



FIREARMS CONTROL BRIEFING

CONSTITUTIONAL COURT UNANIMOUSLY RULES REGULAR GUN LICENCE RENEWAL IS CONSTITUTIONAL: WHAT NEXT?

INTRODUCTION

On 7 June 2018 the Constitutional Court unanimously ruled that sections 24 and 28 of the Firearms Control Act (2000), under which gun owners **must** renew their firearm licences on a regular basis or forfeit guns for which licences have expired to the state, are constitutional.¹

In making its judgment, the ConCourt ruled that gun ownership is not a fundamental right under the Bill of Rights, rather it is a privilege regulated by the Firearms Control Act (FCA). Under the Act:

- No person may possess a gun without a valid licence;
- A firearm licence is valid for a limited period of time; and
- Unless a gun owner has renewed his gun licence before expiry, he has committed a criminal offence and is subject to penalties, including a fine or imprisonment.

The case before the ConCourt began in 2016, when the South African Hunters and Game Conservation Association (SAHGCA) challenged s24 and s28 of the FCA in the North Gauteng High Court, arguing that they are vague and irrational, breach the right of equality and violate the protection of property rights.

The ConCourt's judgment details how SAHGCA failed in all three of these arguments, ruling that s24 and s28:

1. Are not vague and irrational: The FCA "cannot be clearer" in identifying the steps a gun owner must take if he has failed to renew his gun licence within the 90 days required by the FCA.²
2. Do not breach the right of equality: Even though gun owners are treated differently, as gun owners licensed under the FCA must renew their licences, while gun owners who still hold the old "green licence" issued under the Arms and Ammunition Act (1969) are exempt from renewal, this differentiation is neither arbitrary nor discriminatory. The exclusion of gun owners with "green licences" from regular renewals dates to 2009, when SAHGCA filed a motion in the North Gauteng High Court against the then Minister of Safety and Security in the matter of licence renewals, alleging poor implementation of the renewal system. On 26 June 2009, the Court ordered that "all firearm licences contemplated in s 1 (1) of Schedule 1 of the FCA of 2000 shall be deemed to be lawful and valid" pending the final outcome of SAHGCA's application to have certain sections of the FCA declared unconstitutional.³ Nine years later the interim order (under which more than one million firearm owners have not yet applied for licences under the FCA) has still not been set down for a hearing as the Minister of Police has not filed an answering affidavit, thereby preventing full implementation of the Act.
3. Do not violate the protection of property rights in section 25 of the Constitution: While a gun owner who fails to renew his licence in time and is thus in possession of an unlicensed weapon must forfeit his gun to the state, the FCA provides for compensation; moreover "relinquishing

¹ Judge Froneman, Constitutional Court of South Africa. Case CCT 177/17 in the matter between the Minister of Safety and Security (Applicant) and South African Hunters and Game Conservation Association (Respondent) and Fidelity Security Services (PTY) Limited (First Amicus) and Gun Free South Africa (NPO) (Second Amicus). Unanimous judgement made on 7 June 2018. Available online at www.saflii.org/za/cases/ZACC/2018/14.pdf (accessed 12 June 2018).

² Ibid, p. 10.

³ Judge Prinsloo, North Gauteng High Court. Case 33656/09 in the matter between the SA Hunters A. O (Applicant) and the Minister of Safety and Security (Respondent). Judgement made on 26 June 2009.



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, enhancing the constitutional rights to life and bodily integrity.”⁴

BENEFITS OF REGULAR GUN LICENCE RENEWAL

Gun Free South Africa was admitted as amicus curiae (friend of the court) to the ConCourt, the importance of which was acknowledged in the Constitutional Court’s ruling.

Gun Free SA’s input showed how:

1. The FCA, including its licensing and renewal provisions, brings South Africa’s gun control regime within an international legal and political gun control framework as countries worldwide require regular gun licence renewal. In one global analysis of gun laws, 41 out of 42 countries surveyed require regular gun licence renewal; only one country, Finland, grants licences for an indefinite period.⁵
2. A system of regular licence renewal helps reduce and prevent gun-related crime because it:
 - Provides a mechanism by which the state can assess the on-going fitness of gun owners, which in turn is an incentive for gun owners to comply with licensing requirements;
 - Ensures that gun owners remain familiar with changes in the law;
 - Gives a licensed gun owner the opportunity to assess if he still needs a gun, for example, he may decide he no longer wants a gun if he has young children in the home. Relicensing requires each gun owner to demonstrate genuine need for continued ownership of a gun;
 - Requires a gun owner to reaffirm his responsibility for the gun registered in his name, which reduces the risk of legal guns leaking into the illegal pool of weapons through loss and theft; and
 - Ensures records on gun ownership are accurate, which in turn helps law enforcement officials to trace guns, investigate crime and support criminal prosecutions.

