

CSD condemns misleading article by Mr Chan Man-mun in Ming Pao on Safeguarding National Security Ordinance

The Correctional Services Department (CSD) strongly disapproved of and condemned Mr Chan Man-mun for his article entitled "Retrospective Effect" published in Ming Pao yesterday (July 24), in which unfounded and misleading remarks were made about the arrangements for the serving of sentences of persons in custody (PICs) convicted of offences endangering national security.

The grant of early release has never been a guaranteed right of PICs under the laws of Hong Kong; PICs should in principle serve the full sentence imposed by the court before they can be released. The mechanism of granting of remission or early release of PICs under the legislation is established to encourage good conduct and industry of PICs. Any discretion by the Commissioner of Correctional Services to grant early release of PICs or any referral of a PIC's case to the relevant board for consideration of the early release of the PIC must be exercised or handled in accordance with the provisions of the relevant laws, such as the Long-term Prison Sentences Review Ordinance, the Post-Release Supervision of Prisoners Ordinance and the Prison Rules.

As regards PICs serving their sentences in respect of their convictions of offences endangering national security, the Safeguarding National Security Ordinance amended the aforementioned ordinances, such that if a PIC is serving a sentence for a conviction of an offence endangering national security, the PIC must not be granted remission or his case must not be referred to the relevant board for consideration of early release or sentence review, unless the Commissioner is satisfied that the grant of remission or the early release of the PIC will not be contrary to the interests of national security.

The CSD has the responsibility to effectively prevent acts and activities endangering national security in accordance with the law. Under the new provisions, the Commissioner must first consider whether the grant of remission or the early release of PICs convicted of offences endangering national security will not be contrary to the interests of national security. The relevant provisions are applicable to all PICs serving sentences in respect of their convictions of offences endangering national security, irrespectively of whether they were sentenced before, on or after the commencement of the relevant amendments. The new provisions are not punitive measures; they do not increase the length of sentences imposed by the court, nor do they affect those who have already been released early. Therefore, the new provisions definitely do not engage the provisions under Article 12 of

the Hong Kong Bill of Rights against retrospective criminal offences or penalties.

The two so-called "controversial" points mentioned in the article published by Ming Pao are factually inaccurate. First, section 7 of the Safeguarding National Security Ordinance provides for a clear definition of "offence endangering national security". Therefore, there is no such case as alleged in the article that "the Commissioner decides on his own to expand the scope of offences endangering national security". Further, the principles established under the case law are that the court must not, when sentencing a defendant, consider whether the defendant will be granted remission or early release in accordance with the law.

Through these false remarks, the article misled readers to believe that if a PIC is not granted remission or early release in accordance with the law, it would be tantamount to receiving a heavier sentence and a breach of the Hong Kong Bill of Rights. The CSD strongly disapproved of and condemned the remarks. The Commissioner will, as always, carry out his relevant duties in strict accordance with the laws and deal with every case fairly and impartially.