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Your reference/My verwysing: 1/1/14

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THE NATIONAL COMMISSIONER
DIE NASIONALE KOMMISSARIS
PRETORIA
0001

- A. The National Head
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
- B. ALL DIVISIONAL COMMISSIONERS
- C. ALL REGIONAL COMMISSIONERS
- D. ALL PROVINCIAL COMMISSIONERS
- E. The Head
CORPORATE COMMUNICATION
- F. All Heads
HEAD OFFICE
- G. All Section Heads
HEAD OFFICE
- H. All Commanders
SAPS ACADEMY AND TRAINING CENTRES
- I. ALL DEPUTY NATIONAL COMMISSIONERS
- J. The Chief of Staff
MINISTER OF POLICE

ARRESTS BY THE SOUTH AFRICAN POLICE SERVICE FOR CANNABIS –RELATED MATTERS

A-H1. Following the 2018 Constitutional Court judgment in the *Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton and Others [2018] ZACC 30*, there appears to be confusion as to the

legal position in relation to cannabis. In short, possession, use and cultivation of cannabis by an adult, for personal consumption, in private, is permitted. In contrast, dealing in cannabis is not permitted therefore commercialisation of cannabis is still not legal in South Africa. Following the order of the Constitutional Court, the definition in section 1 of the Drugs and Trafficking Act, No. 140 of 1992 has been expanded as follows:

“deal in”, in relation to a drug, includes performing any act in connection with the transshipment, importation, cultivation other than the cultivation of cannabis by an adult in a private place for his or her personal consumption in private, collection, manufacture, supply, prescription, administration, sale, transmission or exportation of the drug.

2. Cannabis is still listed as an undesirable dependence producing substance in Part III of Schedule 2 of the Drugs and Drug Trafficking Act. Despite this, licenses or permits are, in certain circumstances, granted by the South African Health Products Regulatory Authority (SAHPRA) and the Department of Agriculture, Land Reform and Rural Development (DALRRD) permitting cannabis cultivation for medical research purposes or the cultivation of hemp (low THC cannabis) for limited purposes.
3. There is currently no legislation that prescribes what quantities of cannabis may be possessed or cultivated in order to comply with the Prince judgement. There is also no legislation that allows for a presumption of dealing where cannabis quantities above a certain threshold is found in the possession of a person. As a result, the amount of cannabis found in the possession of a person for private consumption, in private or for cultivation cannot be used by a member to presume that the person is in fact dealing in cannabis.
4. Since there is no definition or quantification of the concept of “personal consumption”, the South African Police Services is at risk if they arrest a person for possession, use or cultivation and such matter is not enrolled, struck off the roll, or otherwise does not result in prosecution. This exposes the SAPS to civil claims for unlawful arrest and detention.

ARREST BY THE SOUTH AFRICAN POLICE SERVICE FOR CANNABIS –RELATED MATTERS

5. Whenever a member has a suspicion of, or reasonable grounds in relation to an offence involving cannabis, the suspect, like any other suspect, must be treated with dignity and in compliance of the prescripts laid down by the law, including the Bill of Rights in Chapter 2 of the Constitution of the Republic of South Africa, 1996. All lawful means of securing the accused's attendance at trial, such as a summons or written notice, need to be considered before resorting to arrest and detention. For purposes of a summons or written notice, the name, residential address, occupation and status for the accused must be obtained to ensure his or her appearance at an identified court on a specific court date. A criminal case docket must be registered and the cannabis or any other exhibits must be seized and booked into the SAPS 13.
- 5.1. Before arresting alleged cannabis offenders and the seizure of their property proceed, members of the SAPS should liaise with the prosecuting authority, where possible, to determine whether the matter will be enrolled and prosecuted. It is also advisable to obtain a search and seizure warrant beforehand, before such operations are conducted. This will ensure that the process is subject to judicial oversight and the rule of law.
6. No arrests are to be made for personal and private cultivation and/or or possession of cannabis, which activities are not criminal. Furthermore, no arrests of alleged cannabis offenders should be effected merely for the reason to achieve pre-determined targets and without assurance that there is indeed a crime that will be enrolled and prosecuted by the National Prosecuting Authority.
- 6.1 A private space is any space that the public does not have access to as a matter of right, for example:
 - 6.1.1 a physical barrier preventing access is not a requirement of a private space.
 - 6.1.2 a person does not need to be the owner of a space for it to be their private space.
 - 6.1.3 cannabis is privately possessed if hidden from view when carried in public. The inside of a motor vehicle is a private space.
 - 6.1.4 cannabis dispensed by a traditional, cultural, or religious healer in small quantities is privately and personally possessed; and
 - 6.1.5 more than one person may have ownership rights to personal and private cannabis.
7. This circular must be brought to the attention of all members under your command against their signature and filed as proof that such members familiarised themselves with the content of this circular. Any enquiries in relation to this circular should be directed to

ARRESTS BY THE SOUTH AFRICAN POLICE SERVICE FOR CANNABIS –RELATED MATTERS

Brigadier NF van Graan, at: 082 779 8662 or Brigadier MD Bobie, at: 079 527 3846 of the Division: Legal Services. Alternatively, any member of Legal Services responsible for provincial operational legal assistance may be contacted in this regard.

8. Failure of a member to comply with these instructions may result in disciplinary steps.

I-J.1. For your information.



**GENERAL
NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
SF MASEMOLA (SOEG)**
DATE: 2023-08-23