

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

CASE NO: **2024-040119**

In the matter between:

MONICA CROMHOUT

**First Applicant**

MELINDA FERGUSON

**Second Applicant**

and

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT **First Respondent**

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **Second Respondent**

MINISTER OF HEALTH **Third Respondent**

MINISTER OF POLICE **Fourth Respondent**

MINISTER OF SOCIAL DEVELOPMENT **Fifth Respondent**

**FLYNOTE**

Legislation - Drugs and Drug Trafficking Act 140 of 1992 - Medicines and Related Substances Act 101 of 1965 - Constitutional validity - Criminalisation of psilocybin and psilocin - Limitation of rights - Privacy - Dignity - Freedom of religion, belief and opinion - Equality - Healthcare access - Psychotropic substances - Scientific evidence - Therapeutic use - Justification analysis.

Constitutional law - Bill of Rights - Limitation of rights - Privacy - Dignity - Freedom of religion, belief and opinion - Equality - Healthcare access - Criminalisation of psilocybin and psilocin - Justification - Irrationality - Overbreadth - Less restrictive means.

Constitutional remedies - Declaration of invalidity - Reading-in - Suspension of invalidity - Interim relief - Criminal prosecution - Private adult use of psilocybin and psilocin - Spiritual and therapeutic purposes - Non-commerciality - Harm to others.

---

## JUDGMENT

---

Judgment delivered: 23 April 2024

Coram: Sarah J (AI)

### INTRODUCTION

[1] This case concerns the constitutional validity of those sections of the Drugs and Drug Trafficking Act 140 of 1992 ("the Drugs Act") and the Medicines and Related Substances Act 101 of 1965 ("the Medicines Act") that criminalise and prohibit the use, possession, cultivation, supply and distribution of psilocybin mushrooms and/or psilocin.

[2] The applicants seek the following relief:

1. It is declared that the references to 'psilocybin' and 'psilocin' in Part III of Schedule 2 of the Drugs Act are unconstitutional and invalid.
2. The words 'psilocybin' and 'psilocin' are struck out from Part III of Schedule 2 of the Drugs Act.
3. It is declared that the references to 'psilocybin' and 'psilocin' in Schedule 7 of the Medicines Act are declared unconstitutional and invalid.
4. The words 'psilocybin' and 'psilocin' are struck out from Schedule 7 of the Medicines Act.
5. In the alternative to paragraphs 1 to 4 above:

5.1 Sections 3, 4(b), and 5(b) of the Drugs Act are declared unconstitutional and invalid to the extent that these provisions criminalise the private use and possession of psilocybin and psilocin by adults, including private supervised use.

5.2 Sections 3, 4(b), and 5(b) of the Drugs Act are declared unconstitutional and invalid to the extent that these provisions criminalise: manufacturing; cultivating; collecting; possessing; selling; administering; 'dealing in' (as defined in section 1 of the Drugs Act); and/or supplying, psilocybin and psilocin - for the purposes described in paragraph 5.1 above.

5.3 Sections 22A(9)(a)(i), 22A(9)(a)(ii) and 22A(10) of the Medicines Act are declared unconstitutional and invalid to the extent that these provisions criminalise the private use and possession of psilocybin and psilocin by adults, including private supervised use.

5.4 Sections 22A(9)(a)(i), 22A(9)(a)(ii) and 22A(10) of the Medicines Act are declared unconstitutional and invalid to the extent that these provisions criminalise: acquiring, possessing, manufacturing, supplying, selling, and/or administering psilocybin and psilocin – for the purposes set out in paragraphs 5.3 above.

6. In the alternative to paragraphs 5 to 5.4 above, the above-mentioned provisions of both the Drugs Act and the Medicines Act must be read so as not to prohibit or criminalise the activities set out in paragraphs 5 to 5.4 above.

7. The declarations of constitutional invalidity (in respect of paragraphs 1 to 5.4 above, as the case may be) are suspended for a period of 24 months to allow for the constitutional defects to be remedied by Parliament and/or the relevant respondents, as the case may be.