HISTORY OF FIREARM LICENCE RENEWAL IN SOUTH AFRICA

Figure 1: Timeline of important dates in the history of firearm licence renewal in South Africa

Pre 2000	2000	26 June 2009	3 February 2016	16 March 2016	25 April 2017	4 July 2017	5 July 2017	7 February 2018	7 June 2018
No firearm licence renewal system, gun licences lasted for life	Firearms Control Act introduces regular gun licence renewal system through s24 and s28	North Gauteng High Court rules that gun owners with licences issued under the Arms & Ammunition Act (1969) are exempt from renewals pending the final outcome of SAHGCA’s application to have certain sections of the FCA declared unconstitutional	SAPS issues directive to standardise licence renewal process countrywide	SAHGCA serves notice in North Gauteng High Court challenging constitutionality of s24 and s28	Case heard by North Gauteng High Court	Judge Tolmay rules s24 & s28 are unconstitutional	Minister of Police lodges appeal against North Gauteng High Court ruling	Case head by Constitutional Court	Constitutional Court dismisses application made by SAHGCA, ruling that s24 and s28 of the FCA are constitutional

⁴ Judge Froneman, Constitutional Court of South Africa. Case CCT 177/17 in the matter between the Minister of Safety and Security (Applicant) and South African Hunters and Game Conservation Association (Respondent) and Fidelity Security Services (PTY) Limited (First Amicus) and Gun Free South Africa (NPO) (Second Amicus). Unanimous judgement made on 7 June 2018, p. 13.

⁵ Parker, Sarah. Chapter 9: Balancing Act: Regulation of Civilian Firearm Possession. Small arms Survey 2011. Cambridge: Cambridge University Press.



As shown in Figure 1 above, prior to 2000, firearm licences lasted for life. In 2000 the FCA instituted a system of regular licence renewal to bring South Africa in line with global norms to control the use of firearms by civilians:

- Section 24 deals with gun licence renewal, it requires that anyone wanting to renew a gun licence must apply at least 90 days before the licence expires.
- Section 28 deals with the termination of gun licences: under subsection 1 (a), a licence terminates when the renewal period has expired unless the licence has been renewed; subsection 2 (b) gives the Registrar (who is the national police commissioner) the right to cancel a licence if the licence holder has contravened or failed to comply with the Act (e.g. by failing to renew his gun licence in time); and subsections 4 and 5 state that when a gun licence is cancelled the gun must be disposed of through a dealer within 60 days, otherwise it must be forfeited to the state.

Given that these sections mark a dramatic break from the Arms and Ammunition Act of 1969, there has been significant resistance to the principle of regular licence renewal, ranging from non-compliance to legal action.

In February 2016, Acting National Police Commissioner, Lieutenant General Phahlane, issued a directive within SAPS to standardise the renewal process, which had been unevenly enforced and complied with around the country.⁶ The directive:

- Reiterates that firearm licence renewal applications must be lodged at least 90 days before the expiry of the licence.
- Notes that when someone wants to renew or apply for a firearm licence which has already expired, the person must be informed that he is not in lawful possession of the gun and the gun must be surrendered to the nearest police station. However, if a firearm licence has expired and the gun is voluntarily surrendered, there will be no prosecution of the owner.
- Recognises that this process only applies to gun owners with a licence issued under the FCA, noting that anyone holding a valid “green licence” who wants to apply for a licence under the FCA must be dealt with as a new application.

In response to this directive, SAHGCA served a notice of motion on the Minister of Police in the North Gauteng High Court on 16 March 2016, challenging the constitutionality of s24 and s28 of the FCA.⁷ Gun Free South Africa was admitted as *amicus curiae* in this case.

On 4 July 2017, the North Gauteng High Court ruled that regular gun licence renewal is an integral part of an effective gun control system while stipulating that South Africa’s gun law needs to be properly enforced.⁸ In her ruling, Judge Tolmay upheld the purpose of the FCA, describing guns as “hazardous objects” that need to be “strictly controlled”, and affirming the importance of gun licences having a “limited lifespan”. However, she criticised the Act for not listing the procedure that gun owners whose licences have expired must undertake to bring themselves “back within the parameters of the law”, noting that since about 2010 there is evidence that the Act has been poorly enforced. In the “absence of proper procedures” regarding the renewal of gun licences, the Judge ruled that s24 and s28 of the Act are unconstitutional, giving Parliament 18 months to amend the Act and include this “glaringly absent” detail.

