



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister of Safety and Security v South African Hunters and Game Conservation Association

CCT 177/17

Date of delivery: 7 June 2018

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 7 June 2018 at 10h00, the Constitutional Court handed down a unanimous judgment written by Froneman J. The Court was asked to confirm a declaration of constitutional invalidity of sections 24 and 28 of the Firearms Control Act 60 of 2000 (the Act), concerning the expiration and renewal of firearm licences. The Court refused to do so.

Sections 24 and 28 of the Act were declared unconstitutional by the Gauteng Division of the High Court, Pretoria (High Court) on 4 July 2017 following an application by the South African Hunters and Game Conservation Association (SA Hunters). The Minister of Safety and Security (the Minister) sought leave to appeal the order.

The purpose of the Act is broad. It aims to enhance the constitutional rights to life and bodily integrity and to establish a comprehensive and effective system of firearms control. Section 3 forbids individuals from possessing firearms without an appropriate licence. Each licence has a limited lifespan of two to ten years. It is a criminal offence for a person to possess a firearm without a valid licence. A person guilty of that offence may be fined, or imprisoned for a period of up to 15 years.

If a person wishes to renew a license, section 24(1) of the Act requires an application to the Registrar at least 90 days before the expiry date. Section 28 sets out four different situations in which a licence will terminate: expiration; voluntary surrender; declaration by the Registrar or a Court that a holder is unfit to possess a firearm; and cancellation in terms of the Act. Certain procedures are in place, under sections 102 and 103 of the Act,

to ensure due process in situations where a person is declared unfit to possess a firearm. However no similar provisions exist when a licence expires.

The High Court found the two provisions to be constitutionally invalid on three grounds: (i) the provisions were irrational and vague; (ii) an earlier interim order, which applied to gun-owners who do not have to apply for re-licensing, amounted to unequal treatment and unfair discrimination in terms of section 9 of the Constitution; and (iii) the absence of a proper procedure for surrendering a firearm after the effluxion of the licence period violated the right to property in terms of section 25 of the Constitution.

In the Constitutional Court, the Minister argued that the High Court's order was overbroad and that whatever defects were present in the provision could be cured without striking down both sections. The Minister also argued that any differential treatment attributable to the Act or its implementation does not amount to unfair discrimination in terms of section 9 of the Constitution. Finally, the Minister submitted that forfeiture of a firearm upon failure to comply with the Act does not amount to unlawful deprivation of property.

The Constitutional Court rejected the argument that the Act was irrational and vague. On the contrary, the relevant provisions cannot be clearer in that they set out the exact procedure for holding and renewing firearm licences. Moreover, the constitutional invalidity of the licencing scheme had not been challenged, nor had the criminalisation of unlawful possession upon termination of the licence been challenged. Once that is accepted, it is clear that the licencing process is not irrational. It exists in order to achieve lawful possession. There is nothing irrational about non-compliance with the licencing process leading to unlawful possession and criminalisation.

As to equality, the Constitutional Court held that any differentiation between people does not arise from the Act itself, but from an earlier interim order. For the Act to be constitutionally invalid, the alleged inequality must stem from the provisions of the Act itself. The Constitutional Court applied the *Harksen* test to the provisions of the Act. The test is a multi-stage process for determining if law or conduct violates the right to equality. The Constitutional Court held that whilst there is clearly differentiation between categories of termination of licences in section 28(1)(a)-(d), the differentiation is not arbitrary and has a rational basis thus the equality challenge must fail.

Lastly, the Constitutional Court found no merit in the argument that the Act amounted to unlawful deprivation of property. There is a compensation regime contained in the Act for surrendered firearms. No challenge was brought against the sections criminalising unlawful possession in this matter. Even if the balancing exercise required in terms of the Court's jurisprudence on section 25 had to be undertaken, it is clear that relinquishing some incidents of ownership in a potentially life-threatening firearm is not too great a price to pay for enhancing the constitutional rights to life and bodily integrity.