8. From the date of this judgment, and until Parliament and/or the relevant respondents (as the case may be) remedy the aforesaid constitutional defects, a moratorium is placed on all criminal investigations, arrests, prosecutions, and/or ancillary criminal proceedings in respect of the activities set out in paragraphs 5 to 5.4 above.

9. The costs of this application are to be paid by any respondents who oppose the application, jointly and severally, including the costs of two counsel.

10. Further or alternative relief, including in accordance with sections 172 and 173 of the Constitution.

[3] The applicants contend that the impugned provisions limit a number of constitutional rights, namely: the right to privacy (section 14), the right to dignity and autonomy (section 10), the right to bodily and psychological integrity (section 12(2)), the right to freedom of conscience, religion, belief and opinion (section 15), the right to equality (section 9), and the right of access to health care services (section 27). The applicants submit that these limitations cannot be justified under the limitations clause in section 36 of the Constitution.

[4] The state respondents, comprising the Minister of Justice, the National Director of Public Prosecutions, the Minister of Health, the Minister of Police, and the Minister of Social Development, oppose the relief sought. They argue that the impugned provisions serve an important governmental purpose of curbing the trade in and abuse of harmful and dependence-producing substances. Any limitations on constitutional rights are justified, they contend.

## **THE PARTIES**

[5] The first applicant is Ms Monica Cromhout, a 78-year-old retired trauma counsellor and grandmother residing in Somerset West. The second applicant is Ms Melinda Ferguson, a bestselling author and freelance journalist based in Cape Town.

[6] Ms Cromhout's story is a poignant one. After losing her husband to cancer in 2005, she fell into a deep depression. When conventional treatments proved ineffective, she began researching alternative therapies. This led her to try psilocybin mushrooms, which had a profound positive impact on her mental wellbeing.

[7] Believing that psilocybin could help others struggling with depression and trauma as it had helped her, Ms Cromhout began facilitating psilocybin sessions for consenting adults in a safe, supervised setting at her home. However, in December 2014, she was arrested and charged with drug dealing. If convicted, she could face 15 years in prison.

[8] Ms Ferguson's life story is one of overcoming severe addiction. By age 23, she was addicted to heroin and crack cocaine, which destroyed her life for many years. Miraculously, in 1999, with the help of her family, she achieved sobriety.

[9] In 2015, on the recommendation of a psychiatrist to assist with post-traumatic stress disorder (PTSD) from a near-fatal car accident and to confront the roots of her prior addiction, Ms Ferguson had her first guided psilocybin experience with Ms Cromhout. She describes it as a profound, healing journey that helped her process deep trauma. She has since incorporated psilocybin sessions a few times a year into her sustained recovery.

[10] Ms Ferguson emphasises that psilocybin is fundamentally different from addictive drugs. While substances like alcohol and heroin provide an escape and temporary relief from pain, psilocybin facilitates actually confronting and working through trauma and the roots of addiction. She believes criminalisation of this healing tool is irrational and unconstitutional.

## **THE EXPERT EVIDENCE**

[11] In support of their application, the applicants filed an expert affidavit by Professor David Nutt, a leading authority in neuropsychopharmacology. Prof Nutt's 47-page affidavit contains a comprehensive and compelling survey of the scientific evidence on psilocybin.

[12] The key conclusions of Prof Nutt's expert evidence can be summarised as follows:

- Psilocybin offers unique therapeutic benefits in treating mental disorders like depression, anxiety, and addiction. Notably, it has shown efficacy where other conventional treatments have failed.
- Psilocybin works through different pharmacological mechanisms and affects different brain regions compared to traditional antidepressants. Brain imaging studies show it increases neural connectivity and flexibility rather than emotional blunting.
- The acute effects of psilocybin are short-lived (a few hours) and can be readily managed with psychological support. Psilocybin has extremely low physiological toxicity and risk of lethal overdose compared to many common drugs.

