PART III

OMBUDSMAN

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I. Introduction

On the ombudsman front, the CCAC received a total of 567 cases of complaints and reports in 2014, of which a majority was about legal systems governing public services, management and law-enforcement of public security force and municipal affairs. Moreover, there were 572 requests for help and consultation, a slight increase compared with 2013.

With regard to complaints and reports, the CCAC mainly reviewed the legality and rationality of administrative work conducted by public departments. When they are found involving administrative illegality or irregularity, the CCAC will urge them to ratify. Moreover, depending on the characteristics of each case, the CCAC will analyse, follow-up the case and conduct a thorough and in-depth review of the external services and internal operation of the department concerned. If necessary, the CCAC will render improvement suggestions to the department, with the aims to enhance its service quality and work efficiency, ensuring that it observes the law when carrying out its duties and enhancing its awareness of probity, thus protecting the legal rights and interests of the citizens.

In addition, for the purpose to continuously boosting the capacity of staff to handle administrative complaints, the CCAC kept giving them a variety of training courses in 2014, which included sending staff to attend the supervision training courses at China Academy of Discipline Inspection and Supervision to learn about the discipline inspection and administrative supervision system of the Chinese mainland, its latest development and work experience etc.

II. Cases of administrative complaints and requests for help and consultation

The CCAC received 567 administrative complaints in 2014. See the following for the issues and number of cases involved:

Issues		Caseload
Legal systems governing public services		
▪ Internal management	52	167
▪ Personnel rights and interests	46	
▪ Discipline	38	
▪ Recruitment	31	
Labour affairs		
▪ Labour dispute	12	19
▪ Illegal labour	6	
▪ Non-resident labour	1	
Land and public works		
▪ Illegal constructions	25	37
▪ Regulation on usage of property	3	
▪ Construction license and check	7	
▪ Others	2	
Municipal affairs		
▪ Environmental hygiene	15	43
▪ Occupation of public land	13	
▪ Municipal licenses	6	
▪ Vendors	4	
▪ Public facilities	4	
▪ Others	1	
Traffic affairs		
▪ Traffic planning	17	36
▪ Vehicles / driving licenses	13	
▪ Public transportation	6	

Public procurement		9
Management and law-enforcement of public security force		54
Education		8
Health care		31
Government subsidies		15
Supervision on public utilities		9
Birth / property registration		5
Sports		6
Social housing / economic housing		13
Noise		8
Tax affairs		4
Financial regulation		5
Import / export licenses		3
Postal services		4
Personal privacy		11
Social aids / protection		16
Leakage on premises		4
Identification		5
Consumer rights and interests		2
Irregularities in other administrative procedures		30
Beyond the competence of the CCAC ▪ Criminal cases ▪ Judicial affairs ▪ Private law issues / personal disputes	 4 5 14	23
Total		**567**

Regarding requests for help and consultation, of the 572 cases received by the CCAC in 2014, a majority was about legal system governing public services, management and law-enforcement of public security force, health care, public procurement and municipal affairs, etc. There was a slight increase in the cases involving legal systems governing public services, land and public works and public procurement. See the following for the issues and number of cases involved:

Issues		Caseload
Legal systems governing public services		
▪ Personnel rights and interests	49	141
▪ Public servant's obligations	39	
▪ Discipline	21	
▪ Internal management	18	
▪ Recruitment	14	
Land and public works		
▪ Illegal constructions	15	18
▪ Supervision on use of properties	3	
Labour affairs		
▪ Labour dispute	21	24
▪ Illegal labour	2	
▪ Non-resident labour	1	
Traffic affairs		
▪ Public transportation	9	14
▪ Vehicles / driving licenses	5	
Municipal affairs		
▪ Environmental hygiene	12	26
▪ Occupation of public land	7	
▪ Municipal licenses	4	
▪ Vendors	2	
▪ Others	1	

