

NO ACCUSED PERSON HAS BEEN PREJUDICED BY CHANGES TO PROTOCOL: AGC

Guidelines developed to 'ensure best use' of data from drug couriers

Experts weigh in on whether drug trafficker's case raises need for clearer protocol to certify substantive assistance

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SINGAPORE – It was a topic intensely debated in Parliament, before amendments to the law kicked in last year to give certain drug traffickers a chance to escape the gallows.

However, the Public Prosecutor's decision last month to certify that drug courier Cheong Chun Yin had substantively assisted in disrupting drug trafficking activities — after it had earlier determined otherwise — has drawn mixed views from legal experts on whether clearer guidelines are needed on the issuance of these certificates.

Cheong, 31, was found to have possessed more than 2.7kg of diamorphine in June 2008.

The Malaysian was sentenced to death, but was given the chance to assist the Central Narcotics Bureau after the Misuse of Drugs Act was amended, giving judges the discretion to sentence drug couriers issued certificates of substantive assistance by the Public Prosecutor to life imprisonment and caning, instead of death.

Last November, Cheong was determined by the Public Prosecutor not to have substantively assisted. But last month, the Attorney-General's Chambers (AGC) announced that "in light

of new information received", Cheong would be certified to have substantively assisted in disrupting trafficking activities outside Singapore.

Singapore Management University law don Eugene Tan agreed that Cheong's case again raises reasons for the need for clearer guidelines in the issuance of certificates, "even if concerns about convicted persons 'gaming' the system persist".

"Cheong's case suggests that more can be done to safeguard our Misuse of Drugs Act regime. Imagine the significant dent to public confidence if new information was received after Cheong had been executed," said Associate Professor Tan, a former Nominated Member of Parliament.

Noting that the threshold of substantive assistance may also be dependent on the conduct of foreign law enforcement agencies — acting with reasonable speed and care, and providing information to the Central Narcotics Bureau on the usefulness of data given by the convicted courier — Assoc Prof Tan said Cheong's case suggests how the threshold is "dicey".

It leaves the law open to be discredited, by leaving a convicted person's fate to circumstances beyond his control, he said.

However, SMU assistant law professor Chen Siyuan noted that the amendments' purpose was to enhance the effectiveness of the Misuse of Drugs Act in a "non-capricious and fair way without affecting our underlying fight against drugs", as Law Minister K Shanmugam put it during the parliamentary debate on the amendments.

"Hence, if someone is hanged before new information is received, I would think that, first, this sort of scenario is unlikely to be the norm," said Asst Prof Chen. "Secondly, if the ultimate purpose of the amendments is to enhance the effectiveness of the (Act), this sort of scenario does not defeat the purpose of the amendments, so there is no need to change anything from this point of view."

Responding to media queries, the AGC told TODAY the Public Prosecutor had reviewed each capital case involving drug offences that were sent back for resentencing after the amendments kicked in.

Reviews involve consideration of up-to-date information and are based on guidelines developed to ensure the best use of information provided to disrupt activities of drug-trafficking syndicates, said a spokesman.

All pending cases have been reassessed under guidelines that have been revised to ensure no one who may qualify for substantive assistance and is eligible for resentencing under the new law is prejudiced.

"No accused person has been prejudiced by changes to the guidelines," said the spokesman.

The AGC did not reveal when the guidelines were revised, but said Cheong, whose substantive guilt had never been in issue, was reassessed according to the revised guidelines and information obtained.

"Whether there is 'substantive assistance' is a question of mixed law and facts, and it turns on the operational parameters and demands of

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each case," added the AGC.

More clarity could be shed on the provision that gives judges discretion in sentencing drug traffickers who meet the requirements.

The Court of Appeal has yet to release its grounds of decision on some questions referred by the Public Prosecutor last year, following a High Court judgment for drug trafficker Chum Tat Suan.

Questions the Public Prosecutor wanted the apex court to address included whether convicted traffickers have to prove they are merely couriers and whether the High Court must take into account evidence used to convict a trafficker in a trial during the second-phase hearing to decide whether he is a courier.

Even so, law professor Michael Hor felt the only lasting solution is to do away with the death penalty altogether, or to make sentencing fully discretionary, or both.

As the twin factors of being a mere courier and providing substantive assistance are necessary legal requirements, much more pressure is put on the definition of these conditions than would have been the case if they were merely factors to be taken into account in a discretionary system, said the law dean of Hong Kong University, who was formerly with the National University of Singapore.

"Decision-makers, be it the court or Public Prosecutor, are forced to draw a bright line between what qualifies and what does not, and it would appear in isolation from all other potential mitigating or aggravating factors. Once that line is drawn, it will always be the case that many will feel offenders (who) fall on one side of the line should actually fall on the other," he said.

"The problem cannot be solved by further defining the terms — the vicissitudes of life will always throw up 'hard' cases that seem to have been wrongly categorised."