Part III

OMBUDSMAN

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I. Introduction

In 2011, the CCAC continued to play its important role as the ombudsman by overseeing the **legality** and **rationality** of administrative procedures carried out by public departments; and enhancing their administrative efficiency and **administrative legality**.

Last year, there were over 100 administrative complaints against government departments, of which a majority was about dissatisfaction of the law-enforcement approaches or administrative decisions. Around 50 complaints were against construction projects and relevant competent departments. These data reflect where the areas that are prone to create dissatisfaction:

(1) Acts and law-enforcement standard of administrative departments;

(2) Management approaches of administrative departments;

(3) Effectiveness of public works department in carrying out their duties.

It is worth noting that there was a significant increase of grievance and number of complaints against traffic offences and measures and supervision on taxis and buses, reflecting that it is necessary to pay attention to and properly solve the problems and conflicts in these aspects. How to handle the problems in these areas prone to cause dissatisfaction is the issue that the CCAC has been paying attention to and working on. To establish effective regulating systems through research and analysis on specific issues is the aim of the CCAC. By achieving this aim, solutions will be sought and the efficiency of administrative departments will increase, so that the principle of "legal administration" will be fully implemented.

The report mainly analyses and summarizes the works in the area of ombudsmanship that the CCAC conducted in 2011 in the following aspects:

(1) Number and nature of requests for help and consultation;

(2) To reveal some common or inspiring cases to the general public in order to awake citizens' awareness of protecting their rights and interests and urge public departments to improve themselves.

II. Number and nature of requests for help and consultation

In 2011, the CCAC handled:

- Enquiries: 433
- Complaints: 548[5]

In 2011, the CCAC received 433 requests for help and consultation, a slight decrease compared to the 438 requests in 2010. The requests mainly involved legal system governing public services, traffic offences, illegal construction, municipal affairs and labour disputes. In particular, there is a slight increase of enquiries on illegal construction.

The administrative complaints handled by the CCAC in 2011 were related to the following issues:

Issue		Caseload
Legal system governing public service		128
■ Discipline	52	
■ Rights and interests of personnel	29	
■ Recruitment	20	
■ Internal management	27	
Labour affairs/ Human Resources		31
■ Labour dispute	20	
■ Illegal labour	9	
■ Employment of non-resident workers	2	
Land and public works		48
■ Illegal construction	37	
■ Supervision on usage of property	11	

[5] In 2011, the CCAC opened files for investigation of 463 cases. In addition to 85 cases carried over from 2010, the CCAC had to handle a total of 548 cases throughout the year.

Municipal affairs ■ Environmental hygiene ■ Administrative licenses ■ Occupation of public land ■ Others	 3 2 7 8	20
Traffic affairs ■ Transportation/vehicles/driving licenses ■ Supervision on taxis	 26 9	35
Public procurement		3
Traffic offences		31
Economic housing/social housing		10
Tax affairs		4
Personal privacy		2
Identification		7
Social welfare		3
Sports affairs		3
Social Security Fund		7
Health care		13
Education		8
Property administration		7
Supervision on public utilities		2
Supervision on finance		2
Consumer rights and interests		2
Provision of information		2
Fire safety		2
Noise		8
Competence and function of the CCAC		1
Irregularities in other administrative procedures		52
Others		7

Beyond the competence of the CCAC		
■ Criminal cases	12	25
■ Judicial affairs	6	
■ Civil law issues	5	
■ Personal dispute	2	
Total		463

Moreover, there were 85 cases carried over from 2010. Therefore, the Ombudsman Bureau processed a total of 548 cases last year.

In 2011, the issues which the requests for help and consultation were related to included:

Issue		Caseload
Legal system governing public service		
■ Discipline	23	81
■ Personnel rights and interests	22	
■ Recruitment	18	
■ Internal management	13	
■ Public servant's obligations	5	
Labour affairs/ Human resources		
■ Labour dispute	22	35
■ Illegal labour	6	
■ Non-resident labour	7	
Land and public works		
■ Illegal constructions	15	16
■ Supervision on usage of property	1	
Municipal affairs		
■ Environmental hygiene	2	12
■ Administrative licenses	3	
■ Venders	1	
■ Occupation of public land	5	
■ Public facilities	1	

Traffic affairs ■ Transportation/vehicles/driving licenses ■ Supervision on Taxis	 18 8	26
Tax affairs		11
Codes of conduct		27
Public procurement		17
Traffic offences		31
Economic housing/social housing		14
Personal privacy		6
Identification		2
Social welfare		6
Health care		7
Illegal hotels		7
Supervision on public utilities		6
Subsidy of property maintenance		2
Education		6
Right of abode		3
Property administration		2
Dispute on consumption		2
Noise		2
Competence and function of the CCAC		12
Irregularities in other administrative procedures		21
Beyond the competence of the CCAC ■ Criminal cases ■ Judicial affairs ■ Civil law issues ■ Personal disputes	 22 21 21 15	79
Total	433	

When handling the complaints, the CCAC basically adopts various prompt and effective approaches, of which the most common is to examine related documents and render improvement measures directly in order to solve the problems as soon as possible. However, some public departments do not pay enough attention to the complaints and even give ambiguous responses to the CCAC or avoid addressing the core problems. These have hindered problem solving and enhancement of efficiency. The CCAC attaches importance to these situations and conducts research to map out more specific measures in order not to worsen the problems.

The result of handling administrative complaints in 2011 is as follows:

Approach/Result	Caseload
Archived upon the CCAC's investigation and analysis	451
Archived after the relevant departments solved the problems on their own	20
Archived since the complaints were beyond the competence of the CCAC	25

III. Investigation file, analysis and recommendations

The complaints that the CCAC has received are basically handled and analysed with simple and direct methods – to handle the complaints as ombudsman cases or commence investigation under criminal law.

For the ombudsman cases, the CCAC always observes the principle of debate: to ensure that both the complainant and the department being complained about have the chance of pleading and explaining; and to request related parties to give explanation or clarification or submit supplementary materials to the CCAC according to the particularity of the case and the needs. Subsequently, the CCAC will conduct a comprehensive factual and legal analysis on the complaint. Finally, a conclusion will be made: if illegality exists, the CCAC will point them out clearly and request the relevant department to handle them. Suggestions on improvement will also be made if needed.

Another possibility is that there is no sufficient basis and signs showing illegality and irregularity of administrative departments; therefore the CCAC archives these complaints.

Another situation is that in the complaint handling process, the relevant departments have handled the problems on their own and the complainants have agreed on and accepted the results. In this case, the CCAC will archive the complaints.

These are the approaches that the Commission always adopts to handle administrative complaints and the commonly seen results. Only in some special cases, the CCAC will adopt other ways according to specific needs.

In the process of handling administrative complaints, the most important is to present clear and specific facts, relevant arguments with sufficient basis, clear and convincing legal viewpoints and accurate application of law. The ultimate purpose is to ensure legal administration and to protect citizens' legitimate rights and interests.

IV. Summary of some ombudsman cases

In order to enable the public to know how the complaints in the area of ombudsmanship were handled last year, several cases which are closely related to citizens' daily life and have aroused public attention were chosen to be analysed in this part, with the aim to enhance the public departments' sensitivity and law-enforcement standard, as well as to enable the public to know the defects in handling these cases by public departments thus strengthening citizens' awareness of protecting their own rights and interests.

Case 1 - Special case of "comparing the prices from three suppliers"

A complainant told the CCAC that the Cultural Affairs Bureau (ICM) had requested for his/her quotation of some musical instruments, but later it cancelled his/her quotation. Therefore, the complainant considered that the procedure and approach were suspicious and unfair and were based on incorrect legal basis. Thus, the CCAC was requested for intervention.