Management and law-enforcement of public security forces		35
Tax affairs		11
Code of conduct		37
Public procurement		19
Social housing / economic housing		14
Health care		11
Supervision on public utilities		7
Social aids / protection		5
Personal privacy		8
Financial regulation		6
Government subsidies		8
Education		11
Property management		6
Subsidy grant to associations / supervision		5
Wealth Partaking Scheme		4
Illegal accommodation		3
Gaming supervision		2
Postal services		2
Noise		2
Competence and function of the CCAC / consultation of law		40
Irregularities in other administrative procedures		18
Beyond the competence of the CCAC ▪ Criminal cases ▪ Judicial affairs ▪ Private law issues / personal disputes	 42 21 32	95
Total		**572**

III. Summaries of some ombudsman cases

In order to enable the public to know how the complaints in the area of ombudsmanship were handled in 2014, a number of cases which are closely related to citizen's daily life have been chosen for analysis in this part. The aims are to enhance the sensitivity of the departments in handling similar cases and to improve their awareness of probity and law-abidingness, thus urging the departments to observe the law and enabling the public to learn about the stipulation of the law through relevant cases to protect their own legal rights and interests.

Case 1 – Malpractices in open recruitment

The CCAC received a complaint in January 2014 claiming that the Macao Monetary Authority (hereafter the AMCM) failed to indicate the assessment criteria and grading ratio in the notices of a number of recruitments in 2013 and was suspected of violating the law.

Regarding the relevant recruitments, after analysing the information provided by the AMCM, the CCAC found certain administrative illegalities and malpractices.

First, the provisions contained in Subparagraphs d), f) and h) of Paragraph 2 of Article 4 of the *Recruitment Regulations* of the AMCM were not included in the recruitment notices of the cases involved, that is, "the weighted value adopted if there is any" (i.e., the rating scale), "the scope of exam", "the reference materials that candidates could use", "the composition of jury" and "the location to consult the provisional and final lists of candidates". With the lack of the elements defined in the above provisions of the *Recruitment Regulations* in the recruitment notices, there was violation of law which constituted flaws that could result in the revocability of the relevant recruitment procedure.

In addition, the rule stating "only those who pass the resume evaluation may proceed to the written exam and interview" was set out in the notices of the open

recruitments concerned. In this regard, the CCAC considered that according to the stipulations in Paragraph 2 of Article 13 and Paragraph 3 of Article 17 of the *Recruitment Regulations*, the recruitments that adopt the method of assessment should mainly use knowledge examination as the selection method; the evaluation of curriculum vitae could only serve as a complementary selection method. Even if the AMCM uses the curriculum vitae as a complementary selection method, its share of scoring proportion cannot be higher than the proportion of the knowledge examination. More so, the AMCM should not use a complementary selection method (such as curriculum vitae evaluation) to exclude candidates from taking part in the knowledge examination, otherwise, it is to put the cart in front of the horse.

Therefore, it is obvious that the above rule of "only those who pass the resume evaluation may proceed to the written exam and interview" defined in the recruitment notices is in contradiction with the provisions of Paragraph 2 of Article 13 and Paragraph 3 of Article 17 of the *Recruitment Regulations*.

On the other hand, whether it is legal opinion or jurisprudence, it is believed that the jury should pre-determine and announce the rating ratio and the specific scoring criteria of the various selection methods throughout the recruitment procedures before they have knowledge of the identity and curriculum vitae of the candidates.

However, in the recruitments involved, the information indicates that the jury only modified and announced the rating ratio and the specific scoring criteria of the various selection methods throughout the recruitment procedures after knowing the identity and curriculum vitae of the candidates. Objectively, such act is reasonable enough for the jury to be suspected of "tailor-making" rating ratio and criteria for certain candidates, damaging the impartial and fair image of the Administration.

In this sense, the above acts of the jury already violated the "principle of fairness" stipulated in Article 7 of the *Code of Administrative Procedure*, resulting in the revocability of the relevant recruitment procedures due to the existence of the flaw of violating the law.

Given the several administrative illegalities and irregularities in a number of recruitment cases involved, the CCAC recommended the AMCM to immediately terminate such recruitments. The AMCM accepted the recommendations of the CCAC and abolished the relevant recruitments in accordance with the law, as well as carried out new recruitment procedures for the respective posts.

Therefore, the CCAC archived the case.

