

PART III
OMBUDSMAN



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I. Introduction

In addition to the fight against corruption, the CCAC also performs ombudsman functions in strict accordance with its organic law and other legislation to ensure the public power is exercised lawfully. Through issuing suggestions for improvement and recommendations, it urges public departments to carry out duties in strict compliance with the law and to provide services for the residents in good faith and with efficiency while adhering to the principle of legality, aiming to enhance the fairness, efficiency and transparency of public administration. The CCAC will also, through its investigative work, examine whether the legislation applied by public departments in the course of performing duties meets the practical and development needs of the society, and it will issue suggestions for improvement when necessary.

The CCAC actively handles and follows up all the complaints and inquiries from citizens, ensures investigations are carried out in a fair and unbiased manner and carries out systematic investigation and analyses of the work procedures or operation of public departments in accordance with the law.

Last year, the CCAC placed 482 administrative cases on file and received 673 requests for consultation. The issues mainly concerned the systems related to public service positions, law enforcement of disciplined services, land and public works, municipal and traffic affairs. Obviously, although public departments have adopted certain measures to upgrade service quality and administrative efficiency in recent years, residents still tend to find public services closely related to their livelihood unsatisfactory, which necessitates more attention from the relevant departments.

When it comes to targeted investigations, the CCAC released the “Investigation report on municipal ordinances and municipal regulations” and the “Investigation report on not declaring forfeiture of 16 land concessions”. In addition to looking into and analysing the relevant facts, the reports revealed some shortcomings of the Public Administration in the course of handling the cases, such as the lack of profound understanding of the content and legality of the legislation to be applied, the lack of strict compliance with the law when performing duties, the lack of transparency of policy implementation mechanisms and practices unfavorable to public monitoring. The CCAC therefore raised suggestions for improvement in the reports.

As a government watchdog, the CCAC must strive to perform its duties and usual tasks with even greater diligence and capability so the public will have more confidence in its work. Therefore, the CCAC has aimed to, by restructuring workflow and improving manpower planning, enhance the quality and efficiency of its investigative work. It has also been proactively participating in training activities hosted by international or regional ombudsman institutions, so its personnel may understand and learn from the advanced experiences of their counterparts in handling administrative complaints and upgrade their investigation skills. By taking such measures the CCAC is dedicated to the creation of an investigation team with greater professionalism, aiming to meet the expectation of the society with greater achievements.

II. Administrative complaints and requests for consultation

In 2015, the CCAC received a total of 482 administrative complaints. The statistical data are presented as below:

Issue	Caseload	
Systems related to public service positions		
▪ Internal management	44	160
▪ Rights and interests of personnel	43	
▪ Discipline	40	
▪ Personnel recruitment	33	
Municipal affairs		
▪ Environmental hygiene	12	33
▪ Public facilities	8	
▪ Occupation of public land	7	
▪ Administrative licences	3	
▪ Hawkers	2	
▪ Others	1	
Land and public works		
▪ Illegal construction	20	37
▪ Monitoring of property use	6	
▪ Land concession	4	
▪ Licensing and acceptance inspection	1	
▪ Others	6	
Traffic affairs		
▪ Public transportation	10	23
▪ Traffic planning	8	
▪ Vehicles / Driving licences	5	
Labour affairs		
▪ Labour dispute	15	17
▪ Non-resident employees	2	
Public procurement		3
Disciplined services management and their law enforcement		56

Health care		14
Noise		13
Economical / Social housing		11
Education		10
Social assistance / security		9
Government subsidy		6
Water seepage from premises		6
Building management		6
Identification documents		4
Tourism and culture		4
Gaming supervision		4
Consumer rights		3
Sports		3
Tax		3
Postal services		3
Public service monitoring		2
Other irregular procedures		29
Matters beyond the competence of CCAC		
▪ Criminal matters	11	23
▪ Judicial matters	6	
▪ Private law issues / Personal disputes	6	
Total		482

In 2015, the CCAC received 673 requests for consultation. The statistical data are presented as below:

