IN THE CONSTITUTIONAL COURT - JOHANNESBURG
CASE NO. CCT/23/96

In the matter of objection to certification of

THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

By RAYMOND EDWARD CHALOM - "Objector"

In terms of section 71 of Act 200 of 1993.

FILING SHEET OF WRITTEN OBJECTIONS UNDER DIRECTIONS IN TERMS OF RULE 15 OF THE PRESIDENT OF THE CONSTITUTIONAL COURT - ISSUED 13TH MAY 1996

Presented for service and filing 25 copies of written objections by R. E. Chalom - Citizen

THE CONSTITUTIONAL COURT - JOHANNESBURG

OBJECTION BY RAYMOND EDWARD CHALOM ATTORNEY, TO THE CERTIFICATION OF THE CONSTITUTION ADOPTED BY THE CONSTITUTIONAL ASSEMBLY ON THE 8TH MAY 1996.

1. I am an attorney of 20 years standing.

OBJECTION 1

2. The framers have failed to take into consideration the principle of the Separation of Powers. This omission is a contravention of Constitutional principles V & VI & VII of schedule 4 of Act 200 of 1993.

3. i) " The courts should be an independent, unified structure with it's own system and administration. The judiciary is responsible for the administration of all courts, tribunals, judicial commissions and quasi-judicial bodies including mediation and arbitration and they should have their own staff, civil service and enforcement agencies. The executive and legislature should not be allowed to interfere in the running of the court system which should have its own checks and balances and systems for receiving complaints."
   ii) "Membership of Law societies should be voluntary. Professional discipline can be carried by the courts. Vast areas of current Law Society regulations are unconstitutional; Lawyers who object to this should not be obliged to comply with such rules.
   iii) In the eighties court cases were lost because of court records that had disappeared. This is disreputable. It is the Judiciary's responsibility to ensure that this does not occur. The beaurocracy of the courts must be eliminated in the sense that it has any effect on the outcome of court cases or the execution of Judgements.

iv) Organisations associated with the legal system or having an impact on it should fall under the court system."

4. If the executive controls the civil service operating in the courts as well as the behaviour of attorneys via section 57 of the Attorneys Act and the rules of the Law Society, then any judgements of the courts and their execution become a mockery especially where the judgement is against the executive itself. There will be times when attorneys will be called upon to do things in their representation of people, which will be highly objectionable to the government. The government must never be in a position to exert power on legal representatives to refrain from defending their clients. Only the courts should influence attorneys. By having Law Society regulations which are unconstitutional in a government created Law Society pressure can be exerted on individual attorneys via Law Society regulations. This has occurred in the past.

5. The only method of keeping the Constitution supreme is by a strict system of the Separation of Powers with checks and balances. Montesquieu in "The Spirit of the Laws" enunciated the general principle: "the condition for the respect of the Laws and security of the citizens is that no power be unlimited." In "Democracy in America" Alexis De Tocqueville: "The first term that constitutes the content of 'Liberty' is 'security', that is, the guarantee against arbitrary governments...absolute power cannot be given to anyone. It is necessary, therefore, as Montesquieu would have said, for power to check power. There must be a plurality of centres of force - a plurality of political and administrative organs which balance one another".
Friedman P422: "The inevitable corollary of a rule of law is a separation of Judiciary and Executive...But Dicey's contention that the "Rule of Law" does not permit of a separate system of administrative justice is today discredited even for English law."

6. BOURQUIN V. CUOMO 1995 NY Int. 154 (JUNE 13, 1995): "the 'open-ended discretion to choose ends,' as the legislative prerogative has been called, is clearly in the domain only of the legislature. This has been the most common death blow to executive orders struck down on the basis of separation of powers...Executive orders (are) found unconstitutional because they set substantive content (and do not) ...merely create a mechanism to implement legislative policy."
PLAUT...ET AL, PETITIONERS V. SPENDTHRIFT FARM INC. No. 93-1121 (April 18, 1995):
"Three features of this law, its exclusively retroactive effect, its application to a limited number of individuals, and its reopening of closed judgements, taken together, show that congress here impermissibly tried to apply, as well as make, the law...the separation of powers is violated whenever an individual final judgement is legislatively rescinded..."
"[The purpose of the separation of powers is to assure an impartial rule of law}...For another thing...[there is] concern that a legislature should not be able unilaterally to impose a substantial deprivation on one person." INS V. CHADHA 462 US 919, 962 (1983).

OBJECTION 11

1. Constitutional principle II does not provide for the reduction or retraction of accepted Fundamental rights. “Human rights once recognised cannot be reduced or retracted. I am aware that item II of the 4th schedule to the interim constitution makes specific reference to chapter three but I believe that it is not made absolutely clear that even if the assembly agrees (which we all trust that they will not do). the rights as described in chapter three cannot be reduced or retracted; once the public have read and accepted those rights they are binding forever subject however to interpretations from time to time.
   ‘Cicero in DE RE REPUBLICA wrote: true law is right reason in agreement with nature; it is universal application, unchanging and everlasting...It is impossible to annul this law,...and people can never be absolved from the obligation to obey it.’”

2. Based on the principles set out above, I object to all amendments of chapter three which have the effect of reducing or retracting any of the rights contained therein. In particular I object to the amendment of the following sections of the interim constitution viz. Section 33 (the limitation clause); section 28 (the property clause); section 15 (freedom of expression); section 27 (labour relations).

3. My copy of the “Final Constitution” was received late on Wednesday and thus, I cannot itemise my objections. New rights can be added to counteract other rights, leaving the discretion of priority in the hands of the constitutional court. But a mere reduction or abolition of an existing right removes that discretion from the court and thus not only makes the law but also applies it. This in unconstitutional.

4. I pray for permission from the above honourable court to address it on the objections which I have raised to certification of the said constitution.

DATED AT JOHANNESBURG ON THIS THE 28TH MAY 1996

R. E. CHALOM
ATTORNEY
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30 May 1996

Dear Mr Chalom

CERTIFICATION OF NEW CONSTITUTIONAL TEXT

Thank you for your submission of 28 May 1996.

I have been asked by the President of the Constitutional Court to inform you that your submission will in due course be taken into account by the Constitutional Court. The Court will rely on your written argument.

MS M NIENABER