

致： 公務員及資助機構員工  
事務委員會秘書

由： 李卓人

事： 建議討論事項

日期： 2004 年 11 月 3 日

有關國際勞工組織結社自由委員會早前裁定，香港特別行政區政府在 2002 年單方面削減公務員薪酬，違反《國際勞工公約》第 98 和 151 號的規定，本人建議事務委員會討論以下事項：

- (i) 政府落實結社自由委員會所作的 4 項建議的進展；及
- (ii) 如何處理原訟法庭與結社自由委員會對《國際勞工公約》第 151 號第 8 條所作的解釋的分歧。

**A Complaint Submitted by the  
Hong Kong Confederation of Trade Unions to the  
International Labour Organization  
Committee on Freedom of Association against the  
Government of the Hong Kong Special Administrative Region,  
People's Republic of China for  
Violating the ILO Conventions No. 98 and No. 151**

**Introduction**

The Hong Kong Confederation of Trade Unions (the HKCTU) is lodging a complaint with the International Labour Organization Committee on Freedom of Association against the Government of Hong Kong Special Administrative Region, People's Republic of China (the Government) for violating the Right to Organize and Collective Bargaining Convention, 1949 (the ILO Convention No. 98) and the Labour Relations (Public Service) Convention, 1978 (the ILO Convention No. 151) by enacting the Public Officers Pay Adjustment Ordinance (the Ordinance) to reduce civil service pay unilaterally. A copy of the Ordinance is at Annex A.

2. The HKCTU contends that the violation of the 2 ILO Conventions lies in the Government's –

- (a) decision to vary a fundamental term of the employment contracts (i.e. the remuneration) of civil servants without proper negotiations with civil service unions;
- (b) refusal to settle the dispute over pay adjustment through continued dialogue or through independent and impartial machinery such as mediation, conciliation and arbitration;
- (c) non-compliance with the terms of a collective agreement concluded with main civil service unions; and
- (d) failure to take necessary measures to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment of civil servants with civil service unions.

3. Evidences supporting this complaint are submitted in the paragraphs below.

## **Application of the Conventions to Hong Kong**

4. The ILO Conventions No. 98 and No. 151 have been applied to Hong Kong without modifications since 1975 and 1981 respectively.

5. In a communication to the Director General of the ILO dated 6 June 1997, the Government of the People's Republic of China stated that ILO Conventions would continue to apply to the Hong Kong Special Administrative Region (the HKSAR) after China's resumption of the territory's sovereignty on 1 July 1997. In addition, the Basic Law of the HKSAR, the mini-constitution of Hong Kong, guarantees the continued application of ILO Conventions to the HKSAR. Article 39 of the Basic Law stipulates that, "... the 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".

## **Civil Service Pay Adjustment Mechanism**

6. The Government's policy on civil service pay adjustment is that adjustment should be considered annually and that changes should be broadly in line with pay adjustments in the private sector. To this end, the independent Pay Trend Survey Committee commissions annually a survey of private sector pay trend whereby data from a selection of Hong Kong companies is collected. A note on the pay trend survey methodology is at Annex B.

7. The Pay Trend Survey produces 3 Gross Pay Trend Indicators (GPTIs), which represent the movements in private sector pay for each non-directorate salary band during the period from 2 April of the previous year to 1 April of the survey year. These 3 salary bands (i.e. the Upper Band, the Middle Band and the Lower Band) correspond to the upper, middle and lower sectors of the Master Pay Scale (MPS) and represent the following monthly salaries according to the 2001 pay scale:

- (a) Upper Band: above MPS Point 33 to General Disciplined Services (Officer) Pay Scale 38 or equivalent; i.e. between HKD 47,591 and HKD 97,325 per month;
- (b) Middle Band: MPS Point 10 – Point 33 or equivalent, i.e. between HKD 15,520 and HKD 47,590 per month; and
- (c) Lower Band: below MPS Point 10 or equivalent (including Model Scale One) i.e. below HKD 15,520 per month.

8. The payroll costs of civil service increments are then deducted from GPTIs to produce Net Pay Trend Indicators (NPTIs), which form the basis for the civil service pay adjustment. Apart from the movements in private sector pay, factors such as changes in the cost of living, the state of the economy, budgetary considerations, the staff sides' pay claims, and the civil service morale are all taken into account when determining civil service pay adjustment.

9. After taking into account the factors listed in the previous paragraph, the Chief Executive (the CE) in Council will put an offer of pay adjustments for each salary band to the staff sides of the 4 central consultative councils (i.e. the Senior Civil Service Council (the SCSC), the Model Scale One Staff Consultative Council (the MSOSCC), the Disciplined Services Consultative Council (the DSCC) and the Police Force Council (the PFC)). Having considered the views of the staff sides on the offer, the CE in Council will make a final decision on the annual civil service pay adjustment.

## **2002 Civil Service Pay Adjustment Exercise**

10. The Pay Trend Survey Committee announced on 6 May 2002, and endorsed on 13 May 2002, the findings of the 2001 – 02 Pay Trend Survey. The NPTIs for the 3 salary bands are -4.42% for the Upper Band, -1.64% for the Middle Band, and -1.58% for the Lower Band.

11. On 15 May 2002, the staff sides of 3 central consultative councils, namely the SCSC, the MSOSCC and the DSCC, submitted their pay claims to the Secretary for Civil Service (the SCS). All of them urge the Government to freeze civil service pay for all salary bands despite the negative NPTIs. The PFC did not submit any pay claims to the SCS.

12. The CE in Council decided on 22 May 2002 that an offer of a pay reduction of 4.42% for the Directorate and the Upper Band, 1.64% for the Middle Band, and 1.58% for the Lower Band, with effect from 1 October 2002, should be put to the staff sides of the 4 central consultative councils. The CE in Council also agreed in principle that in the event of a decision this year to reduce civil service pay, a bill, which provides for the specified rates of adjustment for different salary bands with effect from a specified date, should be introduced into the Legislative Council (the LegCo).

13. In their communications to the SCS dated 24 May 2002, the staff sides of the SCSC and the MSOSCC reiterated their original proposal of a pay freeze and objected to the proposed legislative approach to implement a pay reduction. The staff side of the DSCC, in

its letter to the SCS of 25 May 2002, also objected to the proposed legislative approach to implement a pay reduction, and proposed that the civil service pay adjustment exercise this year should be held in abeyance pending the completion of the comprehensive review of civil service pay policy and system. The staff side of the PFC did not submit any views on the pay offer.

14. Having considered the reactions of the staff sides to the pay offer, the CE in Council decided on 28 May 2002 that this year's civil pay should be reduced as originally proposed and that the Public Officers Pay Adjustment Bill (the Bill) should be introduced into the LegCo. The SCS then moved the first and second readings of the Bill at the LegCo sitting on 5 June 2002.

15. The staff side of the Senior Civil Service Council wrote to the CE on 31 May 2002 requesting for the setting up of an independent Committee of Inquiry under the 1968 Agreement between the Hong Kong Government and the Main Staff Associations (the 1968 Agreement) to deal with the dispute over this year's civil service pay adjustment. A copy of the 1968 Agreement is at Annex C. This request was supported by a total of 67 civil service unions. In their joint statement of 5 June 2002, the 67 unions undertook that they would accept the outcome of the inquiry. A copy of their statement (in Chinese only) is at Annex D.

16. The CE decided on 11 June 2002 against the appointment of a Committee of Inquiry on the ground that this year's civil service pay adjustment has been determined on the basis of a settled public policy. A copy of the Chief Secretary for Administration's (the CS's) statement explaining the CE's decision is at Annex E.

17. The Bill was finally passed at the LegCo sitting on 11 July 2002, and the Ordinance was gazetted on 19 July 2002.

18. A table summarizing the major events of this year's civil service pay adjustment exercise is at Annex F.

### **Government's Decision to Reduce Civil Service Pay without Proper Negotiations with Civil Service Unions**

19. Article 4 of the ILO Convention No. 98 stipulates that,

“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation

of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements".

Article 7 of the ILO Convention No. 151 states that,

"Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters".

20. Although there is a long-established consultative machinery within the HKSAR Civil Service, the role of civil service unions in determining the remunerations of civil servants is rather marginal. The participation of civil service unions is limited to submitting their pay claims to the SCS and commenting on the pay offer made by the CE in Council. There is no negotiation, in its ordinary sense, between the Government and civil service unions during the pay adjustment exercise. The HKCTU is of the opinion that the determination of civil service pay is essentially the prerogative of the Government under the existing mechanism.

21. In particular to 2002 civil service pay adjustment exercise, the CE in Council made the final decision just 1 week after putting the pay offer to the staff sides of the 4 central consultative councils. In its letter to the SCS of 24 May 2002, the staff side of the SCSC stated that,

"the spirit of consultation has not been respected in this year's pay adjustment exercise. This is evidenced by the fact that the normal process of consultation and negotiation, to arrive at an agreement on the appropriate pay adjustment, has neither been respected nor conducted in an open-minded and constructive manner. Rather, the process has been conducted with undue haste and gives the clear impression that the Government has already made up its mind. The 'drafted Public Officers Pay Adjustment Bill' was drafted and announced well before the Administration's decision was made known to the Staff Side".

22. It is obvious that no meaningful negotiations between the Government and civil service unions could be taken place in such short period of time, given the controversies of this year's civil service pay reduction. The HKCTU contends that the Government's hasty decision to cut civil service pay is in effect depriving civil service unions of the right to participating in determining the remunerations of civil servants, and this is not in conformity with Article 4 of the ILO Convention No. 98 and Article 7 of the ILO Convention No. 151.

**Government's Refusal to Settle the Dispute over Pay Adjustment through Continued Dialogue or through Arbitration**

23. Article 8 of the ILO Convention No. 151 stipulates that,

“The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved”.

24. In his reply to a question on the implementation of the ILO Convention No. 151 at the LegCo sitting on 5 January 2000, the SCS pledged to settle disputes arising in connection with the determination of terms and conditions of employment of civil servants through consultation and continued dialogue. The SCS added that,

“Where disputes on proposals about significant change in conditions of service affecting a substantial part of the Civil Service cannot be resolved, and after exhausting proper consultation and other existing administrative channels, the matter may be referred to an independent Committee of Inquiry formed under the 1968 Agreement”.

25. The Government however did not honour its promise in the 2002 civil service pay adjustment exercise. The Government refused to extend the consultation period despite repeated calls from civil service unions for continued dialogue to resolve the differences. The CE also turned down the request submitted by the staff side of the SCSC, which was supported by 67 civil service unions, to refer the matter to an independent Committee of Inquiry. It is the HKCTU's view that the Government's refusal to settle the dispute on this year's civil service pay adjustment through continued dialogue or through arbitration is a violation of Article 8 of the ILO Convention No. 151.