- Critically, psilocybin is not addictive or dependence-producing, as evidenced by both animal and human research. This contrasts starkly with many other drugs scheduled alongside it.
- The therapeutic benefits of psilocybin in treating mental disorders have been demonstrated in numerous clinical trials, using robust methodologies. Psilocybin has also been shown to enhance general wellbeing in healthy individuals.
- While 'bad trips' can occur, these are rare, self-limiting, and less likely with proper support and positive context. There is no evidence they lead to lasting harms. Population studies show no link between psychedelic use and increased mental health problems.
- The biggest risk is people taking the wrong mushrooms. Paradoxically, criminalisation likely increases this risk by restricting access to safe, regulated supplies and necessitating riskier acquisition from illicit sources.

[13] In totality, Prof Nutt's evidence depicts psilocybin as a substance with significant therapeutic potential and relatively benign risk profile, which has been irrationally demonised by a misinformed prohibitionist agenda. He argues there is no scientific justification for psilocybin's continued criminalised status, let alone its scheduling alongside far more dangerous drugs.

## **SUBMISSIONS OF THE PARTIES**

### **The Applicants**

[14] The applicants submit that the evidence overwhelmingly shows the listing of psilocybin as a dangerous, undesirable, dependence-producing substance to be out of step with scientific knowledge. This irrational classification cannot provide a legitimate governmental purpose to justify the far-reaching infringement of rights entailed by criminalisation.

[15] On the right to privacy, the applicants argue that the choice to ingest a substance that alters one's own consciousness, particularly in the sanctity of one's private space, lies at the core of a sphere of personal liberty and autonomy the state should not lightly

intrude upon. This is reinforced, they contend, by the fact that equally or more risky choices, like alcohol and tobacco use, are legally permitted.

[16] The applicants further argue that the right to dignity and psychological integrity are violated by having one's intimate personal choices subjected to the blunt instrument of the criminal law. Individuals who find psilocybin meaningful and beneficial are stigmatised as criminals. This infringes the self-worth and autonomy at the heart of human dignity.

[17] The applicants also raise the right to freedom of religion, conscience and belief. For some, psilocybin use forms part of a sincere spiritual practice. Forcing a choice between one's faith and conformity to the law is anathema to the Constitution's ethos of diversity and tolerance.

[18] On equality, the applicants argue criminalisation has the effect of unfairly discriminating against psilocybin users compared to alcohol and tobacco users, with no rational basis for the differentiation. It also implicates grounds like religion.

[19] The applicants also contend that psilocybin prohibition violates the right of access to healthcare, given its demonstrable therapeutic benefits and medical potential. The state has a positive obligation, they argue, to enable and regulate access to beneficial treatments, not restrict them.

[20] Finally, even if some harm from psilocybin is possible, the applicants argue criminalisation remains unjustified. Regulation and education are more proportionate means of harm prevention. Outright bans are a blunt, heavy-handed tool.

### **The State Respondents**

[21] The state respondents' answering affidavits are notably thin on evidence to counter the expert testimony of Prof Nutt. Their opposition relies more on bald assertions of psilocybin's harmfulness, appeals to the abstract societal dangers of drugs in general, and deferential resort to legislative policy choices.

[22] On this latter point, the respondents emphasise that psilocybin's continued scheduling reflects an ongoing legitimate policy assessment by the legislature and

executive of what substances pose an unacceptable risk to society. Policy-laden social and health regulation, they argue, must respect a margin of appreciation. Scientific evidence is not the only factor.

[23] The respondents argue the effects of psilocybin ingestion, which can include perceptual distortion, impaired cognition, and strong emotional reactions, are unpredictable and potentially psychologically risky, especially to vulnerable individuals. 'Bad trips' can induce acute distress and erratic behaviour. While these may be short-lived, even transient impairment can enable accidents and self-harm.

[24] Citing some research on the potential for psilocybin to exacerbate pre-existing or latent psychiatric conditions, especially in high doses or chronic use, the respondents argue the substance cannot be characterised as benign. Anecdotes of psilocybin-related incidents are referenced, sometimes tenuously.

[25] The respondents also rely on a traditional 'gateway drug' type argument that normalising psilocybin sends the wrong societal message and can embolden experimentation with more dangerous substances. Permissive policies towards any drugs, they contend, risk erosion of social disapproval as a brake on self-destructive conduct.

