

TRUTH AND RECONCILIATION COMMISSIONSECTION 29 HEARING"IN CAMERA"

DATE: 27-05-1997  
NAME: JOHANNES LODEWIKUS PRETORIUS  
HELD AT: JOHANNESBURG

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CHAIRPERSON: Before we begin, could I ask you to state your full names for the record please.

MR ROSSOUW: Chairperson, can I at this stage approach the Chairperson with a request?

CHAIRPERSON: Yes, certainly.

MR ROSSOUW: Chairperson, at this point, I am Alwyn Rossouw and I am an Advocate of the Pretoria Bar and I am acting under instructions of the firm Van der Merwe and Coetzer who has instructions from the client, Mr Pretorius.

At this point, I want to request the Commission to make available to the client, all the information with regard to statements made in which he is implicated as well as all documentation which might be relevant in this regard, as well as other particulars with regard to the third point on the subpoena as made available in terms of Section 29 of Act 34 of 1995.

The reason why I am making this request, Chairperson, relates to the Appeal Court decision of Du Preez Janse van

Rensburg, against the Truth and Reconciliation Commission, at this stage an unreported decision of the Appeal Court.

Insofar as I understand that matter, it would appear to me and this is my submission, that the client has the right to have access to such information and that it would be an unfair administrative act at this point to continue with this particular hearing, before this information has been made available to the client.

Should the Commission differ from me, and should the Commission be therefore of the opinion that the client does not have the right to have access to such information, I would with respect want to request at this point, that this event be postponed to a later date, until the High Court will be able to give us a decision with regard to this matter and this situation.

I realise that the factual situation of these hearings differ from the factual situation in the case of Du Preez. I accept that the Commission is aware of the Du Preez decision, and it is true that in that particular case, there was a public hearing and that there was an interdict which was brought in order to prevent the Commission from hearing any testimony in public before meeting certain requirements, and I realise that the factual circumstances, the material circumstances are not the same, but it is my opinion with respect, and my submission, that these two cases in essence

are the same and that the same principles would therefore in essence apply and should be equitably applied in both cases.

CHAIRPERSON: May I place on record that I find it surprising that your client has actually waited until the day of his subpoena to make a request for the information. I think that you are aware of the fact that the circumstances of the cases are very different, that was an open hearing, however this document was served on your client on the 4th of May and had he approached the Commission, the information that he sought, would probably have been made available to him.

I would also like to point out that in fact there is no documentation that implicates him. He in fact was implicated in the oral evidence of another person who was subpoenaed in terms of Section 29 and in fact it is the contents of that conversation, which led to the subpoena that was issued in respect of your client.

I think had your client approached us for a transcript of the proceedings that took place in terms of which his name was mentioned, that would certainly have been made available to him.

I have a real problem with the postponement of this subpoena hearing because I think given the fact that we are now sitting on the 27th of May 1997, I cannot see the reason for why this matter has waited from the 4th of May until now before the request has actually been forthcoming.

Could you address me on that issue please.

MR ROSSOUW: Chairperson, I want to mention that we, that is Mr Coetzer and myself, were on Thursday, the 15th of May 1997 at Adv Steenkamp, we visited Adv Steenkamp and we had an informal conversation with him.

At that time the client and my Attorney may want to correct me, there was no finality with regard to funding through the Legal Aid Council or rather by the Commission then.

The Police had however been approached by the Attorneys who had instructed me and they have provided financial assistance to him for this particular matter. It is only at a very late stage therefore that appropriate attention had been given to this appearance before the Commission.

That then in the first place, Chairperson, and in the second place, it is the case and I might be mistaken, that there are no regulations in terms of the Act where one would be able to determine what the exact procedure is which should be followed for postponements and so forth.

It was my opinion and if this is an error, then it is my error, I advised the client in this regard, I had indicated that this is the appropriate forum, time and place to apply for a postponement in lieu of the fact that the Commission is together and the request for postponement would be directed at the Commission.

CHAIRPERSON: I appreciate, what I would prefer doing is really then, we will make sure, we will postpone the subpoena hearing in respect of matters dealing with Stanza Bopapi particularly to another date so that I can make available to you the transcript in terms of which you are not implicated, but certainly where your name has been mentioned and which in fact resulted in this subpoena being issued.

But I see no problem with paragraph 3 of the subpoena which in fact reads that to answer questions relevant to the investigation being conducted by the Commission, in respect of any other event and or incident which was committed by any member of the South African Security Forces, which constitutes a gross violation of human rights and was committed while you were an officer in the South African Police Force and of which you have knowledge.

I think that is a fairly simple paragraph, it really relies on your knowledge and in terms of paragraphs 1 and 2, I am prepared to in fact postpone the hearing with particular reference to Stanza to a date when you can be furnished with the information, which will be relevant so that you can in fact answer questions, having full knowledge of where you are in fact mentioned.

But I am going to ask you to answer questions relating to paragraph 3. And I assume that you will have no objection to

that because in fact it is really about knowledge relevant to your client during his period of service with the Security Police.