Case 2 – Problems concerning the programmes arrangement of the parade during the Macau Grand Prix

In March 2014, the CCAC received a complaint involving a member of the Macau Grand Prix Committee (CGPM) who was the proprietor of a car shop and was also responsible for the event of classic motorcycle parade during the 60th Macau Grand Prix. According to the complaint, the said committee member originally intended to only dispatch motorcycles of a certain brand franchised to his/her car shop to participate in the parade. He/she contacted seven other motorcycle associations to participate in the parade only after the respective event was made known. The complainant did not know whether those associations had received any payment for participating in the motorcycle parade, but questioned the CGPM's arrangement for only contacting some specific associations.

After making an inquiry to the CGPM, the CCAC found that when organising the event of the Macau Grand Prix, an association took the initiative and submitted a written proposal of conducting a classic motorcycle parade during the event. The CGPM accepted the proposal and announced the said activity through a press conference. Later on, seven other associations also made the application to take part in the parade. After coordination with other relevant public departments, the CGPM approved the application of a total of 168 motocycles to participate in the parade. Besides, the CGPM also pointed out that the classic motorcycle parade was an event specially included in the programme of activities of the Macau Grand Prix and the organisation of activities during the Grand Prix shall be coordinated with other

relevant public services such as the Transport Bureau and the Public Security Police Force and the parade could be cancelled at any time during the period of the Grand Prix, therefore, the CGPM was unable to contact all local motorcycle associations to participate in the said event.

Based on the information provided by the CGPM and the analysis made by the CCAC, the complainant's allegations against the CGPM could not be verified, especially the accusation that the CGPM contacted individual associations on its own initiative to participate in the motorcycle parade and neglected other associations.

Furthermore, it is necessary to note that the classic motorcycle parade was held at the will of the relevant associations and individuals, so the Administration did not need to pay any remuneration or allowance. Nevertheless, since the Grand Prix is not only an international sports event but also a signature event in promoting the tourism industry in Macao over the years, the associations participated in the motorcycle parade would gain great local and international exposure, which is equivalent to free advertising by which they would be benefited. In this regard, the CGPM, as a public entity, should abide by legality, impartiality and transparency in the exercise of duties, especially in the selection of associations to participate in the motorcycle parade, and to act in accordance with the general principles of administrative activity under the *Code of Administrative Procedure*.

Despite the reasons claimed by the CGPM of failing to timely set the criteria for the selection of the associations participating in the parade (let it be that it was the eight associations who proposed their participation in the said parade), considering the benefits potentially brought by the relevant activity, the CGPM should not unilaterally allow the eight associations to participate in the parade without offering the same opportunity to the other local motorcycle associations.

In view of the lack of time claimed by the CGPM, the CCAC considered that the Committee should adopt a more transparent and fair way, such as drawing lots for the selection, and should make announcement appropriately in advance.

For these reasons, the CCAC issued recommendation to the CGPM, so that the Committee could comply with the provisions and general principles of the *Code of Administrative Procedure* in organising events in the future.

Finally, the CGPM accepted the recommendation and the CCAC archived the case.

Case 3 – Lack of legal basis for charging and fining traffic violation

In March 2014, the CCAC received a complaint in which the complainant claimed that he/she had parked his/her vehicle in a metered parking space and paid the meter fees. However, a police officer of the Public Security Police Force (PSP) issued a ticket for parking at "no parking" sign area. The complainant had expressed his/her dissatisfaction to the police officer at the scene but the latter replied that there was no sign nearby indicating that parking was allowed. Thus, the complainant raised his/her dissatisfaction to the Traffic Department of the PSP, where the police officer handling the complaint answered that there was indeed no sign allowing parking at the location and considered that nothing was wrong with the law enforcement carried out by the police officer. In this regard, the complainant believed that since there are metered parking spaces set at the location, it is understandable that vehicles are allowed to park there after paying the meter fees. However, the police issued a ticket based on the absence of parking sign, therefore, the complainant doubted over the rationale for punishment.

The CCAC made an inquiry to the PSP and obtained a reply stating that there is a "no parking" sign and two parking meter posts at the location concerned, but because the law does not stipulate the effect of the parking meter post, it could not be deemed as equivalent to a parking sign or symbol. As a result, the complainant was ticketed for "parking at no parking sign area" in accordance to the provisions of the *Road Traffic Act* and other relevant laws and regulations.

