

**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.