

PART III

OMBUDSMANSHIP



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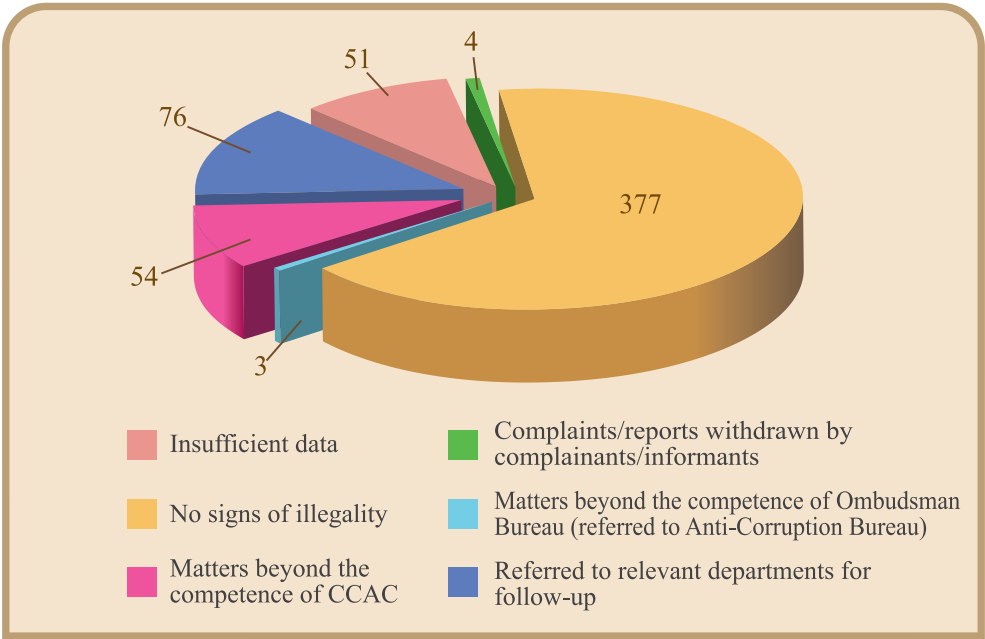
OMBUDSMANSHIP

I. Introduction

In 2019, the CCAC consistently and strictly exerted its function as the ombudsman. It supervised the legality and rationality of the functioning of public departments and entities, reviewed the administrative procedures of the relevant departments, explained to them the problems it had found in the investigations and rendered suggestions for improvement in order to safeguard citizens' legitimate rights and interests and urge public departments to perform duties in accordance with law and boost their efficiency and transparency.

Up to the end of 2019, the CCAC filed a total of 473 ombudsman cases for investigation. Along with the cases carried over from the previous year, 565 cases were concluded, including 76 cases that the Ombudsman Bureau requested the relevant departments to follow up. Of the 489 archived cases, 51 were archived due to insufficient data, four were archived because the complainants/informants withdrew the complaint/reports, 377 were archived as no signs of illegality were found in the investigation, three were referred to the Anti-Corruption Bureau for follow-up and 54 involved matters beyond the competence of the CCAC.

Cases concluded in 2019 (Ombudsman)



In 2019, the CCAC released the findings of a few inquiries in the area of ombudsmanship, including “Investigation of officials recommending employment of relatives by Office of the Prosecutor General”, “Investigation of the parcel at Colina da Ilha Verde”, “Investigation of employment of translators/ interpreters from the Chinese Mainland by the Supporting Office to the Forum for Economic and Trade Co-operation between China and Portuguese-speaking Countries”, and “Investigation of report against Director of Policy Research and Regional Development Bureau”. In the said cases, although the matters being investigated and the analysis and conclusions differed from each other, they all revealed various kinds of failure of the public departments to fully comply with the law and have a satisfactory solution when dealing with the issues, which shall be made an example of all government departments.

In addition, to sum up the cases investigated in 2019 and earlier, the

CCAC finds that there is a growing trend in groundless reports which are filed anonymously. Whether the complaints are filed anonymously or not, the CCAC follows them up with the same attitude and never neglects any of them due to anonymity. Nevertheless, following in-depth investigation, the CCAC has found that some of the anonymous reports were not truthful and even there were signs showing that some people attempted to smear others by filing these reports. In this case, the CCAC will deploy a specific approach in order to prevent abuse of the reporting mechanism. Meanwhile, it will strengthen the relevant promotion through various channels in order to guide citizens to use the reporting mechanism correctly.

II. Inquiries

(1) Investigation of Officials Recommending Employment of Relatives by Office of the Prosecutor General

In December 2016, the CCAC received complaint letters from some associations and therefore carried out an investigation into the matter pursuant to Law no. 10/2000, *Organic Law of the Commission Against Corruption of the Macao Special Administrative Region*.