The complainant was a part-time teacher at a school under the ICM. The Bureau intended to purchase some musical instruments for the school. However, when choosing the potential suppliers, it did not realize that the complainant was the person-in-charge of one of the shops being requested for quotation. After it discovered that, in order to conduct the procurement in a fairer and more reasonable way, it cancelled the whole procurement procedure based on Sub-paragraph a) of

Paragraph 1 of Article 46 of the *Code of Administrative Procedure*, which provides that any officeholder or staff of the Public Administration shall not participate in relevant administrative procedure.

Since the complainant's position was not "officeholder or staff of the Public Administration", and the fact that the complainant provided quotation as a supplier was not the case of "any officeholder or staff of the Public Administration" participating in procurement procedure, the provision above was not applicable to this situation.

Obviously, the ICM adopted the stipulation about recusation incorrectly and used it as the legal basis for cancellation of the procurement procedure.

Given that the procurement of musical instruments was for the school under the Bureau, the complainant, who was a part-time teacher at the school, was in fact, a member of the school, who at the same time participated in the procurement by providing quotation as a "supplier", the cancellation of the whole procurement procedure based on the principles of justice, impartiality and equality had helped to prevent favouritism toward the complainant.

At a matter of fact, after requesting quotations from three shops, only two provided quotation. The complainant's shop was subsequently not allowed to participate in the procurement procedure as the ICM considered it inappropriate. Finally, there was only one supplier for selection. In this case, the objective to conduct a fair procurement by comparing the price quoted by three suppliers has become meaningless. Therefore, the Bureau's decision to cancel the procedure out of the principles of fairness, justice and impartiality was not illegal.

Moreover, when following up this case, the CCAC discovered that the internal guidelines of procurement adopted by the ICM did not specify that the people who have relation with the ICM (or the companies they represent) should not be requested for quotation for procurement. Therefore, the CCAC sent a letter to the Bureau to declare its stance and called for attention. Finally, the Bureau revised the guidelines according to the CCAC's suggestion.

Since no illegality was found and the Bureau has revised the guidelines according to the CCAC's suggestion, the CCAC archived the case.

Case 2 - Notification of punishment procedure

When receiving enquiries from citizens, the CCAC found that the Transport Bureau (DSAT) sent "notification" by registered mail without return receipt to light motorcycle drivers about the lack of effective label stuck on motorcycle to show that vehicle circulation tax had been paid and counted the send-out date of the mail as the beginning of the punishment procedure. However, this practice has not clearly informed the interested parties on whether they were prosecuted or fined by the DSAT, allegedly hindering them from exercising their right of statement and hearing. Therefore, the CCAC took the initiative to intervene in the case.

After the follow-up, the DSAT realized that the relevant punishment procedures carried out before 30th June 2010 did not accord with the law. Therefore, it took remedial measures for relevant past cases and adopted a new procedure starting from 1st July 2010:

For cases that took place before 30th June 2010:

1. The commenced cases where the fines have not been paid and the periods for punishment procedure have not expired.

Since the periods for punishment procedure had not yet expired, the DSAT had the power to implement measures to pursue liability against the people who had broken the law. According to what the DSAT stated, it would give the interested parties another chance to exercise their right of hearing. These show that the DSAT has adopted remedial measures. Therefore, the CCAC did not need to follow up the cases.

2. Cases where the fines have not been paid but the period for punishment procedure has already expired.

Since the decisions of punishment were invalid and the period had already expired, the DSAT could not pursue liability against the people who had broken the law. Therefore, the DSAT archived the cases and notified the interested parties.

3. Cases where the interested parties have already paid the fines voluntarily.

The DSAT stated in a letter that the cases would be archived unless the decisions of punishment were invalidated by court rulings. This showed that the DSAT was

willing to risk being sued by interested parties for compensation and will not take the initiative to declare the invalidity of the relevant decision, giving them another chance to present statement and defense. For these cases, the DSAT's stance was not to handle them unless there were lawsuits.

Information showed that since the new procedure was adopted, the DSAT specified the information about appeal in its notifications, including available ways of appeal (declaration of objection, necessary/voluntary appeal), entities empowered to handle appeal, period for filing appeal, whether the appeal had any effect of suspension, and whether judicial appeal could be filed.

Since the DSAT has adopted follow-up measures, the CCAC archived the case.

Case 3 - Public servant's request for appraisal records being rejected

A complainant, who worked for the Government Printing Bureau (IO), told the CCAC that the IO hindered him/her from exercising the right to information, as it refused to provide the copy of the submission by the Public Administration and Civil Service Bureau (SAFP) and its consultative committee of personnel appraisal did not respond to his/her application submitted in 2006.

Following investigation and analysis, the CCAC considered that the IO's refusal to provide the copy of the SAFP's submission to the complainant under Sub-paragraph b) of Paragraph 3 of Article 63 of the *Code of Administrative Procedure* was groundless. Following the CCAC's intervention, the IO finally provided the copy to the complainant.

The application to the consultative committee of personnel appraisal submitted by the complainant in 2006 was, in fact, based on Administrative Regulation no. 31/2004, for its opinions on his/her perfomance evaluation in 2005. According to the regulation, the committee only had to pass the submission to the chief of the department, who subsequently notified the relevant staff of the result. The regulation did not require the committee to notify the staff of the opinion on its own.

In fact, the complainant could request for a copy of the submission according to the regulation mentioned above and the *Code of Administrative Procedure*, but the information provided by both the complainant and the authority did not show that the he/she had actually made such request. Therefore, this point in the complaint is groundless.

Moreover, the CCAC found that in the process of handling the complainant's request for alternation of judge, the IO did not verify whether the reason for the request was true or not under the *Code of Administrative Procedure* (such as requesting the complainant to provide evidence to support his/her statement). Moreover, the decision to reject the request was defective as it was not backed by any reason. After receiving the CCAC's notification, the IO has already requested the complainant to provide concrete proof to support his/her statement.

Therefore, the CCAC archived the case and responded to the complainant.

Case 4 - Incomplete record of vehicle examination

A complainant reported to the CCAC that his/her car, which was purchased in January 2000, underwent the "annual compulsory vehicle examination" by the Transport Bureau (DSAT) in January 2011. The inspector said that the complainant had re-equipped the car and thus required him/her to pay MOP500 as the fee for application for re-equipment, but the complainant denied the said re-equipment. Therefore, he/she requested the DSAT to review the photographic record of the examination. However, the DSAT replied that "there is no photographic record but written record only". The complainant thought that the DSAT's approach to handle the matter was administratively illegal or irregular, thus requesting the CCAC to intervene in the case.

The CCAC subsequently requested the DSAT for relevant information, while the DSAT replied that the accessories the car currently contained were not consistent with the approved list of accessories of the same model of car as well as the result of the initial examination. Since there was no photographic record of the examinations for new vehicle registration and license in 2000, there was no photographic proof for the initial examination of the complainant's car. The DSAT also pointed out there were a number of similar cases previously.

The DSAT considered that the model has already been recognized and that when the complainant's car underwent initial examination, fenders and side aprons had already been installed. However, these were not considered extra accessories by DSAT at that time and thus this condition was not recorded. Therefore, the DSAT decided to handle the cases of this model of cars as exceptional cases by listing the extra accessories of this model as original accessories.

The complainant told the CCAC that the DSAT told him/her to collect the new vehicle registration booklet in late April 2011 for free.

Therefore, the CCAC archived the case and responded to the complainant.

Case 5 - Method and procedure of body search by law-enforcement officers

A complainant said that two female customs officers conducted a body search and inspection on him/her in 2011, but their manner was bad and they neither showed the document that empowered them to conduct the search nor notified the complainant of his/her rights, such as requesting for presence of a certain person he/she trusts, before requested him/her to take off his/her underpants. The complainant thought that the method had hurt his/her dignity and the search was unnecessary.

Based on the audio record, the CCAC did not discover any signs showing the officers' bad manner. Moreover, the body search was conducted with the complainant's consent, which was subsequently recorded in written form. Meanwhile, the law did not require that the criminal police should enable the interested party to designate a certain trusted person to be present at the site when the interested party agreed to conduct the body search.

