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MEMORANDUM CONCERNING THE RECOMMENDATIONS CONTAINED IN THE REPORT
BY THE COMMITTEE FOR THE JURISPRUDENTIAL INVESTIGATION INTO
LEGISLATION THAT HAMPERS SPORTS RELATIONS IN THE REPUBLIC OF SOUTH
AFRICA (REPORT NO 1 OF THE NATIONAL SPORTS INVESTIGATION OF THE HSRC)

1. RECOMMENDATIONS WITH REGARD TO THE FORMULATION AND IMPLEMENTATION OF A SPORTS POLICY

The findings of the Committee are as follows:

- 1.1 Recognition in principle of a right to participate in sport.
- 1.2 It is the right of active participants, sports organizers and spectators to participate.
- 1.3 Participation in sport is basically an educational, social and cultural activity that includes active participation, organization, watching and the social activities usually associated with sports activities.
- 1.4 Discriminatory measures such as discriminatory legislation, for example, are regarded as unacceptable in principle in the field of sport.
- 1.5 The principle of sports autonomy must be maintained and promoted.
- 1.6 Sports autonomy in principle involves the right of a sports organization to be established at the free will of the founders, free decision-taking regarding membership, free regulation and enforcement of domestic and disciplinary measures, free appointment of officials and the freedom to arrange competitions and make competition-related and/or incidental arrangements.
- 1.7 Any so-called sports organization openly or secretly working against the interests of sport and thwarting the law, should be regarded as abusing its autonomy and warranting investigation by the authorities.
- 1.8 Sports autonomy includes the right to differentiate on the basis of factors such as race, culture, religion, language, etc.

1.9 Differentiation as opposed to discrimination means distinction on the basis of a factor that is socially and culturally relevant in the particular circumstances.

(A sports club that aims therefore at admitting only Portuguese or Germans or Whites or Blacks for example, practises differentiation but not discrimination.)

1.10 At this stage in the legal development of the RSA the norm regarding discrimination is not legal or statutory but of a moral nature. Legally speaking, therefore, discrimination is not illegal or unlawful; the value judgment lies at the moral and ethical level.

1.11 In the formulation and implementation of a sports policy, sport should not be used as a political instrument by the authorities but should in general be supported, promoted and sponsored.

1.12 In the support of sport by the authorities, interference with the autonomy of sport should be guarded against.

1.13 Legislation that does not by nature relate to sports situations (e.g. the Group Areas Act) should not for example be made applicable to sport by proclamation.

1.14 "Administrative" exemption from legislative measures is legally impermissible and undesirable from a policy-forming point of view.

2. RECOMMENDATIONS WITH REGARD TO THE AMENDMENT OF LEGISLATION

The following is recommended:

2.1 Group Areas Act (No. 36 of 1966)

2.2 The Act does not apply to sports situations (with the exception of Section 1(4)). However the Committee recommends that in order to prevent uncertainty and even malicious criticism an appropriate proclamation be issued in terms of Section 26(3)(a). An alternative would be to define sports situations as non-occupation of premises in Section 1(1) of the Act.

2.3 In terms of Section 1(4) of the Act, the State President can by proclamation declare the presence of persons on premises reserved for particular purposes mentioned in the proclamation to be illegal occupation. Proclamation R228 of 1973 was issued in terms of this authorization.

The Committee regards the above proclamation as ultra vires on account of its vagueness and obscurity. As long as no supreme court judgment has been passed, however, it must be regarded as prima facie valid.

The provisions of Proclamation R228 affect participation in sport prima facie directly and are of a discriminatory nature and purpose.

The Committee therefore recommends that Section 1(4) of the Act as well as Proclamation R228 be repealed (or alternatively not be made applicable to participation in sport).

The Committee stresses the fact that in accordance with administrative practice sports situations are already exempted from the proclamation.

3. LIQUOR ACT (NO. 87 OF 1977)

3.1 It is the opinion of the Committee that problems regarding the supply of liquor to other racial groups can be obviated by granting exemption under Section 211, the exemption article of the Liquor Act, to bona fide sports clubs that are the holders of a club or sports grounds licence, with the implication that such clubs will not have to apply for exemption in terms of Section 72(3) or 72(4).

The Committee feels that sports clubs should be relied on to take regulatory measures regarding the supply of liquor.

3.2 This recommendation does not entail radical change either. In practice such ad hoc exemptions in terms of Section 72(4) are fairly readily granted.

4. RESERVATION OF SEPARATE AMENITIES ACT (NO. 49 OF 1953)

In the Committee's opinion it would be artificial to exclude only sport from the discriminatory effect of the Act. In the light of this view the Committee feels that this Act in its totality (and not only as applicable to sport), together with other relevant discriminatory legislation, should be subjected to a comprehensive jurisprudential investigation.

5. BLACKS (URBAN AREAS) CONSOLIDATION ACT (NO. 25 OF 1945)

The Committee recommends that participation in sport be excluded from the provisions of the Act through the amendment of Sections 9 and 10 of the Act.

Compiled by

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