Issue	Caseload	
Systems related to public service positions		
▪ Rights and interests of personnel	46	
▪ Discipline	45	144
▪ Internal management	33	
▪ Obligations of public service positions	12	
▪ Personnel recruitment	8	
Professional ethics and conduct		33
Disciplined services management and their law enforcement		77
Municipal affairs		
▪ Environmental hygiene	16	
▪ Occupation of public land	10	
▪ Administrative licences	8	47
▪ Hawkers	4	
▪ Public facilities	2	
▪ Others	7	
Labour affairs		
▪ Labour dispute	22	
▪ Non-resident employees	4	28
▪ Illegal labour	2	
Public procurement		15
Land and public works		
▪ Illegal construction	21	
▪ Acceptance inspections	2	28
▪ Monitoring of property use	1	
▪ Others	4	
Traffic affairs		
▪ Public transportation	22	
▪ Vehicles/driving licences	8	32
▪ Traffic planning	2	

Economical / Social housing		19
Health care		19
Tax		8
Noise		8
Education		7
Government subsidy		7
Public service monitoring		7
Financial regulation		6
Water seepage from premises		6
Social assistance / security		5
Building management		4
Identification documents		4
Consumer rights		4
Personal privacy		3
Illegal accommodation		2
Sports		2
Competence and function of CCAC / Legislation		21
Other irregular procedures		24
Matters beyond the competence of CCAC		
▪ Criminal matters	35	113
▪ Judicial matters	29	
▪ Private law issues / Personal disputes	49	
Total		673

III. Investigation

In 2015, the CCAC published two investigation reports, namely the “Investigation report on municipal ordinances and municipal regulations” and the “Investigation report on not declaring forfeiture of 16 land concessions”. The two investigation reports analysed the validity and applicability of the municipal ordinances and municipal regulations, and the legality and appropriateness of the handling processes of the administrative authority concerning the disposal of “idled land” and the decision made concerning such condition respectively. In the reports, the CCAC revealed the problems detected in the cases and made some suggestions for improvement.

In the “Investigation report on municipal ordinances and municipal regulations”, the CCAC found that the Transport Bureau continued to apply the expired *Regulation of Use of the Centre for Driving Lessons and Exams* in the management of the Centre for Driving Lessons and Exams and made decisions of fines under the Regulation. Such acts violated the “principle of legality” that must be met by administrative authorities. Moreover, since the above-mentioned regulation was a municipal ordinance promulgated by the former Macao Municipal Council, the CCAC also examined in the investigation the municipal ordinances and municipal regulations that are still in force and found that some of these municipal ordinances and regulations are already outdated, and there are even occurrences of contradictory situations between reality and the normative content. Thus, the CCAC made relevant suggestions to the competent department for improvement, such as the return of collected fines that were imposed under the expired *Regulation of Use of the Centre for Driving Lessons and Exams*, the formulation of a new set of normative rules for the management and use of the Centre for Driving Lessons and Exams as soon as possible, the revision, according to actual situations, of municipal ordinances and regulations that are out of touch with reality without further delay, as well as the undertaking of a comprehensive clean-up and rectification of the relevant ordinances and regulations.

In the “Investigation report on not declaring forfeiture of 16 land concessions”, the CCAC, following an analysis on the process of the Public Administration’s handling of “idled land” cases and the decision not to proclaim forfeiture of the concessions of 16 plots of land, considered that the *Land Law* does not expressly define under what circumstances the fines should be imposed or the declaration of forfeiture of a concession should be made. Therefore, the Public Administration has the power to decide, according to the technical and legal analyses conducted by the relevant services, whether or not to declare forfeiture of the concessions of plots. As to the grounds or concerns for not declaring forfeiture of the 16 land concessions, it is at the Public Administration’s discretion. In this sense, the CCAC does not have the legal competence, resources and techniques to judge whether or not the decisions are the most appropriate.

However, in the course of investigation, the CCAC found that there are a few plots of land whose concessions have already expired but whose use have not yet completed, but the Public Administration failed to proclaim forfeiture of the concessions promptly. Apart from such administrative omission, the issues about the relevant legal regime and administrative procedures that should be reviewed and improved were also found. For example, the *Land Law* does not define the attributability to the concessionaire for delay of land use, the criteria for proclaiming forfeiture of concession and the announcement of order of land use period extension. The public works departments have failed to release the relevant information to public in a timely, complete and accurate manner when dealing with the “idled land” cases. Moreover, the management of land should have been more proactive, systematic, and scientific.

In relation to these problems, the CCAC rendered some suggestions to the Public Administration, including to proclaim forfeiture of the concessions of the plots whose use have not yet completed within the terms of the concessions as soon as possible, to promptly revise the relevant provisions under the *Land Law* so that the competent department can make reasonable decisions and the transparency

of decision-making will be boosted, thus reducing doubts over blackroom deals. Moreover, the competent department should establish a more scientific, systematic and precise mechanism of land management and disclose the information about the handling of “idled land” to the public in a timely and accurate manner in order to facilitate the public’s supervision.