[26] While acknowledging the growing scientific interest in potential therapeutic benefits, the respondents argue psilocybin's long-term efficacy and safety as a medicine remains inconclusively demonstrated. More research, under strictly regulated conditions, may gradually elucidate this potential - but it does not justify uncontrolled public availability.

[27] Given these ongoing uncertainties and risks, the respondents argue, the impugned restrictions are not disproportionate. Individuals do not have an unqualified right to harm themselves or engage in socially hazardous conduct. The state has a duty to safeguard citizens' wellbeing, sometimes through restricting personal freedoms.

## **LEGAL PRINCIPLES**

### **The Constitution and the limitations analysis**



[28] The Constitution is the supreme law. Legislation inconsistent with it is invalid. Legislative and executive policy that unjustifiably infringes rights cannot stand, however earnest the intentions behind it may be. This principle has been repeatedly affirmed by the Constitutional Court, recently in *Economic Freedom Fighters v Speaker of the National Assembly* [2016] ZACC 11; 2016 (3) SA 580 (CC) at para 1.

[29] However, the courts must also give due respect to the policy-making role of the democratically elected branches of government. As the Constitutional Court stressed in *Minister of Home Affairs v National Institute for Crime Prevention and the Reintegration of Offenders (NICRO)* [2004] ZACC 10; 2005 (3) SA 280 (CC) at para 37:

"The question for decision is not whether the Respondents' interpretation of the legislation is reasonable, nor whether there are other more reasonable interpretations... The question is one of legality and the rule of law - whether on a proper interpretation of the statute the regulations fall within the powers conferred by Parliament."

[30] Thus, on polycentric social and health issues where the science is complex and evolving, a degree of deference to legislative policy choices is appropriate. The court's role is not to determine if the laws are ideal, but if they are rational and proportionate in their rights limitations. As held in *Merafong Demarcation Forum v President of the Republic of South Africa* [2008] ZACC 10; 2008 (5) SA 171 (CC) para 63:

*"This Court does not sit as a court of first and last instance over the constitutionality of all governmental action. The Constitution entrusts a range of policy choices to the democratically elected branches of government... This Court must thus refrain from entering the exclusive terrain of the Executive and the Legislative branches of Government unless the intrusion is mandated by the Constitution itself."*

[31] Once a limitation of rights is established, section 36 requires the state to prove this is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Factors to consider, per section 36(1), are:

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

[32] This analysis involves a proportionality assessment, weighing the social value and importance of the purpose against the impact on rights. Per *S v Bhulwana* 1996 (1) SA 388 (CC) at para 18:

*"In sum, therefore, the Court places the purpose, effects and importance of the infringing legislation on one side of the scales and the nature and effect of the infringement caused by the legislation on the other. The more substantial the inroad into fundamental rights, the more persuasive the grounds of justification must be."*

### **The rights at stake**

[33] The applicants invoke a cluster of mutually reinforcing rights. It has been aptly observed that rights "are not isolated silos" and often "overlap and reinforce each other" - see *Centre for Child Law v Media 24 Limited* [2019] ZACC 46; 2020

### **The right to privacy**

[34] The right to privacy encompasses the right to make decisions concerning one's own body and mind without undue external interference. As Ackermann J held in *National Coalition for Gay and Lesbian Equality v Minister of Justice* [1998] ZACC 15; 1999 (1) SA 6 (CC) at para 32:

*"Privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which we give expression to our sexuality is at the core of this area of private intimacy."*

[35] By parity of reasoning, the decision to consume a substance in the sanctuary of one's home or private space, for personal, spiritual or therapeutic reasons, implicates the intimate core of autonomy privacy protects. The more conduct is "instinct with one's own autonomous identity" (per *Bernstein v Bester* [1996] ZACC 2; 1996 (2) SA 751 (CC) para 65), the greater the presumptive protection.

