

Call for guidelines on use of prosecutorial discretion

Law prof says reasons for deciding to prosecute in a case should be disclosed

By **K.C. VIJAYAN**
SENIOR LAW CORRESPONDENT

A LAW professor has called for guidelines to be issued on the use of prosecutorial discretion.

Singapore Management University Associate Professor Gary Chan suggested the scope for challenging the Public Prosecutor's decision to charge someone is weakened by the current system – in which guidelines remain internal and are not published.

Writing in the current issue of the Singapore Academy of Law Journal, he said the Public Prosecutor should disclose the reasons for deciding to prosecute in a particular case, provided there are no disclosure risks and public interest is not compromised.

Calls for the Public Prosecutor to issue guidelines or explain reasons for using its discretions have gained trac-

tion in recent years through challenges in criminal cases brought before the Supreme Court.

In January last year, the Attorney-General's Chambers (AGC) explained publicly that its internal guidelines are not published and the reasons for prosecution are generally not disclosed in order to enable flexibility in the interests of justice in any particular case.

Law Minister K. Shanmugam also weighed in on the issue in Parliament last year. He pointed out that there are layers of checks such as internal processes and reviews while untenable decisions are also open to court scrutiny. But Prof Chan argued that any challenge is currently restricted to the limits defined by the apex Court of Appeal.

The court had ruled last year that the Public Prosecutor's discretion is not absolute and that it must be exer-

cised in good faith and not breach the Constitution.

But if kept within these limits, the scope to challenge through judicial review would be further weakened, argued Prof Chan. He pointed out that the starting point is that the Public Prosecutor's decision is presumed to be constitutional – yet this cannot always be so “if some undisclosed and unknown reasons exist”.

He cited the fictional example of two co-offenders involved in the same offence, who are given different charges. “The strength of the presumption of constitutionality depends to some extent on the availability of reasons for the prosecutorial decision,” he said. He noted that countries like Australia, Britain and Canada have issued public guidelines on the use of discretion.

Lawyers here have expressed mixed views, pointing out non-disclosure had its strengths.

Lawyer Eugene Thuraisingam pointed out that publishing the factors that the Public Prosecutor takes into account in exercising his discretion may

be counter-productive to accused persons in general. This is because there would then be less room for the Public Prosecutor “to consider sympathetically facts unique to a particular accused person or the circumstances of that particular alleged offence”.

He added: “There would be a case for guidelines in cases where the death penalty is mandatory and the courts have no discretion in the sentencing.”

He said this would be acutely relevant in the scenario of there being two co-accused when one is charged with a capital offence and the other is not.

Criminal lawyer Ramesh Tiwary said he has experienced discretion working to the defence's benefit and added that guidelines “might make things a little clearer”.

An AGC spokesman said: “The AGC is aware of views held in some quarters that the publication of guidelines will be useful, but remains of the view that the difficulties that will be posed by such publication will outweigh any perceived benefits.”

vijayan@sph.com.sg