


ary that is to blame. That must necessarily be so when the judiciary has been appointed as the guardian of judicial independence. What purpose is served, then, in calling out in alarm? The public might only respond that the judiciary itself has been left to guard the gate. Which does not mean that threats to judicial independence might not loom from time to

time, but rather that the means to deal with them are readily at hand. Just as they are when liberty, or equality, or dignity, or any other value protected by the Constitution, is under threat. Nor does it mean that judges should not object to being subjected to threats, and public scorn, but those are matters that threaten judicial morale, not judicial independence.

It would be odd, then, if judges were to set off the alarms, for where else would one look to shore up the defence? I suggest that it is only judicial betrayal that could place judicial independence under threat. Hopefully, judges, and lawyers, do not fear that there is any prospect of that. And nor ought the public to be left in any doubt. 

Other judges say...

On using the courts as rubber stamps


"The balanced approach of the courts is sensitive to the need to avoid the mistake (which is both unjust and contrary to the interests of society) of 'sacrificing' any individual offender 'on the altar of deterrence'. The arbitrary punishments imposed by the Legislature are likely to achieve precisely that form of sacrificial injustice when a person to be sentenced is unable to show the existence of 'substantial and compelling circumstances' to relieve him of the full weight of the statutory minimum sentence. Indeed, in my view the present case is an illustration of that form of injustice perpetrated by the Legislature.

That the Legislature has seen fit to use the courts as rubber stamps that must apply the Legislature's arbitrary sentences, without proper regard to all of the factors relevant to just punishment, is an unfortunate breach of the separation of powers. It tends to undermine the independence of the courts, and to make them mere cat's paws for the implementation by the Legislature of its own inflexible penal policy that is capable of operating with serious injustice in particular cases.

Deterrence appears to be the principal concern of the Legislature in the imposition


of the severe minimum sentences upon which it has decided even before the offences are committed. There is good reason to believe that effective deterrence requires, first and foremost, effective policing that creates a high risk for every criminal that he will be caught, and brought to justice, and punished with condign severity. It is to the implementation of such policing that the efforts of the Legislature and the Executive should be directed. There is no good reason to believe that the Legislature's punishments of arbitrary severity, imposed in circumstances in which it seems that no more than a small minority of offenders runs the risk of being caught, convicted and punished, can serve as more effective deterrents that just punishments arrived at in the balanced judicial manner that was usual until Act 105 of 1997 was recently brought into operation.

I repeat, in Alice's words, my sense of affront at the inappropriate procedure devised by Parliament for the infliction on offenders, through the instrumentality of the courts, of arbitrary minimum punishments of its own devising: 'The idea of having the sentence first!' "

Per Stegmann J in S v Mofokeng 1999 (1) SACR 502 526e-527h 

Die "vasvat" van regters

"...Dit is die onafhanklikheid van die regbank, ongelooflik soos dit mag klink, wat tans in gedrang is. Regter Piet van der Walt van die Transvaalse Provinsiale Afdeling van die Hooggeregshof word in die *Volksblad* van 19 November 1999 aangehaal waar hy sê: 'Die regbank word verguis, verkleineer, beledig en bevraagteken tot verby die punt van gesonde kritiek.' Dieselfde koerant haal mnr Johnny de Lange, lid van die Regterlike Dienstekommissie, aan dat regters wat uitsprake lewer wat met die grondwetlike etos bots, 'vasgevat' en 'aangespreek' gaan word. Daar word blykbaar 'n wet beoog, aldus die berig, wat die regbank onder die waghond van 'n politieke 'Big Brother' gaan plaas. Hiervan sê prof Petro Swanepoel van Unisa, aldus die berig, dat '... dit 'n sirkus sal word waarin daar van 'n skeiding van magte geen sprake is nie en 'n mens later nie meer sal weet wat is wetgewend, uitvoerend en regsprekend nie.' 'Wat,' vra sy, 'gaan word van die integriteit en onafhanklikheid wat nodig is by regters en landdroste wat hul werk vreesloos en sonder begunstiging moet doen?'"

Aanhaling uit 'n toespraak deur Buys R met die inhuldiging van Steenkamp R as regter-president van die Noord-Kaapse Hooggeregshof. 

LAWYERS' GOWNS



Quality garments made to your specific needs within 48hrs.

Contact Ellen today at:

TEL: (011) 679 4818

FAX: (011) 475 5349

Lessenaar te koop

R6 000 o.n.a. (Sandton)

*Imbuia 2,4 m x 1,2 m
6 laaie; in goeie toestand*

Skakel Sarah 083 320 8626
of Raelene 082 372 0726