

Explanatory Note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The applicants in both cases challenged the constitutionality of section 40(1) of the Arms and Ammunitions Act 75 of 1969 which contains a presumption to assist the state prove possession of unlawful possession of arms and ammunition. The presumption provides:

Whenever in any prosecution for being in possession of any article contrary to the provisions of this Act, it is proved that such article has at any time been on or in any premises, including any building, dwelling, flat, room, office, shop, structure, vessel, aircraft or vehicle or any part thereof, any person who at that time was on or in or in charge of or present at or occupying such premises, shall be presumed to have been in possession of that article at that time, until the contrary is proved.

The Court classified the presumption in s 40(1) as a 'reverse-onus' provision because it shifted the burden of proof of guilt away from the State to the accused to disprove the presumed fact on a balance of probabilities. In this case the fact presumed was 'possession' which constituted an essential element of the offence. The presumption required the accused to disprove 'possession' on a balance of probabilities. This meant that even if the accused established a reasonable doubt he or she could still be convicted for failing to disprove the presumed fact on a balance of probabilities.

The Court held that this presumption infringed the right of an accused person to be presumed innocent in terms of s 25(3)(c) of the Constitution. The court considered next whether the presumption was a reasonable and justifiable limitation of the right of an accused to be presumed innocent. It noted the high levels of crime in South Africa were linked to the proliferation of illegal firearms and ammunition and also acknowledged the difficulties confronting the police in the investigation of crime and the illegal distribution and possession of arms and ammunition.

The Court found that the presumption was widely phrased and included within its reach many categories of potentially innocent people who may have had no connection with the arms or ammunition found, but against whom the presumption could be used to prove guilt despite the existence of a reasonable doubt. It held that the presumption as it stood could not be classified a reasonable and justifiable limitation on the right of an accused to be presumed innocent.

The judgment of the Court was delivered by Langa J and was concurred in by the other members of the Court.