It was found in the investigation that in 1999, before the handover of Macao, the then Prosecutor General, on an official's recommendation by phone, employed the latter's younger brother to work with the Preparation Office of the Prosecutor General under labour contract on 19th November 1999. On 12th January 2000, he was employed as a 3rd grade assistant technical specialist under the contract for personnel outside the establishment with 380 salary points.

On 15th July 2008, on another official's recommendation by phone, the then Prosecutor General employed the latter's elder sister as a 1st grade assistant officer of 2nd rank under the contract for personnel outside the establishment with 320 salary points.

In accordance with Article 19 of Administrative Regulation no. 13/1999, *Organisation and Operation of the Office of the Prosecutor General*, the Prosecutor General may freely appoint workers as prescribed in the Regulation. In particular, since the legal regime of central recruitment had not yet been established by the time in 1999 and 2008, the relevant employment by the Office of the Prosecutor General did not go against the law.

Nevertheless, the CCAC considered that principal officials shall prevent conflict of interests all the time and shall not make use of their official status directly or indirectly to seek personal interests. Meanwhile, individuals in the leadership positions shall behave ethically so that their personal behaviours will not adversely affect the image of the Macao SAR Government or the services or entities they serve. Such administrative concepts and professional ethics were later regulated concretely by Article 5 of Administrative Regulation no. 24/2010, *Statute of Principal Officials of the Macao SAR*, and Article 11 of Law no. 15/2009, *General Provisions of the Statute of Directors and Chiefs*.

Therefore, the CCAC believed that although the said legislations did not exist at that time when they made the recommendations and employed the relevant individuals, as the then Prosecutor General, the Secretary for Administration and Justice designate and the Chief of the Office for Personal Data Protection designate, they were not impeded from paying attention to and complying with public servant's duty of impartiality in execution of their public functions provided by the *Statute of Personnel of the Public Administration of Macao*.

Since the acts of recommending employment by public services fell short of residents' expectations of recruiting public servants in a fair and open manner, these types of incidents will definitely have negative impacts on the image of the Macao SAR Government. Therefore, the CCAC suggested the Macao SAR

Government strictly supervise the law-abidingness by officials at every level. In particular, they shall prevent conflict of interests in execution of public duties and shall not make use of their official status directly or indirectly to seek personal interests in order to avoid negative impacts on the image of the Macao SAR or the government services caused by their personal behaviours. Especially, stricter disciplinary requirements for official's conduct and recruitment methods of the public service shall be formulated.

(2) Investigation of the parcel at Colina da Ilha Verde

In 2018, the CCAC received complaints from some civic associations, where the latter expressed their doubts about the process of title obtaining, delineation and area calculation concerning the land parcel at Colina da Ilha Verde (with a land description number 2506) and failure at the conservation and planning. They therefore requested an investigation by the CCAC.

The Commissioner Against Corruption, according to Law no. 10/2000 (*Organic Law of the Commission Against Corruption*), mandated an investigation into the matter through an order. After the investigation, the CCAC believed that there were not adequate signs or evidence to challenge the title established by the relevant property registration as well as the delineation and area of the parcel determined on the relevant cadastral map. When it comes to conservation and planning of the parcel at Colina da Ilha Verde, the government departments responsible failed to strictly adhere to relevant provisions of the *Urban Planning Law* and the *Cultural Heritage Protection Law*.

1) Doubts about the title of the parcel at Colina da Ilha Verde

The complainants believed that, according to the relevant historical records, the former Portuguese government of Macao did not occupy and govern Ilha Verde until 1890, and thus they queried the authenticity and validity of the transaction of the parcel at Colina da Ilha Verde in 1828 and the property registration in 1886.

Based on the CCAC's investigation, the definitive registration constitutes a presumption that the right defined in the registration belongs to the registered owner or entity as stipulated in Article 7 of the *Property Registration Code*. According to the property registration records, the parcel was first registered in May 1886 – the bishop of the Catholic Diocese of Macau, in the name of property manager of the St. Joseph's Seminary, applied for the registration to the Real Estate Registry based on a deed documenting the purchase of the parcel by the seminary in March 1828. In May 1886, the St. Joseph's Seminary leased part of the parcel at Colina da Ilha Verde to Ilha Verde Cement Company Limited for building and operating a cement plant with a term of 25 years. In September 1991, the Diocese of Macau signed a deed with Kong Cheong (Macao) Development and Investment Company Limited and sold the parcel with a description no. 2506 to the latter at 95,000,000 patacas. In January 2007, the company resold it to the current owner, Wui San Development Company Limited.