The CCAC personnel conducted a site inspection and found that there was indeed a "no parking" sign near the parking meter posts at the location concerned with yellow line painted on the street below the sign, but the yellow line was extended and ended at the left side of the metered parking space. In this regard, it seemed to the CCAC that when setting up the "no parking" sign at that location, the authority did not intend to include the two metered parking spaces in the range of effectiveness of the "no parking" sign. After verifying with the Transport Bureau, it was confirmed that the range of effectiveness of the above-mentioned "no parking" sign did not include the two metered parking spaces.

After analysis, the CCAC considered that since the authority, when setting up the "no parking" sign and the yellow line, had not included the area of the metered parking spaces concerned, when the complainant paid the meter fees and parked at the said parking space, it could not be deemed as parking inside the "no parking" area and thus violated the stipulations of the *Road Traffic Act*. It lacked legal basis for the PSP to charge the complainant for "parking at no parking sign area". For this reason, the CCAC informed the PSP about the above-mentioned situation and the latter replied that it had already carried out the procedures to refund the complainant.

Lastly, since the department concerned had accepted the relevant stance and suggestions, the CCAC archived the case.

Case 4 – User of realtor services should be considered "consumer"

A complainant made a complaint to the CCAC in July 2014, claiming that the Consumer Council did not regard the user of realtor services as a "consumer" under Article 2 of Law no. 12/88/M of 13th June (*Consumer Protection*).

The complainant had appointed a real estate agency to handle the leasing of his/her parking space. Later, as a disagreement arose between them, he/she lodged a complaint to the Consumer Council.

However, as the Consumer Council did not regard the complainant as a "consumer" as defined in Article 2 of Law no. 12/88/M of 13th June, the case was considered not pursuable.

In a reply to the CCAC, the Consumer Council pointed out that Law no. 12/88/M of 13th June aims to protect a consumer's fundamental rights (Article 3), adding that the provision stating "*services for his/her private use*" in Article 2 is to protect the rights and interests of a consumer who spends in order to sustain his/her daily life.

The Consumer Council also pointed out that, according to some scholars from the Chinese mainland, one of the criteria to judge if someone spends to sustain his/her daily life is to see if the act aims for "profit gaining". Obviously, one who spends with the intention to gain profits cannot be considered a "consumer".

According to the Consumer Council, the ultimate goal of the complainant to acquire the realtor services was to make a profit from the leasing of his/her parking space, which means the act should not be associated with "spending in order to sustain the daily life". Holding that the complainant was not a "consumer" defined in the said law, the Consumer Council considered the case not pursuable.

After analysing the case, the CCAC found that the definition of "consumer" under Article 2 of Law no. 12/88/M of 13th June is quite different from that of Article 2 of *Law of the People's Republic of China on Protection of Consumer Rights and Interests*, particularly because Law no. 12/88/M only stresses that the goods and services are intended "for private use".

In fact, before the entry into effect of Law no. 12/88/M of 13th June in Macao, Portugal's Law no. 29/81 of 22nd August (*Consumer Protection*) was already in force. The definition of consumer in Article 2 of Law no. 29/81 is exactly the same as that of Law no. 12/88/M.

It is evident that something "for private use" should not be for commercial or professional purposes. In this case, the complainant did not have the status of a commercial entrepreneur and thus his/her paying for a real estate agent to handle the leasing of the parking space should not be considered an act done in the exercise of a commercial activity.

It is noteworthy that Law no. 24/96 of 31st July that has revoked Law no. 29/81 of 22nd August (*Consumer Protection*) in Portugal expressly defines "consumer" as a person who is provided with goods or services for "non-professional purposes".

It is undeniable that the complainant aimed to, through acquiring the realtor services, obtain certain monthly income (rents) by leasing his/her parking space. Nevertheless, it is also true that citizens ususally buy goods or services because they have the needs or they can "benefit" from them. In other countries or regions, such as in Hong Kong, it has never happened that service buyers are not considered "consumers" on the grounds that they benefit from what they buy.

