

How Judge Heath's goose was cooked

**Irked ANC leaders decided to 'campaign' against him
MAWANDE JUBASI, RANJENI MUNUSAMY and SIMON ZWANE**

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In the end, Judge Willem Heath's fate was sealed during a regular meeting of the ANC's National Working Committee on January 8, when the party's most senior members decided they had had enough of being "pushed around" by the judge.

A rocky relationship that had begun with Heath's appointment by President Nelson Mandela to head the Special Investigating Unit in 1996 was to end in a dramatic fashion.

At the ANC committee meeting a decision was taken to "campaign" against Heath's inclusion in the investigation into the R43-billion arms deal and to fight back against growing support for the judge.

President Thabo Mbeki and Justice Minister Penuell Maduna had already made up their minds that, in view of Heath's insolence towards ministers and the Constitutional Court judgment ordering his removal as head of the unit, it would be wrong to issue a proclamation authorising him to investigate the deal.

After a brief discussion was held on how to deal with the judge, the possible media response to his axing and the political fallout, the ANC decided to turn the screws on him.

A loose five-member task team comprising Maduna, Safety and Security Minister Steve Tshwete, Finance Minister Trevor Manuel, Trade and

Industry Minister Alec Erwin and the ANC's head of the presidency, Smuts Ngonyama, was formed to deal with Heath.

The following week, the ANC's National Executive Committee, meeting in Kempton Park, endorsed the decision. Heath's political death warrant was written.

Manuel's inclusion in the task team was interesting. He was the first minister that Heath fell out with, back in 1997, had initially been one of the harshest opponents of the arms deal in the Cabinet.

According to those close to the investigation and Heath's own staff, the judge was his own executioner. He was loud, trumpeting his successes in public. He stood up to ministers and appeared to believe he knew more about the functioning of their departments than they did. He also spoke about developments in his investigations before reporting them to the President or liaising with the heads of the institutions he was investigating.

By the time the ANC's top leaders took the decision to campaign against the Constitutional Court ruling that he could not both head the unit and continue to be a judge had already boosted their case.

Also, the Public Protector, Selby Baqwa, the National Director of Public Prosecutions, Bulelani Ngcuka, and the Auditor-General, Shauket Fakie, had met in Pretoria on January 10 and decided that they had enough powers and expertise to conduct the investigation without the Heath unit. Baqwa wrote to Maduna telling him of the decision.

Ngcuka's staff say cases that the directorate and the police received from Heath have often had to be reinvestigated or dropped because of what they call the "poor quality of investigations".

But Heath's greatest sin was being seen to be close to the Democratic Party (forerunner of the DA) and his subsequent alliance with Patricia de Lille, the Pan Africanist Congress MP, whom he appeared to trust more than his employers.

Ngonyama said the ANC took "a principled decision" to campaign against the inclusion of Heath because of the "political role" he had assumed and a feeling that he was being used by opposition parties to portray the ANC in a bad light.

"Heath started acting like a politician," said Ngonyama.

He said the ANC was also acting in support of the Constitutional Court decision.

But Mbeki's masterstroke was enticing Heath's legal counsel, Jan Lubbe, to turn against his boss.

Lubbe, who had access to all Heath's documents on the arms deal, worked with the Western Cape Director of Public Prosecutions, Frank Kahn, to assess the allegations.

They concluded that there was no prima facie criminal evidence in the documents.

Until Friday evening's presidential address, Heath had no clue that Lubbe had screened his documents. He said yesterday that he was "very surprised" to learn what Lubbe had done.

"He must have had good reason to do this. He is on leave so I haven't been able to discuss the matter with him," he said.

Even now, Heath is unconvinced that Lubbe stabbed him in the back. "I don't believe he would have advised the minister [Maduna] that we should not be involved," Heath said.

"He would have told him that there is no prima facie evidence but there is no evidence that [Lubbe and Kahn] would have said there should be no investigation."

But for Mbeki, Lubbe and Kahn's verdict was essential to counter Heath's claim that he had to be involved in the investigation because of the information he had.

Then, on Thursday, Mbeki learnt that Heath had allegedly tried to play him off against Mandela. He also received an "organogram" - a complex diagram joining top state officials in a web of arms-dealing intrigue and said to be part of Heath's arsenal - linking him and Mandela to the arms deal.

By the time a delegation of religious leaders arrived at the Union Buildings to discuss the issue with him, Mbeki's resolve was unshakable.

According to the head of the South African Hindu Maha Sabha, Ashwin Trikamjee, Mbeki made it clear that he was angry that Heath was using the media to distort information about the arms deal.

"He was very frank. He gave us all the facts and said: 'Tell me if I'm doing the wrong thing.' We came away convinced that he was making the right decision," said Trikamjee.

Within the Heath Unit, the falling of the axe was no surprise. "We have been expecting both the replacement of Judge Heath and the exclusion from the investigation," said a spokesman, Naomi Goodley.

<http://www.suntimes.co.za/2001/01/21/politics/pol01.htm>