Since the complainant refused to be inspected by a drug detector dog in the first place and given that drug trafficking by hiding drugs in underpants was common, the CCAC considered that the way of inspection adopted by the customs officers was not unnecessary. The complainant insisted not to take off his/her underpants but accepted to be inspected by drug detection dog, while the officers accepted his/her request, showing that they already respected his/her dignity. Therefore, the CCAC considered that the complaint was groundless and subsequently notified the complainant of the results.

On the other hand, the CCAC found that the English translation of record about the complainant's consent on body search on the "Inspection Room Record" was not consistent with the Chinese version. Especially, it did not mention that the interested party accepted relevant body search. Moreover, the CCAC also found that the Macao Customs Service did not have a set of written guidelines on the way of body search and inspection on people entering Macao conducted by frontline customs officers.

Therefore, the CCAC sent a letter to the Macao Customs Service to request for attention to the above problems and improvement. Subsequently, the Macao Customs Service improved the relevant guidelines based on the CCAC's suggestion.

Therefore, the CCAC archived the case.

Case 6 - Problems brought by public department's extension of deadline for submission of competition entries

A complainant told the CCAC that the deadline for submission of entries for the Book Review Writing Contest for Public Servants 2011 organized by the Public Administration and Civil Service Bureau (SAFP) was 5th August 2011 according to the rules, but the SAFP announced new rules on 15th August 2011, postponing the deadline to 16th September 2011. The complainant considered that the extension was unfair to the participants who already submitted their entries by 5th August 2011 and suspected that the purpose was to have certain people win the contest.

Following analysis, the CCAC considered that the extension of the deadline after the original deadline expired, in an objective sense, would lead to suspicion of favouritism, as the terms and rules of the competition was modified after it is completed, violating the principle of impartiality. Moreover, this act has also violated the principle of good will as the organizer betrayed contestants' trust in the original rules.

The CCAC declared its stance to the SAFP and requested the latter to adopt proper measures to follow up the case.

The SAFP accepted the CCAC's opinion and decided to cancel the extension of deadline and only accept the entries submitted by the original deadline. As to the people who submitted their entries afterwards, the SAFP would send them a letter about relevant arrangement.

Since the SAFP has accepted the CCAC's suggestion and adopted appropriate measures to handle the case, the CCAC archived the case.

Case 7 – Illegal establishment of the position of "functionary supervisor"

The CCAC received a complaint over the re-establishment of the Welfare and Recreation Department of the Macao Polytechnic Institute (MPI), because:

1. The MPI did not assign staff members based on their skills, specialties and education background but only randomly gathered staff members from different departments. Therefore, the complainant suspected whether the department could exert its function.

2. Staff member A of the Welfare and Recreation Department which was responsible for the works related to MPI staff's welfare and recreation, did not have any subordinates. In addition, his/her duties were simple with light workload. The complainant considered the appointment of A as a functionary supervisor was illegal.

As to the first point, the staff members who were assigned to the Welfare and Recreation Department were office staffs of different ranks with different years of work experience. No inappropriate issue was found.

As to the second point, it was discovered that the appointment of "functionary supervisor" by the Board of Management had revocable defect (lack of statutory prerequisite). Therefore, the CCAC requested the MPI for explanation.

Apart from pointing out the staff members' duties, the MPI claimed that, about the appointment of functionary supervisor of the Welfare and Recreation Department, the Board of Management was very clear about relevant staff members' jobs and that the decision was not merely based on the reports by the supervisor of the relevant department. Nevertheless, the CCAC considered that the Board of Management should have clearly, accurately and completely stated the important facts related to the decision-making in the relevant commentary reports when facing such "an excessively simple report which did not thoroughly indicate the workload of the department and its complexity", in order to meet legal requirement and ensure that the relevant resolutions would have expected legal effects, rather than stating the reason only when it came to suspicion of illegality afterwards.

In order to guarantee relevant staff's rights and interest, the Board of Management may consider giving retroactive effect to the administrative acts of establishment of the post of functionary supervisor and appointment of relevant staff under Sub-paragraph a) of Paragraph 2 of Article 118 of the *Code of Administrative Procedure*

when deliberating the "report to the Board of Management concerning establishment of the post of functionary supervisor of the department".

As the MPI has accepted the CCAC's opinions, adopted measures for remedy and stated that this case would be taken as an important reference for relevant administrative procedures, the CCAC archived the case.

Case 8 – Arrangements for the case that too many public servants intend to take annual leave during the same period

A complainant, who worked for the Maritime Administration, told the CCAC that in his/her department, the staff members who have served the Administration for longer time were given the priority to take annual leave during the working days adjoining public holidays (such as Christmas and New Year) and suspected that this practice was administratively illegal. According to the Maritime Administration, the relevant rule stipulated that "In case more than one staff requests for annual leave during the same period, the one of higher rank or the one who has served the Administration for longer time has the priority."

Following comprehensive analysis of relevant laws, it is discovered that the said practice deprived the staffs of lower rank/who have worked there for shorter time of the chance to take annual leave on the working days prior or following important holidays. In particular, for the staffs that had to work on shift, the result of the practice was that they had to work during important holidays every year, infringing upon their basic right to enjoy important holidays and violating Article 5 of the *Code of Administrative Procedure* regarding the principle of moderation. Therefore, the CCAC declared its stance to the Maritime Administration.

The Maritime Administration accepted the CCAC's opinion and subsequently revised the relevant internal guideline by adopting the method of "balloting" and the statute method implemented in Portugal suggested by the CCAC, which was that "if needed, when confirming the schedule of annual leave, for the months in which more staff intend to take annual leave, the rights shall be distributed proportionally according to the status of the same month in the previous two years, so that every interested party can be benefited on rotation." The Administration implemented the measures immediately.

Since the internal rules that violated the principle of moderation have been redressed, the CCAC archived the case.

Case 9 – Notification method in punishment process affected efficiency and outcome

The person-in-charge of a company complained to the CCAC that in January 2009, one of its staff reported to the Labour Affairs Bureau (DSAL) that the company had deducted his/her attendance bonus unreasonably, while in July 2009, the complainant called the DSAL to explain the reason, that the staff was not given the attendance bonus because of his/her absence from work. Since then the complainant has never received any feedback from the DSAL. In mid-October 2010, he/she contacted the DSAL again after receiving a notification from the court and realized that the DSAL confirmed that he/she did not have to give the attendance bonus to the staff but had to pay the salary amounting to around MOP8,000, and that the DSAL had informed his company through public announcement. Later in November, the court ruled that the company "violated labour law" and fined it MOP30,000. The complainant stated that although the company had moved, its telephone number did not change and therefore complained that the DSAL only released the information through public announcement but not by telephone. If he/she had known its decision in time, his/her company would have followed the instruction and thus it would not have been fined.

The CCAC found that the DSAL's investigation proved that there were illegal situations involving the company, such as back pay, which was punishable by fine. In late January 2010, the inspector in charge of the case made a notification of "payment of fine and arrears to employees", which indicated that the company should deposit the fine and arrears in designated bank accounts and submit the proof of payment to the DSAL within the following five days, and that if the overdue salary was paid before the "labour dispute record" was passed to the court, the company could be exempted from fine according to law.

On the following day, the DSAL sent the said notification by registered mail to the former address of the company. Later, the Macao Post returned the mail to the DSAL as there was no receiver at the address. After the period for payment expired, the inspector suggested informing the company through notification on local newspapers and the suggestion was accepted by the superior.

After another period for payment, the DSAL transferred the case to the court. Meanwhile, the DSAL told the CCAC that the person-in-charge of the company should have paid attention to the mailing and had never updated the DSAL about the new address although he/she knew that the case had not yet been solved, and that the DSAL had not violated the law when handling the case.