Besides, if we judge whether or not someone is a consumer based on whether or not he/she gains pecuniary interests from buying realtor services, there will only be more problems and questions. Suppose a citizen sells a condominium unit through a real estate agency and receives a certain amount of money (from the sale of the unit). In this case, does the Consumer Council have to, before determining whether or not the citizen falls within the definition of "consumer", verify that the current selling price of the unit is lower than the price when it was purchased?

Finally, the legislator of Law no. 16/2012 (*Activity of Real Estate Law*), in the explanatory memorandum, has stated clearly that the legislative intent is to protect the "rights and interests of consumers". This means that the legislator considers, in the context of this law, those who acquire the realtor services as "consumers".

After the CCAC presented its analysis and the position, the Consumer Council accepted the opinion of the CCAC and pledged to take necessary follow-up action.

The CCAC archived the case after corrective measures were taken.

Case 5 – The concerned department should initiate disciplinary procedures according to law

In September 2013, the CCAC received a complaint against A, a doctor of the Hospital Conde S. Januário, who prescribed wrong antibiotics to the daughter of the complainant, and B, a pharmacist, who was unaware of the prescribing fault and dispensed the said wrong medication, which resulted in medical malpractice.

After the intervention of the CCAC, the Health Bureau (SSM) reported having started the inquiry procedure following the medical incident and concluded that the doctor A did make the fault prescription and the pharmacist B did dispense the wrongly prescribed drugs. Nevertheless, as no evidence of commission of any disciplinary offence was found, the Director of the SSM decided to file the inquiry procedure in November 2013.

After analysis, the CCAC believed that, according to Paragraph 2 of Article 357 of the *Statute of Personnel of the Public Administration of Macao* (hereinafter the *Statute*), "*The inquiry procedure is a summary investigation process to detect any faults or irregularities in services in order to facilitate the carrying out of a necessary disciplinary proceeding or investigation.*" Also, Article 281 of the *Statute* provides that "*A disciplinary offence is a wrongful fact committed by a public servant or a staff in violation of any of the general or special obligations with which his/her position is associated.*"

According to Article 11 of Law no. 10/2010 (*Medical Career Regime*), doctors are obliged to, among others, "*practice their profession with respect for the right to health protection of patients and the community*" and "*perform their duties with zeal and diligence*".

In addition, Paragraph 4 of Article 279 of the *Statute* provides that "*The duty of zeal is to perform their duties with efficiency and commitment and, in particular, know the laws and regulations and the instructions of their superiors; it also necessitates the possessing and improving of their technical knowledge and working methods*."

In this case, the fact that the doctor A prescribed wrong medication allegedly violated the obligations prescribed in the *Medical Career Regime* and the *Statute*.

Regarding the pharmacist B, he/she is also subject to the "duty of zeal" under Paragraph 4 of Article 279 of the *Statute*. In addition, according to Article 3 of Law no. 6/2010 (*Career Regime of Pharmacists and Senior Health Workers*), pharmacists are obliged to "*practice their profession with respect for the right to health protection of patients and the community*", and to "*perform their duties with zeal and diligence and carry out teamwork to ensure the continuity and quality of health care services as well as the effective coordination of all stakeholders*".

The fact that the pharmacist B dispensed the wrongly prescribed medication allegedly violated the obligations set forth in the *Career Regime of Pharmacists and Senior Health Workers* and the *Statute*.

Considering the SSM filed the inquiry procedure without carrying out any disciplinary action against the doctor A and the pharmacist B, there was administrative illegality. Therefore the CCAC sent a statement to the SSM about its position on the case.

The SSM later accepted the opinion of the CCAC and initiated the necessary disciplinary action against the doctor A and the pharmacist B. Respective penalties were also imposed on them.

Since the SSM had taken necessary measures on the incident, the CCAC archived the case.

Case 6 – Assessment process for application for purchase of economical housing flat

In April 2014, a complainant, who had been living in an economical housing flat located at Alameda da Tranquilidade with her family for two years, told the CCAC that the pre-contract agreement of the purchase of the flat was cancelled by the Housing Bureau and therefore was dissatisfied with the assessment of application for purchase of economical housing flat.