Based on the analysis on all related registration documents, there have been no adequate signs or evidence proving that the deed documenting the purchase of the parcel by the St. Joseph's Seminary and the property registration afterwards was fake or fabricated.

The complainants had doubts about why there were military barracks, blockhouses and warehouses at Colina da Ilha Verde. According to the CCAC's investigation, in November 1923, the former Portuguese government of Macao wrote to the Diocese of Macau requesting the latter to allow it to build military facilities at Colina da Ilha Verde and send garrisons there. In March 1927, the Portuguese military department wrote to the Diocese of Macau, requesting that part of the parcel and buildings at Colina da Ilha Verde be leased to them. In May 1975, the Portuguese military department handed the leased parcel and buildings over to the former Portuguese government of Macao for administration. In May

1981, the former Portuguese government of Macao terminated the lease contract officially and returned the said parcel and buildings for military purposes to the Diocese of Macau.

After the registration of the parcel at Colina da Ilha Verde in 1886, there was no document or record showing that someone ever brought a lawsuit to the court requesting cancellation of the relevant land transaction or querying the title of the St. Joseph's Seminary. There were also documents showing that the former Portuguese government of Macao once had discussions and entered into a lease contract with the Diocese of Macau about building military facilities at Colina da Ilha Verde, where the eligibility of the St. Joseph's Seminary as the owner of the parcel at Colina da Ilha Verde was recognised.

Therefore, in accordance with the principle of legality, the CCAC considered that there is no sign or evidence challenging the ownership recognised by the property registration.

2) Doubts about the area of the parcel at Colina da Ilha Verde

Since the accuracy in the area calculation was doubted by the complainants, the CCAC investigated the matter through reviewing the property registration and cadastral records.

Information shows that the area was not clearly recorded in the original property registration, which only indicated that its circumference was around 1,000 m. In March 1988, the then Department for Cartography and Cadastre carried out an analysis on the area of the parcel. Following the analysis, the department estimated that the parcel should be on the hill in the shape of a circle and calculated the area as 79,580 m².

According to the analysis conducted by the department, the parcel with a

description no. 2506 had been divided three times and its area remained at 56,948 m². In June 1988, the former Portuguese government of Macao notified the Diocese of Macau of the result of the analysis and requested for opinions from the latter. In July 1988, the latter sent a letter to the former pointing out that there were mistakes in the calculation and measurement of the area and that the parcel with a description no. 2506 should also cover some parcels next to it.

On 27th April 1991, the former Portuguese government of Macao, the Diocese of Macau and the St. Joseph's Seminary signed an agreement confirming that the parcel with a description no. 2506 was composed of nine plots of land, covering a total area of 70,228 m², of which the then Department for Cartography and Cadastre made a cadastral map on January 1991. On 11th May 1991, the St. Joseph's Seminary submitted to the Real Estate Registry the agreement and other documents and applied for separate property registrations of the other eight parcels. Ever since then, the area of the parcel with a description no. 2506 has remained as 56,166 m². In accordance with Article 14 of Decree Law no. 3/94/M, cadastral map is sufficient for identification of the location, area and boundary of a property.

Following an analysis of relevant documents and information, the CCAC considered that there is no sign showing mistakes or fake parts existing in the cadastral map made by the then Department for Cartography and Cadastre. Therefore, the area of the parcel at Colina da Ilha Verde should be 56,166 m² as recorded in the real estate registration.

3) Doubts about conservation and planning of the parcel at Colina da Ilha Verde

The complainants also suspected that the government departments failed at the conservation and planning of Colina da Ilha Verde, thus resulting in damage to the hill and landscape. The CCAC found in the investigation that the relevant departments did not strictly comply with the provisions under the *Urban*

Planning Law and the *Cultural Heritage Protection Law* when dealing with the conservation and planning of Colina da Ilha Verde.

Regarding planning, the information obtained by the CCAC showed that in October 1996, the former Portuguese government of Macao formulated the Research Plan of Urban Regeneration of Ilha Verde, according to which the Ilha Verde district was divided into 26 areas. The plan laid down detailed provisions of the purpose, the permitted building height and other building requirements of each area. In response to social development of Macao, the Land, Public Works and Transport Bureau (DSSOPT) commenced a study on formulating a new planning in 2008 and completed the Ilha Verde Urbanisation Plan in October 2010. In February 2011, the bureau publicised the urbanisation plan and gathered public opinions.