The law stipulates that the DSAL shall send notification to offenders by "registered mail". Where appropriate, it can notify offenders directly. In case of failure, the notification shall be made through public announcement under the *Code of Administrative Procedure*. In the case, the inspector should have realized that the company would not receive the mail when the mail was returned and thus it was impossible for the company to pay the fine and arrears within the statutory period. However, it was not until the period for submission of payment proof expired that the DSAL "commenced" the notification procedure. More than two months later, the notification was published on newspapers. As a result, the procedure was unnecessarily delayed, reducing the efficiency.

Moreover, notification through public announcement is, in fact, a compromising approach. Although it can ensure the continuation of the procedure, the interested party may not be informed. Moreover, public announcement increases administrative workload as well as cost, because publishing announcement on newspapers is very expensive.

In fact, the inspector had the telephone number, fax number and e-mail address of the company and both sides did contact each other through these channels. Therefore, after knowing that the registered mail to the company was returned, the inspector could contact the company in a more speedy way and thus got the new address and sent the notification once again. Even he/she could have requested the legal representative for the company to visit the DSAL for direct notification. However, the inspector did not do so but adopted the complicated and costly method of public announcement after unnecessary wait (First, the inspector made a report, to which later his/her supervisor and the Chief of the Labour Rights Division attached their opinions. Later, the report was approved by the Chief of the Labour Inspection Department and the DSAL sent letters to the presses to request for publishing the announcement.), probably infringing upon the principle of efficiency that administrative authorities shall abide by when carrying out activities.

In fact, the inspector had been using fax to contact the person-in-charge of the company, which therefore expected that the DSAL would continue to contact them in the same way due to the principle of good will. Such expectation is reasonable. However, the DSAL's statement that the company did not actively fulfil the obligation of "immediate informing" the change of address was groundless.

Finally, the CCAC also found that although the case file included the draft of the

announcement, there were no records about DSAL's staff posting the announcement on the notice board in accordance with the law. Therefore, this might cause suspicion about whether the DSAL had carried out its duties under the law. Meanwhile, the company and the said employee did made statement/explanation to the DSAL respectively in person or by e-mail. In this sense, the DSAL staff should have made request for statement/explanation by telephone beforehand, but the case file did not include such record.

Therefore, the CCAC declared its stance to the DSAL through a letter and urged it to adopt measures in order to improve the procedure of handling labour disputes. The DSAL gave a positive response, stating that it accepted the suggestion and promised to adopt measures for improvement (to indicate the period for having the notification on the notice board). Moreover, the DSAL issued working guidelines to its labour inspection staff in order to remind them that notification could only be made through public announcement only if the said contact methods were exhausted, and the record of telephone conversations had to be attached to case files. Therefore, the CCAC archived the case.

Case 10 – Is Administrative Authority liable for extinction of prescription for prosecution about labour right?

In January 2011, four complainants told the CCAC that they resigned from a bus company limited in June 2006 and January 2007. In October 2007 they complained to the Labour Affairs Bureau (DSAL) that their former employer did not pay them for overtime work due to delivery of bus.

Following investigation, the DSAL referred the case to the Court of First Instance on 27th October 2010. However, on 16th December 2010, they received a notification from the judicial agency, which indicated that the prescription for prosecution in the case of slight offence was extinct due to expiry. The complainants were dissatisfied with this and wanted to know the reason why the case was not referred to the court until the prescription was extinct.

The law stipulates that the DSAL's duty of handling labour dispute cases is to investigate and prove whether there is violation of labour regulations and commence relevant punishment procedure for slight offence for the illegalities it has discovered. The two-year prescription provided by the law is only to limit the time for the DSAL to complete investigation and punish offenders. Its expiry only leads to the

authority's inability to sue the offender for liability for slight offence, but it does not hinder employees from recovering arrears from their employers by civil means. As analysed, the fact that DSAL failed to refer the case to the court by the expiry date of the two-year prescription was related to the DSAL's inadequate operation mechanism in the past. Therefore, the CCAC rendered suggestions for improvement when conducting examination on operation with the DSAL in 2008.

Information shows that the main reason why the court rejected to handle the request for civil compensation for overtime raised by the four complainants was not the DSAL's failure to pass the case by the expiry day, but it was that the Public Prosecutions Office considered that the request was groundless in an objective sense and thus it refused to recover the compensation at the court on their behalf.

Meanwhile, the CCAC discovered that the reason for DSAL's failure to refer the case to the court by the expiry day of the two-year prescription might be caused by its handling of the appeal filed by one of the complainants. Moreover, the DSAL neither clearly explained to them the reason for the failure nor provided them the information about other possible channels to recover the arrears based on the consensus reached between the CCAC and the DSAL according to the examination on operation. After the CCAC declared its stance, the DSAL formulated internal guidelines for its staff, which indicated that the priority to handle cases of labour dispute should be classified into four grades based on the expiry date of prescription, and that the procedures of case investigation and appeal handling should go at the same time so that the rights and interests of the interested parties will not be infringed upon due to either one of the procedures and the cases will be surely passed to the court on time.

As to providing information for complainants, the DSAL stipulates in its guidelines that employees shall be told the channels for better protecting their rights and interests and solve the problems they are facing, so that they can choose a better way to solve their cases and be clear about the related issues.

Since the DSAL has adopted appropriate measures to follow up and solve the problems discovered by the CCAC in the case, the CCAC archived the case.

Case 11 – Vehicle license "locked" due to arrears in fine

A complainant did not accept the decision made by the Public Security Police Force (PSP) to levy administrative fine for traffic and subsequently filed a judicial

appeal to the court within the statutory period. A few months later, the complainant, when going to pay the vehicle license tax, was notified that his/her vehicle license was "locked" by the PSP due to arrears in fine. After the complainant provided the number of his/her judicial appeal, his/her vehicle license was "unlocked" and he/she managed to pay the vehicle license tax before the deadline.

A few months later, when the complainant went to apply for driving license of heavy passenger vehicles, he/she was told that his/her vehicle license was "locked" again and therefore his/her application might be problematic. The complainant was dissatisfied with the fact that the PSP "locked" his vehicle license before the court made any judgment.

Following investigation, the CCAC realized that when the 30-day prescription for appeal expires, the PSP's computer system automatically labeled the vehicles as two types: 1) vehicle license tax cannot be paid; 2) the car owner fails to renew driving license. In the case, the day the complainant went to pay vehicle license tax was already over 30 days after he/she received the notification of punishment. Also, when the PSP proved that the relevant administrative punishment had not yet been confirmed, it already "unlocked" the vehicle license in manual way and the complainant paid the vehicle license tax before the deadline. Therefore, the problem has been solved.

As for the second "locking", the PSP did not realize the loophole of the programme and hence needed to completely cancel the "locking" by hand twice. The PSP stated that this problem has already been solved and mechanisms of appeal follow-up and mutual notification have been established through procedure improvement in order to prevent the same cases from occurring again. Therefore, the CCAC archived the case.

Case 12 – Companies invited to provide written quotation

A complainant suspected that company B, which won the Health Bureau's tender for developing "Chinese medicine software" through written quotation, had never been invited to participate in the said procurement procedure and to provide any quotation. The complainant also stated that the company was lack of experience in developing medical software and therefore suspected the ground for its acquisition of this contract.

Following analysis on the case and relevant information from the Health Bureau, the CCAC found that B was invited to bid for the project and it partnered with a company which had experience in developing medical software to participate in the bidding. Therefore, the CCAC considered that the complaint was groundless.

However, the CCAC also discovered that the Health Bureau sent the notification about the final decision through the system of "result of selection of written quotation (trial version)" in the procedure of procurement through written quotation, but the notification did not indicate the information required by Article 70 of the *Code of Administrative Procedure*, including the entity that made the decision, the date the decision was made, and the channels and period for the losing bidders to file appeal. Therefore, the CCAC notified the Health Bureau the said problems.