⁶ Phahlane, Lieutenant General, Acting National Commissioner, South Africa Police Service. 2016. Letter titled *Renewal of firearm licences in terms of section 24 of the Firearms Control Act, 2000 (Act 60 of 2000)*, 3 February. Available online at www.saga.org.za/cm4all/iproc.php/SAPS%20Instruction%203Feb2016.pdf?cdp=a (accessed 3 November 2016).

⁷ Founding affidavit of the SA Hunters and Game Conservation Association. Case number 21177/16. p.2.

⁸ Judge Tolmay. North Gauteng High Court. Case 21177/2016 in the matter between the South African Hunters and Game Conservation Association (Applicant) and the Minister of Safety and Security of the Republic of South Africa (Respondent). Judgment made on 4 July 2017.



The Minister of Police appealed the North Gauteng High Court’s ruling, and the Constitutional Court heard the case on 7 February 2018; again Gun Free SA acted as amicus curiae.

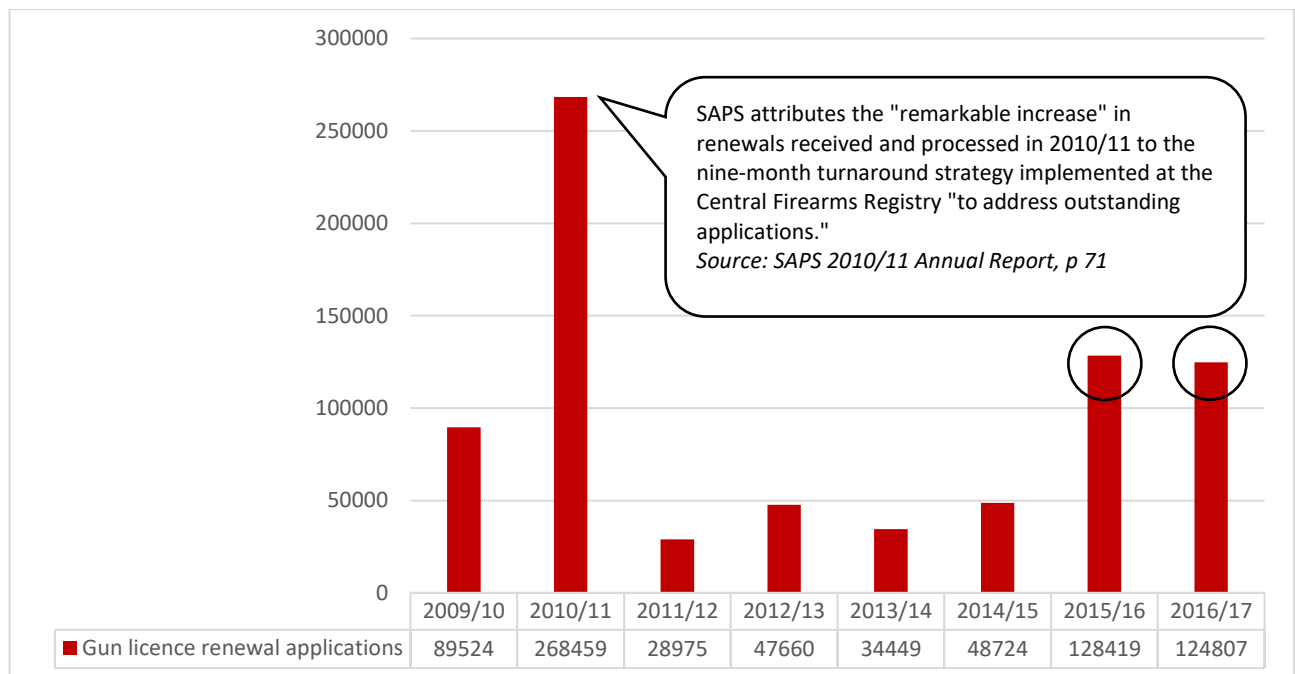
Four months later, on 7 June 2018, Constitutional Court Judges Cachalia, Dlodlo, Froneman, Goliath, Jafta, Petse, Theron and Zondo unanimously ruled that s24 and s28 are constitutional, and dismissed SAHGCA’s application.