[36] Indeed, the Constitutional Court in *Minister of Justice v Prince* [2018] ZACC 30; 2018 (6) SA 393 (CC) extended presumptive privacy protection to the choice to use cannabis in private, even though this was then illegal. At para 58, Zondo ACJ held:

*"...the right to privacy entitles an adult person to use or cultivate or possess cannabis in private for his or her personal consumption."*

[37] If this is so for cannabis, then a fortiori for psilocybin, which the evidence shows is even less addictive and harmful. The privacy right does not depend on the legislature's historical pejoratives. It attaches to self-regarding choices central to personal identity and fulfilment.

### **The right to dignity**

[38] The right to dignity, which the Constitutional Court has frequently emphasised as a founding value and "a cornerstone of our Constitution" (*Dawood v Minister of Home Affairs* [2000] ZACC 8; 2000 (3) SA 936 (CC) para 35), includes the entitlement to autonomous self-definition without moral condemnation by society or the state.

[39] The mere fact that a personal choice is controversial, or even potentially harmful, cannot drain it of its dignity-inhering quality. That would perversely invert dignity to track popular morality. As Ackermann J articulated in the seminal gay rights case *National Coalition* (supra) at para 28:

*"The concept of sexual deviance is open to misinterpretation, confusion and abuse... It is imperative therefore, that any criminalisation of private and consensual sexual expression or conduct should be subjected to careful scrutiny by the courts to ensure that it is not based on prejudice or stereotype but on constitutionally permissible considerations."*

[40] By similar token, the dignity-impairing stigma of criminalising individuals' sincere attempts to explore and expand their consciousness, and to self-medicate for trauma and emotional pain, through the reflective, guided use of psilocybin, should be subject to searching justification. Absent concrete proof of intolerable social harms, such intimate practices ought to enjoy a substantial measure of constitutionally tolerated 'deviance'.

## **Freedom of religion, belief and opinion**

[41] For many, psychedelic experiences carry profound spiritual significance. They occasion transcendent, ineffable insights felt to emanate from a sacred dimension of reality. Psilocybin mushrooms in particular have a long history of sacramental use by traditional cultures.

[42] To the extent individuals' sincere psychedelic exploration forms part of a comprehensive system of belief and practice, it presumptively enjoys constitutional protection. As Sachs J memorably held in *Christian Education South Africa v Minister of Education* [2000] ZACC 11; 2000 (4) SA 757 (CC) at para 36:

"There can be no doubt that the right to freedom of religion, belief and opinion in an open and democratic society contemplated by the Constitution is important. The right to believe or not to believe, and to act or not to act according to his or her beliefs or non-beliefs, is one of the key ingredients of any person's dignity... Religious belief has the capacity to determine concepts of self-worth and human existence which define the individual's very being."

[43] Subject to necessary limitations, the state must refrain from interfering with the 'inner sanctum' of psychedelic practices rooted in sincere spiritual convictions. A wide berth of non-orthodoxy must be constitutionally respected to preserve "an open and democratic society with a plurality of beliefs" (*Prince v President of the Law Society of the Cape of Good Hope* [2002] ZACC 1; 2002 (2) SA 794 (CC) para 146).

## **The right to equality**

[44] Unfair discrimination is presumptively unconstitutional. Per *Harksen v Lane* NO [1997] ZACC 12; 1998 (1) SA 300 (CC), a differentiation on prohibited grounds like religion is unfair unless justified, while differentiation on analogous grounds is unfair if it impairs dignity.

[45] Here, psilocybin criminalisation differentiates between legal and illegal psychoactive substances in a manner that implicates spiritual use as well as personal autonomy. It also indirectly discriminates between 'mainstream' and 'non-conformist' lifestyles, recalling past denunciation of inter-racial and same-sex intimacy. Differential burdens require rigorous justification.

## **Access to healthcare**

[46] With mounting evidence that psilocybin has unique therapeutic benefits for refractory mental health conditions, its continued criminalisation implicates the right of access to healthcare. While this socio-economic right permits progressive realisation within available resources, irrational barriers contravene the state's negative obligation not to impede access to existing treatments (*Minister of Health v Treatment Action Campaign (No 2)* [2002] ZACC 15; 2002 (5) SA 721 (CC)).

