

CRIMINAL LAW

Can Human Rights Be Limited?

The human rights contained in the Bill of Rights are not entirely set in stone and a person's human rights can sometimes be limited. This means that a limitation of a human right may be considered lawful.

I feel violated - can human rights be limited?

John understands that he has all these different human rights that are protected in the Constitution.

However, he struggles to understand whether it can be limited? For example, a police officer can still search his home if there is a search warrant to do so. According to John, this infringes his right to privacy.

- The human rights contained in the Bill of Rights are not entirely set in stone and a person's human rights can sometimes be limited. This means that a limitation of a human right may be considered lawful.
- However, not every single limitation of a human right will be considered as lawful. A person's human rights can be limited if:
 - The limitation applies to all people and not just one or a group of people.
 - There is a good reason to limit the right and the limitation can reasonably be justified in society.
- The Constitution specifically provides that any limitation must be fair and reasonable, and that all relevant factors must be taken into account, such as:
 - The nature of the right. For example, one of the purposes of the right to privacy is to repudiate the unfair practices in the past.
 - The importance of the limitation of the right. For example, the police official's duty is to protect the public. It is important for him/her to search a person's home, limiting that person's right to privacy, to obtain evidence that can be used in a court.
 - How the limitation affects the right. For example, the seriousness of the limitation must be considered. If a police officer can search a person's home at any time s/he wants to, that will highly affect a person's right to privacy.

- If any less restrictive manners are available to get the same result. For example, by getting a warrant from court to search John's home, the same result of obtaining evidence can be reached.
- The limited human rights of a person will be weighed against the human rights of others and the values of the society. For example, if a person feels that his/her freedom of expression has been violated, the court weigh his/her right against societal values and every other person's right to dignity when considering whether it is lawful to limit his/her freedom to say something in public.

John understands that it can be a difficult matter to prove that his human rights have been limited, but wants to know what he can do if he feels that someone limited his human rights.

- Every person has the right to approach a court to resolve any dispute s/he may have with another person or entity (such as a company) through the application of law. This is known as the right to access to courts.
- This right also includes to have the dispute resolved in a fair public hearing in court or other tribunal or forum, such as an Ombudsman.
- A person who feels that his/her human rights have been violated can do the following:
 - Contact the South African Human Rights Commission ("SAHRC") to lodge a complaint. The SAHRC will resolve the complaint through negotiation, mediation or arbitration.
 - Approach a court to enforce his/her right to claim compensation if the limitation caused damages. It is recommended to obtain the assistance of an attorney when approaching the court.
 - Lodge a complaint with another institution, such as the Public Protector or a non-governmental organisation.