IV. Summaries of cases

Among all its ombudsman cases handled in 2015, some are considered representative by the CCAC and are therefore presented in this report. These cases not only allow the public to better understand the work of the CCAC and the legislation currently in force, but also serve as lessons for public departments so they will avoid making similar mistakes, perform administrative duties according to law and increase their administrative effectiveness.

Case 1

A complainant filed a complaint with the CCAC in April 2015, mentioning that the Civic and Municipal Affairs Bureau (IACM) imposed a fine on him/her for illegal fishing in January 2015. According to the complainant, when being at IACM to pay the penalty in late April of 2015, he/she was informed by a staff member that he/she failed to clear it within 30 days, so the case was handed over to the Coercive Collection Bureau of the Financial Services Bureau, where he/she would have to clear the penalty. The complainant then went to the Coercive Collection Bureau, only to be told by the staff there that the relevant case information was still held by IACM so his/her penalty payment could not be accepted. The complainant immediately returned to IACM and reported the situation. Finally, after all the hassle, the IACM staff accepted the complainant’s penalty payment.

Following the CCAC’s investigation, the complainant’s account was authenticated by IACM. When the complainant went to pay the penalty at IACM,

the computer system there showed that the complainant's case had already been handed over to the Coercive Collection Bureau of the Financial Services Bureau, so the complainant was asked to clear it there. However, it turned out that the relevant case information had yet to be handed over. In reply to the CCAC's investigation, IACM promised that measures would be taken to improve their operation so that the said situation will not happen again.

Case 2

In late April 2015, the CCAC received a letter and documents about an inquiry procedure of a case from the Office of the Secretary for Social Affairs and Culture.

In March 2015, there were reports that a member of the Administrative Board of the Cultural Industries Fund allegedly did not fulfil the obligation of making necessary recusal from the process of assessment and approval of a subsidy application made by his brother and assisted him to get the subsidy. Subsequently, the Secretary for Social Affairs and Culture carried out an inquiry procedure.

In April 2015, the preliminary investigator completed the inquiry procedure and concluded that the member was not found to have violated the obligation of making recusal and influenced the process of the assessment and approval carried out by the Fund. At the same time, it was also not found that the member had induced staff members of the Fund to give favourable testimony. Therefore, the preliminary investigator suggested archiving the case and the Secretary subsequently issued an order to approve the conclusion.

However, having made the conclusion that no illegal or irregular acts had been found and the suggestion of archiving the case, the preliminary investigator also proposed referring the file of the inquiry procedure and relevant information to the CCAC for follow-up. Since the rumors that the case involved serious illegal acts was widely spread at that time, taking account into citizens' right to know and the legitimate rights of the party concerned, the CCAC immediately opened an

investigation upon the receipt of the documents from the Office.

Following an in-depth analysis on the documents provided by the Office and a necessary supplementary investigation, the CCAC also believed that there was no evidence proving that the member had committed any illegal or irregular acts in the application made by his relative and the relevant assessment and approval process. Therefore, under Article 12 of the *Organic Law of the CCAC*, the case was archived due to insufficient evidence.

After the conclusion of the CCAC's investigation was revealed, some staff members of the Fund told the media that they were under pressure when the inquiry procedure was underway. Moreover, there were allegations that the member attempted to pry into the details of the inquiry procedure through an assessor of the Office of the Secretary for Social Affairs and Culture. Therefore, the CCAC carried out another investigation into whether the inquiry procedure had been interfered and sought evidence repeatedly from some people related to the case including staff members of the Office. However, none of them was able to present any evidence to prove the accusation. Therefore, the decision to archive the case was upheld.

Case 3

In May 2014, the CCAC received a complaint from a student of the Macao Polytechnic Institute (IPM), claiming that a professor currently working in the same institution had borrowed money from the complainant but failed to pay it back. After unsuccessful request for assistance made to the IPM, the complainant filed a complaint to the CCAC.

Although the debt relationship between the complainant and the professor concerned was a private debt relationship, it was found during the handling process of the case that the aforementioned professor was one of the teachers while the complainant was the current student of the same course, when the professor borrowed money from the complainant, it was likely that he/she might become the teacher of

the complainant and there was a potential and foreseeable functional relationship between the professor and the complainant. Therefore, the fact that the professor borrowed money from the complainant in the capacity of teaching staff is evidently a conflict of interest.