In 2002, the complainant's daughter, as the applicant, submitted the application on behalf of the family to the Housing Bureau. In October 2011, they were informed by the Bureau that they could select and purchase an economical housing flat. In December of the same year, the pre-contract agreement was signed. In January 2014, the Bureau informed them that the agreement was cancelled for the reason that one of the family members (the complainant's husband) took possession of a residential flat in Macao in 1979.

Following the CCAC's intervention, the Housing Bureau replied that after the application was received, the Bureau examined the details of the family's assets based on the data provided by the network of the Financial Services Bureau (DSF) and the Real Estate Registry. However, since the data did not indicate the Macao SAR Resident Identity Card numbers of the people involved in the relevant case in response to its enquiry, the Bureau could not timely prove that there was a member of the family who possessed a separate residential flat in Macao SAR. As a result, the Bureau arranged the family to select an economical housing flat and sign a pre-contract agreement. Subsequently, before the Housing Bureau arranged the family to enter into the purchase contract, another examination was conducted. At that time, the network of the DSF was able to show the relevant Macao SAR Resident Identity Card numbers and hence it was proved that there was a member of the family who possessed a separate residential flat in Macao SAR. Eventually, the pre-contract agreement was cancelled by the Bureau under Paragraph 4 of Article 34 of the *Law of Economical Housing*.

For the abovementioned situation, the CCAC wrote to the Housing Bureau to ask what remedial measures would be adopted to prevent the same cases from happening again. Later, the Bureau replied that starting from September 2013, the information about the applicants and their family members will be sent to the DSF in order to verify whether any of them have acquired any real properties by checking the records of payment of stamp tax. For suspicious cases, the Bureau will even request the DSF to provide the copies of declaration of transfer of assets and existing documents related to transfer so as to verify whether the relevant families are qualified.

To conclude, since the Housing Bureau had already adopted measures to improve the process of assessment of application for purchase of economical housing flat, the CCAC archived the case.

Case 7 – Consultation on civil engineering should be thorough

In February 2014, a complainant told the CCAC that the Land, Public Works and Transport Bureau (DSSOPT) and the Transport Bureau (DSAT) did not consult the residents nearby on the plan of building a footbridge over Avenida dos Jardins do Oceano to connect the Health Centre in Taipa and the residential buildings nearby. In fact, all of them opposed to the plan because they thought the existing zebra crossings were enough to meet the demand.

The CCAC found in the investigation that between October 2009 and December 2012, the DSSOPT and the DSAT held a joint press conference on transportation and introduced the footbridge construction plan to the Transport Advisory Committee and the representatives from several civil associations of residents on off-shore islands respectively, but no opposite opinions were raised at that time.

In December 2013 and January 2014, the DSSOPT and the DSAT received dissenting opinions from the administration committees of the buildings in the area that the footbridge would be built. Therefore, the two authorities held a meeting

with the committees and the property owners of the buildings to introduce the construction plan, the concept of the design, the purpose, the location, the access to the footbridge and the height and collect the dissenting opinions, so as to make proper adjustments to meet their needs. However, the attendants still opposed to the plan for the reason that the existing zebra crossings were enough for pedestrians and raised their concern about the influence on the view from the buildings.

The CCAC considered that the construction of the footbridge was directly related to the interests of the residents living at the buildings nearby. According to the principle of participation provided by Article 10 of the *Code of Administrative Procedure*, the authorities should have obtained opinions from the residents living in the relevant area by opening up consultation thoroughly before making the decision. However, they did not adopt the best method to do it.

Following the CCAC's intervention, the DSAT conducted another analysis on the construction plan and subsequently sent a letter to the DSSOPT pointing out that some of the services provided by the Health Centre in Taipa had already been taken over by the Island Emergency Station of Hospital Conde S. Januário and some would be run by the Health Centre of Nossa Senhora do Carmo to be opened in the future, causing change of pedestrians' needs as the conditions had become different from that when the plan was made. Moreover, the residents thought that the existing zebra crossings were able to effectively guarantee pedestrians' safety and there were still no solutions to the problem concerning the influence of the footbridge on the view from the surrounding buildings. Therefore, the DSAT suggested the DSSOPT waiving the plan and making the final decision based on the future development and the flow of pedestrians in the area after the completion of the Light Rapid Transit System. In fact, no signs of construction were found according to CCAC staff's site visit.

