

SUMMARY

Gun ownership is not a fundamental right under our Bill of Rights, rather, it is a privilege regulated by law under the Firearms Control Act 60 of 2000 (“the Act”), which aims to establish and ensure a comprehensive system of firearm control and lawful possession. The Act regulates this privilege by prescribing specific mandatory guidelines and measures, whereby gun owners are required to hold a valid licence authorising possession of a firearm and a competency certificate demonstrating proficiency in the handling and use of a firearm. Furthermore, a licence is valid only for a limited period (of two, five or ten years, depending on the nature of the firearm licence) and, thereafter, must be renewed upon expiration, and possession of a firearm without a licence is a criminal offence and subject to minimum penalties. Section 24 of the Act regulates the renewal of a firearm license, while Section 28 speaks to the termination of a firearm license.

Application was made by the South African Hunters and Game Conservation Association (“SAHGCA”) in the High Court of South Africa, Gauteng Division, Pretoria, wherein SAHGCA argued that the above provisions were unconstitutional. The High Court found in SAHGCA’s favour, declaring the provisions to be unconstitutional on the basis that they were irrational and vague; in contravention of the right to equality; and, furthermore, violated the protection of property rights in terms of section 25 of the Constitution. The High Court further reasoned that the Act’s failure to implement a mechanism whereby firearm owners who found themselves in breach of the Act could *“bring [themselves] back under a scheme of legality”* and, additional failure to implement an effective process in respect of the surrender of a firearm, amounted to irrationality and vagueness.

The Minister of Safety and Security lodged an appeal against the High Court’s decision, and argued before the Constitutional Court that any deficiencies of Sections 24 and 28 of the Act could be remedied by means other than that of striking down the Sections.

HELD

The Constitutional Court rejected the argument that the Act was irrational and vague and held that the provisions of sections 24 and 28 adequately set forth the procedure for holding a firearm and the manner in which a firearm license is to be renewed. The Court held that legal provisions are not automatically vague if they are not absolutely clear or lucid. Rather, the doctrine of vagueness requires the law to indicate with reasonable certainty to those who are bound by it as to what is required of them in order to comply with the relevant legal requirements. As such, it is not

irrational that in instances where there is non-compliance with the licensing process that same amounts to unlawful possession and ultimately criminalisation.

As for the provisions being in contravention of the Section 9 of the Constitution (the Equality Provision) the Constitutional Court applied the *Harksen* test to the provisions of the Act and ultimately held that whilst Section 28 of the Act clearly differentiates between categories of termination of licences, specifically Sections 28(1)(a)-(d), this differentiation is in no way arbitrary and in fact has a rational connection to a legitimate government purpose. Therefore, the equality challenge must fail.

The Constitutional Court held that the Act did not amount to unlawful deprivation of property; as such deprivation was in no way arbitrary especially due to the fact that there is a compensation regime contained in the Act for surrendered firearms. Further, the Constitutional Court emphasised that relinquishing some incidents of ownership in potentially life-threatening firearms is not too great a price to pay for one of the purposes of the Act, namely, the enhancement the constitutional rights to life and bodily integrity. As such, the forfeiture of a firearm due to a failure to comply with the Act does not amount to unlawful deprivation of property.

The Constitutional Court stated that none of the arguments advanced to the effect that the sections are constitutionally invalid are well-founded and the Minister's appeal was accordingly upheld.

VALUE

Gun ownership is not a fundamental right under our Bill of Rights, it is a privilege regulated by law under the Firearms Control Act 60 of 2000 and strict compliance with the provisions contained therein is required.

Written by Kirsten Chetty and supervised by Jarryd Spargo, 7 September 2018

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