



CONSTITUTIONAL COURT OF SOUTH AFRICA

Robert McBride v Minister of Police and Another

CCT 255/15

Date of hearing: 17 May 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.

On Tuesday 17 May 2016 at 10h00, the Constitutional Court will hear an application for confirmation of a High Court order that declared certain provisions of the Independent Police Investigative Directorate Act 1 of 2011; the Public Service Act, 1994; and the Regulations for the Operation of the Independent Police Investigative Directorate, 2011, inconsistent with the Constitution and invalid – to the extent that they purport to authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or to remove from office the Executive Director of the Independent Police Investigative Directorate (IPID).

The applicant is Mr Robert McBride, the Executive Director of IPID, who was suspended pending disciplinary action by the first respondent, the Minister of Police (Minister). 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 Sibiya, the provincial head of the DPCI, in the alleged unlawful rendition of four Zimbabwean nationals during 2010 and 2011. Based on the inconsistencies between the initial report by the investigating officer, which recommended that Mr Dramat and Mr Sibiya should be criminally charged with kidnapping, and the later report signed by Mr McBride, which recommended that no charges be brought against them for lack of evidence, the Minister suspended Mr McBride and initiated disciplinary proceedings against him.

Mr McBride launched an application before the High Court to declare the provisions empowering the Minister to suspend him unconstitutional. The disciplinary proceedings have been stayed by the Labour Court, pending the outcome of this case.

The High Court held that the independence of IPID, expressly guaranteed under section 206(6) of the Constitution, was not adequately protected by the relevant legislative provisions which afford the Minister a unilateral power to remove the Executive Director of IPID from office, and make the appointment of the Executive Director subject to the laws governing the public service. Hence 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 Directorate for Priority Crimes Investigation (DPCI) – were read into the IPID Act. The Minister’s decisions 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 decided. All of these orders were referred to this Court for confirmation.

Mr McBride applies to the Constitutional Court to confirm the orders of constitutional invalidity and ancillary orders made by the High Court. Mr McBride emphasises the significance of the express constitutional requirement for IPID to be independent. As the DPCI’s independence is expressly entrenched, it follows that the operational and structural independence of the IPID must be as strongly protected as the DPCI. It is of no legal consequence that the DPCI investigates the corruption of politicians while IPID investigates the corruption of the police, including corruption by the DPCI members. Both must be independent.

Mr McBride further emphasises that security of tenure is an essential condition of institutional independence and it is a recognised requirement for independent police oversight bodies under international law. As this Court held previously, adequate independence and security of tenure demand a statutory scheme that, viewed objectively, instils confidence in the members of the relevant institution to carry out their duties vigorously and not to yield to political pressure.

The Minister concedes that declaring the impugned provisions constitutionally invalid will strengthen the independence of the IPID – thus he does not oppose the confirmation application. However, on the issue of remedy, the Minister contends that the High Court’s suspended order to set aside disciplinary proceedings against Mr McBride, subject to the Parliament’s intervention, is inconsonant with the doctrine of separation of powers – and that it fails to provide certainty as there is no mechanism in place for Parliamentary intervention. It is also contended that because the Minister’s decision in respect of Mr McBride was made in good faith and was correct in law at the time when it was taken, it would not be just and equitable to set it aside.

The Helen Suzman Foundation has been admitted as *amicus curiae*.