

https://dspace.org/

Constitutional court statistics for the 1998 term

Klaaren, Jonathan; Dagut, Helen; Mochaba, Khahliso; Phalane, Jack; Singh, Anushka

1999
Juta
http://hdl.handle.net/10539/12796
Jonathan Klaaren (Senior Lecturer in Law), Helen Dagut (Student of Law), Khahliso Mochaba (Student of Law), Jack Phalane (Student of Law) & Anushka Singh (Student of Law) (1999) Constitutional Court Statistics for the 1998 Term, South African Journal on Human Rights, 15:2, 256-263, DOI: 10.1080/02587203.1999.11835009

Downloaded from a DSpace repository. https://dspace.org/

CONSTITUTIONAL COURT STATISTICS FOR THE 1998 TERM

I INTRODUCTION

This section 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. This information should supplement the more qualitative analyses presented in the other pages of this issue of the *SAJHR*. The method of constructing each table is given in the text following the table. These 1998 statistics are primarily drawn from data on the website maintained by the Faculty of Law of the University of the Witwatersrand (**www.law.wits.ac.za**). This section covers only cases in which a full written judgment of the Court is produced. Thus, matters disposed of without hearing or by judgment by a single judge – which would be important from the point of view of examining issues such as the control of the Court over its roll – are not included. The objectives and methods of this section are more fully laid out in the 1995 edition and subsequent editions of this section.[1]

We present these statistics with caution and they should be read likewise. Statistics can often mislead. Furthermore, these statistics describe a small number of cases. Finally, in this section we do not examine the reasoning of judges nor do we examine the facts which the cases present. Thus, the data offered here should be taken as complementary rather than as conclusive and should be interpreted with a high degree of care.

II SUMMARY

The 1998 term was one in which the Court spoke nearly unanimously, with debate and dialogue apparently declining. Of the 21 decided cases in 1998, 81,0 per cent were unanimous with a further 14,2 per cent having only concurrences but no dissents. As in the 1996 term, there was only one case (4,8 per cent) that showed any dissent *(De Lange v Smuts NO)*.

The range of agreement rates among the judges reflects this unanimity. The lowest figure for agreement in 1998 (80 per cent between Sachs J and Ackermann J) is still fully twice the lowest agreement rate in 1997 (40 per cent between Didcott J and each of Ackermann, Mokgoro, and O'Regan JJ). Most judges agreed with each other at least 90 per cent of the time in 1998.

The Court's roll (21 cases) remained on par with last year's figure of nineteen cases. Again, criminal cases occupied a relatively small share of

1 See 'Constitutional Court Statistics for the 1995 Term' (1996) 12 *SAJHR* 39; 'Constitutional Court Statistics for the 1996 Term' (1997) 13 *SAJHR* 208; and 'Constitutional Court Statistics for the 1997 Term' (1998) 14 *SAJHR* 277.

the roll (19 per cent). The Court ruled against the prevailing or governmental position in one-third of the cases and either for government or the prevailing legal position two-thirds of the time.

This Term's jurisdictional bases nearly entirely reflect the Final Constitution, with nearly a quarter of the cases (23,8 per cent) being dismissed for lack of jurisdiction. The largest group of decided cases were High Court appeals (39,2 per cent). The average time it took the Court to decide cases was reduced significantly from last year's 120 days to 1998's 84 days.

List of 1998 Cases

Together with the abbreviations used in these tables, the cases decided with written judgments in 1998 are listed here in chronological order based on the day the judgment was delivered. There are 21 cases covered by the 1998 statistics.

(Wa) City Council of Pretoria v Walker
CCT 8/97; 1998 (2) SA 363 (CC); 1998 (3) BCLR 257 (CC)

(ANC) African National Congress v Minister of Local Government and Housing, KwaZulu-Natal
CCT 19/97; 1998 (3) SA 1 (CC); 1998 (4) BCLR 399 (CC)

(Br) Bruce v Fleecytex Johannesburg CC
CCT 1/98; 1998 (2) SA 1143 (CC); 198 (4) BCLR 415 (CC)

(OV) Oranje Vrystaatse Vereniging van Staatsondersteunde Skole v Premier van die Provinsie Vrystaat
CCT 12/96; 1998 (3) SA 692 (CC); 1998 (6) BCLR 653 (CC)

(Wi) Wild v Hoffert NO
CCT 28/97; 1998 (3) SA 695 (CC); 1998 (6) BCLR 656 (CC)

(Nel) S v Van Nell
CCT 3/98; 1998 (8) BCLR 943 (CC)

(Mel) S v Mello
CCT 5/98; 1998 (3) SA 712 (CC); 1998 (7) BCLR 908 (CC)

(Del) De Lange v Smuts NO
CCT 26/97; 1998 (3) SA 785 (CC); 1998 (7) BCLR 785 (CC)