The CCAC considers that the act of the professor concerned violated the provisions on the prevention of conflict of interest of the *Code of Professional Ethics and Conduct of the Macao Polytechnic Institute* and also the obligation of impartiality under Article 88 of the *Statutes of the Personnel of Macao Polytechnic Institute*. However, during the handling process of this dispute, the IPM did not initiate any disciplinary proceedings against the professor in accordance with the stipulation of the *Statutes of the Personnel of Macao Polytechnic Institute*. Upon receipt of the opinion of the CCAC, the IPM initiated disciplinary proceedings against that professor. It was indicated that the professor was punished with disciplinary sanction for violating the obligations of public servants, namely the obligation of impartiality.

Case 4

The complainant filed a complaint with the CCAC in June 2014, pointing out that he/she reported to the Housing Bureau about someone, without prior authorisation, taking in a person in his/her social housing flat but that person was not named as a household member in the lease. However, when handling the case at a later time, the Housing Bureau unduly leaked the personal information of the complainant, which made known his/her identity as the complainant having made the said report.

With the information obtained from the Bureau, the CCAC found that in spite of not having directly or expressly revealed the identity of the complainant to the person being reported against, the staff member involved did, during investigation, mention the surname and other identification information of the complainant to that person and even advised him/her to protect him/herself and not to disclose too much of his/her personal information to others.

Given the staff member's unduly leaking of the complainant's identity, the CCAC referred the incident to the Housing Bureau, and the latter already initiated disciplinary procedures against the staff member involved. However, the CCAC found some inadequacies relating to the relevant disciplinary procedures, including that the preliminary investigator failed to record in a complete way the content of the interviews with the staff involved and raise questions on certain facts. Therefore, the CCAC urged the Housing Bureau to take proper measures to handle the case. In its reply to the CCAC, the Housing Bureau stated that although the mentioned inadequacies would not affect the assessment of facts in the disciplinary procedures, it will take account of the CCAC's opinions in order to improve its disciplinary procedures in the future.

Case 5

In July 2015, a complainant filed a complaint to the CCAC, stating that he/she was not listed on the list of special allocation of funds from budget surplus 2015 of the central provident fund system by the Social Security Fund (FSS) due to the reason that the complainant stayed in Macao for less than 183 days in 2014.

After investigation, the CCAC found that there were three occasions that the complainant entered or exited the border of Macao via the immigration at the airport using his/her Macao permanent resident identity card and his/her Macao SAR passport alternatively, as a result, when the FSS checked the travel records of the complainant by the Macao permanent resident identity card, the travel records were incomplete and assumed that the complainant was not in Macao during those periods.

Meanwhile, for the purpose of lodging an objection, the complainant made an application to the Public Security Police Force (CPSP) for the issuing of certificate of travel records as a proof. However, since the complainant only provided the CPSP with the number of his/her Macao permanent resident identity card when making

the application and the CPSP only retrieved the records and issued the certificate based on the identification document contained on the application form, resulting in the failure of disclosing all the travel records in the certificate and came to the conclusion that the complainant stayed in Macao for less than 183 days in 2014.

After investigation carried out by the CCAC, it was shown that the complainant stayed in Macao for more than 183 days in 2014 and he/she could be included in the list of special allocation of funds from budget surplus in accordance with the relevant provisions. Thus, the CCAC sent a letter to notify the FSS of the findings. Subsequently, the FSS informed the CCAC that the complainant was already included in the list of allocation of funds.

Taking into account the fact that the residents of Macao can pass the border with various types of identification documents under the law, in order to prevent the incompleteness of travel records from occurring, the CPSP accepted the suggestion of the CCAC and fields were created in which applicants can fill in the type and number of various identification documents in the application form for the issuing of the certification of travel records. Furthermore, a footnote stating that “In case of failure of providing all type(s) and number(s) of document(s) used for passing the borders, it may cause the incompleteness of the records inquired” was introduced to remind the applicants.

Case 6

In August 2013, a complainant, who formed a family unit with his/her younger sister to purchase an economical housing flat in 2003, told the CCAC that he/she has not been arranged to sign the official purchase contract. Until 2013, other applicants were notified that they could proceed with making the purchase contracts. The complainant was, however, notified by the Housing Bureau that since his/her sister had become the proprietor of a private flat, it did not comply with Article 4 of Decree Law no. 13/93/M. As a result, the complainant was not approved to be issued the “Authorisation Letter” to make the contract.