Under the Ilha Verde Urbanisation Plan, the Ilha Verde district is divided into 53 areas for different purposes of development, such as green conservation, public housing, social facilities and commercial and residential zone, etc., while the parcel with a description no. 2506 is divided into eight areas for different purposes. According to the urbanisation plan, part of the hill and the remains of the convent are designated for the purposes of green conservation and public facilities, while part of the hill below the hillside and the areas surrounding the hill are designated for commercial and residential purposes.

Due to entry into force of the *Cultural Heritage Protection Law* and the fact that Colina da Ilha Verde has been classified as a site with value of cultural heritage, the Ilha Verde Urbanisation Plan no longer accorded with the reality. In August 2014, the DSSOPT commenced the procedure of revising the urbanisation plan. In December 2017, based on the opinions given by the Cultural Affairs Bureau (IC), the bureau made revisions to part of the contents of the urbanisation plan, which expanded the green conservation zone to the entire

hill, shrank the areas in which building is permitted and lowered the permitted maximum building height in some of the areas.

However, the DSSOPT has never conducted public consultation on and publicised the aforesaid revisions of the Ilha Verde Urbanisation Plan.

The CCAC considered that the urbanisation plan and the “detailed planning” as provided for in the *Urban Planning Law* are of similar nature and have the same effect. Therefore, the bureau should obtain opinions from the Urban Planning Committee, the general public and the parties concerned in accordance with the “principle of transparency and promotion of public participation” provided by Article 4 of the *Urban Planning Law* when revising the urbanisation plan and publicise the revisions in an official manner in accordance with the “principle of openness” stipulated by law.

In accordance with Paragraph 2 of Article 64 of the *Urban Planning Law*, before the overall planning and the detailed planning are implemented, the DSSOPT and other public departments shall continue to follow the guidelines and principles laid down in existing urban planning and studies on urban planning. The CCAC considered that since Ilha Verde district is actually not a “white zone”, the Ilha Verde Urbanisation Plan still has binding effect in the aspect of planning. In this sense, when assessing the building projects in Ilha Verde district, the public works department should ensure that the building requirements provided for in the urbanisation plan are complied with.

When the Urban Planning Committee was discussing the urban condition plan of the area at the bottom of Colina da Ilha Verde adjacent to Estrada Marginal Da Ilha Verde, the representative of the DSSOPT pointed out that the draft of the urban condition plan was made based on the Ilha Verde Urbanisation Plan in 2010. The DSSOPT should clearly know that since part of the content of the Ilha Verde Urbanisation Plan in 2010 was obsolete and did not accord with

the provisions under the *Cultural Heritage Protection Law*, it was necessary to revise the urbanisation plan, while the relevant works were in progress.

In the CCAC's opinion, the DSSOPT's granting of urban condition plans to construction projects before completion of the revision work on the Ilha Verde Urbanisation Plan has contravened the provision under Paragraph 2 of Article 64 of the *Urban Planning Law*. The practice of approving projects before reviewing the urbanisation plan is simply "putting the cart before the horse" and will inevitably raise doubts about whether or not some acts are "intentionally hasty". It will also seriously undermine the effectiveness of the urbanisation plan. Such situations contravene the "principle of legality" provided for in Article 4 of the *Urban Planning Law*. Regarding this matter, the CCAC has requested the DSSOPT for explanation.

Regarding the conservation of Colina da Ilha Verde, which has been a subject of concern of various sectors of society, according to the information available to the CCAC, the IC once wrote to the parcel owner Wui San Development Company Limited in October 2017, where it pointed out that the convent there fell into disrepair and it therefore requested the company to carry out repair and maintenance works as soon as possible. Later, the IC provided the parcel owner with information such as designs and building materials of the convent at the latter's request. However, the repair works of the convent have yet to begin. Even an application for a works licence has not been submitted yet.

According to Article 39 of the *Cultural Heritage Protection Law*, the owner of the classified immovable property must carry out the works that the IC deems necessary after its inspection to ensure the protection of the property. In the event that the works have not been commenced or completed within the scheduled period, the IC may urge mandatory execution under the terms established in the legislation in force, and the respective costs shall be borne by the owner of the property.

In the CCAC's opinion, as the IC is vested with the authority to take adequate and effective means by the law, it should proactively motivate and even carry out the relevant repair works and faithfully shoulder the statutory responsibility for safeguarding the cultural heritage. It should not allow Colina da Ilha Verde, the convent and the other structures there to remain haphazard and in such disrepair. Therefore, the CCAC has urged the IC to pay attention to this issue, which may soon become one of the issues subject to the CCAC's retrospective review.

