



SAGA SNIPPETS

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Supreme Court of Appeal Judgment

SAGA's evaluation of the Supreme Court of Appeal (SCA) judgment of the 23rd July 2020

By Advocate John Welch

SAGA members are now aware that the appeal by the National Commissioner and the Minister of Police against the interim interdict granted to Gun Owners of South Africa (GOSA) by judge Prinsloo in the Gauteng High Court (Pretoria) on 27 July 2018, was upheld by the Supreme Court of Appeal (SCA) on 23 July 2020, and the interdict was accordingly set aside.

This is very unfortunate since the High Court judgment provided protection for firearm owners who had failed to renew their licenses timeously in that it prevented the SAPS from applying, implementing and enforcing various provisions of the Firearms Control Act No. 60 of 2000 (FCA), such as accepting and demanding the surrender of firearms with expired licenses. The effect of this SCA judgment is that there is no longer such protection for those firearm owners

SAGA is aware that GOSA is currently considering their options, one of which may be an appeal to the Constitutional Court (CC).

One of the issues raised by GOSA's counsel was that a judgment granting an interim interdict was not appealable. This was a good argument, since this usually

is the case, however, there are exceptions.

In this case the court ruled that *"The interim interdict has a nation-wide effect, and constitutes an impermissible intrusion by a court upon executive authority, as explained below. The SAPS is prohibited from exercising its powers and carrying out its obligations under the Act. For this reason alone, the interim order is appealable."*

Especially the first reason that the interdict had a "nation-wide effect", would previously not have sufficed, since previously judgments of provincial and local divisions of the High Court had effect only in the provinces they were delivered.

For instance, a Gauteng judge had no jurisdiction in the Cape province, hence his judgment had no power or effect, excepting that it might have had persuasive power. A judgment of the former Appellate Division (the SCA) had a national effect, though. Currently the situation is that we have one judiciary for the whole of the republic, hence judgments (on legal points as opposed to factual decisions) of High Courts are generally binding on courts of other divisions. The SAPS recognised the universal effect of the Prinsloo J judgment since subsequent to it, it sent out a circular instructing police offices to abide by the judgment and not to go after owners of firearms the licenses of which had expired.

The second point raised that the granting of an interim interdict constitutes an *"impermissible intrusion by a court upon executive authority"* is even more important. On more than one occasion our courts, including the Constitutional Court (CC), have ruled on the importance of the separation of powers within the state. This means that the judiciary is not entitled to subsume executive or legislative powers.

Yes, if asked to, a court may, if satisfied of the irrationality or unconstitutionality of legislation or the exercise of executive powers, declare legislation unconstitutional or an executive act irrational, but it may not clothe itself as the legislature or the executive and perform such functions. Accordingly, the SCA found that judge Prinsloo did just that – preventing the police (a constitutionally created organ of state) to perform its functions in accordance with the law, in this case, the FCA.

Accordingly the interdict was an impermissible restraint on exercise of statutory power, a violation of principle of separation of powers. It must be borne in mind that not too many moons ago the Constitutional Court has declared sections 24 and 28 constitutionally



1985

2015

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valid (see *Minister of Safety and Security v South African Hunters and Game Conservation Association* [2018] ZACC 14, decided on 7 June 2018 . . . in which the Court upheld the system of firearm licensing and renewal, and the criminalisation of possession of an unlicensed firearm).

The SCA expressed rather harsh criticism against judge Prinsloo, especially about his apparent, according to the SCA judges, perceived impartiality. In paragraph 26 the SCA stated: "... in our adversarial system of litigation, a court is required to determine a dispute as set out in the affidavits (or oral evidence) of the parties to the litigation. It is a core principle of this system that the judge remains neutral and aloof from the fray.", and further "GOSA had set out the main relief it sought in the notice of motion. The application was however decided on a notice of motion containing main and central relief – proposed by the Judge and accepted by GOSA – different from that initially sought by GOSA." (my underlining). In trying to substantiate the amendments, GOSA's counsel argued "*that there was no substantial change to the main relief*", however the SCA found this to be without substance.