## **The Government's Non-compliance with the Terms of a Collective Agreement Concluded with Main Civil Service Unions**

26. Clause 7 of the 1968 Agreement provides that a Committee of Inquiry can be appointed by the CE where there are no prospects of reaching agreement on a matter within the scope of the Agreement, provided that the matter in dispute is not one which in the opinion of the CE:

- (a) is trivial; or
- (b) is a matter of settled public policy; or
- (c) affects the security of the HKSAR.

27. The CE decided on 11 June 2002 not to appoint a Committee of Inquiry under the 1968 Agreement to look into the 2002 civil service pay adjustment, as requested by the staff side of the SCSC. In his reply to the staff side of the SCSC explaining the CE's decision, the CS said that,

“The Chief Executive is of the opinion that it is a matter of settled public policy that in determining the size of each year's civil service pay adjustment, the Government takes into account the following factors: the net pay trend indicators derived from an independent private sector pay trend survey, the state of the economy, budgetary considerations, changes in the cost of living, the staff sides' pay claims and civil service morale. Some of the considerations under the existing mechanism such as the net pay trend indicators and the cost of living are capable of upward and downward movements. It is thus inherent in the existing mechanism that civil service pay may be increased or decreased”.

28. The HKCTU considers the above argument unacceptable. The Government bluntly and repeatedly stressed that under the existing employment contracts of most serving civil servants, the Government has no authority to reduce civil service pay unilaterally. In moving the second reading of the Bill at the LegCo sitting on 5 June 2002, the SCS explained that,

“While the standard [memorandum on conditions of service (MOCS)] applicable to civil servants provides that the Government reserves the right to alter any of the officer's terms of appointment and conditions of service should the Government consider this to be necessary, the employment contracts of most serving civil servants, except for a very small number of



officers recruited since June 2000, do not contain any express provision authorizing pay reduction by the Government. The legal advice we obtained is that on the basis of decided cases, the courts are unlikely to accept that this general power of variation could apply to such a fundamental term as the salary”.

29. The fact that the Government has no power to reduce civil service pay unilaterally under the original employment contracts is also evidenced by Section 10 of the Ordinance, which reads that,

“The contracts of employment of public officers are *varied* so as to expressly authorize the adjustments to pay and the amounts of the allowances made by this Ordinance” (emphasis added).

30. The SCS, in his reply to a question on the terms of employment of serving civil servants at the LegCo sitting on 6 February 2002, stated that,

“The employment arrangements for a civil servant are governed by the provisions set out in the letter of offer of appointment and the memorandum on conditions of service (MOCS) attached to the letter. *The provisions therein are binding on both the Government and the appointees*” (emphasis added).

In other words, all government policies, measures and decisions relating to the terms and conditions of employment of serving civil servants, including pay adjustment mechanism, should be bound by the provisions set out in the letter of appointment and the MOCS. Since the existing contractual arrangements do not allow the Government to reduce civil service pay unilaterally, it follows that whether the Government, which is bound by the employment contracts, could reach a pay reduction decision unilaterally, despite downward movements of some of the factors under the existing pay adjustment mechanism, is disputable. The CE’s decision against the appointment of a Committee of Inquiry under clause 7 of the 1968 Agreement on the ground that the matter in dispute is a matter of settled public policy is therefore unsubstantiated.

31. Another matter in dispute is the Government’s legislative approach to reduce civil service pay. The CS pointed out, in his reply to the staff side of SCSC, that the CE in Council’s decision to give effect to the 2002 civil service pay adjustment by legislation is a matter of implementation of a settled policy. He added that,

“Whether the decision could have been implemented without legislation and whether the proposed legislation is constitutional, are questions of law which a Committee of Inquiry would not be able to resolve”.

32. The HKCTU considers the Government’s argument unconvincing. A legislative approach to adjust civil service pay is a significant departure from the existing regime regulating civil service pay. Prior to the enactment of the Ordinance, civil service pay is not governed by legislation. It is purely a matter of contractual relationship between the Government and serving civil servants. As far as general legal policy on contractual relationship is concerned, any dispute arising out of the application and interpretation of a contract should be settled through negotiations between the parties concerned, or through arbitration, or referred to the courts instead of the legislature to deal with. A legislative approach to adjust civil service pay materially alters this contractual relationship. The Government’s argument that a legislative approach is but a technical means to implement the decision of this year’s pay reduction is to ignore its far-reaching implications on the existing regime regulating civil service pay. Since this approach represents a significant change in conditions of service affecting all serving civil servants, the Government is obliged to negotiate with civil service unions with a view to reaching an agreement. In the event that an agreement could not be reached, the matter in dispute should be referred to a Committee of Inquiry appointed under the 1968 Agreement.

33. In view of the foregoing, the HKCTU contends that a legislative approach to reduce civil service pay is not a matter of settled public policy, and the Government’s refusal to appoint a Committee of Inquiry under the 1968 Agreement constitutes a breach of the terms of a collective agreement between the Government and main civil service unions.

**Government’s Failure to Take Necessary Measures to  
Encourage and Promote the Full Development and Utilisation of Machinery for  
Negotiation of Terms and Conditions of Employment of Civil Servants**

34. Some LegCo members urged the Government to reconsider the staff sides’ request for the appointment of a Committee of Inquiry under the 1968 Agreement, having regard to the undertaking made by the 67 civil service unions that they would accept the outcome of the inquiry. The Government however maintained its stance and pointed out that the recommendations of a Committee of Inquiry, though accepted by the central consultative councils and civil service unions, would not bind individual civil servants. The SCS, speaking on the resumption of the second reading of the Bill at the LegCo sitting on 11 July 2002, added that,

“Some [Members of the LegCo] have asked why we do not negotiate with civil service unions, why we do not discuss with them [...] If Members think about the matter in greater depths, they will see that there are 300 civil service unions and 180,000 civil servants altogether. Is it then possible in practice to draw up a new agreement with each and every civil servant? In case any of them refuses, what are we going to do?”

35. The HKCTU is of the opinion that the speech of the SCS quoted in the previous paragraph is exactly the reason why a collective bargaining machinery, with provisions laying down objective procedures for determining the representative status of civil service unions for bargaining purpose, is essential to the good management of the Civil Service.

36. Moreover, the HKCTU also notes that the Government’s statement above is a significant departure from its original position on the 1968 Agreement as revealed in a booklet published in 1977 explaining the labour relationships between the Government and civil servants. A copy of the booklet (in Chinese only) is at Annex G. Paragraph 4(E) of the booklet reads that,

“The civil service associations pledge to observe any decision made by the central consultative council; [...] the civil service associations also pledge to observe any recommendations made by the independent Committee of Inquiry and accepted by the Government. Under such circumstances, *members and non-members of the civil service associations concerned shall observe the decisions made* and no individual civil servant will be permitted to make any personal choice unless it so stipulated in the agreement” (original text in Chinese, our translation and emphasis).

37. In view of recent development of court rulings, if the Government acts without explicit authority vested by laws, its action may be considered *ultra vires* by the courts. The HKCTU understands the Government’s concern that a collective agreement concluded with civil service unions or the recommendations made by the independent Committee of Inquiry under the 1968 Agreement may be legally inoperative. The HKCTU insists however that the proper way to address this potential problem is to introduce legislation to give legal effect to the 1968 Agreement, instead of abandoning the Agreement altogether as the Government did in this year’s civil service pay adjustment exercise. The HKCTU is also of the view that the present impasse is evidence of the Government’s failure to take necessary measures to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment of civil servants with civil service unions.

## **Conclusion**

38. With the above remarks, the HKCTU submits that the Government's decision to reduce civil service pay unilaterally through legislation contravenes Article 4 of the ILO Convention No. 98 and Articles 7 of ILO Convention No. 151. In addition, the Government's refusal to settle the dispute arising out of this year's civil service pay adjustment through arbitration is a breach of Article 8 of the ILO Convention No. 151 and clause 7 of the 1968 Agreement.

39. The HKCTU calls for the Committee on Freedom of Association to urge the Government:

- (a) to re-negotiate with civil service unions with a view to reaching an agreement on the 2002 civil service pay adjustment, and in the event that no agreement could be reached, to refer the matter in dispute to an independent Committee of Inquiry appointed under the 1968 Agreement; and
- (b) to take necessary measures, including legislative means, to establish a legally operative collective bargaining machinery within the HKSAR Civil Service, which is in full compliance with the ILO Conventions No. 98 and No. 151.

## **Glossary of Abbreviation**

1968 Agreement	1968 Agreement between the Hong Kong Government and the Main Staff Associations
Bill	Public Officers Pay Adjustment Bill
CE	Chief Executive
CS	Chief Secretary for Administration
DSCC	Disciplined Services Consultative Council
Government	Government of the Hong Kong Special Administrative Region
GPTI	Gross Pay Trend Indicator
HKCTU	Hong Kong Confederation of Trade Unions
HKSAR	Hong Kong Special Administrative Region
LegCo	Legislative Council
MOCS	Memorandum on Conditions of Service
MPS	Master Pay Scale
MSOSCC	Model Scale One Staff Consultative Council
NPTI	Net Pay Trend Indicator
Ordinance	Public Officers Pay Adjustment Ordinance
PFC	Police Force Council
SCS	Secretary for Civil Service
SCSC	Senior Civil Service Council

## **List of Annexes**

Annex A	The Public Officers Pay Adjustment Ordinance
Annex B	Methodology of the Annual Pay Trend Survey
Annex C	The 1968 Agreement between the Hong Kong Government and the Main Staff Associations (1998 Adapted Version)
Annex D	The Joint Statement Issued by 67 Civil Service Unions on 5 June 2002 (in Chinese)
Annex E	The Chief Secretary for Administration's Statement Explaining the Chief Executive's Decision against the Appointment of a Committee of Inquiry
Annex F	Major Events of the 2002 Civil Service Pay Adjustment Exercise
Annex G	The Booklet Published in 1977 Explaining the Labour Relationships between the Government and Civil Servants (in Chinese)



FIFTH ITEM ON THE AGENDA

**334th Report of the Committee  
on Freedom of Association**

**Contents**

*Paragraphs*

**Part I**

<b>Introduction.....</b>	<b>1-94</b>
--------------------------	-------------

*Case No. 2197 (South Africa): Report in which the Committee requests to be kept informed of developments*

Complaint against the Government of South Africa presented by Mandate Trade Union (MTU).....	95-131
The Committee's conclusions.....	125-130
The Committee's recommendations .....	131

*Case No. 2224 (Argentina): Definitive report*

Complaint against the Government of Argentina presented by the Confederation of Argentine Workers (CTA) and the Association of State Workers (ATE).....	132-146
The Committee's conclusions.....	141-145
The Committee's recommendation .....	146

*Case No. 2256 (Argentina): Report in which the Committee requests to be kept informed of developments*

Complaint against the Government of Argentina presented by the Confederation of Education Workers of Argentina (CTERA) the United Union of Education Workers of Mendoza (SUTE) and the Confederation of Argentine Workers (CTA).....	147-165
The Committee's conclusions.....	161-164
The Committee's recommendations .....	165

- ~~(c) Regarding the alleged dismissal of all the workers of Andonaegui S.A., including the union officials, after the conclusion of the collective bargaining process, the Committee calls on the Government to keep it informed of the decision handed down by the judicial authority.~~

CASE NO. 2253

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of China/Hong Kong  
Special Administrative Region  
presented by  
the Hong Kong Confederation of Trade Unions (HKCTU)**

***Allegations: The complainant alleges that by enacting the Public Officers Pay Adjustment Ordinance in 2002, the Government unilaterally reduced civil service pay without proper negotiations with civil service unions and refused to settle the dispute over pay adjustment through continued dialogue or through a committee of inquiry, as provided in the 1968 Agreement between the Government and the main staff associations***

275. In a communication dated 10 March 2003, the Hong Kong Confederation of Trade Unions (HKCTU) submitted a complaint of violations of freedom of association against the Government of China/Hong Kong Special Administrative Region.
276. The Government sent its observations in a communication dated 8 March 2004.
277. China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) applicable in the territory of Hong Kong Special Administrative Region (HKSAR) with modifications. It has declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) as well as the Labour Relations (Public Service) Convention, 1978 (No. 151) applicable without modifications.

