Constitutional Court Press Release

By: Hubert Wentzel
Monday, 12th February 2018

A CONSTITUTIONAL CHALLENGE

Eight justices of the Constitutional Court, our country's highest court, will henceforth have to carefully consider the arguments made on behalf of the Minister of Police (as appellant), SA Hunters and Game Conservation Association (as defendant), Gun Free SA and Fidelity Security (both as amici curiae) and then adjudicate the case on the facts as contained in pleadings and the law. Since Judge Tolmay on 4 July 2017 ruled, amongst others, that sections 24 and 28 of the Firearms Control Act, No. 60 of 2000 were unconstitutional, our law requires that any finding of unconstitutionality by a High Court, needs to be confirmed by the Constitutional Court.

On behalf of the minister it was argued that the Gauteng North High Court went beyond what was proven by the applicant (SA Hunters) and that, accordingly, the ruling could not be confirmed. Counsel for SA Hunters, however, argued convincingly that there are clear gaps in the legislation, especially in the sense that no provision is made for firearm owners who had failed to timeously apply for the renewal for their licenses, to do so either during the so-called 90-days period or even after the license has expired. Great emphasis was placed on the fact that the failure to timeously apply for the renewal of licenses criminalise such gun owners and deprive them of their ownership of their firearms. This is an argument based on constitutional principles that protect citizens against vague and irrational legislation and equal protection for all. It also guards against arbitrary deprivation of property. We are satisfied that the court understands that there are gaps in the law and that these gaps cause confusion and uncertainty among firearm owners.

The argument of GFSA was based on emotion and (again) irrelevant statistics and we are of the view that it will not contribute significantly to any finding or decision.

Fidelity argued that sections 24 and 28 were not unconstitutional, but rather that clear guidelines should be given regarding the interpretation of the provisions. These guidelines could then be utilised by parliament in redrafting the Firearms Control Act.

As expected, at the conclusion of the arguments, the court postponed the matter for consideration and to deliver judgment. Although we have no indication how long this might take, the justices are extremely hard-working and they have very high productivity rate.

Is it possible to predict the ruling of the court? It will be unethical and very irresponsible to do so. The court will declare unconstitutional provisions of an Act only if there are no other remedies. Accordingly, even if the court does not confirm the declaration of unconstitutionality of sections 24 and 28 by the Gauteng High Court, it may nevertheless provide interpretation and guidelines for its application.

Firearm owners are reminded that it remains their responsibility to timeously apply for the renewal of their licenses or to lawfully dispose of such firearms should they no longer wish to possess them. Although the CFR sends out sms notices to remind licensees of the imminent expiry of their licenses, it still does not happen consistently. Rather diarize the expiry dates and apply for renewal in time.

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