The judgment continues: "*Further, the amendments to the main relief, in particular, the amendment to the alternative prayer in paragraph 3.1 [A], went beyond the scope of the founding affidavit. There was no evidence, not even by a single firearm owner, that he or she had suffered harm or prejudice as a result of the renewal scheme in the Act. Neither was there evidence that any aggrieved firearm owner had applied to the Registrar of Firearms (the Registrar) for an extension as contemplated in s 28(6). There was accordingly no factual basis for an order that the period contemplated*

in s 28 of the Act should be extended to enable the holders of expired licences to apply for renewal 'on good cause shown and within a period determined by the court'." In this regard the SCA made the following important observation: "*The main relief that GOSA had initially sought, namely, the abolition of the system of renewals and the introduction of lifetime periods of validity for firearms, by way of a court order, was incompetent. So too, the relief that the periods referred to in ss 24(1) and 24(4) of the Act be extended across the board to all holders of expired licences – it is inconsistent with the express provisions of the Act.*" (my underlining).

In concluding their criticism of the granting of the interdict, the SCA stated: "*The conduct of the Judge in effecting the amendments to the main relief sought by GOSA is unusual, troubling and regrettable. Judicial officers would do well to remember that their function is that of a neutral umpire holding the balance between litigants; and that they should not, as Lord Parker CJ put it, 'descend into the arena and give the impression of acting as advocate'.*", (except, as I have previously been quoted in the same SCA, "*to see through the dust kicked up by the parties*").

The SCA then confirmed that "*The core premise of the gun control regime is that gun ownership is not a fundamental right under the Bill of Rights, but a privilege regulated by law under the Act.*"

Had SAGA had the necessary support from firearm owners in 1994 when it argued that firearm ownership ought to be a fundamental right for law-abiding, responsible and free citizens, the situation today might have been different.

The SCA then quoted from the CC judgment in the SA Hunters case, where it held "*that the purposes of the Act are sought to be achieved mainly by the following principles: (a) No person may possess a firearm without a valid licence; (b) No licence may be issued to a person without a relevant competency certificate; (c) A licence is valid only for limited period; (d) Possession of a firearm without a licence is a criminal offence and subject to minimum penalties.*"

The court concluded by stating that "*When a firearm licence terminates as contemplated in s 24(1) of the Act, it comes to an end by the operation of law; it is no longer valid and thus cannot be extended.*"

Wrapping up this issue the SCA then quoted from the SA Hunters judgment "*The gun-owner knows that he must either apply in time for renewal or dispose of the firearm before expiry. If he does not, he will be guilty of an offence. He knows what is expected of him before expiry of the licence and is provided with legislative means to fulfil that expectation. He also knows what will happen to him if he does not do so. The rule of law requirements of clarity and certainty are clearly met.*"

New Firearm Amnesty Update

SAGA, and other members of the firearms community have proposed that there ought to be a new firearms amnesty.

Although the Minister of Police indicated his willingness to apply to parliament to extend the amnesty, he did not do so in time, nor could the amnesty be extended, as he had to seek parliament's permission again.

The National Assembly (Parliament) will be considering the application for the new amnesty on Thursday 30th July 2020.

Should it be approved, and thereafter gazetted, the new amnesty will run from 1 August 2020 to 31 January 2021.



The surrendering of firearms under the new amnesty, so it seems, will be the only remedy for firearm owners whose licenses have expired.

Going forward the Firearms Control Act must be amended to allow for the renewal of firearm licences after the expiry—to avoid the possibility of hundreds of thousands of gun owners becoming potential criminals overnight, because they failed to renew their licences in time.

SAGA advises all those who may be in possession of firearm licences that may have expired, to wait further advices from SAGA, as matters develop.

Shooting Associations

SAGA encourages our members to use their firearms for recreational shooting, sport shooting and hunting.

Members often say they would like to be out shooting, or even just spectating, but don't know where to go or who to speak to. Starting in this issue of Snippets, we will introduce you to some of the national shooting associations so you have a better idea of what options are available.

The placing of this information will be in no particular order.

Should you have any queries please direct them to the association concerned.

Members are welcome to send us the names (and contact details) of associations that they would like covered in future Snippets. We will try to cover as many associations as possible over the next months.