#### **A. The complainant's allegations**

278. In its communication dated 10 March 2003 the complainant alleges that, by enacting the Public Officers Pay Adjustment Ordinance in 2002, the Government unilaterally reduced civil service pay without proper negotiations with civil service unions and refused to settle the dispute over pay adjustment through continued dialogue or through a committee of inquiry, as provided in the 1968 Agreement between the Government and the main staff associations.



### ***Unilateral reduction of civil service pay without negotiations***

279. The complainant initially presents the mechanism of the annual civil service pay adjustment. According to the complainant, the Net Pay Trend Indicators form the basis for the civil service pay adjustment. They are produced on the basis of a survey of private sector pay trends which is commissioned annually by the independent Pay Trend Survey Committee. The Pay Trend Survey produces three Gross Pay Trend Indicators which represent the movements in private sector pay for each (upper, middle and lower) salary band from 2 April the previous year until 1 April of the current year. The payroll costs of civil service increments are then deducted from the Gross Pay Trend Indicators to produce the Net Pay Trend Indicators. Apart from the movements in private sector pay, factors such as changes in the cost of living, the state of the economy, budgetary considerations, the staff sides' pay claims, and the civil service morale are all taken into account when determining civil service pay adjustment.
280. The complainant describes the usual procedure for deciding on the civil service pay adjustment. After taking into account the above six factors, the Chief Executive in Council puts an offer of pay adjustment for each salary band to the staff sides of the four central consultative councils, i.e., the Senior Civil Service Council (SCSC), the Model Scale 1 Staff Consultative Council (Mod 1 Council), the Disciplined Services Consultative Council (DSCC) and the Police Force Council (PFC). Having considered the views of the staff sides on the offer, the Chief Executive in Council then makes a final decision on the annual civil service pay adjustment.
281. The complainant adds that the findings of the 2001-02 Pay Trend Survey were announced on 6 May 2002 and endorsed on 13 May 2002 by the Pay Trend Survey Committee. The Net Payment Trend Indicators (forming the basis for the civil service pay adjustments) were -4.42 per cent for the upper salary band, -1.64 per cent for the middle salary band, and -1.58 per cent for the lower salary band. On 15 May 2002, the staff sides of three central consultative councils (the SCSC, the Mod 1 Council and the DSCC) submitted their pay claims, urging the Government to freeze civil service pay for all salary bands despite the negative Net Payment Trend Indicators (the PFC did not submit any pay claims). On 22 May 2002 the Chief Executive in Council decided that an offer of a pay reduction of -4.42 per cent for the upper band, -1.64 per cent for the middle band and -1.58 per cent for the lower band, with effect from 1 October 2002, should be put to the staff sides of the four central consultative councils. The Chief Executive in Council also agreed in principle that in the event of a decision to reduce civil service pay, a bill should be introduced in the Legislative Council to provide for the specified rates of adjustment. On 24 May 2002 the staff sides of the SCSC and the Mod 1 Council reiterated their original proposal of a pay freeze. On 25 May 2002 the staff side of the DSCC proposed that the civil service pay adjustment exercise be held in abeyance pending the completion of the comprehensive review of the civil service pay policy and system. All of them objected to the proposed legislative approach to implement a pay reduction. The staff council of the fourth consultative council, the PFC, did not submit any views. On 28 May 2002, after having considered the reactions of the staff sides to the pay offer, the Chief Executive in Council decided that this year's civil pay should be reduced as originally proposed and that the Public Officers Pay Adjustment Bill (the Bill) should be introduced in the Legislative Council. The first and second readings of the Bill were then scheduled for the Legislative Council sitting of 5 June 2002. The Bill was finally passed at the Legislative Council sitting on 11 July 2002, and the Public Officers Pay Adjustment Ordinance was published in the Gazette on 19 July 2002 (copy attached).
282. The complainant alleges that although there is a long-established consultative machinery within the HKSAR civil service, the role of civil service unions in determining the

remunerations of civil servants is rather marginal and their participation is limited to submitting their pay claims and commenting on the pay offer made by the Chief Executive in Council. There is no negotiation, in its ordinary sense, between the Government and civil service unions during the pay adjustment exercise, and the determination of civil service pay is essentially the prerogative of the Government under the existing mechanism.

283. The complainant further indicates with regard to the 2002 civil service pay adjustment exercise, that the Chief Executive in Council made the final decision just one week after putting the pay offer to the staff sides of the four central consultative councils. Thus, in a letter of 24 May 2002, the staff side of the SCSC held that the spirit of consultation had not been respected and that the normal process of consultation and negotiation to arrive at an agreement had not been conducted in an open-minded and constructive manner. According to the complainant, the undue haste with which the process had been conducted gave the clear impression that the Government had already made up its mind. It was obvious that no meaningful negotiations could have taken place in such short period of time, given the controversies of this year's civil service pay reduction. The Public Officers Pay Adjustment Bill had been drafted and announced well before the Administration's decision was made known to the staff side. The complainant contends that the Government's hasty decision to cut civil service pay deprived in effect civil service unions of the right to participate in determining the remunerations of civil servants, contrary to Article 4 of Convention No. 98 and Article 7 of Convention No. 151.

### ***Refusal to settle the dispute***

284. The complainant adds that the staff side of the Senior Civil Service Council wrote to the Chief Executive on 31 May 2002 requesting the setting up of an independent committee of inquiry under the 1968 Agreement between the Hong Kong Government and the main staff associations, to deal with the dispute over this year's civil service pay adjustment (copy attached). This request was supported by a total of 67 civil service unions in a joint statement of 5 June 2002, in which they undertook that they would accept the outcome of the inquiry (copy attached). The complainant explains that according to clause 7 of the 1968 Agreement, a committee of inquiry can be appointed by the Chief Executive where there are no prospects of reaching agreement on a matter within the scope of the Agreement, provided that the matter in dispute is not, in the opinion of the Chief Executive, trivial, or a matter of settled public policy, or affects the security of the HKSAR. The complainant adds that on 11 June 2002 the Chief Executive decided not to appoint a committee of inquiry under the 1968 Agreement because, as indicated in his reply, he was of the opinion that it was a matter of settled public policy that in determining the size of each year's civil service pay adjustment, the Government took into account certain factors, some of which, such as the Net Pay Trend Indicators and the cost of living, were capable of upward and downward movements. Thus, according to the Chief Executive, it was inherent in the existing mechanism that civil service pay may be increased or decreased (copy attached).
285. The complainant considers this argument unacceptable because as conceded by the Government, under the existing employment contracts of most serving civil servants, the Government had no authority to reduce civil service pay unilaterally. The complainant quotes the Secretary for Civil Service (SCS) as saying before the Legislative Council on 5 June 2002 that the standard memorandum on conditions of service and the employment contracts of most serving civil servants (except for a very small number of officers recruited since June 2000) do not contain any express provision authorizing pay reduction by the Government and, on the basis of decided cases, the courts are unlikely to accept that a general power of variation could apply to such a fundamental term as the salary. The complainant alleges that it is therefore disputable whether the Government could reach a pay reduction decision unilaterally. Consequently, according to the complainant, the Chief

Executive's decision against the appointment of a committee of inquiry under clause 7 of the 1968 Agreement on the ground that the matter in dispute is a matter of settled public policy is unsubstantiated.

286. With regard to the Government's legislative approach to reduce civil service pay, the complainant notes that the Chief Executive argued that the decision to give effect to the 2002 civil service pay adjustment by legislation was a matter of implementation of a settled policy, and that whether this decision could have been implemented without legislation or whether the proposed legislation was constitutional, were questions of law which a committee of inquiry would not be able to resolve. According to the complainant, the Government's argument that a legislative approach was but a technical means to implement the decision of pay reduction was unconvincing because it ignored its far-reaching implications on the existing regime regulating civil service pay. Prior to the enactment of the Public Officers Pay Adjustment Ordinance, civil service pay was not governed by legislation and was purely a matter of contractual relationship between the Government and civil servants. Since the enactment of the Ordinance represented a departure from the existing regime and a significant change in the conditions of service affecting all civil servants, the Government was obliged, on the basis of general legal policy on contractual relationships, to negotiate with civil service unions with a view to reaching an agreement; in the event that an agreement could not be reached, the matter in dispute should be referred to a committee of inquiry appointed under the 1968 Agreement. Consequently, the complainant contends that a legislative approach to reduce civil service pay is not a matter of settled public policy, and the Government's refusal to appoint a committee of inquiry under the 1968 Agreement constitutes a breach of the terms of a collective agreement between the Government and the main civil service unions.
287. The complainant alleges that although some Legislative Council members urged the Government to reconsider the staff sides' request for the appointment of a committee of inquiry under the 1968 Agreement, the Government maintained its stance, pointing out that despite the undertaking by 67 civil service unions to accept the outcome of the inquiry, individual civil servants would not be bound by the recommendations of a committee of inquiry. Moreover, the SCS stated before the Legislative Council on 11 July 2002 that negotiations with civil service unions were obstructed by the existence of 300 civil service unions and 180,000 civil servants, and the impossibility to draw up a new agreement with each one of them. The complainant points out that this is exactly the reason why collective bargaining machinery, with provisions laying down objective procedures for determining the representative status of civil service unions for bargaining purposes, is essential to the good management of the civil service. Thus, the complainant suggests that the only proper way to address this problem would be to introduce legislation to give legal effect to the 1968 Agreement instead of abandoning it altogether as the Government did. The complainant is also of the view that the present impasse is evidence of the Government's failure to take necessary measures to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment of civil servants with civil service unions.
288. In conclusion, the complainant alleges that the Government's refusal to extend the consultation period despite repeated calls from civil service unions for continued dialogue to resolve the differences, and its turning down of the request to refer the matter to an independent committee of inquiry, constituted a violation of Article 8 of Convention No. 151.