After investigation, the CCAC found that the complainant signed the pre-contract agreement of economical housing flat with the Housing Bureau in January 2003 and forthwith lived in the economical housing flat. In May of the same year, the complainant, according to the requirement of the Bureau, completed the formalities of paying the stamp tax and submitted all the necessary documents for the making of purchase contract. By then, the complainant and the family member met the statutory requirements to apply for economical housing flat. However, due to some problems between the Public Administration and the developer of the economical housing flats, the complainant was unable to complete the procedure of the purchase contract.

While awaiting the making of the purchase contract, the younger sister of the complainant had a new flat for marriage under the regime of assets co-owned by spouse in 2006 and thus became the proprietor of a private flat.

The CCAC believed that since the complainant submitted all the documents required by the Public Administration for making the purchase contract in 2003 and the complainant did not do anything wrong, the Public Administration should not disappoint the reasonable anticipation of the complainant to sign the purchase contract by refusing to issue him/her the “Authorisation Letter”.

After the CCAC had repeatedly reflected its stance to the Housing Bureau and required the Bureau to handle the issue, the Bureau finally accepted the opinions of the CCAC and decided to issue the “Authorisation Letter” to the complainant for signing the purchase contract.

Case 7

In September 2014, a complainant told the CCAC that the Cultural Affairs Bureau directly granted the contracts to a certain association to provide audio description services for three cultural activities for consecutive months in 2014. The reporter suspected that the Bureau did not ask quotes from other entities which could

provide the same services.

The Cultural Affairs Bureau replied to the CCAC that it was a new attempt to provide audio description and theatrical interpretation services in the theatres and exhibition venues of Macao. The local associations were still unfamiliar with this aspect but a certain association had the experiences of providing audio description services, possessed relevant instructors and had the liaison network of the visually impaired and hearing loss associations. Due to the aforementioned reasons, the Cultural Affairs Bureau, in accordance with Decree Law no. 122/84/M, exempted on written quotations and directly granted the contracts to that association for providing the audio description services for the visually impaired and the hearing loss for three consecutive times.

Upon analysis, the CCAC believed that according to the above law, exemption on written quotations and direct granting of contract shall be made by reason only of special and irreplaceable services and the granting of the contract is beneficial to the SAR. After investigation, the CCAC found that apart from that association, there were other entities which could also provide the audio description services. Therefore, the act that the Cultural Affairs Bureau directly granted the contracts of providing audio description services to that association for three times was against Decree Law no. 122/84/M of 15th December, particularly against the stipulation of “irreplaceability”.

Thus, the CCAC wrote to the Cultural Affairs Bureau, suggesting it take the initiative to invite other entities which can provide the same services to give quotation during procurement of similar services in the future in order to ensure fair competition. The Cultural Affairs Bureau replied that it agreed with the suggestions of the CCAC and would try its best to invite other entities which could provide the same services to give quotation when purchasing similar services in the future. It would also formulate appropriate scoring criteria in order to grant the contracts in a fair and just way.

Case 8

The CCAC received a number of complaints successively in 2015, indicating that the Macao Government Tourism Office (MGTO) had asked its staff to work overtime outside working hour for the preparation or convening of the meeting of the Administrative Council of the Tourism Fund. However, the MGTO failed to pay the overtime compensation to the relevant staff. The complainants considered this situation constituted a violation of the law and requested the intervention of the CCAC.

The MGTO indicated in its response to the investigation of the CCAC that when staff of the MGTO had worked overtime due to the preparation or convening of the meeting of the Tourism Fund, the MGTO would make overtime compensation in accordance with the current regime. However, some of those workers did not submit application for compensation to the department after working overtime at the request of their superiors, causing it impossible to process the settlement of overtime service. Thus, the situation of some relevant staff failed to receive the overtime compensation occurred.

After analysis of the CCAC, it was deemed that according to the provisions of the *Statute of Personnel of the Public Administration of Macao*, it is considered overtime work when staff provides services outside normal working hours at the request of the superior. Except in special circumstances, when a staff provides overtime work at the request of the superior or under the condition of prior approval, the staff already has the right to receive compensation for overtime work, regardless of whether the staff makes an application for compensation to the department, and the department should start the internal administrative procedure to compensate the overtime work based on the available information. Given the above, the CCAC sent a letter to the MGTO to state the above stance and recommend the MGTO to adopt measures to rectify these situations. The MGTO accepted the suggestions of the CCAC and adopted appropriate measures for correction.