SA Wingshooters Association & Long Range Shooting Club



The SA Wingshooters Association has been accredited by the CFR as a Dedicated Hunting Association, since 2004. In fact, we are the second oldest accredited association in South Africa.

We have current members, many of whom regularly participate in the various sport shooting disciplines available and thus have a definite need to be able to grant such members the Dedicated Sport Shooting status, in order to enable them to fully participate in their chosen sport. We are both an accredited sport shooting and hunting association, as we have members who want dedicated status, but who do not hunt.

We currently offer the following sport shooting disciplines to our members, either at our own facilities/ranges, or at any range country-wide and internationally.

PSP (Postal Shooting Programme) target shooting for handguns, rifles and self-loading rifles. Various target shooting tables/disciplines are offered, which can be practiced at any range world-wide. All our targets are available on our website

Clay Target Shooting – all members have access to Clay Target Shooting using shotguns at any accredited clay target range or club (CTSASA, COMPAK, etc.) country-wide.

Long Range Rifle Shooting – we have our own dedicated long range rifle shooting range near

Leandra, where members compete over shooting distances ranging from 100m to 1300m.

This range also affords us the opportunity to offer a 3-gun sport shooting discipline (handgun and rifle combination shooting with movement and transitions),

starting at 10m for handguns, to 100m and then up to 400m for self-loading rifles, with official division categories for calibres and types of rifles.

We also offer .22LR Precision Small-Bore club rifle shooting through our LRSC membership.

Handgun Shooting – we offer handgun shooting, again at our LRSC range, or any other range world-wide via the PSP, on our 17-target steel pistol range with targets from 10m to 100m, and includes a 6-plate duelling tree.

The requirements for obtaining a Dedicated Sport Shooting status is as follows:

- * All prospective applicants will have to complete a practical shooting qualification exercise, in either handgun, rifle or shotgun.
- * A minimum final score of 50% must be attained in order to qualify and must be signed off by a range officer or club official.
- * All qualified members must submit an annual report to us, in confirmation of their minimum dedicated sport shooting activities, as required. We propose a minimum of three sport shooting activities per year for members in order to retain such status.
- * Should you hold current dedicated sport shooter status elsewhere, we will accept that status, if it is indeed current, on the basis of RPL.

The Long Range Shooting Club (LRSC) and the PSP (Postal Shoot-

ing Programme) are part of SA Wingshooters and are subject to its constitution, disciplinary codes and rules of ethical conduct, but requires an additional membership. LRSC and SA Wingshooters membership together includes membership of all the sub-clubs.

Lastly, the SA Wingshooters Association has R20-million liability insurance to cover the Association, with each individual member also having R20-million liability insurance as individual cover, for all shooting related activities.



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European Lead Ammo Ban Update

From: <https://www.nraila.org/articles/20200720/european-lead-ammunition-ban-update>

Monday, July 20, 2020

European firearm owners are in the midst of a three fronted war on the possession and use of lead ammunition. The battles are being fought against a European-wide ban on metallic lead (ammunition), a prohibition on the use of lead ammunition in terrestrial environments, and a ban on both the use and possession of lead ammunition in wetlands.

Today, votes were set to be tallied on the wetlands ban, but instead, the European Commission was forced to end voting without result, sending shockwaves through Brussels as it was widely expected that, with twenty-three Member States already having phased out the use of lead ammunition for hunting over wetlands, and support coming from Germany, Spain, France, Italy and Portugal, the ban would pass easily under a qualified majority vote.

The Czech Republic, however, had other plans, intervening yesterday at the eleventh hour to call into question both the online procedures being used to discuss the issue and the overly broad definition of wetlands, a definition which could easily be interpreted to include dry land containing a rain puddle.