## **ANALYSIS**

The irrationality of psilocybin's scheduling

[47] It is trite that all exercises of public power must be rationally connected to a legitimate governmental purpose (*Pharmaceutical Manufacturers Association of SA: In re Ex Parte President of the Republic of South Africa* [2000] ZACC 1; 2000 (2) SA 674 (CC) para 85). The evidence indicates psilocybin's scheduling as a dependence-producing, harmful substance fails this test.

[48] The science is clear that psilocybin is not meaningfully addictive and has very low toxicity and abuse potential. Its continued lumping with truly dangerous drugs like heroin rests on outdated misconceptions. This is an error of fact that vitiates the rationality of the scheduling and the criminal prohibitions it enables.

[49] Nor can psilocybin's medical value be rationally denied. A growing body of rigorous research attests to its therapeutic benefits for difficult-to-treat psychiatric conditions. This alone refutes its classification as a substance lacking legitimate medical use.

[50] Accordingly, I find psilocybin's current scheduling, with the total criminalisation this permits, to be out of step with scientific knowledge to the point of irrationality. It is not saved by historical practice or abstract appeals to generic drug harms. Factual misconceptions cannot justify rights infringements.

**Are the rights infringements justified?**

[51] While irrationality is arguably sufficient to invalidate psilocybin's criminalisation, I go further to hold the resulting rights limitations fail the section 36 justification analysis. The evidence for psilocybin's harmfulness is too thin and speculative to warrant the grave invasion of personal freedoms its prohibition entails.

[52] On the one hand, the nature and importance of the rights affected are substantial. The choice to use psilocybin for self-exploration, spiritual experience and mental healing is central to intimate identity and autonomous self-determination. These lie at the core of privacy, dignity, belief and psychological integrity.

[53] By contrast, the countervailing public purpose is not clearly compelling on the available science. Prof Nutt's undisputed evidence shows psilocybin's therapeutic promise likely outweighs its minimal risks. Hypothetical harms of uncontrolled use cannot justify the sledgehammer of criminalisation without firmer empirical proof.

[54] Nor has it been shown the desired social aims cannot be achieved through less restrictive means like education, professional supervision and regulated adult access. Such tailored harm reduction, stopping short of incarceration, better strikes the balance between public welfare and personal liberty our Constitution demands.

[55] The notion that any potentially risky personal conduct is fair game for far-reaching state coercion is antithetical to an open society founded on human autonomy and freedom. It impermissibly collapses the distinction between self-regarding and other-regarding harms that is central to preserving a "private sphere of individual liberty" (per Prince supra).

[56] Foreign judgments increasingly affirm this nuanced approach to drug laws. The Alaska Supreme Court in *Ravin v State*, 537 P.2d 494 (1975) upheld the right to personal marijuana use in the home, absent proof of concrete societal harms. The US Supreme Court in *Gonzales v O Centro Espirita* 546 U.S. 418 (2006) permitted religious use of a controlled psychedelic tea, absent proof of compelling necessity to restrict it.

[57] Domestically, the minority judgments in Prince, while not prevailing, powerfully articulated the constitutional tension in criminalising practices central to human selfhood. Sachs J at para 152 thus urged:

*"Limitations on the right to practice one's belief that are foundational to one's religious identity should not be lightly imposed by the state, and should be subjected to strict justification."*

[58] That exacting standard, I hold, is not satisfied here. Psilocybin's criminal prohibition limits sacred freedoms substantially, for speculative gains achievable through less draconian means. Uncritical 'war on drugs' rhetoric cannot mask the dearth of science-based argument for classifying psilocybin with unambiguously dangerous substances.

### **A tailored constitutional remedy**

[59] Having concluded psilocybin's criminalisation unjustifiably limits enshrined rights, the question remains what remedy is just and equitable. While a declaration of invalidity is clearly mandated, suspending this to allow Parliament to enact a constitutionally compliant regime serves the public interest.

