

CONSTITUTIONAL COURT JUDGMENT – 7 JUNE 2018

Most of you will be aware of the Constitutional Court decision of earlier today.

The Constitutional Court, in dismissing the application of SA Hunters and Game Conservation Association, upheld the constitutionality of Sections 24 and 28 of the Firearms Control Act. This means that you are compelled to relicence your firearm in terms of Section 24 and if you fail to do so, the possession of your firearm is illegal and you are criminalised.

The Judgment of the Constitutional Court is short, simple and to the point. It is also a final Judgment and any criticism of the Judgment is of no purpose or consequence.

What we need to consider now, is the consequences of the Judgment and if you have an expired licence, and what you can do.

The Constitutional Court ruled that the life of your licence is finite as determined by the Act and if you do not renew the licence, your licence terminates, the firearm becomes illegal and possession thereof is criminalised i.e. you become a criminal. The Constitutional Court pointed out, however, that if you intend to surrender the firearm to the police on an expired licence, you cannot be prosecuted, because handing in the firearm is a solution to the illegal possession. Froneman J specifically stated *"I can see no legal obstacle to hand in a firearm over to the police after termination."* (of the licence)

This means that the safest most precautionary approach to take, is to surrender your firearm to the police for destruction if you have an expired licence.

The other alternative, which comes without any guarantees at this stage, is to wait for the proposed amnesty that the police are busy trying to finalise and put before Parliament and apply for a licence in terms of such amnesty. This comes, however, with some potential risks inasmuch as your possession of a firearm on an expired licence remains illegal until you have handed it in to the police and applied for an licence in terms of the amnesty.

Under no circumstances and as a result of this Judgment, should anybody with an expired licence carry and/or use their firearm until they have been granted a licence in terms of the proposed amnesty.

In summary therefore you can:

1. Immediately surrender your firearm to the police for destruction and avoid being criminalised; or
2. You can keep your firearm, not use it or carry it and wait for the proclamation of the amnesty to surrender your firearm in terms of the amnesty and to apply for a licence in terms of the amnesty.

I do not know exactly when the amnesty will be proclaimed.

The Judgment does not change the status of green or old Act licences which remain valid.

Sincerely

Martin Hood