(3) Investigation of employment of translators/interpreters from the Chinese Mainland by the Supporting Office to the Forum for Economic and Trade Co-operation between China and Portuguese-speaking Countries

In June 2019, the Association of Synergy of Macao filed a report to the CCAC indicating that the Supporting Office to the Permanent Secretariat of the Forum for Economic and Trade Co-operation between China and Portuguese-speaking Countries (GASPF) had hired five people from the Chinese mainland as translators/interpreters under labour contract, raising doubts on violation of the provisions that require priority to be given to local candidates. The association requested the CCAC to investigate the legality of the employment.

It was found in the investigation that since the GASPF consists of representatives from the Chinese mainland and Portuguese-speaking countries, its main working languages are Mandarin and Portuguese and thus the workload of Chinese/Portuguese translation and interpretation is very heavy. However, The Supporting Office tried to expand the translation and interpretation team through blanket recruitment processes and secondment from other public services but failed. In order to build its own professional team of Chinese/Portuguese translation and interpretation which was especially intended for the preparation of the 6th Ministerial Conference of the GASPF, the Supporting Office proposed employing five Chinese/Portuguese translators/interpreters whose mother tongue

was Mandarin under labour contract. Eventually, the proposal was approved by the Secretary for Economy and Finance in May 2018.

Subsequently, the Supporting Office formed a jury panel and contacted the Beijing Foreign Studies University and the Shanghai International Studies University. The jury panel was then sent to the two universities to conduct a selection process among 16 graduates recommended by them. Following written exam, oral exam, interview and analysis of resumes, the five candidates with the highest scores were employed.

Information shows that apart from graduating from the said universities, those candidates had certain work experience in Chinese-Portuguese translation/interpretation and Portuguese language teaching.

Information also shows that for following up the later stages of the recruitment process, the Supporting Office consulted the Public Administration and Civil Service Bureau (SAFP) in accordance with law. The SAFP agreed that since there was a lack of Chinese/Portuguese translators/interpreters whose native tongue was Mandarin, the recruitment accorded with the relevant provisions under Law no. 12/2015, *Regime on Labour Contract in Public Services*. In September 2018, the Supporting Office gained approval of the Secretary for Economy and Finance and employed the five successful candidates from the Chinese mainland as Chinese-Portuguese translators/interpreters.

In accordance with Law no. 12/2015, *Regime of Labour Contract in Public Services*, when there is a shortage of professional staff, public services may fill the professional and technical positions with non-locals under labour contract. The SAFP, as the public service responsible for coordination and management of affairs of public servants and translation and interpretation, considered that there

was a lack of Chinese/Portuguese translators/interpreters whose native tongue was Mandarin. Such opinion verified that the employment accorded with the situation of shortage of professional as prescribed in the law.

The recruitment process consisted of several screening stages including recommendation by professional education institutions, written exam, oral exam, interview and analysis of CV and finally the successful candidates were selected based on the scores. There were no illegal or irregular circumstances found in the process.

The complainants believed that employment of Chinese/Portuguese translators/interpreters with Mandarin as the native tongue by the Supporting Office might involve language discrimination and be considered as edging out local talents. It cannot be denied that the working languages of the GASPF are Mandarin and Portuguese. Moreover, according to the submission of the SAFP, in order to meet the special service needs of the GASPF, the department has the need to hire translators/interpreters with Mandarin as their native tongue. Therefore, the CCAC considered that the practice of hiring translation/interpreters from the Chinese mainland with Mandarin as their native tongue did not involve language discrimination or edging out local talents. Nevertheless, if the Supporting Office has stressed the point that it would be difficult for translators with Cantonese as the native tongue to cope with the “Mandarin/Portuguese” interpretation work apart from pointing out that “in addition to good translation and interpretation skills, translators/interpreters should be familiar with the affairs of the Chinese mainland”, the doubts about the reasonableness of its recruitment might have been alleviated. The CCAC has notified the Supporting Office of the problem and requested the latter to critically review it and make improvements accordingly.

(4) Investigation of report against Director of Policy Research and Regional Development Bureau

In June 2019, the CCAC received a report from “workers of the Policy Research and Regional Development Bureau”, who mentioned a number of irregular acts carried out by the Director of the Policy Research and Regional Development Bureau (DSEPDR) and former Chief of the former Policy Research Office and requested for the CCAC’s investigation.

Following the investigation, the CCAC considered that most of the allegations mentioned in the report were unable to be substantiated or did not constitute a violation of law. However, the DSEPDR has hired workers without going through open recruitment processes. Such practices did not accord with the principles of fairness and openness set up in the legal regime of recruitment of public servants of the Macao SAR.

