Dudley, Western Areas, and Radio Pretoria (Lib, Dud, Swa, Rpt) do not easily fit into these tables. For purposes of these tables, each of the participating judges is given a 'c' for these cases.

The judges covered in Table 1 are: Chaskalson CJ (Ch), Langa DCJ (La), Ackermann J (Ac), Goldstone J (Go), Madala J (Md), Mokgoro J (Mo), Moseneke (Ms), Ngcobo J (Ng), O'Regan J (OR), Sachs J (Sa), Skweyiya J (Sk), Van der Westhuizen J (Vdw) and Yacoob J (Ya).

TABLE 2: ACTIONS OF INDIVIDUAL JUDGES — 2004

	L Judgment	C Judgment	c Vote	D judgment	d Vote	Total
Ch	2	1	16	0	0	19
La	1	0	19	0	0	20
Ac	1	0	3	0	0	4
Go	0	0	3	0	0	3
Md	1	0	11	2	2	16
Mo	3	1	17	0	0	21
Ms	3	0	17	1	1	22
Ng	3	3	7	3	0	15
OR	4	1	16	1	0	22
Sa	2	4	15	0	0	21
Sk	0	0	17	0	0	17
Vdw	1	0	16	0	0	17
Ya	3	0	19	0	0	22

This table is calculated on the same basis as Table 1.

TABLE 3: UNANIMITY PERCENTAGE — 2004

	Unanimous	With Concurrence (Without dissent)	With dissent	Total
Cases	13 59%	5 23%	4 18%	22 100%

In this table, 'unanimous' means that all judges concurred in both the judgment of the Court and the order. 'With concurrence (without dissent)' means that at least one judge wrote separately but concurred in the order of the Court and that no judge dissented. 'With dissent' means that at least one judge would have made a different order.

TABLE 4: VOTING ALIGNMENTS: JUDGES OF THE COURT — 2004

	Ch	La	Ac	Go	Md	Mo	Ms	Ng	OR	Sa	Sk	Vdw	Ya
Ch	- 100%	17/17 100%	4/4 100%	3/3 100%	12/16 75%	18/18 100%	17/19 89%	13/16 81%	18/19 95%	18/18 100%	14/14 100%	14/14 100%	19/19 100%
La	17/17 100%	- 100%	4/4 100%	3/3 100%	10/14 71%	19/19 100%	18/20 90%	13/16 81%	19/20 95%	19/19 100%	15/15 100%	15/15 100%	20/20 100%
Ac	4/4 100%	4/4 100%	- 100%	2/2 100%	2/4 50%	4/4 100%	2/4 50%	4/4 100%	4/4 100%	4/4 100%	- -	- -	4/4 100%
Go	3/3 100%	3/3 100%	2/2 100%	- -	1/3 33%	3/3 100%	2/3 67%	2/3 67%	3/3 100%	2/2 100%	- -	- -	3/3 100%
Md	12/16 75%	10/14 71%	2/4 50%	1/3 33%	- -	12/16 75%	14/16 87%	10/13 77%	12/16 75%	12/15 80%	10/11 91%	10/11 91%	12/16 75%
Mo	18/18 100%	19/19 100%	4/4 100%	3/3 100%	12/16 75%	- -	19/21 90%	12/15 80%	20/20 100%	20/20 100%	16/16 100%	16/16 100%	21/21 100%
Ms	17/19 89%	18/20 90%	2/4 50%	2/3 67%	14/16 87%	19/21 90%	- -	11/16 69%	19/22 86%	19/21 90%	17/17 100%	17/17 100%	20/22 91%
Ng	13/16 81%	13/16 81%	4/4 100%	2/3 67%	10/13 77%	12/15 80%	11/16 69%	- -	12/16 75%	13/15 87%	9/11 82%	9/11 82%	13/16 81%
OR	18/19 95%	19/20 95%	3/3 100%	4/4 100%	12/16 75%	20/20 100%	19/22 86%	12/16 75%	- -	20/21 95%	16/17 94%	16/17 94%	21/22 95%
Sa	18/18 100%	19/19 100%	4/4 100%	2/2 100%	12/15 80%	20/20 100%	19/21 90%	13/15 87%	20/21 95%	- -	17/17 100%	17/17 100%	21/21 100%
Sk	14/14 100%	15/15 100%	- -	- -	9/11 91%	16/16 100%	17/17 100%	9/11 82%	16/17 94%	17/17 100%	- -	17/17 100%	17/17 100%
Vdw	14/14 100%	15/15 100%	- -	- -	10/11 91%	16/16 100%	17/17 100%	9/11 82%	16/17 94%	17/17 100%	17/17 100%	- -	17/17 100%
Ya	19/19 100%	20/20 100%	4/4 100%	3/3 100%	12/16 75%	21/21 100%	20/22 91%	13/16 81%	21/22 95%	21/21 100%	17/17 100%	17/17 100%	- -