(Mi) Mistry v Interim National Medical and Dental Council
CCT 13/97; 1998 (4) SA 1127 (CC); 1998 (7) BCLR 880 (CC)

(DP) MEC for Development Planning and Local Government in Gauteng v Democratic Party
CCT 33/97; 1998 (4) SA 1157 (CC); 1998 (7) BCLR 855 (CC)

(Am) Amod v Multilateral Motor Vehicle Accidents Fund
CCT 4/98; 1998 (4) SA 753 (CC); 1998 (10) BCLR 1207 (CC)

(De) De Freitas v Society of Advocates of Natal
CCT 2/98; 1998 (11) BCLR 1345 (CC)

(Os) Osman v Attorney General for the Transvaal
CCT 37/97; 1998 (4) SA 1224 (CC); 1998 (11) BCLR 1362 (CC)

(Fr) Fraser v Naude
CCT 14/98; 1999 (1) SA 1 (CC); 1998 (11) BCLR 1357 (CC)

(NC) National Coalition for Gay and Lesbian Equality v Minister of Justice
CCT 11/98; 1999 (1) SA 6 (CC); 1998 (12) BCLR 1517 (CC)

(Ch) Christian Education South Africa v Minister of Education
CCT 13/98; 1999 (2) SA 83 (CC); 1998 (12) BCLR 1449 (CC)

(Fed) Fedsure Life Assurance Ltd v Greater Johannesburg TMC
CCT 7/98; 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC)

(Jo) Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour intervening)
CCT 15/98; 1999 (2) SA 1 (CC); 1999 (2) BCLR 139 (CC)

(EC) Premier, Province of Mpumalanga and another v Executive Committee of the Association of Governing Bodies of State Aided Schools: Eastern Transvaal
CCT 10/98; 1999 (2) SA 91 (CC); 1999 (2) BCLR 151 (CC)

(EY) Beinash v Ernst & Young
CCT 12/98; 1999 (2) SA 116 (CC); 1999 (2) BCLR 125 (CC)

(SAR) President of the Republic of South Africa v South Africa Rugby Football Union
CCT 16/98; 1999 (2) SA 14 (CC); 1999 (2) BCLR 175 (CC)

TABLE 1: VOTING PATTERNS IN CASES DECIDED – 1998

	Judge										
Case	Ch	La	Ac	Di	Go	Kr	Md	Mo	OR	Sa	Ya
Wa	C	L	c	–	c	c	C	c	C	C	–
ANC	C	c	c	c	c	c	C	c	L	c	–
Br	L	c	c	–	c	c	C	c	C	c	c
OV	C	c	c	–	L	c	C	c	c	c	c
Wi	C	c	c	–	c	L	C	c	c	c	c
Nel	C	c	c	c	c	c	C	L	c	c	c
Mel	C	c	c	c	c	c	C	L	c	c	c
Del	C	c	L	D	–	d	C	D	D	C	–
Mi	C	c	c	–	c	c	C	c	C	L	–
DP	C	c	c	–	c	c	C	c	c	c	L
Am	L	c	c	c	c	c	C	c	c	c	C
De	c	L	c	c	c	c	C	c	c	c	C
Os	c	c	–	–	c	c	L	c	c	c	C
FR	L	c	c	–	c	c	C	c	c	c	C
NC	c	c	L	–	c	c	–	c	c	C	C
Ch	c	L	c	–	c	c	c	c	c	c	C
Fed	L	c	c	–	L	L	c	c	L	c	C
Jo	c	c	c	–	c	c	c	c	C	c	L
EC	c	c	c	–	c	c	c	c	L	c	C
EY	c	c	c	–	c	c	c	L	C	c	C
SAR	L	c	c	-	c	c	c	c	c	c	C

'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.[2] Reasonable minds can 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.
'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.
'd' indicates a dissenting vote without reasons.
'–' indicates that the Judge did not participate in deciding the case.

The judges covered in this table are: Chaskalson P (Ch), Langa DP (La), Ackermann J (Ac), Didcott J (Di), Goldstone J (Go), Kriegler J (Kr), Madala J (Md), Mokgoro J (Mo), O'Regan J (OR), Sachs J (Sa) and Yacoob J (Ya).

TABLE 2: ACTIONS OF INDIVIDUAL JUDGES – 1998

	LdJ	Concur	C vote	Diss	D vote	Total
Ch	5	–	16	–	–	21
La	3	–	18	–	–	21
Ac	2	–	19	–	–	21
Di	-	–	5	1	–	6
Go	2	–	18	–	–	20
Kr	2	–	18	–	1	21
Md	1	–	19	–	–	20
Mo	3	–	17	1	–	21
OR	3	–	17	1	–	21
Sa	1	3	17	–	–	21
Ya	2	–	17	–	–	19

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

TABLE 3: UNANIMITY PERCENTAGE – 1998

	Unanimous	With Concurrences (without dissent)	With Dissent	Total
Cases	17 (81,0%)	3 (14,2%)	1 (4,8%)	21 (100%)

In this table, unanimous means that all judges concurred in both the judgment of the court and the order. With concurrences (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.