## B. The Government's reply

289. In its communication dated 8 March 2004, the Government indicates that it does not consider that ~~there is~~ any violation of Conventions Nos. 98 and 151 in relation to the 2002 civil service pay ~~adjustment~~.

### ***Unilateral reduction of civil service pay without negotiations***

290. The Government ~~first~~ provides information on the civil service pay policy and system, the objective of which is to offer sufficient remuneration to attract, retain and motivate staff of a suitable calibre to provide the public with an effective and efficient service. In this framework, the principle of broad comparability with the private sector is an important factor and has underpinned civil service pay policy since the 1960s. As of 1974, broad comparability with pay movements in the private sector has been assessed annually through a Pay Trend Survey. The Pay Trend Survey is carried out by the independent Pay Survey and Research Unit. The results are analysed and validated by the Pay Trend Survey Committee which comprises representatives from the staff sides of the central consultative councils. The survey produces a Gross Pay Trend Indicator for each salary band, which represents the weighted average pay adjustment for all surveyed employees in the respective salary band during the survey period (from 2 April of the previous year to 1 April of the survey year). Following validation by the Pay Trend Survey Committee, the Gross Pay Trend Indicators are submitted to the Government, which in turn deducts the payroll cost of civil service increments to produce the Net Pay Trend Indicators for each salary band. The Net Pay Trend Indicators form one of the factors which the Government takes into account in determining the size of the annual civil service pay adjustment. Under the prevailing mechanism, the Government decides on the size of the annual civil service pay adjustment having regard to six factors (Net Pay Trend Indicators, state of the economy, budgetary considerations, cost of living, pay claims of the staff sides of the central consultative councils and civil service morale).
291. The Government adds that in accordance with the established procedures, the Government consults the staff sides of the central consultative councils in the course of the annual civil service pay adjustment exercise. In the first place, the staff sides are represented on the abovementioned Pay Trend Survey Committee which validates the findings of the Pay Trend Survey. Moreover, following the validation, the Government invites the staff sides to submit their pay claims for that year. In the light of the staff sides' pay claims and other relevant factors, the Chief Executive in Council then takes a view on the pay offer to be made to the staff sides. Finally, taking account of the staff sides' comments on the Government's pay offer and other relevant factors, the Chief Executive in Council makes a final decision on the pay adjustment for that year.
292. With regard to the 2002 civil service pay adjustment in particular, the Government indicates that when the 2001-02 Pay Trend Survey was released on 6 May 2002, its results were a decrease in the Gross Pay Trend Indicators for the three salary bands (-3.39 per cent for the upper band, -0.60 per cent for the middle band and -0.79 per cent for the lower band). The Pay Trend Survey Committee discussed and validated the findings of the Survey on 13 May 2002. The results were submitted to the Government which deducted, in accordance with the established mechanism, the payroll cost of civil service increments from the Gross Pay Trend Indicators to produce the Net Pay Trend Indicators as follows: -4.42 per cent for the upper salary band, -1.64 per cent for the middle salary band and -1.58 per cent for the lower salary band. The staff sides of the four central consultative councils were invited to submit their pay claims. Three of them, namely, the Senior Civil Service Council (SCSC), the Model Scale 1 Staff Consultative Council (Mod 1 Council) and the Disciplined Services Staff Consultative Council (DSCC) submitted their claims to

the Government on 15 May 2002, urging the Government to freeze civil service pay for all salary bands despite the negative pay trend indicators. The staff side of the Police Force Council (PFC) decided not to submit a pay claim.

293. At the meeting of the Executive Council on 22 May 2002, it was decided, among other things, that an offer of a pay reduction of -4.42 per cent for the directorate and the upper salary band, -1.64 per cent for the middle salary band and -1.58 per cent for the lower salary band should be put to the staff sides of the four central consultative councils. The Chief Executive in Council also gave its agreement in principle to a draft Public Officers Pay Adjustment Bill to implement the proposed pay reduction. The Government specifies that in coming to this decision, the Chief Executive in Council took full account of the relevant considerations under the prevailing mechanism for civil service pay adjustment, including: (1) the Net Pay Trend Indicators which showed a downward trend; (2) the state of the economy which underwent a distinct downturn in 2001 and remained modest in 2002 with unemployment reaching a new high of 7 per cent; (3) budgetary considerations: the Government faced a structural fiscal deficit problem of HK\$65.6 billion for 2001-02 and HK\$45.2 billion for 2002-03 and set the target of reducing public expenditure to 20 per cent of gross domestic product by 2006-07; (4) changes in the cost of living: the composite consumer price index had declined by 1.8 per cent by 31 March 2002; (5) the staff sides' pay claims urging the Government to freeze civil service pay; and (6) civil service morale.
294. The Government attaches the text of a brief submitted to the Legislative Council in which these elements are analysed. The contractual implications of the adjustment are also carefully analysed in the brief, which provides that since the standard Memorandum on Conditions of Service (governing the employment arrangements for a civil servant) does not expressly reserve for the Government the right to reduce the salaries of civil servants, there is a risk that a decision to reduce civil service pay without legislation will be subject to a successful legal challenge; thus, the Government should seek the enactment of legislation to provide for an express reduction of civil service pay at the specified rates of adjustment for different salary bands. The text of the Public Officers Pay Adjustment Bill is attached to the brief, which is dated 22 May 2002, as its Annex A.
295. The Government adds that on 22 May 2002, the staff sides of the central consultative councils were informed of the Chief Executive in Council's decision and were invited to provide their views on the pay offer. In response, the staff sides of three consultative councils (SCSC, Mod 1 Council and DSCC) reiterated that a pay freeze would be appropriate. On 28 May 2002, the Executive Council decided that the Government should adjust civil service pay as originally proposed, and that the Public Officers Pay Adjustment Bill should be introduced into the Legislative Council. The Government adds that in coming to this decision the Chief Executive in Council took full account of the views of the staff sides of three central consultative councils (SCSC, Mod 1 Council and DSCC) as well as all the other relevant factors (the Government attaches the second brief to the Legislative Council dated 28 May 2002, in which consideration is given to these factors).
296. The Government adds that following approval by the Chief Executive in Council, the Public Officers Pay Adjustment Bill was published in the Gazette on 31 May 2002 and introduced into the Legislative Council on 5 June 2002. Interested bodies, including the staff sides of the central consultative councils and the major service-wide staff unions, were invited to give their views on the Bill which was passed by the Legislative Council on 11 July 2002. The Public Officers Pay Adjustment Ordinance was published in the Gazette on 19 July 2002 (text attached).
297. The Government adds that after the enactment of the Public Officers Pay Adjustment Ordinance, a number of civil service staff unions and individual civil servants applied to

the court for judicial review regarding the lawfulness of the Ordinance. The Court of First Instance dismissed two lead cases on 10 June 2003 and dismissed the remaining cases on 7 November 2003. The Court did not accept the applicants' arguments that the Government had not complied with Convention No. 151 and hence had contravened Article 39 of the Basic Law (excerpts attached).

298. In response to the complainant's allegations, the Government indicates that it has applied Convention No. 98 in full, through a well-established and extensive consultative machinery comprising four central consultative councils and 89 departmental consultative committees in 66 government bureaux and departments. Each central consultative council/departmental consultative committee comprises the official side (representing management) and the staff side (representing the relevant staff unions/associations). Through this machinery, individual civil servants and staff unions/associations are consulted on a wide range of civil service matters concerning, for instance, pay, conditions of service and the working environment. In addition to the formal machinery, informal channels of consultation are in place.
299. As far as civil service pay is concerned, the Government indicates that, as noted above, the established pay adjustment mechanism has built-in procedures for staff consultation and is effective and adequate for the purpose of consulting with staff on matters relating to civil service pay. With regard to the 2002 civil service pay adjustment, the Government emphasizes that the staff sides were able to submit their pay claims which were taken into account by the Chief Executive in Council.
300. As to the application of Article 7 of Convention No. 151, the Government recalls that this Article allows a degree of flexibility in the choice of procedures to be used in the determination of the terms and conditions of employment. The Government therefore holds that in compliance with Article 7, it has taken measures appropriate to the local conditions, and has established the consultative machinery which allows staff representatives to participate in the determination of terms and conditions of employment of civil servants. The pay adjustment mechanism for the civil service allows the staff side representatives to participate in the determination of adjustments to pay. In conducting the 2002 civil service pay adjustment exercise, the Government followed the established procedures for consulting the staff sides. The Court of First Instance rejected any claim that there had been a contravention of Article 7 of Convention No. 151, as the established procedure allowed for the participation of public servants.
301. As to the allegation that meaningful negotiations could not have taken place in such a short period of time, the Government states that there was no material difference in the timetable for staff consultation in 2002 as compared with previous years. The tight timetable was due to the fact that the summer recess of the Legislative Council normally commences in early July.

### ***Refusal to settle the dispute***

302. The Government indicates that on 31 May 2002, the staff side of the SCSC wrote to the Chief Executive requesting the appointment of a committee of inquiry under clause 7(1) of the 1968 Agreement signed between the Government and the main civil service staff associations (copy attached). After consideration of the request, the Chief Executive decided not to appoint a committee of inquiry and this decision was conveyed in writing to the staff side of the SCSC on 11 June 2002.
303. As to the allegation of violations of Article 8 of Convention No. 151 and the 1968 Agreement, the Government indicates that to come within the scope of Article 8, the dispute must be in connection with the determination of the terms and conditions of

employment and not with the method by which terms and conditions, once determined, are implemented. According to the Government, once the magnitude of the pay adjustment has been determined in accordance with machinery which is consistent with Article 7 of Convention No. 151 (through negotiation or other procedures such as mediation, conciliation and arbitration), a dispute as to the implementation of the decision does not fall within Article 8.