In this table, the second number represents the total number of cases in which two judges have sat together. The first number represents the number of cases in which two judges have either fully agreed in a judgment of the other, co-written a judgment, or fully agreed in a judgment of another judge. If a judge writes that s/he is concurring but only overall or with certain reservations or with any restatement of the other judge's views, this is not classified as full agreement. Thus, judgments that are in substance very similar may well be counted as not agreeing for the purposes of this table. No acting judges were involved in any of the recorded judgements of 2004.

TABLE 5: SUBJECT MATTER OF CASES DECIDED — 2004

	Rights	Other	Total
Civil	Nic; Kho; Lhr; Dac; Lib; Vhe; Kau; Pev; Mls; Mko; Jaf; Bhe; Zon; Rca (14)	Bat; Mas; Rob (3)	(17) 94.4%
Criminal	(0)	Dpp (1)	(1) 5.5%
Intra-Governmental	(0)	(0)	0%
Total	(14) 77.7%	(4) 22.2%	(18) 100%

In this table cases are classified as 'criminal' when a person is subject to the criminal or penal laws. 'Intra-governmental' cases are those cases litigated between two or more organs of government or, as in certification proceedings, ex parte on behalf of one organ. Other cases are civil.

Cases are classified as rights-based if the majority judgment on the principal issue turns on a fundamental right. Judgments dealing with procedural issues (for example, refusal for direct access) are excluded except where the Court went on to address the merits of the case. The cases excluded on this basis are: Bas, Swa, Dud and Rpt.

TABLE 6: GOVERNMENT SUCCESS RATE — 2004

	For government	Against government
Civil (94.4%)	Bat; Lib; Vhe; Kau; Mko; Rob (6)	Nic; Kho; Lhr; Dac; Mas; Pev; Mls; Jaf; Bhe; Zon; Rca (11)
Criminal (5.5%)	Dpp (1)	(0)
Intra-Governmental	(0)	(0)
Total	7 38.9%	11 61.1%

Cases are classified as 'for government' if a central, provincial or local government or an agency or a person in an official capacity prevails on the principal issue. A case is always counted as for the government if the status quo ante prevails. If the central government opposes another organ

of government, the case is classified as for the government if the central government prevails. If a Chapter 9 institution opposes the government the case will be classified as against government if the Chapter 9 institution prevails. If agencies or organs of equivalent tiers of government are opposed to each other, the case is counted neither for nor against the government. Judgments dealing with procedural issues and judgments between private parties are left out of this table (Bas; Swa; Dud; Rpt).

TABLE 7: JURISDICTIONAL BASIS OF CASES DECIDED-2004

BASIS OF JURISDICTION					
Direct Appeal from the LAC ito s 167(6)(b) read with Rule 18 of the CC of the rules.	Direct access ito s 167(6)(a) of the 1996 Constitution	Applications and referrals of orders of invalidity in terms of s 172(2)(d) and s 172(2)(a) of the 1996 Constitution respectively.	Appeals against orders of invalidity ito s 172(2)(d) of the 1996 Constitution.	Direct Appeals from the High Court ito s 167(6)(b) of the 1996 Constitution	Direct Appeals from the SCA ito s 167(6)(b) of the 1996 Constitution
Dud (4.5%)	Nic; Lib (9.1%)	Kho; Lhr; Dac; Mas; Bhe; Zon; Rob (31.8%)		Swa; Vhe; Kau; Mls; Mko; Jaf; Dpp (31.8%)	Bas; Bat; Pev; Rca; Rpt (22.7%)

This table examines the basis of jurisdiction after decision by the Court, rather than the jurisdiction invoked to place the case on the Court roll.