Later, the Health Bureau replied that it had revised the content of the system of "result of selection of written quotation (trial version)" and given the losing bidders a supplementary notification which indicated the information required by Article 70 of the *Code of Administrative Procedure*.

Moreover, the CCAC found that before the procedure of procurement of "Chinese medicine software" started, the Health Bureau "borrowed" software from A, one of the bidders, for testing. Since this practice might advantage A to obtain information, the CCAC took the initiative to follow up the case. After acquiring relevant information from the Health Bureau, the CCAC did not discover adequate information proving the said issue.

Therefore, the CCAC archived the case.

Case 13 – Traffic offence/ delay of notification

A complainant told the CCAC that he/she did not receive the notification of traffic offence concerning illegal parking on a pavement by registered mail from the police until over four months later. Since the incident occurred a few months ago, it was difficult for the complainant to provide evidence. This has infringed upon his/her right of defense and therefore requested the CCAC to intervene in the case.

The CCAC realized that the PSP has to sent a large number of registered mails everyday within a time limit, therefore, it reached an agreement with the Macao Post to "control the amount" of the notifications of charge being sent everyday, leading to delay of receipt of the notification of traffic offence by the complainant.

The law stipulates that the prescription for punishment procedure for administrative illegality concerning traffic offence is two years, so it was not illegal of the PSP to send the notification to the complainant over four months after the incident. The most important thing was that the period for appeal began on the day the notification was received.

However, the delay of sending the notification about charge of traffic offence due to "daily control of capacity" might infringe upon the interested party's exercise of right of defense. Therefore, after the CCAC declared its stance, the PSP stated that when there was an urgent need, it would revise the policy by shortening the prescription for conducting the special procedure for handling administrative illegality.

In fact, the CCAC realized that the PSP had already adopted measures for the issue about delay of sending the notifications – increasing the daily "capacity" of sending registered mails and launching the service of SMS notification based on the illegal parking detection system.

Therefore, the CCAC archived the case and replied to the complainant.

Case 14 – Notification and other arrangements in procedure of recruitment of public services post

A complainant was dissatisfied of the following issues about the recruitment of the post of administrative assistant officer of 2nd class on temporary contractual basis by the Education and Youth Affairs Bureau (DSEJ):

1. The DSEJ did not inform him/her of the date of the second examination by appropriate means;

2. The second examination was held before the "announcement period" ended;

3. The list of results of the second examination did not indicate the channels and period for appeal.

For 1 and 2, the DSEJ considered that since the then effective applicable

regulations did not stipulate the ways of notification of date of examination of recruitment of non-permanent posts, it had the power to decide how to make the notification. According to the DSEJ's response and the information it provided, on the day the first round of examination was held, the DSEJ informed the candidates of the date of the second round and the channels for viewing the candidate list and the date the list would be publicized through broadcasting and a notice posted at the venue of the first round of exam, while the list was publicized as scheduled with the time and venue of the second round. Since the DSEJ already announced the date through various channels, the candidates could prepare for and attend the exam on time. Therefore, there was no sign showing administrative illegality or irregularity in the aspect of notifying candidates of examination date and details.

As to 3, the CCAC realized that the list, in fact, did not indicate the channels and period for filing appeal, although there are some theories that notification without some necessary content required by the law is not sufficient to affect the validity of the act of being notified. According to the DSEJ's response, the DSEJ had already informed the complainant that s/he had the right to file an appeal. Therefore, the defect in the result list – lack of relevant information – has already redressed properly. However, the DSEJ should not violate the *Code of Administrative Procedure* for the reason that the law stipulates that candidates have the right to file an appeal against the results. In order to prevent other suspicions of legality of relevant procedures, the CCAC wrote to the DSEJ to suggest stating the relevant information in the result list of future recruitments. Subsequently, the DSEJ stated in the reply that it accepted the suggestion.

Therefore, the CCAC archived the case.

Case 15 – Written evidence in punishment procedure

A complainant told the CCAC that he/she was charged and fined for spitting on a drain by an inspector of the Civic and Municipal Affairs Bureau (IACM). He/She suspected that the inspector filed the charge without any evidence and hence power abuse might be constituted. Also, the complainant stated that the reason for being charged was that the IACM required its inspectors to file a sufficient number of charges every month.

Following investigation, the CCAC found that the inspector insisted in the "supplementary report by inspectors" that he/she really saw the complainant spitting

in a public place (drain is considered a public place), while the IACM adopted this statement and determined that the complainant had violated the *General Regulations Governing Public Places* and thus was liable for a fine.

As to whether the complainant has spitted in public place or not, both the complainant and the inspector insisted in their own statements. Without any other evidence, the CCAC was not able to judge who was right or wrong and agree on the accusation that the IACM staff filed the charge without any evidence. Moreover, according to the information obtained by the CCAC, the IACM already clearly denied that they required its inspectors to file a sufficient number of charges every month. Therefore, the complaint was groundless.

Meanwhile, when handling the case, the CCAC also found that the basis for the IACM to determine that the complainant had violated the *General Regulations Governing Public Places* - "supplementary report by inspectors"- indicated neither the identity of the staff who made the report nor any signature for authentication. In order to ensure the authenticity of the IACM's measures of evidence collection, the report should indicate the identities of the people who made the report and their signatures to authenticate the respective records. Therefore, the CCAC wrote to the IACM to report the said problems and the latter accepted the CCAC's suggestion and adopted appropriate measures to follow up the case.

Finally, the CCAC archived the case.

Case 16 – Outcome of lack of traffic signs in Coloane

A citizen living in Coloane complained to the CCAC that in November 2009, the IACM laid red tiles and parterres at Rua de Estaleiro, the street where citizens used for parking next to the Coloane Municipal Court. When the construction was ongoing, an engineer of the IACM who supervised the construction told the complainant that the side of the street with parterres would serve as a pavement, while the other side would not be a pavement and could be used for parking. After the construction, some traffic police officers ticketed the cars (including the complainant's one) parked on the side of non-pavement for the reason "parking on pedestrian area" based on complaints. The complainant thought that whether the said location was "pedestrian area" or not should be determined by the IACM or the Transport Bureau (DSAT), while the police did not have this power.

Moreover, since there were no road sign that prohibited parking or solid yellow line on the road and the engineer said that parking was allowed there, the complainant considered that the ticketing was improper and thus raised an objection to the Traffic Department of the Public Security Police Service (PSP). However, the objection was rejected. Therefore, the citizen voiced the grievance to the CCAC.

According to the law, the police officers of the Traffic Department of the PSP have the duty to supervise the compliance with road and traffic regulations. In the course of law enforcement, it was inevitable that they would encounter the cases whether certain laws are applicable – including judgment on some facts. In the case, the police officer judged that the street was a pedestrian area. If the police did not have the authority to judge, they could not enforce the law and perform their duty to control and supervise the traffic. Therefore, the statement that "the police did not have the power to determine whether the location was pedestrian area" was groundless. Nevertheless, if citizens think that the police's judgment is wrong, they can file complaint according to law in order to protect their own rights and interests.

According to the IACM's response, the street would be re-constructed as a pavement based on the traffic plan made by traffic authorities. The IACM also stated that some citizens living in Coloane suggested setting parking spaces at the street and it has already referred the request to the DSAT. In other words, although there were changes in the facilities at the street, the nature of the street – pavement – remained unchanged. However, the IACM has never declared its stance by notifying the public whether parking was allowed. The CCAC's officers found at the site that the IACM still has not set up any road signs of "no parking" and that there were many cars parked there, showing that the authorities have not adopted any measures in response to citizens' request of "setting parking spaces at the street".