304. With regard to the allegation of non-compliance with the terms of the 1968 Agreement between the Government and the main staff associations, the Government indicates that the 2002 civil service pay adjustment has been conducted in strict accordance with the established mechanism and that the final decision on a civil service pay reduction has taken account of all the relevant consideration factors. The Government emphasizes as an inherent feature of the prevailing pay adjustment mechanism, that civil service pay may be increased or decreased as some of the factors taken into consideration such as the Net Pay Trend Indicators and the cost of living are capable of upward and downward movements. The fact that there had been no civil service pay reduction until 2002 was a reflection of the generally favourable fiscal and economic environment over the years and was not an indication of any government policy that civil service pay should not be reduced. According to the Government, the Court of First Instance confirmed that the matter was one of settled public policy. It found that the possibility of a reduction was inherent to the working of the existing mechanism; the use of the latter was so much part of settled policy, that the possibility of a reduction in pay was itself part of settled policy. Thus, the decision to reduce civil service pay had been adopted in accordance with the established mechanism. There was no violation of Article 8 of Convention No. 151 as the established mechanism allowed for the participation of public servants. At this stage, the remaining issue in dispute were the methods through which the decision would be implemented, and this issue did not belong to the competence of the committee of inquiry.
305. As to the question of implementing the 2002 civil service pay adjustment by legislation, the Government considers that this was a matter of implementation of a settled policy and that the committee of inquiry would be unable to resolve such a question. It was incumbent on the Government to implement with certainty and in a fair manner a decision which was generally supported by the community. The Court of First Instance confirmed that this matter of implementation was not encompassed within Article 8 of Convention No. 151. The Government adds that the allegation that the legislative approach is a significant departure from the existing regime regulating civil service pay is unfounded. The Public Officers Pay Adjustment Ordinance was related only to the pay adjustment and did not change the system of pay or the conditions of service for the civil servants.
306. The Government further adds that even if a committee of inquiry had been set up, its recommendations would not be binding on the Government or the staff associations – parties to the 1968 Agreement – unless accepted by them. Moreover, they would not be binding on staff associations which were not parties to the 1968 Agreement or to individual civil servants. Finally, given that under clause 7(2) of the 1968 Agreement the decision of the Chief Executive on this matter shall be final, the latter was entitled to form the opinion that the 2002 civil service pay adjustment exercise was a matter of settled public policy and accordingly not to appoint a committee of inquiry.
307. As to the allegation that the Government has failed to encourage and promote the full development of machinery for negotiation of terms and conditions of employment of civil servants, the Government states that there is no question of the Government abandoning the 1968 Agreement and that it has taken measures appropriate to local conditions for handling matters concerning the terms and conditions of employment of civil servants in compliance with Conventions Nos. 98 and 151.

308. In conclusion, the Government notes that given the economic climate prevailing in 2002, the stringent fiscal situation and the pay adjustment trend in the private sector, its decision to reduce civil service pay was reasonable and struck a balance between the concerns of civil servants and the wider interests of the community as a whole. The adjustment exercise was conducted in accordance with the established mechanism and procedures, in compliance with Conventions Nos. 98 and 151.

### C. The Committee's conclusions

309. *The Committee notes that this case concerns allegations that by enacting the Public Officers Pay Adjustment Ordinance in 2002, the Government unilaterally reduced civil service pay without proper negotiations with civil service unions and refused to settle the dispute over pay adjustment through continued dialogue or through a committee of inquiry, as provided in the 1968 Agreement between the Government and the main staff associations.*

#### **Unilateral reduction of civil service pay without negotiations**

310. *The Committee takes note of the facts on which both the complainant and the Government agree. The annual civil service pay adjustment is decided on the basis of six factors (Net Pay Trend Indicators, state of the economy, budgetary considerations, cost of living, staff sides' pay claims and civil service morale). In the context of the standard procedure for determining civil service pay for the year 2002, on 6 May 2002 the Pay Trend Survey was released. This survey constitutes an important step in determining civil servants' pay adjustment because it produces the private sector Gross Pay Trend Indicators from which the public sector Net Pay Trend Indicators will be deduced. In 2002, the survey's results were a decrease in the Gross Pay Trend Indicators. On 13 May 2002 the results of the Pay Trend Survey were validated by the Pay Trend Survey Committee with the participation of the staff sides of the central consultative councils. The results were submitted to the Government which produced, in accordance with the established mechanism, the Net Pay Trend Indicators as follows: -4.42 per cent for the upper salary band, -1.64 per cent for the middle salary band and -1.58 per cent for the lower salary band. On 15 May 2002 the staff sides of three out of four central consultative councils (namely, the Senior Civil Service Council (SCSC), the Model Scale 1 Staff Consultative Council (Mod 1 Council) and the Disciplined Services Staff Consultative Council (DSCC)) submitted their claims to the Government, urging the latter to freeze civil service pay. On 22 May 2002 the Executive Council decided to make an offer of pay reduction at a rate identical to the decrease in that year's Net Pay Trend Indicators. The Government also decided on the same day that the reduction in civil service pay should be implemented through legislation. The text of the Public Officers Pay Adjustment Bill was annexed to the Legislative Council brief of the same date. As explained in the brief, the adoption of legislation was necessary because the civil servants' Memorandum on Conditions of Service and case law did not allow for a unilateral reduction of a fundamental term of the employment contract like the salary. On 25 and 26 May 2002 the staff sides of three out of four central consultative councils (SCSC, Mod 1 Council and DSCC) objected to the salary reduction and the draft Bill, and proposed in essence to maintain the status quo. On 28 May 2002 the Chief Executive in Council decided that this year's civil service pay should be reduced as originally proposed (i.e., without any modifications) and that such reduction should be implemented through legislation. On 5 June 2002 the Public Officers Pay Adjustment Bill was introduced in the Legislative Council. On 11 July 2002 the Bill was passed by the Legislative Council. On 19 July 2002 the Public Officers Pay Adjustment Ordinance was published in the Gazette. On 10 June 2003 and 7 November 2003, the Court of First Instance rejected certain applications for judicial review regarding the lawfulness of the*



*Ordinance. The Court did not find any violation of Convention No. 151 as the established procedure allowed for the participation of the staff sides.*

311. *The Committee notes that according to the complainant, although there is a long-established consultative machinery within the civil service, the role of civil service unions in determining the remuneration of civil servants is rather marginal and there is no negotiation in the ordinary sense between the Government and civil service unions over civil service pay. According to the complainant, during the 2002 civil service pay adjustment exercise, there were no meaningful negotiations given the short period of time left (one week) between the pay offer and the final decision made by the Chief Executive in Council as to the pay adjustment. Moreover, the Public Officers Pay Adjustment Bill had been drafted and announced well before the Administration's decision was known to the staff side. The Committee notes that according to the Government, the available, well-established and extensive consultative machinery is both effective and adequate for the purpose of consulting with staff on matters relating to civil service pay, in conformity with Article 4 of Convention No. 98 and Article 7 of Convention No. 151. This mechanism allows the staff sides of the central consultative councils to be represented on the Pay Trend Survey Committee, to submit their pay claims which are taken into account when the Chief Executive in Council makes a pay offer, and to make comments on the Government's pay offer which are taken into account when making the final decision on the pay adjustment. As to the 2002 civil service pay adjustment exercise, the Government indicates that it was conducted in strict accordance with the established mechanism. The staff sides were able to submit their pay claims which were taken into account by the Chief Executive in Council. The final decision on the civil service pay reduction took account of all the relevant consideration factors. The timetable for staff consultation was the same as in other years and was determined by the fact that the summer recess of the Legislative Council normally commences in early July.*
312. *The Committee notes that public employees are subject to the consultation mechanism in place, while those of them who are not engaged in the administration of the State cannot engage in collective bargaining. The Committee recalls that a distinction should be drawn between those public employees who are engaged in the administration of the State, who can be excluded from the scope of Convention No. 98 on the basis of Article 6, and those who are not engaged in the administration of the State and who should enjoy collective bargaining rights in accordance with Article 4 of Convention No. 98. The Committee emphasizes that it is imperative that the legislation contain specific provisions clearly and explicitly recognizing the right of organizations of public employees and officials who are not acting in the capacity of agents of the state administration to conclude collective agreements. From the point of view of the principles laid down by the supervisory bodies of the ILO in connection with Convention No. 98, this right could only be denied to officials working in the ministries and other comparable government bodies but not, for example, to persons working in public undertakings or autonomous public institutions [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 795]. The Committee notes the complainant's suggestion that legislative measures could include objective procedures for determining the representative status of civil service unions and recalls that in Case No. 1942 it had requested the Government to give serious consideration to the adoption of legislative provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes which respect freedom of association principles. The Committee finally takes note of the latest observation made by the Committee of Experts on the Application of Conventions and Recommendations in which the Government is requested to take all necessary measures so as to guarantee the right of public employees who are not engaged in the administration of the State, to negotiate collectively their conditions and terms of employment [see **Report of the Committee of Experts on the Application of Conventions and Recommendations**, ILC, 92nd Session, 1994]. The Committee therefore*

requests the Government to engage in consultations with the staff sides of the central consultative councils without delay with a view to taking the appropriate legislative measures so as to establish a collective bargaining mechanism allowing public employees who are not engaged in the administration of the State, to negotiate collectively their terms and conditions of employment in accordance with Article 4 of Convention No. 98, applicable in the territory of China/Hong Kong Special Administrative Region without modifications. The Committee requests to be kept informed of developments in this respect.

313. With regard to the other category of public employees (those engaged in the administration of the State who have been excluded from the scope of Convention No. 98 under Article 6), the Committee considers it useful to recall that, under the terms of the Labour Relations (Public Service) Convention, 1978 (No. 151) (Article 7) "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters." The Committee acknowledges that Article 7 of Convention No. 151 allows a degree of flexibility in the choice of procedures to be used in the determination of the terms and conditions of employment [see *Digest*, op. cit., para. 923]. Thus, a mechanism of consultations might enable public employees engaged in the administration of the State to participate in the determination of their terms and conditions of employment.
314. The Committee observes that during the 2002 civil service pay adjustment exercise, the period of consultations lasted two weeks, from 15 May 2002 when the staff sides of the three central consultative councils proposed a pay freeze, to 28 May 2002 when the Chief Executive in Council decided that this year's civil service pay should be reduced as originally proposed; moreover, the final decision was adopted only one week after the Government had made its initial pay offer and two to three days after the staff sides of the central consultative councils had made their counter-proposals. The outcome of the consultations was that the Government decided to maintain the original pay reduction without any modification despite categorical opposition from the staff sides. The pay reduction was identical to the decrease in that year's Net Pay Trend Indicators, although additional factors were to be taken into account in this framework, in particular, the claims of the staff sides of the central consultative councils. It also emerges from the brief to the Legislative Council dated 22 May 2002, that the Public Officers Pay Adjustment Bill had already been drafted on 22 May 2002 when the staff sides were informed of the pay reduction offer. On the basis of these elements, it appears to the Committee that the consultations which took place during the 2002 civil service pay adjustment exercise seemed to be perfunctory.
315. As the national system in place in the framework of Convention No. 151 relies on consultations rather than negotiations, the Committee emphasizes the need for genuine in-depth consultations with public employees' organizations. The staff sides of the central consultative councils should be invited to talks with adequate advance notice and should be allowed sufficient time for consultations on their conditions of employment. They should also be consulted at sufficient length by the authorities on matters of mutual interest, including everything relating to the preparation and application of legislation concerning their terms and conditions of employment; this would contribute to more solidly founded legislation, programmes and measures that the public authorities have to adopt or apply, and to greater compliance and better implementation. The Government should, as far as possible, also aim at reaching agreement with the staff sides of the central consultative councils. The Committee expects that the staff sides of the central consultative councils will be allowed in the future to engage in full and frank consultations with the Government over the terms and conditions of employment of public employees who are engaged in the

administration of the State in accordance with Article 7 of Convention No. 151, applicable in the territory of China/Hong Kong Special Administrative Region without modifications.