2 See 'Constitutional Court Statistics for the 1995 Term' (note 1 above) 41 for examples and further explanation.

TABLE 4: VOTING ALIGNMENTS: JUDGES OF THE COURT – 1998

	Ch	La	Ac	Di	Go	Kr	Md	Mo	OR	Sa	Ya
Ch	—	20/21 95,2%	20/20 100%	5/6 83,3%	20/20 100%	19/21 90,5%	20/20 100%	19/21 90,5%	20/21 95,2%	17/21 80,9%	16/17 94,1%
La	20/21 95,2%	–	19/20 95%	5/6 83,3%	19/20 95%	20/21 95,2%	19/20 95%	20/21 95,2%	19/21 90,5%	18/21 85,7%	17/17 100%
Ac	20/20 100%	19/20 95%	–	5/6 83,3%	19/19 100%	18/20 90%	19/19 100%	18/20 90%	19/20 95%	16/20 80%	14/16 87,5%
Di	5/6 83,3%	5/6 83,3%	5/6 83,3%	–	5/5 100%	6/6 100%	5/6 83,3%	5/6 83,3%	5/6 83,3%	5/6 83,3%	4/4 100%
Go	20/20 100%	19/20 95%	19/19 100%	5/5 100%	–	19/20 95%	18/19 94,7%	19/20 95%	20/20 100%	17/20 85%	16/17 94,1%
Kr	19/21 90,5%	20/21 95,2%	18/20 90%	6/6 100%	19/20 95%	–	18/20 90%	20/21 95,2%	19/21 90,5%	18/21 85,7%	17/17 100%
Md	20/20 100%	19/20 95%	19/19 100%	5/6 83,3%	18/19 94,7%	18/20 90%	–	18/20 90%	19/20 95%	17/20 85%	15/16 93,7%
Mo	19/21 90,5%	20/21 95,2%	18/20 90%	5/6 83,3%	19/20 95%	20/21 95,2%	18/20 90%	–	19/21 90,5%	18/21 85,7%	17/17 100%
OR	20/21 95,2%	19/21 90,5%	19/20 95%	5/6 83,3%	20/20 100%	19/21 90,5%	19/20 95%	19/21 90,5%	–	17/21 80,9%	16/17 94,1%
Sa	17/21 80,9%	18/21 85,7%	16/20 80%	5/6 83,3%	17/20 85%	18/21 85,7%	17/20 85%	18/21 85,7%	17/21 80,9%	–	16/17 94,1%
Ya	16/17 94,1%	17/17 100%	14/16 87,5%	4/4 100%	16/17 94,1%	17/17 100%	15/16 93,7%	17/17 100%	16/17 94,1%	16/17 94,1%	–

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 she 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 which are philosophically very similar may well be counted as not agreeing for the purposes of this table.

TABLE 5: SUBJECT MATTER OF CASES DECIDED – 1998

	Rights	Other	Total
Civil[3]	10	7	17 (81%)
Criminal[4]	4	–	4 (19%)
Intra-Governmental[5]	–	–	–
Total	14 (66,7%)	7 (33,3%)	21 (100%)

3 Wa, Anc, Br, Ov, Wi, Mi, DP, Am, De, Fr, NC, Ch, Fed, Jo, EC, EY, SAR.

4 Nel, Mel, Del, Os.

5 Though there is such a classification, in 1998 there were no cases involving two organs of the state or ex parte on behalf of one organ that were decided.

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 between two organs of government or, as in certification judgments, ex parte on behalf of one organ. Other cases are civil.

Cases are classified as rights cases if the majority judgment in the principal issue turns on a fundamental right.

TABLE 6: GOVERNMENT SUCCESS RATE – 1998[6]

	For government	Against government
Civil	12[7]	2[10]
Criminal	2[8]	7 (33%)
Total	14 (67%) 5[9]	

Cases are classified as for the 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 also counted as for 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 agencies or organs of equivalent tiers of government are opposed, the case is counted neither for nor against the government (not relevant in this table as there were no decided intra-governmental cases in 1998). Due to its formalistic definition, this statistic should be used with particular caution.