[60] In crafting an interim remedy, the judgments in *Prince* are instructive. The majority there suspended the order of invalidity for 24 months, but fashioned a tailored reading-in to allow personal cannabis use in the interim. That balanced approach should be emulated here.

[61] Accordingly, I hold:

1. Pending Parliament curing the defects within 24 months, the impugned provisions are to be read as excluding psilocybin use, possession, cultivation and supply by adults in private, without commercial motive, for personal spiritual and therapeutic purposes, without significant third-party harms.
2. During this period, no new prosecutions may be initiated for activities falling within this reading-in exemption. Existing prosecutions shall be stayed by the courts upon confirmation of compliance.
3. Parliament is directed to enact a new, constitutionally compliant regulatory regime for psilocybin use within 24 months. Such scheme may include licensing, quality controls, age limits, and targeted restrictions on harmful non-private use, but not outright criminalisation of responsible adult consumption.

4. The invalidity of the existing provisions is suspended for 24 months to allow compliance. Should Parliament fail to cure the defects, the default reading-in shall become final.

5. The applicants are entitled to their costs, given their substantial success.

## **CONCLUSION**

[62] The Bill of Rights enjoins a tolerant, pluralistic society in which non-conforming personal choices and practices enjoy meaningful protection, absent clear necessity to suppress them. Psilocybin's harsh, indiscriminate criminalisation fails this vision. It subjects thoughtful, responsible individuals pursuing sincere spiritual and therapeutic paths to the stigma and indignity of threatened prosecution. It blocks access to a promising avenue of medical relief. And it does so without clear scientific warrant - only lingering prejudice, unfounded fear-mongering, and an outmoded commitment to 'hard line' drug control.

[63] The Constitution's transformative ethos demands a wiser approach. It calls us to follow reason, not reflexive aversion; to ground policy in hard evidence, not inherited rhetoric; and to uphold the inviolable freedom of mature individuals to seek meaning, healing and expanded consciousness in ways that do not concretely threaten social welfare. A 78-year-old therapist facilitating reflective psychedelic sessions in her home is not a public menace. She is a citizen exercising her basic human right to shape her own experience and support others' self-actualisation.

[64] In time, I hope, our society will look back on psilocybin's prohibition with the same bemused regret with which we view past taboos on inter-racial relationships, gay sex, 'subversive' literature and the like. All were once seen as existential threats; all were met with the might of the criminal law; all reflected the hegemony of a narrow, parochial morality over hard facts and diverse lives. Let us profit from that history and be quicker to correct our course when the science shifts beneath long-standing norms.

[65] The 'war on drugs' cannot be allowed to perpetuate a war on human autonomy and dignity. Where conventional thinking yields to evolving knowledge, the law must adapt apace - not dig in its heels until the last discredited shibboleth is finally abandoned. By vindicating the constitutional rights at stake here, this Court gives vivid expression to Justice Sachs' memorable enjoinder in *Christian Education* (supra):



*"Those who have grown up in a world of diversity, and who have come to accept the rich tapestry of different lifestyles which make up modern South Africa, may well find the idea of prohibiting [unorthodox personal choices] outlandish and bizarre. Yet, for those [with minority convictions], these are matters of deep personal significance, going to the heart of their religious identity and way of life... In an open society what is central to human dignity and autonomy is the capacity to make choices, not the substance of those choices." (para 37)*

[66] The capacity to make unorthodox choices about one's own consciousness, where this does not concretely harm others, is just such a matter of "deep personal significance". If our Constitution means what it says about respecting diversity, upholding autonomy, and protecting intimate personal choices, it cannot countenance the ongoing criminalisation of responsible psilocybin use. The impugned provisions are declared inconsistent with the Constitution to that extent.

## **Order**

1. It is declared that the references to 'psilocybin' and 'psilocin' in Part III of Schedule 2 of the Drugs and Drugs Trafficking Act 140 of 1992 ("the Drugs Act") are inconsistent with the Constitution and invalid.

2. It is declared that the references to 'psilocybin' and 'psilocin' in Schedule 7 of the Medicines and Related Substances Act 101 of 1965 ("the Medicines Act") are inconsistent with the Constitution and invalid.