### **Refusal to settle the dispute**

- 316.** *With regard to allegations concerning the Government's refusal to settle the dispute, the Committee takes note of the facts on which both parties agree. On 31 May 2002 the staff side of the SCSC wrote to the Chief Executive requesting the setting up of an independent committee of inquiry under the 1968 Agreement between the Government and the main staff associations, to deal with the dispute over this year's pay adjustment. According to clause 7 of the 1968 Agreement, a committee of inquiry can be appointed by the Chief Executive where there are no prospects of reaching agreement on a matter within the scope of the Agreement, provided that the matter in dispute is not, in the opinion of the Chief Executive, trivial, or a matter of settled public policy, or a matter which affects the security of the HKSAR. On 5 June 2002, the request for the committee of inquiry was supported by a total of 67 civil service unions in a joint statement. On 11 June the Chief Executive decided against the appointment of a committee of inquiry on the ground that it was a matter of settled public policy that in determining the size of each year's civil service pay adjustment, the Government took account of certain factors, some of which (Net Pay Trend Indicators, cost of living) were capable of downward movements and it was therefore inherent in the existing mechanism that civil service pay may be increased or decreased. Since civil service pay adjustment was a matter of settled policy, the decision to implement such adjustment through legislation was a matter of implementation of a settled policy and a committee of inquiry would be unable to resolve the questions of law as to whether this decision could have been implemented without legislation. On 10 June 2003 and 7 November 2003, the Court of First Instance found that the issue in question was one of settled public policy because the possibility of reducing civil service pay was an inherent feature of the established procedure for civil service pay adjustment. The Court did not find any violation of Convention No. 151 because the established pay adjustment procedure allowed for the participation of the staff sides. At this stage therefore, the only issue in dispute concerned the methods through which the decision would be implemented, and this matter did not belong to the competence of the committee of inquiry.*
- 317.** *The Committee notes that according to the complainant, the Government's refusal to extend the consultation period and its turning down of the request to refer the matter to an independent committee of inquiry, constituted a violation of Article 8 of Convention No. 151 which provides that the settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved. The Committee notes that the Government indicates that on the contrary, the dispute did not come within the scope of Article 8 because it was not related to the determination of the terms and conditions of employment but to the method by which terms and conditions are implemented once determined. Thus, according to the Government, the Chief Executive had the authority under clause 7 of the 1968 Agreement to refuse the appointment of the committee of inquiry.*
- 318.** *The Committee notes that there has been a dispute between the Government and the staff sides of three central consultative councils over the decision to reduce civil service pay. The Committee observes that the Court of First Instance examined the dispute primarily from the point of view of whether a reduction in pay was possible on the basis of the established procedure. The Committee is of the view that the essential issue in dispute in this case was not so much whether civil service pay could be reduced, but whether it could be reduced without genuine consultations. The Committee observes that the Court of First*

*Instance did not examine this issue, confining itself to noting that the established pay adjustment procedure allowed for the participation of the staff sides. It appears to the Committee therefore, that an essential issue in dispute has not been settled; an examination of this issue would fall squarely within the scope of Article 8 of Convention No. 151. The Committee is of the view that by not bringing this dispute before the committee of inquiry in accordance with the 1968 Agreement, the Government avoided the procedure in place for the settlement of disputes, putting a unilateral end to it, in violation of Article 8 of Convention No. 151 and Article 4 of Convention No. 98. Given the time which has elapsed since the 2002 civil service pay adjustment exercise, the Committee considers that it would not be realistic to insist at this stage on the appointment of the committee of inquiry. Nevertheless, the Committee expects that the authorities will accept in the future the appointment of the committee of inquiry provided in the 1968 Agreement between the Government and the main staff associations, in case of dispute over the determination of the terms and conditions of employment of public employees.*

- 319.** *In light of the recurrent and serious issues involved in recent cases concerning China/Hong Kong Special Administrative Region, the Committee reminds the Government that it may avail itself of the technical assistance of the Office so as to bring its law and practice into full conformity with freedom of association standards and principles.*

### **The Committee's recommendations**

- 320.** *In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:*

- (a) The Committee requests the Government to engage in consultations with the staff sides of the central consultative councils without delay with a view to taking the appropriate legislative measures so as to establish a collective bargaining mechanism allowing public employees who are not engaged in the administration of the State to negotiate collectively their terms and conditions of employment in accordance with Article 4 of Convention No. 98, applicable in the territory of China/Hong Kong Special Administrative Region without modifications. The Committee requests to be kept informed of developments in this respect.*
- (b) The Committee expects that the staff sides of the central consultative councils will be allowed in the future to engage in full and frank consultations with the Government over the terms and conditions of employment of public employees who are engaged in the administration of the State in accordance with Article 7 of Convention No. 151, applicable in the territory of China/Hong Kong Special Administrative Region without modifications.*
- (c) The Committee expects that the authorities will accept in the future the appointment of the committee of inquiry provided in the 1968 Agreement between the Government and the main staff associations in case of dispute over the determination of the terms and conditions of employment of public employees.*
- (d) In light of the recurrent and serious issues involved in recent cases concerning China/Hong Kong Special Administrative Region, the Committee suggests that the Government avail itself of the technical*

*assistance of the Office so as to bring its law and practice into full conformity with freedom of association standards and principles.*

CASE NO. 2046

INTERIM REPORT

**Complaints against the Government of Colombia  
presented by**

- **the Colombian Union of Beverage Industry Workers (SINALTRAINBEC)**
- **the National Union of Bavaria S.A. Workers (SINALTRABAVARIA) and**
- **the National Union of Caja Agraria Workers (SINTRACREDITARIO)**

*Allegations: Dismissals and disciplinary measures against officials of SINALTRABAVARIA for participating in a strike in the company; failure to comply with the collective agreement, refusal to deduct trade union dues, intimidation of workers to force them to sign a collective agreement and preventing the union from entering the premises to advise workers in that connection, the refusal to allow trade union leave and the dismissal of many officials and members of various branches and pressure to accept a voluntary retirement plan; the refusal to register the trade union organization USITAC, alleged by SINALTRABAVARIA and SINALTRAINBEC, dismissals, disciplinary measures and transfers for trying to establish this organization; mass dismissals due to the conversion of the Caja de Crédito Agrario into the Banco de Crédito Agrario and dismissal of trade union officials in disregard of their trade union immunity and failure to comply with the orders for reinstatement by the Caja de Crédito Agrario of some of these officials. A number of allegations presented by SINALTRABAVARIA, including denial of leave for trade union affairs, pressure on workers to resign from the union, disciplinary measures, requests to revoke trade union registration and the untimely closure of enterprises, among others*

321. The Committee last examined this case at its November 2003 meeting [see 332nd Report, paras. 426-457].

322. SINALTRAINBEC sent new allegations in a communication dated 9 October 2003.

## 第2253號個案

在報告中，委員會要求政府繼續向委員會報告事情的發展

**香港職工會聯盟(下稱“職工盟”)申述對中國／香港特別行政區政府的投訴**

**指控：申訴人指控政府在2002年透過制定《公職人員薪酬調整條例》，在沒有與公務員工會進行適當磋商的情況下單方面削減公務員薪酬，並且拒絕按照政府與主要公務員協會簽訂的《一九六八年協議》所訂，透過持續對話或委任調查委員會，解決有關薪酬調整的爭議。**

275. 香港職工會聯盟(下稱“職工盟”)在2003年3月10日的通訊內，投訴中國／香港特別行政區政府侵犯結社自由。

276. 政府在2004年3月8日的通訊內提出本身的觀點。

277. 中國曾宣布，《1948年結社自由與保護組織權利公約》(第87號)經變通後適用於香港特別行政區(下稱“香港特區”)的地域。中國亦宣布，《1949年組織權利及集體談判權利公約》(第98號)及《1978年(公務員)勞動關係公約》(第151號)未經變通即適用於香港特區。

**A. 申訴人的指控**

278. 申訴人在2003年3月10日的通訊中指控政府在2002年透過制定《公職人員薪酬調整條例》，在沒有與公務員工會進行適當磋商的情況下單方面削減公務員薪酬，並且拒絕按照政府與主要公務員協會簽訂的《一九六八年協議》所訂，透過持續對話或委任調查委員會，解決有關薪酬調整的爭議。

**在未經磋商的情況下單方面削減公務員薪酬**

279. 申訴人首先陳述每年公務員薪酬調整的機制。據申訴人所述，薪酬趨勢淨指標是調整公務員薪酬的依據。薪酬趨勢淨指標是根據私營機構薪酬趨勢調查的結果而計算的，而該調查由獨立的薪酬趨勢調查委員會每年授權進行。薪酬趨勢調查得出3個薪酬趨勢總指標，該等指標分別反映在進行調查之前一年的4月2日至進行調查當年的4月1日期間，私營機構每個薪金級別(高層、中層及低層)的薪酬變動情況。政府繼而從薪酬趨勢總指標減去公務員的增薪開支，得出薪酬趨勢淨指標。政府在釐定公務員薪酬調整幅度時，除了參考私營機構的薪酬變動情況外，亦會考慮其他因素，例如生活費用的變

動、經濟狀況、財政預算、職方對薪酬調整的要求和公務員士氣。

**280.** 申訴人描述就公務員薪酬調整幅度作出決定的慣常程序。行政長官會同行政會議在考慮上述6項因素後，便向4個中央評議會(即高級公務員評議會、第一標準薪級公務員評議會、紀律部隊評議會及警察評議會)的職方提出每個薪金級別的薪酬調整建議。行政長官會同行政會議在考慮職方就薪酬調整建議提出的意見後，便就每年的公務員薪酬調整幅度作最終決定。

