



CONSTITUTIONAL COURT OF SOUTH AFRICA

Robert McBride v Minister of Police and Another

CCT 255/15

Date of hearing: 17 May 2016
Date of judgment: 6 September 2016

MEDIA SUMMARY

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

Today the Constitutional Court handed down judgment in a matter concerning the constitutional validity of statutory powers of the Minister of Police to unilaterally suspend and institute disciplinary proceedings against the Executive Director of the Independent Police Investigative Directorate (IPID).

The applicant, Mr Robert McBride (Mr McBride), the Executive Director of IPID, was suspended pending disciplinary action by the first respondent, the Minister of Police (the Minister) pursuant to the provisions of, among others, the IPID Act. Mr McBride became responsible for a publicly controversial IPID investigation into the alleged involvement of Lieutenant General Dramat, then the head of the Directorate for Priority Crimes Investigation (DPCI) and Major General Sibiyi, the provincial head of the DPCI, in the alleged unlawful rendition of four Zimbabwean nationals during 2010 and 2011. An initial report recommended that Mr Dramat and Mr Sibiyi should be criminally charged with kidnapping and defeating the ends of justice. However in a subsequent report, endorsed by Mr McBride, it was recommended that no charges be brought against them – citing lack of evidence as the reason. Mr McBride was accused of unlawfully tampering with the report. The inconsistencies between the two reports prompted the Minister to suspend Mr McBride and initiate disciplinary proceedings against him. Disciplinary proceedings have been stayed by the Labour Court, pending the outcome of this case.

The High Court emphasised that the independence of IPID is expressly guaranteed under section 206(6) of the Constitution. It held that this independence was not adequately protected by the relevant legislative provisions. The provisions were declared invalid to the

extent of their inconsistency with the Constitution. As an interim measure, provisions from the South African Police Service Act (SAPS Act) – providing for parliamentary oversight of the removal of the head of the DPCI – were read-in to the IPID Act. The decisions of the Minister to suspend Mr McBride and institute disciplinary action against him were set aside. The latter order was suspended for 30 days, allowing Parliament a short period to institute action against Mr McBride under the provisions read-in from the SAPS Act, if it so decides. All of these orders were referred to the Constitutional Court for confirmation.

In a unanimous judgment, written by Bosielo AJ, the Constitutional Court confirmed the High Court's declaration of invalidity and found that the disputed provisions undermined IPID's constitutionally guaranteed independence. The Court emphasised the need to protect IPID from undue influence or political pressure by ensuring that appropriate mechanisms for accountability and oversight are in place. This would include, among other things, security of tenure through parliamentary oversight. Public confidence in IPID's ability to fulfil its duties is important the Court held, and as a result in addition to having actual independence, the Constitution also requires IPID to be perceived as independent. On remedy, the Minister's contention that his decisions ought to be preserved, despite them being taken in terms of constitutionally invalid provisions, was rejected and found to be unsupported in law. The Minister's decisions to suspend Mr McBride and take disciplinary steps pursuant to his suspension were set aside. However, since both parties were amenable, the order setting aside the Minister's decisions was suspended for 30 days so that the process can be restarted with the necessary parliamentary oversight.