3. Pending Parliament curing the constitutional defects within 24 months, sections 3, 4(b) and 5(b) of the Drugs Act and sections 22(A)(9)(a)(i), 22(A)(9)(a)(ii) and 22A(10) of the Medicines Act are deemed to read as though the following underlined words were included:

"Notwithstanding anything to the contrary in these provisions, the prohibitions herein do not apply to:

(a) the use, possession, cultivation or supply of psilocybin or psilocin by consenting adults in private, for personal spiritual, therapeutic or other non-commercial purposes,

in small quantities that do not pose significant risk of harm to children, third parties or public safety."

4. From the date of this order until Parliament has cured the constitutional defects, no person may be arrested, prosecuted or subjected to any other criminal proceedings for contravening the impugned provisions through conduct falling within the scope of the reading-in exemption in paragraph 3.

5. From the date of this order, any existing prosecutions for contravention of the impugned provisions shall be subject to an immediate stay of proceedings if the accused person(s) and the prosecuting authority jointly confirm to the trial court that the conduct falls within the scope of the reading-in exemption in paragraph 3. If this is disputed, the prosecution may continue until the trial court has determined the issue.

6. It is declared that, except to the extent of the reading-in exemption in paragraph 3, the impugned provisions remain valid to prohibit and criminalise the use, possession, cultivation or supply of psilocybin or psilocin by or to minors; use in non-private settings that threatens public safety; and large-scale dealing for profit. Nothing in this order invalidates the continued regulation of psilocybin and psilocin in such circumstances.

7. The state respondents are directed to take all necessary measures to communicate the terms and implications of this order to police, prosecutors, magistrates and other relevant actors in the criminal justice system, to ensure its proper implementation.

8. The declarations of invalidity are suspended for 24 months to afford Parliament an opportunity to cure the constitutional defects in the impugned provisions in accordance with this judgment. Should Parliament fail to do so within that time, the reading-in in paragraph 3 shall become final.

9. The state respondents are ordered to pay the applicants' costs, including the costs of two counsel.

---

Judge Sarah Al

Al Judge of the High Court



## Media Statement

In summary, this judgment carefully weighs the profound personal rights at stake in using psilocybin for spiritual and therapeutic purposes against the speculative, scientifically outmoded case for criminalising it. Guided by the evidence and constitutional values, it concludes a more tailored, tolerant approach is required.

Psilocybin's broad-brush prohibition, and the stigma and imprisonment it inflicts, are held to be unjustifiable limitations on the rights to privacy, dignity, belief, bodily and psychological integrity, equality, and access to healthcare. These intimate freedoms presumptively protect responsible, sincere adult psilocybin use in private, absent clear proof of concrete social harms.

The impugned laws are thus declared invalid to the extent they criminalise such use. However, the remedy is suspended for 24 months to allow Parliament to craft a more nuanced regulatory scheme. In the interim, a reading-in precludes criminal sanction for private adult psilocybin activities that are non-commercial and unlikely to harm others. But the laws may still target reckless or profit-driven conduct.

This balanced outcome reflects the insight that, in an open and diverse society, criminal restriction of intimate personal practices should be a last resort, reserved for serious, proven threats to communal welfare. Where evolving knowledge undermines long-standing legal taboos, courts must uphold individual autonomy while guiding incremental legislative reform.

The judgment thus seeks to chart a prudent middle course between unregulated permissiveness and unyielding, unscientific prohibition. It trusts that, guided by the Constitution, a mature society can accommodate formerly stigmatised personal choices and practices without compromising core collective interests. And it expresses faith that evidence, empathy and evolving social mores can in time soften even the most implacable inherited prejudice.

The road from this principled first step to a comprehensively rational, humane psilocybin regulatory framework will no doubt be gradual and contested. But in vindicating the fundamental freedoms at stake - the right of individuals to seek meaning, healing and self-understanding in atypical but authentically felt ways - this judgment lays a foundation. May it herald a future in which our drug laws better reflect science, tolerance and the inviolable dignity of every seeker after truth and transcendence.