**281.** 申訴人補充，2001至02年度的薪酬趨勢調查結果於2002年5月6日公布，並於2002年5月13日獲薪酬趨勢調查委員會通過。各薪金級別的薪酬趨勢淨指標(作為調整公務員薪酬的依據)分別為高層薪金級別的-4.42%、中層薪金級別的-1.64%及低層薪金級別的-1.58%。雖然薪酬趨勢淨指標為負數，但3個中央評議會(高級公務員評議會、第一標準薪級公務員評議會及紀律部隊評議會)的職方在2002年5月15日提交薪酬調整要求，促請政府凍結所有薪金級別的公務員薪酬(警察評議會沒有提交任何薪酬調整要求)。在2002年5月22日，行政長官會同行政會議決定向4個中央評議會的職方提出減薪建議，高層薪金級別減薪4.42%、中層薪金級別減薪1.64%，低層薪金級別減薪1.58%，由2002年10月1日起生效。行政長官會同行政會議亦原則上同意，如決定削減公務員薪酬，政府須向立法會提交條例草案，就指明的調整率作出規定。在2002年5月24日，高級公務員評議會及第一標準薪級公務員評議會的職方重申原先的凍薪建議。在2002年5月25日，紀律部隊評議會的職方建議，在公務員薪酬政策和制度全面檢討完成前，應暫時擱置公務員薪酬調整的工作。3個中央評議會的職方一致反對透過立法落實減薪的建議。第4個中央評議會(即警察評議會)的職方則沒有提出任何意見。在2002年5月28日，行政長官會同行政會議在考慮職方對薪酬建議的反應後，決定按照原先的建議削減該年的公務員薪酬，以及向立法會提交《公職人員薪酬調整條例草案》(下稱“條例草案”)。條例草案其後於2002年6月5日的立法會會議上進行首讀和二讀，最終在2002年7月11日的立法會會議上獲得通過，而《公職人員薪酬調整條例》則於2002年7月19日刊登憲報(複本隨附於後)。

**282.** 申訴人指稱，雖然香港特區的公務員體制中長久以來都設有既定的諮詢機制，但公務員工會在釐定公務員薪酬方面的角色無足輕重，工会的參與只限於提出薪酬調整要求，以及就行政長官會同行政會議作出的薪酬建議提出意見。一般而言，在薪酬調整工作進行期間，政府並沒有和公務員工會進行任何磋商，而在現行機制下，釐定公務員薪酬基本上屬政府的特權。

**283.** 申訴人進一步表示，就2002年的公務員薪酬調整工作而言，行政長官會同行政會議向4個中央評議會的職方提出薪酬建議後才一星期，便作出最終決定。因此，高級公務員評議會的職方在2002年5月24日的函件中表示，政府不尊重諮詢的精神，亦沒有以開放及積極的態度，透過一般的諮詢及磋商程序達成協議。據申訴人所述，有關過程過於倉卒，清楚顯示政府已作決定。鑒於本年的公務員減薪問題極具爭議性，顯然無法在如此短暫的時間內進行有意義的磋商。政府當局向職方公布決定前，早已擬備及公布《公職人員薪酬調整條例草案》。申訴人認為，政府倉卒決定削減公務員薪酬，實際上剝奪了公務員工會參與釐定公務員薪酬的權利，此做法與公約第98號第4條及公約第151號第7條有所抵觸。

### **拒絕解決爭議**

**284.** 申訴人補充，高級公務員評議會的職方於2002年5月31日致函行政長官，要求根據政府與主要公務員協會簽訂的《一九六八年協議》成立獨立調查委員會，負責處理有關該年公務員薪酬調整的爭議(複本隨附於後)。在2002年6月5日，67個公務員工會聯署聲明支持此項要求，並承諾會接受調查的結果(複本隨附於後)。申訴人解釋，根據《一九六八年協議》第七條，假如不可能在該協議範圍內就某事項達成協議，只要行政長官認為爭議的事項並非瑣事，或並非已落實的公共政策，或並不影響香港特區的安全，行政長官便可委任一個獨立調查委員會。申訴人補充，行政長官在2002年6月11日決定不根據《一九六八年協議》委任調查委員會，因為正如他在回覆時表示，他認為政府每年釐定公務員的薪酬調整幅度時會考慮某些因素，這是已落實的公共政策，而部分因素(如薪酬趨勢淨指標及生活費用)是可升可跌的。因此，根據行政長官，現行機制本身容許向上和向下調整公務員薪酬(複本隨附於後)。

**285.** 申訴人認為上述論據令人難以接受，因為正如政府所承認，根據大部分現職公務員的聘用合約，政府無權單方面削減公務員薪酬。申訴人引述，公務員事務局局長於2002年6月5日的立法會會議上表示，除極少數自2000年6月入職的公務員外，大多數在職公務員的標準服務條件說明書和聘用合約均沒有明文訂明授權政府減薪的條文，而根據過往案例，法庭不大可能接納更改條文的一般性權力能適用於涉及薪酬這類基本的條款。投訴人因而指稱，政府能否單方面作出減薪決定，實在值得商榷。因此，根據申訴人，行政長官以爭議的事項是已落實的公共政策為理由，作出無須根據《一九六八年協議》第七條委任調查委員會的決定，是毫無根據的。

**286.** 關於政府以立法方式削減公務員薪酬的做法，申訴人察悉，行政長官辯稱有關透過立法實施2002年公務員薪酬調整的決定，關乎實施已落實政策的方法。至於該項決定是否無須透過立法也可以實施，或擬議法例是否符合憲法，則屬法律問



題，並非調查委員會所能解決。申訴人表示，政府辯稱立法只是一種實施減薪決定的技術手段，令人難以信服，因為政府忽略了這做法對現行規管公務員薪酬的制度所構成的深遠影響。在《公職人員薪酬調整條例》制定前，公務員薪酬並不受任何法例規管，純屬政府與公務員合約關係的事宜。由於制定該法例的做法偏離了現行制度，兼且對影響全體公務員的服務條件帶來重大轉變，政府有責任根據合約關係的一般法律政策，與公務員工會進行磋商，謀求達成協議；如不能達成協議，則可把爭議的事項轉交根據《一九六八年協議》委任的調查委員會處理。因此，申訴人認為以立法方式削減公務員薪酬的做法並非已落實的公共政策，而政府拒絕根據《一九六八年協議》委任調查委員會，違反了政府及主要公務員工會所達成的集體協議條款。

**287.** 申訴人指稱，雖然部分立法會議員促請政府重新考慮職方有關根據《一九六八年協議》委任調查委員會的要求，但政府堅持本身的立場，並指出儘管67個公務員工會承諾接受調查結果，個別公務員也不會受調查委員會所作建議的約束。此外，公務員事務局局長曾於2002年7月11日的立法會會議上表示，現時有300個公務員工會及18萬名公務員，而政府不可能與每名公務員訂定新的合約，因而阻礙了與公務員工會進行磋商。申訴人指出，這正好解釋為何設立集體談判機制，並訂定條文，為確認公務員工會在談判中的代表地位訂立客觀程序，對妥善管理公務員非常重要。因此，申訴人建議，制定法例，使《一九六八年協議》具有法律效力，而非一如政府，完全棄之不用，才是解決此問題的妥善辦法。申訴人亦認為，現時的僵局證明政府未能採取所需的措施，鼓勵及推動充分發展及利用與公務員工會磋商公務員聘用條款及條件的機制。

**288.** 申訴人總結時指稱，政府罔顧公務員工會多次呼籲政府透過繼續對話化解分歧，拒絕延長諮詢期，以及拒絕按要求把有關事項轉交獨立調查委員會處理，違反了公約第151號第8條。

## **B. 政府的回覆**

**289.** 政府在2004年3月8日的通訊中表示，關於2002年公務員薪酬調整一事，政府認為並無任何違反公約第98號及第151號的情況。

### **在未經磋商的情況下單方面削減公務員薪酬**

**290.** 政府首先就公務員薪酬政策及制度提供資料。公務員薪酬政策的目的，是提供足夠的薪酬去吸引、挽留及激勵合適人才，為市民提供有效率和有效能的服務。在此架構下，與私營機構薪酬大致相若的原則是一項重要因素，自60年代以來已是公務員薪酬政策所依據的原則。由1974年起，政府每年透過

薪酬趨勢調查，評估公務員的薪酬變動是否與私營機構僱員的薪酬變動大致相若。薪酬趨勢調查由獨立的薪酬研究調查組進行。調查結果由薪酬趨勢調查委員會分析及確認，該委員會的成員包括各個中央評議會的職方代表。該項調查得出每個薪金級別的薪酬趨勢總指標，該等指標分別反映每個薪金級別內所有接受調查的僱員在調查期間(即由進行調查之前一年的4月2日至進行調查當年的4月1日為止)的加權平均薪酬調整幅度。這些薪酬趨勢總指標經薪酬趨勢調查委員會確認後會提交政府。政府繼而從薪酬趨勢總指標減去公務員的增薪開支，得出每個薪金級別的薪酬趨勢淨指標。薪酬趨勢淨指標是政府釐定每年公務員薪酬調整幅度時所考慮的其中一項因素。根據現行機制，政府根據6項因素(薪酬趨勢淨指標、經濟狀況、財政預算、生活費用、各個中央評議會的職方對薪酬調整的要求和公務員士氣)，釐定每年的公務員薪酬調整幅度。

291. 政府補充，根據既定程序，政府在進行每年的公務員薪酬調整工作期間會諮詢各個中央評議會的職方。首先，職方有代表加入上述負責確認薪酬趨勢調查結果的薪酬趨勢調查委員會。此外，在該委員會確認薪酬趨勢調查結果後，政府會邀請職方提交該年的薪酬調整要求。行政長官會同行政會議在考慮職方的薪酬調整要求及其他相關因素後，會商定向職方提出的薪酬建議。最後，行政長官會同行政會議在考慮職方對政府所作薪酬建議提出的意見及其他相關因素後，便會就該年的薪酬調整幅度作最終決定。
292. 關於2002年的公務員薪酬調整，政府特別指出，2001至02年度的薪酬趨勢調查結果於2002年5月6日公布，3個薪金級別的薪酬趨勢總指標均出現負數(高層薪金級別為-3.39%、中層薪金級別為-0.60%，低層薪金級別為-0.79%)。薪酬趨勢調查委員會於2002年5月13日討論及確認調查的結果，並把結果提交政府。政府其後根據既定的機制，從薪酬趨勢總指標減去公務員增薪的開支，得出以下各級的薪酬趨勢淨指標：高層薪金級別為-4.42%，中層薪金級別為-1.64%，低層薪金級別為-1.58%。政府繼而邀請4個中央評議會的職方提交薪酬調整要求。儘管薪酬趨勢指標出現負數，其中3個中央評議會，即高級公務員評議會、第一標準薪級公務員評議會及紀律部隊評議會的職方於2002年5月15日向政府提出要求，促請政府凍結所有薪金級別的公務員薪酬。警察評議會的職方決定不提交薪酬調整要求。
293. 行政會議在2002年5月22日的會議上作出多項決定，當中包括向4個中央評議會的職方提出建議：首長級和高層薪金級別減薪4.42%、中層薪金級別減薪1.64%，低層薪金級別減薪1.58%。行政長官會同行政會議原則上亦同意為了實施減薪建議而草擬的《公職人員薪酬調整條例草案》。政府特別提到，

