

## **COURT PROCEDURES IN SOUTH AFRICA**

V.I. Serdyuk - Sumy State University, group U-13

S.V. Podolkova – EL Adviser

Pre-trial motions that are intended to exclude evidence on the basis of exclusionary rules are not prominent in the South African legal system. Instead, objections to the admissibility of statements such as confessions or admissions are dealt with at the trial stage in a procedure that is known as the “trial-within-a-trial” system. The South African Constitutional Court has held that an accused person is constitutionally entitled to pre-trial discovery of all evidence in police files, unless said evidence compromises the identity of a witness/informer etc. South African trial proceedings are largely adversarial. According to the principle of the presumption of innocence, prosecutors are required to prove their case beyond a reasonable doubt. All trials are also public. Moreover, section 35 of the Constitution guarantees the accused the right to be present at their trial, unless that person continues to exhibit loud and disruptive behavior. Finally, the Constitution ensures that the accused have the constitutional right to be protected from double jeopardy, meaning they cannot be punished twice for the same single offense. Section 35 (3) (g) of the South African Constitution guarantees the accused the right to legal representation. If the accused cannot afford legal representation, the state will assign that person a legal practitioner.

South African judges preside on the High Court, Supreme Court of Appeal, and Constitutional Court and are appointed by the President of South Africa. All judges must retire at age seventy. Additionally, South African magistrates are civil servants and can be either former prosecutors or lawyers. South Africa does not currently have statute addressing the rights of victims of crime. Victims of crimes cannot request that prosecutors either withdraw or proceed with any case.

According to the section 35 (3) (h) of the South African Constitution, an accused person has the right to appeal to a higher court. If an appeal is successful, the higher court may only set aside the previous conviction on the following grounds: that the trial court was not competent or that the indictment was invalid or there was some “technical irregularity or defect in the procedure”.

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