

## **Legislative Council Panel on Public Service**

### **Civil servants' freedom and right to join trade unions and take part in trade union activities**

#### **Introduction**

On 7 March 2006, a Member wrote to the Clerk to the Panel, raising a number of questions concerning civil servants' freedom and right to join trade unions and take part in trade union activities.

2. The Chairman of the Panel invited the Administration to provide a written response to the questions raised.

#### **Employment Ordinance**

3. Of the four questions raised by the Member, the first three relate to the Employment Ordinance (Cap. 57). They are reproduced hereunder:-

- Are Parts IVA and VIA of the Employment Ordinance (Cap. 57) applicable to civil servants and their employer (the Government of the Hong Kong Special Administrative Region (HKSAR))?
- Will civil servants' employer (the Government of HKSAR) be subject to criminal prosecution if it contravenes Part IVA of the Employment Ordinance (Cap. 57)?
- If a civil servant is dismissed by his employer (the Government of HKSAR) because of his participation in a trade union and its activities, can he seek remedy under Part VIA of the Ordinance?

4. The Administration wishes to point out that, as a general rule, an Ordinance is not binding on the Government unless it is therein expressly provided for or unless it appears by necessary implication that the Government is bound thereby (ref. section 66(1) of the Interpretation and General Clause Ordinance (Cap. 1) which is reproduced in the attached **Appendix**).

5. As there is no such express provision or necessary implication in the Employment Ordinance, this Ordinance is not applicable to the Government.

### **Other statutory provisions**

6. The fourth question raised by the Member is reproduced hereunder:-

- What statutory provisions are in place to protect the right of civil servants to join trade unions? More specifically:-
  - (a) If the Government terminates the employment of a civil servant, penalizes him or discriminates against him in other ways because of his participation in a trade union and its activities, is the Government criminally liable?
  - (b) Is it open to a civil servant to seek remedy through a civil claim if the Government terminates the employment of a civil servant, penalizes him or discriminates against him in other ways because of his participation in a trade union and its activities ?

7. The freedom and right of Hong Kong residents (including civil servants) to join trade unions and take part in trade union activities are protected under Articles 27 and 39 of the Basic Law (which is reproduced in the attached **Appendix**).

8. Also included in the attached **Appendix** is a brief account of (i) other relevant international covenants applicable to Hong Kong; and (ii) relevant provisions in the Hong Kong Bill of Rights Ordinance (Cap. 383) which protect the right to freedom of association, including the right to form and join trade unions.

9. The Administration is not aware of any express statutory provisions in the laws of Hong Kong which provide for criminal proceedings to be brought against the Government, in circumstances as those described in part (a) of the question in para. 6 above.

10. In societies as open and transparent as Hong Kong, we believe that the real, and more powerful, sanction rests with revelation of a wrong doing, which will be swiftly followed by public censure through the news media and scrutiny by LegCo.

11. As regards part (b) of the question in para. 6 above, the Administration wishes to point out that any civil servant who considers that the Government has violated, or threatened to violate, his right to freedom of association under Article 18 of the Bill of Rights – as set out in section 8 of the

Hong Kong Bill of Rights Ordinance – may seek remedy or relief under section 6(1) of the Ordinance. By virtue of section 7 therein, the Hong Kong Bill of Rights Ordinance binds the Government and any person acting on behalf of the Government. Sections 6(1), 7 and Article 18 of Section 8 of the Ordinance are reproduced in the attached **Appendix**.

Civil Service Bureau  
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**Interpretation and General Clauses Ordinance**

Section 66(1) of this Ordinance states “No Ordinance (whether enacted before, on or after 1 July 1997) shall in any manner whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby.”

**Basic Law**

2. Article 27 of the Basic Law states “Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.”

3. Article 39 of the Basic Law states:

“The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

**Other relevant International Covenants applicable to Hong Kong**

4. The right to form and join trade unions is protected by (i) Article 22 of the International Covenant on Civil and Political Rights, and (ii) Article 8 of the International Covenant on Economic, Social and Cultural Rights.

5. The International Labour Convention No. 87 (Freedom of Association and Protection of the Right to Organise Convention) applies in the HKSAR. The principal obligation is to ensure that all workers (and employers) have the right to establish and join organisations of their own choosing. As

with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, applicable Labour Conventions are entrenched by Article 39 of the Basic Law.

### **The Hong Kong Bill of Rights Ordinance**

6. Article 18 of the Hong Kong Bill of Rights, as set out in section 8 of the captioned Ordinance, states :-

- “(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on Members of the armed forces and of the police in their exercise of this right.
- (3) Nothing in this article authorizes legislative measures to be taken which would prejudice, or the law to be applied in such a manner as to prejudice, the guarantees provided for in the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize as it applies to Hong Kong.”

7. Article 18 mirrors Article 22 of the International Covenant on Civil and Political Rights, which is entrenched by Article 39 of the Basic Law.

8. Section 6(1) of the Hong Kong Bill of Rights Ordinance states :-

- “A court or tribunal-
- (a) in proceedings within its jurisdiction in an action for breach of this Ordinance; and
- (b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant,
- may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances.”

9. Section 7 of the Hong Kong Bill of Rights Ordinance states :-

“(1) This Ordinance binds only-

- (a) the Government and all public authorities; and
- (b) any person acting on behalf of the Government or a public authority.

(2) In this section-

"person" (人) includes any body of persons, corporate or unincorporate.”