According to the information revealed by the police some years ago, the main measure to handling illegal parking was admonition. For the illegally parked cars that severely obstructed pedestrian facilities, affected security, obstructed the movement of other cars or caused traffic accident, the police would handle the cases strictly. If such complaint was received, the police would strictly enforce the law. Therefore, in principle, the police did not immediately ticket the cars parked at the said location, unless it was repeated offence despite repeated admonition or the police had received citizens' complaints. Nevertheless, the DSAT staff told citizens that whether parking was allowed depend on the factors such as the road signs at the location, whether there was yellow solid line and whether parking would cause obstruction. In other words, parking cars at the said street should not subject to ticketing. In this sense, the

police's law enforcement criteria differed from the DSAT's statement. Therefore, the CCAC urged the IACM, the DSAT and the PSP to reach an agreement on the nature of the street and whether parking was allowed, declare their stance and provide the public with consistent information.

The said authorities responded actively. Following meeting and gathering of citizens' opinions, a number of metered parking spaces have been set at the street for the public. Also, the road sign of "no parking" and others has been set at the relevant areas.

Therefore, the CCAC archived the case.

Case 17 – Criteria for rehousing residents of wooden huts and other problems

On 5th August 2010, a complainant requested the Housing Bureau (IH) to arrange his/her mother and his/her family to purchase economic housing by the reason that his/her mother had the right to inherit a wooden hut at Ilha Verde. However, the IH rejected the application for the reason that there was no relevant record in the wooden hut registration for 1991 and 1993. However, the complainant pointed out that the wooden hut was still occupied at the moment as there were his/her own stuffs inside and he/she had been paying water and electricity charges. The complainant thought that the IH's decision was not backed by any legal basis and that the notification of rejection did not indicate the date and channels for appeal and thus suspected that there was administrative illegality.

According to the CCAC's analysis, only the people considered by the IH to be living in the wooden huts could be registered. Otherwise, even relatives of the registered people should not be registered if they were not considered living in the wooden huts. According to the contract, the developer was responsible for rehousing only the families who were really living in the wooden huts located at the areas to be developed, while the people who no longer lived in the wooden huts were not entitled to receive any compensation. For the fact the IH considered the complainant to be not living in the wooden hut, the latter did not present any counter-evidence. Since there was no record showing that the complainant was living in the wooden hut in the registrations for 1991 and 1993, they did not meet the statutory requirement of rehousing under the land grant contract. In this sense, it was legal for the IH to reject the said application for rehousing. At the same time, the law stipulates that people

who are still living in wooden huts as registered shall not transfer the "right" related to the wooden huts to someone else by any means (such as inheriting). Moreover, the registration did not mean that the people being registered had ownership over the wooden huts they were living in. Based on the legal principle that "one shall not transfer his/her right to another person", it was impossible for the complainant and his/her mother to claim any right over the wooden hut. Also, it was impossible for the complainant to request the IH or the developer for compensation or rehousing based on the fact that he/she occupied the wooden hut to be removed.

As to the fact that the IH did not indicate the information required by Article 70 of the *Code of Administrative Procedure* (such as the date the order was issued, the channels and period for filing appeal, etc.), after the CCAC notified the IH, on 17th December 2010, the latter sent another notification to the complainant, which indicated the legal basis for not accepting his/her application and the channels and period for filing appeal.

When handling the case, the CCAC discovered that there were discrepancies between the criteria adopted by the IH for approving the rehousing application by wooden hut residents at Ilha Verde and the law, which were reflected in the following aspects:

1. Registration of residence in wooden huts

The internal criteria for rehousing set up by the IH in May 2010 stipulate that priority will be given to the families living in wooden huts registered in 1993. Otherwise, applications by those registered in 1991 will be considered. However, in the reply to a legislator's written query in October 2010, the IH stated that records in the registrations for 1991 and 1993 are required. The CCAC thought that although the IH might set this requirement for adequate reasons, according to the law, registration in 1993 is one of the prerequisites, while the registration in 1991 is not the "replacement" or "substitution" of it. It refers not the case of fulfilling one of the two conditions, nor, as the IH's reply to the legislator, that registrations had to be done in both 1991 and 1993 in order to be re-housed. In fact, since registration in 1991 was the authority's exceptional handling method, the IH should request the administrative authorities to handle the issues about the legal basis and competence of the exceptional method and whether the registration should be publicized in order to avoid suspicion. The IH has promised to adopt or suggest adopting appropriate measures in order to distinguish between the registrations in 1991 and 1993.

2. Change of family members

According to the law, if there are changes in the members of a registered family, the family has to go through a noting procedure. The IH allows application for changing in spouse and children, but the children should be under the age of 18. Since the currently effective law does not exclude adult children from the concept of family, the IH might have narrowed down the legal definition.

The IH's perception is that adults can live independently, but minors need to rely on their parents. Therefore, it allows including the latter into a registered family. Moreover, as it has been more than a dozen years since 1993, the children of the wooden hut owners registered in 1993 have already grown up and some even have their own children. Due to the change in structure of the families, the IH allowed separated applications for rehousing.

The CCAC considers that qualified family members can be rehoused. In the cases where separate rehousing is applicable, all of the family members shall be qualified. As the law allows including adult children as new family members, the IH shall recognize their eligibility to be rehoused. Whether they will be rehoused separately is another issue. This cannot be mixed up with the eligibility to be re-housed. The CCAC points out that whether an applicant is eligible has to be judged by the administrative authority, while the IH shall specify the legal basis and the channels for filing appeal when notifying the applicant of the result.

3. Meaning of "core family" and "forming another family"

The IH's internal criteria require that the families applying for the rehousing scheme shall be "core families" and the concept is described with examples of relationships between the members and the applicant, such as legal spouse, parents and children, etc. However, the law only provides the concept of "family" but not "core family". The stipulations about "core family" in the internal criteria have narrowed down the statutory definition of "family".

The IH stated that in fact, a majority of the family members intended to apply for rehousing separately. Taking into account public resources, it required that those who were single should apply together with their parents because it did not intend to re-house them separately.

The CCAC pointed out that the issues about eligibility and allocation should

not be mixed up. Eligibility should be considered first and how to re-house the families should come second. The criteria should be specified clearly and publicized in order to avoid unnecessary dispute. Moreover, as to "forming another family", the criteria only specified sibling but parents were not mentioned. In fact, if a divorced or widowed parent marries again, he/she may have the need to form another family. The CCAC considered that the IH should not narrow down the meaning of law through internal criteria. The IH agreed with this stance and promised to revise relevant criteria.

4. Whether ownership of private property constitutes disqualification for purchasing economic housing/ renting social housing

For economic housing, Decree Law no. 13/93/M only stipulates that those who own a residence, a piece of land or are granted a piece of local private land are not qualified for purchase of economic housing. In other words, people who only own a shop or a parking space will not be disqualified.

For social housing, Administrative Regulation no. 25/2009 states that those who own any residential apartment or separate property (including shop and parking space) in Macao, or have made an appointment to purchase any of them, or those who are granted a piece of local private land will be disqualified for renting social housing.

Therefore, the stipulation that "ownership of private property leads to disqualification for purchasing economic housing or renting social housing" in IH's internal criteria needs to be revised. The IH accepted this suggestion and promised to make a revision.

The CCAC reiterated that if the IH only revised the internal criteria due to enforcement of relevant laws, the CCAC would not have any dissenting views on it. However, if the contents "overstate" or "narrow down" what stipulated by the law, there will be problems about "competence", "form" (whether the revision can be issued through the Director's order) and "announcement". Therefore, the IH has to review the content of relevant criteria in order to handle it properly or request the authorities to handle it properly.

Since the IH has accepted the CCAC's suggestions and adopted proper measures to follow up the case and redress the defects, the CCAC archived the case.

Case 18 – Improper handling of complaint

A complainant told the CCAC that a division head of the Macao Polytechnic Institute (MPI) exploited his/her subordinates' benefits by replacing their overtime pay with equal day-off and banning them from carrying annual leave over to the following year.