IMPLICATIONS OF THE CONCOURT RULING

Responding to the ConCourt ruling, SAHGCA has claimed that over 400,000 gun owners are now in illegal possession of a gun, having not complied with the renewal provisions in the FCA.⁹ However, the data suggest that when the law is enforced, compliance levels increase. As shown in Figure 2:

- Data from the SAPS show that firearm licence renewal applications increased significantly in 2015/16 and 2016/17, which is when SAPS seems to have taken steps to uniformly enforce s24 and s28 of the FCA nationally: According to SAPS, the CFR system was blocked and late applications were not accepted in 2015/16 due to the high number of late applications, while SAPS’ 3 February 2016 directive was “prompted... by individuals and businesses not applying to renew their licences.”¹⁰
- It appears that SAHGCA’s legal challenge to SAPS’ directive did not impact on renewal applications, with numbers remaining high in 2016/17.
- It seems that SAPS’ turnaround strategy that was implemented at the Central Firearms Registry in 2010/11 had no impact on compliance in the following four years; compliance only improved when enforcement did.

Figure 2: Firearm licence renewal applications received by SAPS



⁹ Mabuza, Ernest. End of the road for firearm owners who fail to renew their licences on time. TimesLive, 7 June 2018. Available online at <https://www.timeslive.co.za/news/south-africa/2018-06-07-end-of-the-road-for-firearm-owners-who-fail-to-renew-licences-on-time/> (accessed 11 June 2018).

¹⁰ South African Police Service 2015/2016 Annual Report, p. 111. Available online at www.saps.gov.za (accessed 22 October 2016).



WHAT NEXT?

There are five next steps that need to be undertaken following the ConCourt's ruling:

1. The SAPS needs to urgently finalise and publicly communicate a strategy to deal with gun owners who are in illegal gun possession for failing to renew their licences. Options for the SAPS include:
 - Issuing a clear directive to police stations on the procedure to accept a gun from an owner whose licence has expired and who wants to surrender his gun immediately.
 - Clarifying whether licensed firearms dealers can hold guns on behalf of gun owners whose licences have expired while they renew their licences, as was allowed in February 2016 before being stopped.¹¹
 - Declaring a national firearms amnesty so that gun owners whose licences have expired can surrender their firearms to the state without fear of prosecution; since 1 March 2017 there's been talk of holding a national firearms amnesty, the ConCourt's ruling makes this urgent.¹²
2. The Minister of Police must immediately challenge the 2009 North Gauteng High Court ruling which exempts gun owners with "green licences" issued under the Arms and Ammunition Act (1969) from having to comply with the stricter provisions of the FCA, including regular licence renewal.
3. SAPS must immediately put in place measures to stop guns leaking from SAPS stores and other secure facilities in which forfeited, surrendered and recovered weapons are stored; this entails safeguarding stores and ensuring that guns destined for destruction are destroyed.
4. A forensic audit of all licences, permits and authorisations issued following the 2010 turn-around strategy of the Central Firearms Registry must be undertaken to ensure that due process was followed as it's likely that the "remarkable increase" in the processing of applications noted in Figure 2 above resulted from fast-tracking licence applications.
5. Require that all firearm licences, irrespective of the category, be renewed every three years, in line with global norms. This will also standardise the renewals period and avoid any potential confusion for gun owners.

CONCLUSION

The ruling by the Constitutional Court on 7 June 2018 confirms that South Africa's Firearms Control Act (2000) is a world class gun law. However, a law is only as good as its implementation, the foundation of which is enforcement by the enforcing agency, in this case SAPS, and compliance by those regulated by the law, in this case gun owners. Enforcement and compliance are closely interlinked; as one increases, the other is forced to respond. The ConCourt's ruling recognises this connection and identifies both parties as being responsible for upholding the principle of regular licence renewal to meet the purpose of the FCA to reduce and prevent gun-related crime and violence in South Africa.

¹¹ In a 5 August 2016 communique to members, the SA Gunowners Association notes that Designated Firearms Officers (DFOs) in some provinces were referring late firearm licence applicants to dealers, signing form SAPS 534 to transfer ownership of the firearm to the dealer. However, these DFOs later informed dealers that they have in fact accepted unlicensed firearms. According to SAGA, "despite SAGA's efforts to request a former deputy National Commissioner of Police to authorize dealers to accept such unlicensed firearms because he had not done so... members should not rely on anyone's advice to surrender any unlicensed firearm to dealers."

¹² South African Government. 2017. Statement on the Cabinet meeting of 1 March 2017. Available online at <http://www.gov.za/speeches/statement-cabinet-meeting-1-march-2017-2-mar-2017-0000> (accessed 2 March 2017).