Regarding the director’s acts mentioned in the report, including his attitude towards other people, asking others to address himself as “professor” all the time, splitting the contracts in order to circumvent the regulations on public tendering, concocting various pretexts for study tours abroad, redoing the signboard of the bureau, placing a table tennis table in the office and smoking in the office, etc., the CCAC investigated these allegations one by one and subsequently found that some of the complaints were groundless and therefore did not involve illegality or irregularity, while some were beyond the scope of the CCAC’s jurisdiction and therefore was unable to carry out further investigation and follow them up.

The report alleged that the director rent an upscale apartment with public money. The CCAC found in the investigation that the housing subsidy he received was higher than the amount provided for in Law no. 2/2011 (*Regime of Seniority Premium, Housing Subsidy and Family Subsidy*) when he was a principal adviser of the former Policy Research Office under a labour contract. However, according to

the law, employees hired under a labour contract may enjoy benefits different from those for general public servants, so the practice in question did not contravene the law.

After taking up the positions as Chief of the former Policy Research Office and Director of the DSEPDR, he has been hired under fixed-term appointment in lieu of the labour contract, which means the salaries and benefits to be received shall follow the general regulations of the civil service laws. Therefore, the housing subsidy received by him has changed to an amount equal to 40 salary points.

According to the report, the director allegedly practiced cronyism by hiring his PhD students to work in the service without having them go through open recruitment processes. The CCAC found in the investigation that six individuals who already knew the director or had connection with him before they joined the office as mentioned in the report were hired by the former Policy Research Office as researchers under labour contracts without going through open recruitment process. Among the six individuals, some were his PhD students, some were candidates recommended by his former colleagues, and some were people he met in the academic seminars.

During the investigation, the directors and chiefs of the DSEPDR disclosed to the CCAC that, due to the special nature of the work of the Bureau, they have very demanding requirements on the quality of researchers. The candidates must hold a doctoral degree and have the relevant work experience. In addition, given that it already consulted the Public Administration and Civil Service Bureau (SAFP) beforehand, the bureau has all along hired its researchers under labour contracts and without being subject to open recruitment processes. During the recruitment of researchers, duties were delineated according to the types of work to be performed. The complainee (when working as the principal advisor of the office) was responsible for identifying researchers in the fields of politics and law. Since he had tried to look for qualified policy and law researchers in Macao but did not succeed, after

discussion with the SAFP and approval of the superior, the former Policy Research Office started to look for suitable candidates not limited to Macao residents.

For this purpose, the former Policy Research Office formed a jury panel comprising the former Chief, the Deputy Chief and the principal adviser, who evaluated the candidates mainly by interview or written exam.

Following the analysis, the CCAC considered that although the former Policy Research Office's employment of the researchers under labour contracts without going through open recruitment processes was not illegal, there were defects in the method of the search for the candidates through interpersonal connection and it did not comply with the principles of fairness and openness provided for in the legal regime of recruitment of public servants. In addition, among those workers, not all of them were researchers. In fact, some of them were merely administration and finance workers. Such practice goes against the original intention of the exemption of open recruitment and thus inevitably giving rise to doubts about cronyism.

Therefore, the CCAC requested the DSEPDR to thoroughly reflect on its recruitment processes, strictly abide by the regulations on open recruitment provided by the legal regime of the public service and put an end to the abuse of the mechanism of exemption of open recruitment.

III. Summaries of other cases in the area of ombudsmanship

(I)

The CCAC received a complaint from a citizen who intended to sell his residence. According to the complaint, the property registration data showed that the parcel where his residence was located was one leased out by the Government with concession, but the lease term had already expired. Therefore,

the complainant went to the Land, Public Works and Transport Bureau (DSSOPT) for details about the procedure of concession renewal. However, in response to his enquiry, the DSSOPT told him that the parcel was privately owned. The complainant criticised about the chaotic transmission of information among public departments and requested the CCAC to investigate the matter.

It was discovered in the investigation that the parcel where the residence owned by the complainant was located was privately owned. In as early as 1985, the former Portuguese government of Macao purchased the parcel from an individual and then leased it to the complainant's father for residential purpose. In 1991, his father signed a sale and purchase deed with the former Financial Services Department to buy the relevant residence in accordance with Decree Law no. 56/83/M.

In accordance with Article 9 of Decree Law no. 56/83/M, the sale and purchase deed between the Government and the lessee shall be made based on the sample provided by the appendix of the Decree Law, which indicates a clause that the transaction will result in the relevant part of the parcel where the sold unit is situated being leased to the buyer on concession on a 25-year term. Since such clause was also indicated in the buy and purchase deed signed between the complainant's father and the then Financial Services Department, the information about the lease on concession and the relevant term was introduced to the property registration of the unit, despite that the parcel on which the unit is located is privately owned. The CCAC discovered that apart from the complainant's residence, there are 389 units in the same or similar situation.