Therefore, the CCAC archived the case.

Case 8 – Level of punishment shall be justified

In September 2013, a complainant told the CCAC that he/she and his/her domestic helper was charged by the inspection staff of the Civic and Municipal Affairs Bureau (IACM) with an administrative offence because they abandoned a few wood planks next to a waste collection point in Taipa in July. However, the punishments imposed on them were different. The complainant was sentenced to a fine to be paid by instalment, while the punishment imposed on the domestic helper was suspended for six months. The complainant considered that the punishment imposed on him/her was unfair.

Under the *General Regulations Governing Public Places* and the *List of Illegal Acts*, discarding solid waste at any public place instead of designated locations or containers shall be liable for a fine of MOP600.

According to Paragraph 1 of Article 41 of the *General Regulations Governing Public Places*, the IACM has the discretion to suspend the punishment for six months to one year. Moreover, according to Paragraph 1 of Article 55 of the same law, the IACM may determine the payment of fine either in a lump sum or by instalments based on the offender's financial situation.

According to the CCAC's findings in the investigation, the IACM considered that the complainant, as the employer, was not only the actor of the discard but also instructed the domestic helper to carry out the act. The latter was only the one who followed the complainant's instruction. In this sense, the complainant's "intention" and fault were stronger and more serious than the domestic helper's. Therefore, the IACM decided to suspend the punishment imposed on the domestic helper for six months and allowed the complainant to pay the fine by instalment according to Paragraph 1 of Article 41 and Paragraph 1 of Article 55 of the *General Regulations Governing Public Places* respectively.

The CCAC believed that the spirit of the principle of equality under the *Code of Administrative Procedure* lies in the criterion of "the same treatment for the same situation while different treatments for different cases". Therefore, since the complainant's circumstances were different from his/her domestic helper's, it was not illegal or unreasonable for the IACM to impose different punishments on them.

However, the CCAC found that the reason why the complainant thought the IACM treated him/her unfairly was that neither the relevant notification nor the reply sent from the IACM to the complainant had pointed out the core reason for determining the different punishments. In order to avoid unnecessary misunderstandings in the future and ensure due effectiveness of notification, the CCAC sent a letter to the IACM to call for their attention and to urge them to adopt necessary measures for improvement.

Finally, the IACM accepted the CCAC's suggestion and therefore the case was archived.

Case 9 – Statement about the right for making objections shall be provided in notification

In September 2014, a complainant told the CCAC that his/her premise was suspected of providing illegal accommodation and that the Director of the Macau Government Tourist Office (MGTO) ordered to impound the premise and cut off the water and electricity supplies. The complainant was dissatisfied with the MGTO as it stated that it had not received the complainant's objection within the statutory period, and that constituted one of the reasons for rejecting the complainant's appeal of releasing the impounded premise. However, the authority had never mentioned in the written notification that the complainant could raise objection within the statutory period upon receipt of the notification.

After investigation, the CCAC found that the MGTO only stated in the written notification that "judicial appeal can be filed to the Administrative Court within 30

days", but failed to provide the means to lodge an administrative complaint, such as the right to raise an objection to the Secretary.

According to Paragraph 1 of Article 20 of Law no. 3/2010, *Prohibition of Providing Illegal Accommodation*, regarding the decision of the Director of the MGTO to adopt provisional measure, the complainant can directly file a judicial appeal against the decision without raising an objection or lodging a complaint. In other words, raising an objection is actually an arbitrary means to lodge an appeal. Whether the objection is raised or not will not hinder the validity of the provisional measure.

In spite of this, the act of the authority of not mentioning the means to lodge an administrative complaint in the written notification needs to be improved. Firstly, the authority failed to observe Paragraph c) of Article 70 of *Code of Administrative Procedure* which clearly stipulates the content of notification involving administrative decision shall include "*the competent department of which complaint about the act can be lodged to*". In addition, Article 146 of *Code of Administrative Procedure* states that a "complaint" shall include raising an objection and appeal. Therefore, despite judicial appeal about administrative act can be lodged directly, the relevant administrative complaint (such as objection) is arbitrary. The content about the complainant's right to raise an objection should not be omitted in the written notification.