MR ROSSOUW: Chairperson, again with respect, I would want to submit that paragraph 3 is extremely wide in ambit. It covers a large number of years. In view of this and particularly in view of the fact that my client has not applied for amnesty, it might well be that in view of questions asked of him and answers given by him, that the Commission in its subsequent report, might mention the client, might make information public and the client would then not have had an opportunity to consider such disclosures.

As far as I understand the Act, and it is the intention of ... (tape ends) ... at this point, I want to suggest that those submissions which will be given to the Commission as well as verbal information given to the Commission, will therefore discuss his acts and activities during his period of service in the South African Police, and that would be included in such submissions.

It would therefore be a complete submission and I want to suggest with respect Chairperson, that these two matters of Bopapi and then paragraph 3 of the subpoena should be handled as a single whole. It might be against the interest of the client if he answers questions today, prior to making the submission in terms of my advice to him and one would maybe put the cart

before the horse if one handles the entire matter in such a confused and non-chronological manner.

CHAIRPERSON: I think then what I am going to do is take the matter under consideration and I am going to postpone it for a few minutes, and I will ask you to in fact recuse yourself while I have a discussion with the rest of my team. Thank you, you may be excused for a while.

I have had a discussion with my colleagues, and I think that in essence you are not, and there are two ways in which we can handle this, we can handle this in a very legal, technical way in which you finally will end up saying you want to go to court and make an application to ensure that I hand you the information, or we can actually discuss what it is that we have actually asked your client to come here for.

Your client was mentioned in the evidence of Mr Charles Zeelie and a Colonel Van Niekerk, as well as Mr Du Preez. I think you were Mr Du Preez' Commanding Officer and in a moment of weakness he informed you of his own involvement in the death of Stanza Bopapi, and of course his subsequent involvement in the huge cover up that took place afterwards.

Now, you yourself have not been implicated in any one of those statements, you were simply mentioned in their amnesty applications as a passing reference and I think Mr Zeelie was

quite scathing about the fact that Mr Du Preez broke down and confessed to you what he had actually done.

Now, we want to test the veracity of what Mr Du Preez actually said to you and it is for that reason that we have asked you to come via a subpoena to the Commission. You have an option, you can say to me that you are not going to respond to any of the questions now and I can of course then postpone the matter and give you sight of the documents.

The documents are not going to tell you any more than what I have actually said, but for us really, we simply want to get some sense from you of what was actually said to you, so you could confer with your client and decide on what line you actually want to take and come back and inform me and then we will take the appropriate action.

MR ROSSOUW: Chairperson, I would like to confer with my client, but I would like at this stage to make it very clear, that we are prepared to give our cooperation to the Commission.

But from our side, we feel that if we make a contribution, it should be a meaningful contribution in all respects. And therefore our contribution would be much more meaningful if we can see exactly what they are saying, whether they are laying or not, what exactly was said, to whom it was said, dates, times, etc in order to test the correctness or not of that statements before you.



In the light of these considerations, I think it would perhaps be more meaningful if we were to postpone the proceedings and first obtain this information so that we could make a submission to the Commission or would be in a better position next time, to make a meaningful contribution.

CHAIRPERSON: That of course is your client's right and I certainly am not going to withhold or try to impugn any of his rights. That is your client's decision, then we will postpone this hearing (indistinct) and we will inform you accordingly of a new date as soon as the transcripts become available, because those will probably be the most useful to your client, they will be made available to you so that he can be completely in the picture and answer the questions with full disclosure.

Thank you.

MR ROSSOUW: I thank the Commission. May I at this stage address a request to you. I don't know whether it is meaningful or suitable at this stage, but as far as the third aspect of the subpoena is concerned, because it is so widely worded, questions might arise regarding the procedures in those units, what the practices were, what customs were like in those units, etc and if there is information which would perhaps be contained in reports, etc or statements, which would help us to place things in the correct perspective, we would appreciate it if such information could also be made available to us.

We don't know whether such testimony has been led before you.

CHAIRPERSON: There isn't and part of our function is actually to test the prevailing attitudes and motives and perspectives at the time. Your client was the Commanding Officer I think at the Sandton Security Branch and I think what we actually want to get from him is some sense of the prevailing attitude at the time, the mindset which actually led to gross violations, the question of torture, the fact that there were Officers who were saying that torture was quite routine and simply to draw out a general perspective.

We don't have details that we can release of specific incidents to your client, accept from the one that we have actually detailed in his subpoena, but we would welcome his sharing in fact his own perspective of incidents at the time, and whether in fact it was quite usual for junior Officers to expect that if they found themselves in these kind of situations, superior Officers would cover up for them.

Also a sense of command structure, who people reported to, the expectation of whether politicians would cover them if violations took place, these are some of the areas that we intend testing to get some sense of perspective.

MR ROSSOUW: I understand thank you.

CHAIRPERSON: Thank you. The matter is postponed (indistinct), we will inform you accordingly of a new date. This will be once the transcript of the other evidence becomes available and that will be handed to you. Thank you for coming today.

MR ROSSOUW: We are indebted to the Committee.

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