TABLE 8: TIME FROM HEARING TO DECISION* — 2004

	Hearing Date	Decision Date	Days to Written Order
Nic	25 February 2004	3 March 2004	7
Kho	30 May 2003	4 March 2004	279
Lhr	19 August 2003	9 March 2004	203
Bas	5 November 2003	10 March 2004	126
Dac	6 November 2003	11 March 2004	126
Bat	11 September 2003	12 March 2004	183
Vhe	24 February 2004	29 July 2004	156
Kau	19 July 2004	4 August 2004	16
Mas	26 February 2004	6 September 2004	193
Pev	4 March 2004	1 October 2004	211
Mls	6 May 2004	5 October 2004	152
Mko	3 March 2004	6 October 2004	217
Jaf	11 May 2004	8 October 2004	150
Bhe	2 March 2004	15 October 2004	227
Zon	9 March 2004	15 October 2004	220
Rca	18 August 2004	26 November 2004	100
Rob	7 September 2004	29 November 2004	83
Dpp	24 August 2004	2 December 2004	100

Mean Time Hearing to Decision: 153 days.

* Decision refers either to the day on which full judgment was made or reasons were given for an earlier order.

Where the hearing takes place over several days, the last day of the first continuous period of hearing is used for calculation. In some instances, cases were not heard in a full court session (Lib, Swa, Dud, Rpt). These cases have not been included in this table.

TABLE 9: PROSPECTIVE TERMS OF THE CONSTITUTIONAL COURT JUDGES

Name	Date of birth	Age at 31/12/2004 (in years and months)	Date of beginning of term office	Cut-off date of term of office*	Years until cut-off date (from 31/12/2004)
Chaskalson	24/11/1931	73yrs 1mth	07/1994	11/2006 (75)	1yr 11mths ⁴
Ackermann	14/01/1934	70yrs 11mths	08/1994	01/2004 (70)	
Sachs	30/01/1935	69yrs 11mths	10/1994	09/2009 (FT15)	4yrs 9mths
Madala	13/07/1937	67yrs 5mths	08/1994	07/2009 (FT15)	4yrs 7mths
Goldstone	26/10/1938	66yrs 2mths	08/1994	07/2006 (FT12)	1yrs 7mths
Langa	25/03/1939	65yrs 9mths	10/1994	09/2009 (FT15)	4yrs 9mths
Yacoob	03/03/1948	56yrs 9mths	02/1998	01/2013 (FT15)	8yrs 1mth
Mokgoro	19/10/1950	54yrs 2mths	10/1994	09/2009 (FT15)	4yrs 9mths
Ngcobo	01/03/1953	51yrs 9mths	08/1999	07/2011 (FT12)	6yrs 7mths
O'Regan	17/09/1957	47yrs 3mths	10/1994	09/2009 (FT15)	4yrs 9mths
Moseneke	20/12/1947	57yrs	11/2002	01/2017 (FT15)	12yrs 1mth
Skweyiya	17/06/1939	65yrs 6mths	02/2004	06/2014 (75)	9yrs 6mths
Van der Westhuizen	26/05/1952	52yrs 7mths	02/2004	02/2016 (FT12)	11yrs 2mths

*(75) indicates that the judge will turn 75 before his/her maximum 15 years of active service have been completed.

(70) indicates that the judge will turn 70 before his/ her maximum 12 years of office have been completed, but after more than 15 years of active service.

4 Chaskalson CJ retired in May 2005.

(FT12) indicates that the judge will be able to complete a full 12 year term before his/her 70th birthday, and will at the same time have performed a full 15 years of active service.

(FT15) indicates that the judge will be able to complete a full 15 years of active service term before his/her 75th birthday

In terms of s 4 of the Judges' Remuneration and Conditions of Employment Act 47 of 2001, Constitutional Court Judges' terms have been extended to 15 years in situations where their 12 year term has expired or they have reached the age of 70 before they have completed 15 years of active service as a judge, provided that they do not reach the age of 75 before this point. This table identifies the prospective terms of office of the Constitutional Court Judges as at 31 December 2004. Acting Judges are not included in this table.

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