No information proving the said report was found in the investigation, but it was discovered that the method adopted by the MPI to handle the reports about staff's alleged violation of discipline was not appropriate:

(1) The Acting President executed the suggestions indicated in the investigation report made by the Acting Secretary-General before the Board of Management assessed the report.

(2) The Acting Secretary-General gave the documents of orders/their copies, issued by himself/herself or the President, which has sealed "confidential", to the person who was being complained.

After the CCAC notified the MPI of these problems, for (1), the MPI provided meeting minutes which proved that on 4th July, the Board of Management already "discussed and made decision on" the investigation report made by the Acting Secretary-General. Moreover, the minutes indicated that the report was a compilation of relevant resolutions. In other words, before the Acting President responded to the CCAC about the case of alleged violation of discipline, the Board of Management had already passed the resolution about it. Therefore, it was not necessary for the CCAC to follow up this issue.

For (2), the MPI required the relevant staff to pay attention to the proper procedure of handling complaint/report on violation of discipline when handling the same kind of cases and promised to take this case as a reference for improvement of relevant works. Therefore, the CCAC did not need to follow up this issue.

Finally, the CCAC archived the case.

Case 19 – Notification in procedure of recruitment of public services post

In March 2011, a complainant told the CCAC that there were illegalities in the

procedure of recruitment of administrative assistant officer of 2nd class of 1st grade on non-permanent basis by the Maritime Administration:

(1) The information about the exam was released through SMS;

(2) Candidates were requested to write down their names on every page of the exam papers;

(3) The finishing time of the exam was not announced in advance.

Following analysis, for (1), the law does not require that recruitment on non-permanent contractual basis shall be conducted openly; therefore, the method adopted by the Maritime Administration was not illegal. For (2), the Maritime Administration admitted that it always required candidates to write down their names on the first page of their exam papers and initial every page for identification. However, since this would directly unveil the identity of the candidates and lead to unnecessary dispute about unfairness, the CCAC suggested the Maritime Administration to pay attention to and make improvement on it and the latter accepted the suggestions. For (3), the Maritime Administration replied that the starting time and "approximate" duration of the exam had been announced in advance, but it promised to draw on the experience of this time in order to improve relevant recruitment procedure.

Therefore, the CCAC archived the case.

Case 20 – Reason for punishment should be adequate

A taxi driver complained to the CCAC that an inspector of the Transport Bureau (DSAT) did not arrange confrontation between him/her and the passenger when filing a charge against him/her and that the inspector forged the evidence.

After requesting for information from the DSAT and conducting an analysis, the CCAC considered that the complaint was groundless.

Nevertheless, the CCAC discovered that the evidence that the charge of "refusal to take passenger" against the complainant was based on, especially the records of the statements of the complainant, the inspector and the passenger, were not sufficient to support the DSAT's presumption. Therefore, the CCAC sent a letter to the DSAT to request it to handle the said problem properly. Finally, the DSAT accepted the

CCAC's opinion and stated that without sufficient evidence, nobody would be subject to punishment.

Therefore, the CCAC archived the case.

Case 21 – Imprudent law enforcement

A complainant told the CCAC that the taxi he/she was driving crashed with a light vehicle and suspected that the police officer who went to handle the accident had wrongly charged him/her with violation of Paragraphs 1 and 3 of Article 34 of the *Road Traffic Code*.

Based on the information collected from the Public Security Police Force (PSP), there was a road sign of give way set on the transaction where the two cars crashed. The complainant did not follow the road sign and thus obstructed the traffic, causing the accident. The police officer charged the complainant with violation of the *Road Traffic Code*. As the complainant did not provide any counter-evidence, there was no apparent illegality or misconduct. Therefore, the complaint was archived.

Later, the complainant told the CCAC that when viewing the PSP's written plea and relevant information, he/she found a discrepancy between the site illustration made by the police officer who went to the site to handle the case and the photo: there was a difference of 5 to 6 metres recorded in the two documents which showed the location of the two cars after the crash. The CCAC confirmed that what the complainant said was true after comparing the said information provided by the PSP and then notified the PSP of the situation.

Since the illustration describing the traffic accident made by the police officer was not the only basis for the charge against the complainant, the said "discrepancy" pointed out by the complainant was not sufficient to prove that the charge was wrong. At the same time, the PSP replied to the CCAC that it had adopted measures to follow up the issue about the discrepancy pointed out by the CCAC. The CCAC has no need to follow up the case and thus archived the case.

Later, the complainant went to the CCAC to request for a written apology by the police officer who made the illustration. Since the CCAC did not have the power to make this order, the complainant had to make the request to the PSP or the Security Forces Discipline Committee. Therefore, the CCAC kept the case archived.

Case 22 - Problem on calculating household income for purposes of access to social housing

A complaint was lodged to the CCAC concerning a man who had made two fake marriages with residents of Mainland China, in order to assist the latter to acquire the Macao identity card. The case was referred to the Judiciary Police for follow-up since it falls in the scope of competence of the entity.

Besides, the complainant claimed that a woman has given false declarations of her husband being unemployed so that she can obtain the approval of renting the social housing. In fact, her husband does business in Hainan Province with a monthly income of some RMB100,000. This case was referred to the Housing Bureau for handling. After follow-up, the Housing Bureau stated in the reply that it was found that the husband of the woman was recruited by an employer in Mainland China to work in the area of aquaculture in Hainan Province since January 2010, with a monthly salary of RMB4,500. The Housing Bureau has already adjusted the rent of the social housing concerned in accordance with the law. However, there is no evidence with regards to the woman falsely declared that her husband is unemployed.

During the follow-up of the case above, the CCAC learned that the Housing Bureau has included certain government grants in the calculation of the monthly income of the families of social housing. Moreover, given the lack of legal knowledge and the lack of an active role on the part of tenants of social housing, the Housing Bureau has adopted a less strict policy against those who failed to report their incomes or the change of number of members of the family within the deadline. However, in the promotion materials of the Housing Bureau, it is not pointed out that what sorts of government grants will be included in the calculation of the income of the families nor the possible negative consequences such as the imposition of fines as a result of failure of reporting the relevant changes within the deadline in accordance with the law.

Given that if the Housing Bureau includes the related subsidies in the income of the families may result in an adjustment of rent, or even a termination of the lease of social housing if the income of the family exceeds the income limits set by law. For new applications or those who are on the waiting list for the allocation of social housing, they may eventually be excluded from the list due to the income exceeds the income limits set as a requirement for the social housing. On the other hand, it was not found in any document published by the Housing Bureau that indicates explicitly the legal consequences caused by the failure of declaration within the deadline, in

other words, the tenants are not adequately informed about the importance of fulfiling this statutory duty. Thus, the CCAC suggested in writing that the Housing Bureau to integrate this information in their promotional materials to better facilitate the implementation of the new legislation as well as to avoid unnecessary problems. The Housing Bureau replied by letter that it accepted the suggestions given by the CCAC.

For these reasons, the CCAC archived the case.

Case 23 – Form of notification for retired public servants

A retired fireman lodged a complaint to the CCAC, claiming that he/she intended to sign up for the dinner activity organized by the Fire Services Bureau Welfare Association that would run for three consecutive days. The complainant was unable to sign up since the quota was filled and the staff member of the Association stated that there would be further notification in case there was additional session. Later on, the complainant made phone inquiries since he/she failed to receive more information about the activity and was informed that the quota for additional sessions were also filled, therefore no further notification was made. The complainant immediately queried that the activity was a backroom deal and claimed that he/she would file a complaint to the CCAC. After requesting instructions from the superior, the staff expressed that the complainant could select the preferred date and indicate the number of participants. The complainant questioned about the existence of "internal reservation" in this event and the absence of established rules by the Association.