Unfortunately, the end to voting does not mean an end to this battle, as it is very likely that the online procedures will be replaced with in-person discussions and that a new call for votes will go out in September. One can only hope that when discussions resume, opposition to the proposal will not only continue, but expand into several other areas of concern, including:

The proposals presumption of guilt, which would require hunters to prove that they were not in possession of lead ammunition in a wetland, even if found outside of one;

The use of a 100 meter buffer zone, which not only causes confusion, but shifts depending on weather and ground conditions, especially when rain is causing puddles to form;

Language which prohibits not only the use of lead ammunition in wetlands, but also "where spent gunshot would land within a wetland," language so vague neither hunters nor enforcement authorities could ever be certain if a violation has or has not occurred;

A misuse of the European Union's Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) authority, as REACH regulations are intended for industry but instead are being used to target consumers (hunters); and,

The lack of any exemption for military or law enforcement, which, while immaterial to hunters, should concern Member States given that such a ban would almost certainly impact the ability of both their police and military forces to train and operate.

One can only hope that the delay afforded by the Czech Republic's intervention will result in Member States rethinking their support for this proposal, but, with so many already expressing favor for the ban, it appears very likely that this front in the battle may soon be lost.

[Note from SAGA: This was for shotgun ammunition.](#)

Watch this space ...for more interesting firearm snippets

Defensive Handgun Training: 3 Critical Fundamentals

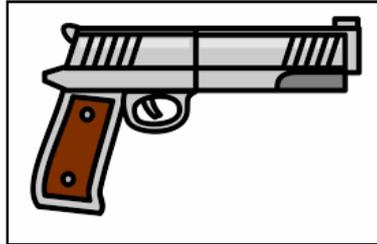
by Sheriff Jim Wilson
Monday, July 6, 2020

There are three major areas of training and practice that are critical for the armed citizen to master. Col. Jeff Cooper, the founder of Gunsite, called them the Combat Triad: marksmanship, gun handling, and combat mindset. Let's look at these three areas of study and see why they are so important to the defensive shooter.

MARKSMANSHIP—The essentials to hitting a target, any target, with a handgun or rifle are always the same, regardless of the target. They include sight picture, trigger squeeze, and breath control. Frankly, it is not difficult to learn to hit the thoracic area of a human target, especially at the ranges that deadly encounters usually occur.

However, the defensive shooter must learn to get a proper sight picture as quickly as possible. And he must learn to press the trigger, instead of jerking it, even when under extreme stress. With training we learn to perform these marksmanship tasks correctly. And with practice they become a strong habit, which helps us overcome the panic and stress that we naturally feel when our world is shattered by a criminal attack.

GUN HANDLING—It is not necessary to know how to properly operate every kind of defensive firearm, though that would be nice. What is important is to know how to operate and manage the firearm that you have chosen to use for personal defense.



With proper training in gun handling, the shooter knows how to quickly manage a particular firearm's various safety controls and he or she learns to quickly reload that firearm. And the shooter also learns how to clear any malfunctions that might be common to a particular firearm.

Most importantly, the shooter must learn to perform these functions while focusing a minimum of visual attention to the firearm. The focus should be upon the threat, and what is going on around the shooter, as much as possible. With good training and lots of practice, the defensive shooter can master these skills in a relatively short time.

COMBAT MINDSET—In my view, this is the most difficult of the three areas to master, and it is one that involves continual study and evaluation. The armed citizen must begin to understand how the criminal mind works. He needs to understand how criminals select their victims and, most importantly, he needs to know what to do about it.

The defensive shooter must train himself to be as aware as possible of the things that are going on around him. He needs to begin to look at the common objects that he sees every day in terms of their

value as cover that will stop, or seriously impede, bullets. The combat mindset also requires a person to develop his own personal defense plan so that he will already have some idea of how to respond when trouble occurs. In short, he has to learn to fight with a firearm.

For many people this means that they have to change habits that they have spent a lifetime developing. And that is difficult. However difficult, it is a skill that can be developed and one that can be added to with serious thought and study.

Any training school truly worth a student's hard-earned money should incorporate these three elements as a foundation for the training. Instructors may call them something other than the Combat Triad, but they must address and teach these techniques or the tuition has been wasted. Learning to hit a target under extreme stress, learning to manage the defensive firearm, and learning to fight with that firearm, are the foundation of personal defense.

<https://www.nrafamily.org/articles/2020/7/6/defensive-handgun-training-3-critical-fundamentals/>