The CCAC considered that although the relevant sale and purchase deed was made based on the sample provided by the appendix of Decree Law no. 56/83/M, under the prerequisite that the parcel on which the unit is located was originally privately owned, in a legal sense, the sale and purchase deed signed between the

Government and the buyer cannot change the status of the parcel from privately owned into State owned nor have it granted by lease. Such situation has not only constituted infringement upon the rights and interests of the owner of the relevant unit but also caused confusion over the status of the unit and the parcel on which the building is located. Therefore, the CCAC suggested the Financial Services Bureau taking measures to correct the property registration data of the relevant unit. Subsequently, the bureau wrote to the Real Estate Registry, where it requested the latter to rectify the property registration of all units in the said problematic situation.

(II)

The CCAC received a report involving a worker of the Labour Affairs Bureau (DSAL), which indicated that the worker left his work frequently during office hours without permission. He left his workplace without the superior's permission, which allegedly constituted violation of the duty of assiduity provided by the law. Therefore, the CCAC was requested to investigate into the matter.

Following the initial investigation, it was proved that between November and December 2018, there were 22 days on which the worker left the workplace for private reasons without asking the superior for approval. Such acts have constituted unjustified absence and violation of the duty of assiduity.

Since the worker's acts have gone against the duties of public servants provided by the law on public service, the DSAL has commenced a disciplinary proceeding and pursued disciplinary liabilities against the complainee.

Although the disciplinary proceeding has already been commenced, the CCAC considered that in order to prevent similar cases from happening

again, it is still necessary for the competent authority to review and perfect the mechanisms of attendance recording and supervision of staff. The authority agreed on the CCAC's suggestion and replied that proper measures had been taken to perfect the mechanisms.

(III)

The CCAC received a report alleging that in a recruitment notice published by the Macao Trade and Development Promotion Institute (IPIM), there was a requirement that candidates should have a master's degree. However, according to the complainant's knowledge, there were candidates admitted to the recruitment exam although they only had a bachelor's degree. Therefore, the complainant considered the practice of the IPIM unfair and requested for the CCAC's intervention.

Following an investigation, it came to light that the IPIM opened up two vacancies of senior officer in marketing research and listed a few requirements in the recruitment notice, one of which being that the candidates should have a master's degree in economics or management or higher. However, among the 68 candidates admitted to the recruitment exam, only 28 of them had a master's degree, while the remaining 40 only had a bachelor's degree in relevant majors.

Although the IPIM explained that the aforesaid requirement for master's degree was only a factor in prioritising candidates for admission, and was not intended to eliminate the candidates who only had a bachelor's degree, in fact they would only get a lower grade in the stage of CV analysis. However, the CCAC considered that such expression of the application requirement was obviously misleading and it would possibly discourage some people who had a bachelor's degree in the relevant major. As a result, they might give up applying for the recruitment and thus miss the opportunity.

In addition, recruitment processes of the IPIM are run in accordance with the regime provided for in the *Statute of Personnel of the Macao Trade and Development Promotion Institute* instead of the general regime of recruitment of public servants. Nevertheless, the CCAC discovered in the investigation that there were many discrepancies between the arrangements of the said recruitment process and that of a procedure as required by the *Statute*. For example, the contents of the recruitment notice failed to meet the requirements under the *Statute*. Moreover, no mechanism was set up for appeal against the provisional and confirmed lists of candidates admitted to the recruitment exam and the final ranking list.

Moreover, the aforesaid *Statute* is only applicable to the staff within the establishment of the IPIM and there is actually no concrete regulation on the staff outside the establishment. Regarding this issue, the CCAC considered that such arrangement was undesirable and failed to meet the demand of society for legal administration. Therefore, the CCAC has urged the IPIM to adopt measures to redress the problem and perfect the *Statute* and the relevant recruitment regime as soon as possible so as to regulate the recruitment regimes for personnel within and outside the establishment in a standardised way.

Subsequently, the IPIM replied that it agreed on the CCAC's opinions and suggestions and promised to clearly state the requirement for educational background and other requirements in recruitment notices in the future. Also, the IPIM has formulated internal regulations on the recruitment processes of personnel outside the establishment and has planned to amend the *Statute of Personnel of the Macao Trade and Development Promotion Institute* by introducing the relevant internal regulations in the *Statute*.

(IV)

The CCAC received an anonymous complaint claiming that there have been quite some cases of jury panel members failing to declare recusal in the open recruitments carried out by the Health Bureau in recent years despite that they were related to some candidates. The complainant also clearly pointed out the identity information and relations of the persons concerned and requested an investigation by the CCAC.