After referral of the case, the organizer stated in the reply that all entries needed to be made in person or through other members and stressed that there was no "internal reservation". Since there were cancellation of tickets, the organizer was able to arrange substitutions by those who failed to sign up earlier, in addition to the decision of having extra sessions, therefore, the complainant was allowed to choose the day of the dinner and indicate the number of participants. On the issue of the complainant has been informed that the additional sessions were also filled up, the organizer clarified that the staff who answered the call was not the one in charge of the "reservation" of the activity, as a result, the staff did not have a clear understanding of the actual situation. The issue was merely due to a misunderstanding among staff members, for these reasons, the organizer already instructed the related staff to handle similar situations with care in the future.

Moreover, according to the information provided by the organizer, besides posting notices to disseminate the information of the activity involved, "internal notification" of the Fire Services Bureau was sent to existing firemen and phone calls were made to retired firemen to inform them about the news. However, the organizer did not make any notification to the retired firemen with regards to the additional sessions of the said activity. The information also showed that the records of phone calls notifying the retired firemen made by the staff of the organizer were made in a relatively "rough and crude" way by pencil, which could hardly serve as evidence and easily lead to disputes in the future. Based on the above, the CCAC sent a letter to the organizer of the activity requesting the organizer to pay attention to the situation and the case was archived.

Case 24 – Can frontline public servants refuse to accept documents?

A public servant of the Cultural Affairs Bureau lodged a complaint to the CCAC on 6th and 7th September 2011, claiming that the Department where he/she serves, especially the Chief of the General Collections and Macao Sector, refused to accept a number of documents he/she intended to submit, including the application form for absence and holidays, explanation of tardiness / absenteeism, medical certificates and statements of medical consultation.

After analysing the facts, the CCAC has reached the following conclusions: it was found that certain staff members of the Cultural Affairs Bureau, particularly the respective Chief of Sector, did refuse to accept the above mentioned applications, and such refusal violates the stipulations of Article 57 of the *Code of Administrative Procedure* concerning the initiation of administrative procedures and Decree Law no. 5/98/M of 2nd February (Not allowing to use inappropriate carrier for carrying documents of any nature as basis to refuse the acceptance or processing of such documents).

Besides, the CCAC found that the said Chief not only refused to accept these documents, resulting in the complainant's failure to abide by the period stipulated by the *Statute of Personnel of the Public Administration of Macao*, but also took advantage of the situation that the complainant did not comply with the preceding paragraph and reported to the Department with the intent to impair the rights of the complainant. Thus, the behaviour of the Chief was suspected of constituting acts of disciplinary offence for breaching the general obligation and special obligation he/she should abide by, especially the obligation of zeal, the obligation of impartiality

and the obligation to treat the subordinates in accordance with legality and in a just manner as stipulated in the *Statute of Personnel of the Public Administration of Macao*.

Through looking into the case, it was also found that there were certain inadequacies in the notifications submitted by the complainant, because the complainant did not make any indications in regards to the reason of absence or the way of compensation for the absence. In this regard, the Department concerned showed certain passivity and did not inform the complainant about the existence of inadequacy in the contents of the application to allow timely rectification to be made. As a result, the complainant needed to bear the responsibility caused by unjustified absence.

Given the above, the CCAC made the following suggestions to the Cultural Affairs Bureau:

1) According to the stipulations of Article 57 of the *Code of Administrative Procedure* and Paragraph 3 of Article 24 of Decree Law no. 5/98/M of 2nd February, the Cultural Affairs Bureau cannot refuse to accept or handle documents that are submitted by individuals, including its own staff members.

2) Further investigation on the Chief of Sector who refused to accept documents should be commenced to examine whether he/she has violated the general obligations or special obligations. If it is true, the Cultural Affairs Bureau should take the necessary measures to pursue his/her disciplinary responsibility.

3) In the future, the Cultural Affairs Bureau should adopt a more proactive attitude and alert the applicants immediately if deficiencies are found in the notification or application received, so that the applicants can make timely rectifications to avoid any possible damage that may arise.

The Cultural Affairs Bureau has accepted suggestions 1) and 3).

As for suggestion 2), the Cultural Affairs Bureau responded that:

1) The documents submitted by the complainant on 9th and 10th September 2010 were handled in accordance with the law and the rights of the

complainant were not impaired, thus the alleged overdue situation is not valid;

2) The opinions made by the Chief of Sector on various applications of the complainant had no binding effect since the competence to accept explanation of absence belongs to the Head of Administrative and Financial Division;

3) The Chief of Sector has made notifications in accordance with the order of the superior due to the fact that the two notifications made earlier were not successful (29th June 2010 and 6th July 2010).

Lastly, the Cultural Affairs Bureau asserted that explicit instructions were given to the Chief of Sector and other related staff members. In any case in the future, they should immediately accept the applications submitted by staff members. The same instruction was also sent to other subsidiary units of the Cultural Affairs Bureau.

Since no other matters needed follow-up, the CCAC archived the case.

Case 25 – How should public entities address the rights and obligations of contracts?

A "guest musician" who participated in the rehearsals and performances for the Macao Orchestra of the Cultural Affairs Bureau for three weeks lodged a complaint concerning the remuneration for the third week to the CCAC. The complainant claimed that the Cultural Affairs Bureau has deducted XXX Euros for having the complainant to practice one time less than originally scheduled. According to the complainant, the weekly remuneration XXX Euros is stated in the contract and is calculated by day. Moreover, the shortage of one practice by the complainant was only in accordance with the instruction of the Cultural Affairs Bureau. Thus, the complainant considered that the his/her remuneration should not be deducted, even if the remuneration was calculated by the number of practices performed, the deduction should only be XXX Euros according to the market price currently offered in Macao.

After analysing the information provided by the Cultural Affairs Bureau and the statement given by staff A who handled the matter, it indicated that the Cultural Affairs Bureau and the complainant had reached an agreement regarding the total amount of remuneration for the rehearsals and performances (However, no agreement

was set that the remuneration is calculated by day. Besides, staff A claimed that during the time that he/she representing the Department to finalize the terms with the complainant, the two parties have reached a verbal agreement of calculating the payment of rehearsals by MOPXXX per section). With regards to the adjustment of rehearsal arrangement afterwards that could possibly increase or decrease the number of sections of rehearsals originally scheduled, no prior agreement was made between the two parties on the method of calculation of the respective remuneration. (Is it necessary to make certain adjustment? Or the complainant should receive the original remuneration?) However, according to staff A, when the Cultural Affairs Bureau decided to cancel two sections of rehearsals on the third week (the rehearsal of that week have not yet started at that time), he/she has already explained to the complainant that the Cultural Affairs Bureau would deduct the amount of two sections of rehearsals and one day transportation allowance from the overall remuneration, meanwhile, the complainant would be compensated with one daily allowance for non-rehearsal day. The complainant agreed with the arrangement of the Cultural Affairs Bureau at that time and signed a declaration.

Based on the content of the above described declaration alone, it is not sufficient enough to conclude that the complainant was fully acknowledged the reasons for deducting his/her remuneration by the Cultural Affairs Bureau at the time of signing. Besides, according to the account of the complainant, he/she has not admitted that he/she knew in advance the reasons for deducting the remuneration and the respective arrangements made by the Cultural Affairs Bureau. Nevertheless, taking into account that the case involved a verbal dialogue between the staff of the Bureau and the complainant, under the situation that there is no way to determine who was right and who was wrong, the CCAC has no ground to deem that the decision of the Bureau is in breach of the contract. If the complainant considered that the Cultural Affairs Bureau did not make clear explanation beforehand, or did not agree with the Bureau in deducting his/her remuneration, he/she has the rights to safeguard his/her legitimate rights and interests through legal proceedings.

The key that trigger the dispute in this case is mainly due to the lack of prior written agreement between the Cultural Affairs Bureau and the visiting musician in respect of certain matters concerning the rights and obligations of both sides. In order to prevent similar complaints from happening in the future that might even recourse to litigation, the CCAC has sent a letter to the department to carry out improvements in this area.

Since no evidence of administrative illegality or irregularity is found against the Cultural Affairs Bureau, the CCAC archived the case.