Secondly, from the practical perspective, the authority only stated the means to lodge judicial appeal in the written notification, but residents mostly prefer administrative complaints to judicial appeal due to higher costs of the latter. Moreover, some offenders involving in "provision of illegal accommodation" are non-local residents who may not be familiar with the current laws of Macao. Therefore, based on the above circumstances, it is necessary for the authority to mention about the right to raise an objection or the means to lodge an administrative complaint against the decision in the written notification of order to adopt provisional measures.

Therefore, the CCAC sent a letter to the MGTO to express the above stances and suggestions and urged it to follow them. The authority accepted CCAC's suggestions and promised to abide by the stipulations of *Code of Administrative Procedure* to mention about the means and period of lodging an administrative complaint in the written notification of provisional measures.

Since the MGTO adopted appropriate measures to follow-up the complainant's matter, the CCAC archived the case.

Case 10 – Application of human remains placed together

In December 2013, a complainant told the CCAC that his/her father, who applied to the Civic and Municipal Affairs Bureau (IACM) for disinterment of his/her grandmother, also applied to place his/her grandmother's remains to the bone box of his/her grandfather. However, the registered person of his/her grandfather's bone box was his/her aunt such that his/her father had to submit the consent letter signed by his/her aunt in order to complete the application procedure. Therefore, the complainant requested his/her aunt to submit the consent letter to the IACM.

Later on, having not received any reply from the IACM, the complainant made an enquiry and only by then he/she realised his/her father's application was rejected but his/her aunt's was accepted. The complainant was dissatisfied because it was his/her father who first made the application and it was also his/her father who undertook the disinterment of his/her grandmother. However, the IACM approved his/her aunt's application without giving his/her father any reply.

After enquiry to the IACM, the CCAC realised that for application of placing human remains together, if the applicant is not the registered person of the bone box where the human remains are intended to be placed together, the IACM will request the applicant to submit the consent letter signed by the registered person so as to protect the right of use of the registered person of the bone box. In this case, soon after the IACM received the application of the complainant's father, it received

the application of his/her aunt. Since both the complainant's aunt and his/her father were having the same application, the concerned staff presumed that his/her aunt's application was made due to notification and request to the complainant's father by the IACM and thus combined the two applications to one application for handling. The staff thus finally only accepted the application of the complainant's aunt and notified her of the result, giving no reply to the complainant's father.

Following analysis, the CCAC thought that despite the complainant's father and his/her aunt applied for the same issue, the relevant applications were significantly different and separate. Since the complainant's father submitted his application, he has never revoked his application to the IACM or passed the application to the complainant's aunt. As a matter of fact, the complainant's father kept waiting for the reply of the IACM. The IACM should make corresponding decision and reply to each application. In the lack of understanding the whole issue, the IACM should not hastily combine the applications of both the complainant's father and his/her aunt, and even failed to notify the complainant's father of the situation.

In fact, the CCAC understood the aim of the IACM to simplify and quickly complete the relevant procedure. However, when the IACM handled the applications, not only shall it be quick and convenient, it shall also consider the particular situation of the case and pay attention to whether the handling way is appropriate and proper in order to avoid unnecessary misunderstanding and dispute.

Therefore, the CCAC sent a letter to the IACM, suggesting that in the future, if the IACM receives two identical applications for placing human remains together, despite the applicants are within first degree of consanguinity (such as brothers and sisters), the IACM shall first understand the situations before deciding how to handle the issues. Moreover, if the applicant applies to place the human remains after exhumation which is handled by other party to the bone box registered by the applicant himself/herself, the IACM shall request the applicant to submit the written consent letter by the party who undertakes the disinterment of the deceased person

or use other appropriate methods to understand the will of the party before approving the application due to the concerned party is in control of the human remains. If the concerned party refuses to do so, even if the IACM has approved the application, the human remains still cannot be placed together.

Afterwards, the IACM replied the CCAC that it will take reference from the suggestions of the CCAC and take the initiative to improve the application work for placing human remains together in order to prevent similar case from happening again.

Then the CCAC archived the case.