After a preliminary investigation, there was no evidence that the jury panel member of an open recruitment was related to the candidate as claimed by the complainant; for another open recruitment, despite that the CCAC found the candidate concerned was a younger female cousin of the spouse of the jury panel member, which means they were collaterally related in the fourth degree of affinity, according to the *Administrative Procedure Code* and the relevant legal provisions, it did not fall into any of the situations where recusal must be made or requested. Nevertheless, the jury panel member concerned still applied for self-recusal to his superior and it was approved.

Despite that his relation with the candidate concerned did not fall into the situations where recusal must be made or requested provided for by the law, the jury panel member still made an application for self-recusal to his superior, which was approved by the Health Bureau. In the CCAC's opinion, such practice deserves recognition.

Given the anonymous report lodged by the complainant did not reflect the actual situation and even did an injustice to the complained against, it wasted significant amounts of resources and time of the CCAC and the Public Administration. Such practice should be censured. It is noteworthy that residents should exercise their right to lodge complaints and reports in a prudent manner by lodging them under their real names and taking responsibility for their own acts.

(V)

The CCAC received a complaint claiming that the Social Welfare Bureau (SWB) failed to notify the complainant to renew his disability assessment registration card in time due to its negligence. As a result, the disability pensions were not granted due to the invalidity of his card. Claiming the mishandling of his renewal by the SWB, the complainant requested the CCAC to follow up the incident.

It was found after the investigation that, in May 2017, due to the expiring disability assessment registration card of the complainant, the SWB notified him to renew it via a letter sent to the mailing address provided in his application form and by phone. However, as the complainant was serving a sentence in prison, he was not able to receive the notification of the SWB. As it had not received any renewal application from the complainant and that the aforesaid card had already expired, the SWB did not grant the disability pensions for the year 2018 to the complainant. Upon completing his sentence and being released in 2019, the complainant found that he did not receive the relevant pensions, and therefore he made a complaint to the SWB and applied for a renewal subsequently.

In the CCAC's opinion, as the disability assessment for the complainant had all along been handled with the assistance of the social worker in the prison and his proof of life had been submitted to the SWB through the prison every year, the SWB should have known well that the complainant was serving his sentence in the prison. While the practice of the SWB of not making notification to the complainant directly through the prison or the social worker in the prison did not violate the law, there is room for improvement for the relevant procedures.

Therefore, the CCAC immediately notified the SWB about the situation and gave its advice. The SWB, in a later reply, mentioned that their notification

mechanism for disability assessment registration card renewal failed to cope with such special cases as applicants serving sentences in jail. After making its assessment on the complainant, the SWB confirmed his disability status and decided to grant him the disability pensions for 2018. The SWB also stated that they would review and improve the aforesaid notification system to prevent similar incidents from happening again.

(VI)

The CCAC received a complaint, claiming that the Macao Polytechnic Institute (IPM), after conducting an open recruitment to hire a physical education lecturer, cancelled the entire procedure upon completion of the selection process and publication of the list of final results. Believing that the practice of the IPM was lack of transparency and wasted a considerable amount of administrative and financial resources, the complainant requested an investigation by the CCAC.

After investigation, it was found that the IPM conducted an open recruitment for recruiting a lecturer for the School of Physical Education and Sports. However, after the examination, it was found that the candidate who ranked first was not a Macao resident. Therefore, the IPM contacted the Labour Affairs Bureau to find out the feasibility of applying for an employment permit for hiring the aforesaid candidate as a non-resident worker. The DSAL replied that as the case did not adhere to the principle of ensuring the priority of local workers in employment, it was hardly possible that they would approve the application.

Given that the candidate concerned did not withdraw from the recruitment procedure and the IPM also knew that their employment permit application for hiring a non-resident worker would not be approved, the IPM decided to cancel the entire recruitment procedure.

In the CCAC's opinion, if the IPM had the intention of hiring a non-resident lecturer, it should have approached the DSAL to find out the conditions and restrictions of applying for the aforesaid employment permit before carrying out the recruitment process. It should not have done it after the relevant examination had come to an end and the results had been announced. Also, for the purpose of providing more concrete justifications, the IPM could still have made an application for the aforesaid employment permit to the DSAL. Once the DSAL rejected the application in a formal reply, the IPM could use it as a justification for hiring a lower-ranked candidate who scored above the pass mark. It should not have simply rejected hiring a lower-ranked candidate with the justification that "the results of other candidates are too close to the pass mark".

Beyond doubt, the aforesaid practice of the IPM inevitably led people to cast doubt on whether administrative and financial resources had been wasted or not. In response, the CCAC already notified the IPM of its opinion and suggestions. The latter accepted them and stated they would take appropriate measures to improve their recruitment procedures.