TABLE 7: JURISDICTIONAL BASIS OF CASES DECIDED – 1998

	Basis of jurisdiction							
	Section 102(1) of the interim Constitution	Direct access ito s 167(6)(a) of the 1996 Constitution	Direct access ito s 167(6)(a) read with s 167(4)	Referral of orders of invalidity ito s 172(2)(a)	Appeals against orders of invalidity ito s 172(2)(d)	Direct appeals from HC ito s 167(6)(b)	Direct appeals from the SCA ito s 167(6)(b)	Dismissed for Lack of Jurisdiction
Cases	Mel; Mi (9,5%)			Nel; Del; NC (14,3%)	Jo, SAR (9,5%)	ANC; Wi; Wa; Os; EC; DP; OV, EY (39,2%)	Fed (4,8%)	Br, Fr, De, Am, Ch (23,8%)

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.

6 The table considers all cases in which government was involved: Wa, ANC, OV, Wi, Nel, Mel, Del, DP, Os, NC, Ch, Fed, EC, SAR.
7 Wa, ANC, Wi, Ch, Fed, SAR, Jo, EY, Fr, Am, Br, and De.
8 Del, Os.
9 EC, NC, DP, OV, Mi.
10 Nel, Mel.

TABLE 8: TIME FROM HEARING TO DECISION – 1998

Cases Decided (Hearing Date)	(Decision Date)	Days To Decision
Wa (19 August 1997)	(17 February 1998)	182
ANC (7 November 1997)	(24 March 1998)	137
Br (24 March 1998)	(24 March 1998)	1
OV (11 March 1997)	(12 May 1998)	427
Wi (10 March 1998)	(12 May 1998)	63
Nel (28 May 1998)	(28 May 1998)	1
Del (20 November 1997)	(28 May 1998)	189
Mi (24 February 1998)	(29 May 1998)	94
DP (17 March 1998)	(29 May 1998)	73
Am (21 May 1998)	(27 August 1998)	98
De (21 May 1998)	(15 September 1998)	117
Os (07 May 1998)	(23 September 1998)	139
NC (27 August 1998)	(9 October 1998)	43
Ch (15 October 1998)	(15 October 1998)	1
Fed (20 August 1998)	(14 October 1998)	55
Jo (10 November 1998)	(27 November 1998)	17
EC (3 November 1998)	(2 December 1998)	29
EY (8 September 1998)	(2 December 1998)	85
SAR (24 November 1998)	(2 December 1998)	8

Mean Time Hearing to Decision: 84 days

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 firstly heard in chambers and decided by the Constitutional Court.[11] No time calculation is made for such cases.

11 Fr and Mel.

The terms of office of Constitutional Court judges are dealt with in s 176(1) of the 1996 Constitution which provides that a Constitutional Court judge is appointed for a non-renewable term of 12 years, but must retire at the age of 70. The following table identifies the prospective terms of office of the Constitutional Court Judges as of 31 December 1998.

TABLE 9: PROSPECTIVE TERMS OF THE CONSTITUTIONAL COURT JUDGES

Name	Date of Birth	Age at 31/12/1998 (in years and months)	Date of beginning of term of office	Cut-off date of term of office*	Years until cut-off date (from 31/12/1998)
Chaskalson	24/11/1931	67 yrs 1 mth	01/07/1994	24/11/2001 (70)	2 yrs 11 mths
Kriegler	29/11/1932	66 yrs 1 mth	01/07/1994	29/11/2002 (70)	3 yrs 11 mths
Ackermann	14/01/1934	64 yrs 11 mths	01/08/1994	14/01/2004 (70)	5 yrs 1 mth
Sachs	30/01/1935	63 yrs 11 mths	01/07/1994	30/01/2005 (70)	6 yrs 1 mth
Langa	25/03/1939	59 yrs 9 mths	01/07/1994	01/07/2006 (FT)	7 yrs 6 mths
Goldstone	26/10/1938	60 yrs 2 mths	01/07/1994	01/07/2006 (FT)	7 yrs 6 mths
Mokgoro	19/10/1950	48 yrs 2 mths	01/07/1994	01/07/2006 (FT)	7 yrs 6 mths
O'Regan	17/09/1957	41 yrs 3 mths	01/07/1994	01/07/2006 (FT)	7 yrs 6 mths
Madala	13/07/1937	61 yrs 5 mths	01/10/1994	01/10/2006 (FT)	7 yrs 9 mths
Yacoob	03/03/1948	50 yrs 9 mths	01/02/1998	01/02/2010 (FT)	11 yrs 1 mth

* (70) indicates that the judge will turn 70 before his/her maximum 12 years of office have been completed.
(FT) indicates that the judge will be able to complete a full 12 year term before his/her 70th birthday.

JONATHAN KLAAREN
Senior Lecturer in Law, University of the Witwatersrand
HELEN DAGUT
Student of Law, University of the Witwatersrand
KHAHLISO MOCHABA
Student of Law, University of the Witwatersrand
JACK PHALANE
Student of Law, University of the Witwatersrand
ANUSHKA SINGH
Student of Law, University of the Witwatersrand