行政長官會同行政會議在作出此項決定時已充分考慮現行公務員薪酬調整機制下的有關因素，包括：(1)薪酬趨勢淨指標呈下調趨勢；(2)經濟狀況在2001年明顯轉差，在2002年持續放緩，失業率升至7%的歷史新高；(3)財政預算：政府在2001至02年度及2002至03年度分別面對656億港元和452億港元的結構性財政赤字，並定下目標，務求在2006至07年度或之前，把公共開支縮減至本地生產總值的20%；(4)生活費用的變動：截至2002年3月31日為止，綜合消費物價指數已下跌1.8%；(5)職方促請政府凍結公務員薪酬的薪酬調整要求；及(6)公務員士氣。

**294.** 政府附上向立法會提交的參考資料摘要的文本，當中就上述因素作出了分析。該份參考資料摘要亦詳細分析了有關薪酬調整對合約所帶來的影響，當中載述，由於規管公務員聘用安排的標準服務條件說明書沒有明文保留政府調低公務員薪酬的權力，如不以立法方式實施調低公務員薪酬的決定，便有減薪決定可能被人成功質疑合法性的風險；因此，政府應以立法方式，明文規定按各薪金級別的訂明調整率調低公務員薪酬。《公職人員薪酬調整條例草案》的文本以附件A的形式隨附於日期為2002年5月22日的參考資料摘要。

**295.** 政府補充，在2002年5月22日，政府向各個中央評議會的職方公布行政長官會同行政會議的決定，並邀請職方就薪酬建議提出意見。3個中央評議會(高級公務員評議會、第一標準薪級公務員評議會及紀律部隊評議會)的職方回應時重申，凍薪是適當的做法。行政會議在2002年5月28日決定，政府應按原先的建議調整公務員薪酬，並向立法會提交《公職人員薪酬調整條例草案》。政府補充，行政長官會同行政會議在作出這項決定時已充分考慮3個中央評議會(高級公務員評議會、第一標準薪級公務員評議會及紀律部隊評議會)職方的意見及所有其他有關因素(政府附上向立法會提交而日期為2002年5月28日的第二份參考資料摘要，當中就此等因素作出了研究)。

**296.** 政府補充，《公職人員薪酬調整條例草案》經行政長官會同行政會議批准後，在2002年5月31日刊登憲報，並於2002年6月5日提交立法會。各有關團體(包括各個中央評議會的職方及各主要跨部門的公務員工會)獲邀就條例草案發表意見，而條例草案則於2002年7月11日獲立法會通過。《公職人員薪酬調整條例》於2002年7月19日刊登憲報(複本隨附於後)。

**297.** 政府補充，《公職人員薪酬調整條例》制定後，若干個公務員工會及個別公務員曾就該條例是否合法一事向法院尋求司法覆核。原訟法庭在2003年6月10日駁回兩宗指引性的案件，並於2003年11月7日駁回其餘的案件。法庭不接納申請人提出的論據，即政府沒有遵守公約第151號，因而違反《基本法》第三十九條(摘錄隨附於後)。

- 298.** 政府回應申訴人的指控時表示，政府透過運作良好及涵蓋範圍廣泛(包括4個中央評議會和分屬66個政府政策局和部門的89個部門諮詢委員會)的諮詢機制，全面落實公約第98號的規定。每個中央評議會／部門諮詢委員會均由管方(代表管理層)及職方(代表有關的職工會／員工協會)組成。政府透過這個機制，就一系列範圍廣泛的公務員事務(例如薪酬、服務條件及工作環境)諮詢個別公務員及職工會／員工協會。除了正式的諮詢機制外，亦設有非正式的諮詢渠道。
- 299.** 就公務員薪酬而言，政府表示，從上文可見，既定的薪酬調整機制設有諮詢職方的固有程序，而就徵詢職方對公務員薪酬事宜的意見而言，該機制既有效又足夠。關於2002年的公務員薪酬調整，政府強調職方能夠提交對薪酬調整的要求，而行政長官會同行政會議亦有考慮該等要求。
- 300.** 關於公約第151號第7條的適用問題，政府憶述此條文容許在選用哪種程序釐定聘用條款及條件時有某程度的彈性。因此，政府堅稱已遵照第7條的規定，採取了切合當地情況的措施，以及設立了諮詢機制，讓職方代表參與釐定公務員聘用條款及條件的工作。公務員薪酬調整機制容許職方代表參與釐定薪酬調整幅度的工作。政府在進行2002年的公務員薪酬調整工作時，已遵照既定程序諮詢職方。由於既定程序容許公務員參與，原訟法庭駁回任何違反公約第151號第7條的聲稱。
- 301.** 至於申訴人指稱根本不可能在如此短暫的時間內進行有意義的磋商，政府表示2002年諮詢職方的時間表與往年相若。諮詢時間緊迫，是由於立法會夏季休會通常在7月初開始所致。

### **拒絕解決爭議**

- 302.** 政府表示，高級公務員評議會的職方在2002年5月31日致函行政長官，要求根據政府與主要公務員協會簽訂的《一九六八年協議》第七(一)條委任一個獨立調查委員會(複本隨附於後)。行政長官在考慮有關要求後，決定不委任調查委員會，並於2002年6月11日致函把此項決定告知高級公務員評議會的職方。
- 303.** 關於違反公約第151號第8條及《一九六八年協議》的指控，政府表示有關爭議若屬第8條的適用範圍，便須關乎釐定聘用條款及條件的事宜，而非關乎釐定聘用條款和條件後如何實施的事宜。據政府所述，一旦薪酬調整的幅度已按照符合公約第151號第7條的機制(即透過磋商或其他如調停、調解和仲裁的程序)釐定，關乎如何落實有關決定的爭議不屬第8條的涵蓋範圍。

- 304.** 關於申訴人指政府沒有遵守與主要公務員協會簽訂的《一九六八年協議》條款一事，政府表示2002年的公務員薪酬調整工作已嚴格遵照既定的機制進行，而公務員減薪這個最終決定是在考慮所有相關因素後作出的。政府強調，現行薪酬調整機制本身容許向上和向下調整公務員薪酬，因為政府考慮的部分因素(例如薪酬趨勢淨指標及生活費用)是可升可跌的。2002年以前一直沒有削減公務員的薪酬，反映以往多年來財政及經濟環境普遍理想，並非顯示政府的政策是不應削減公務員薪酬。據政府所述，原訟法庭確定有關事項是已落實的公共政策。法庭認為，根據現行機制的運作，減薪的可能必然存在，而採用現行機制全然屬於已落實政策的一部分，以致減薪的可能本身亦屬已落實政策的一部分。因此，削減公務員薪酬的決定是根據既定機制作出的。由於既定機制容許公務員參與，因此並沒有違反公約第151號第8條的情況。在現階段，餘下的爭議事項關乎落實決定的方法，而此事項並非調查委員會所能處理。
- 305.** 關於透過立法實施2002年公務員薪酬調整的問題，政府認為這是實施已落實政策的事宜，而此問題並非調查委員會所能解決。政府有責任以穩妥及公平的方式，實施社會普遍支持的決定。原訟法庭確定實施政策的事宜並不屬於公約第151號第8條的適用範圍。政府補充，對於有指立法這種方法大大偏離現行規管公務員薪酬的機制，此種指控實在毫無根據。《公職人員薪酬調整條例》只關乎薪酬調整，並沒有改變公務員薪酬制度或服務條件。
- 306.** 政府進一步補充，即使成立一個調查委員會，該委員會所作出的建議除非獲得簽訂《一九六八年協議》的政府或各個公務員協會接納，否則對有關各方都不會有約束力。此外，該等建議對並無簽訂《一九六八年協議》的各個公務員協會或個別公務員都不會有任何約束力。最後，鑒於根據《一九六八年協議》第七(二)條，行政長官就此事所作的決定為最終決定，行政長官有權認為2002年的公務員薪酬調整工作屬已落實的公共政策，因而有權不委任調查委員會。
- 307.** 關於指控政府未能鼓勵及推動充分發展磋商公務員聘用條款及條件的機制一事，政府表示絕不會摒棄《一九六八年協議》，而政府已按照公約第98號及第151號的規定，採取切合當地情況的措施，處理有關公務員聘用條款及條件的事宜。
- 308.** 政府總結時表示，鑒於2002年的經濟環境、緊絀的財政狀況及私營機構的薪酬調整趨勢，政府削減公務員薪酬的決定既合理，亦能夠在公務員與整體社會的利益之間取得平衡。調整工作是根據既定機制及程序進行的，符合公約第98號及第151號的規定。

## C. 委員會的結論

309. 委員會察悉，在這宗個案中，申訴人指控政府在2002年透過制定《公職人員薪酬調整條例》，在沒有與公務員工會進行適當磋商的情況下單方面削減公務員薪酬，並且拒絕按照政府與主要公務員協會簽訂的《一九六八年協議》所訂，透過持續對話或委任調查委員會，解決有關薪酬調整的爭議。

### 在未經磋商的情況下單方面削減公務員薪酬

310. 委員會察悉申訴人及政府雙方均同意的事實。每年的公務員薪酬調整幅度是根據6項因素(薪酬趨勢淨指標、經濟狀況、財政預算、生活費用、職方對薪酬調整的要求和公務員士氣)而釐定的。根據釐定2002年公務員薪酬的標準程序，薪酬趨勢調查結果於2002年5月6日公布。這項調查是釐定公務員薪酬調整幅度的一個重要步驟，因為這項調查得出私人機構的薪酬趨勢總指標，從而推算出公營部門的薪酬趨勢淨指標。在2002年，調查結果顯示薪酬趨勢總指標出現負數。在2002年5月13日，薪酬趨勢調查委員會確認該次薪酬水平調查的結果，而各個中央評議會的職方亦有參與該委員會的工作。這些結果隨後提交政府，而政府則根據既定機制，計算出各薪金級別的薪酬趨勢淨指標：高層薪金級別為-4.42%，中層薪金級別為-1.64%，低層薪金級別為-1.58%。在2002年5月15日，4個中央評議會中有3個(即高級公務員評議會、第一標準薪級公務員評議會和紀律部隊評議會)的職方向政府提交薪酬調整要求，促請政府凍結公務員薪酬。在2002年5月22日，行政會議決定提出減薪建議，減幅與該年薪酬趨勢淨指標相同。政府亦於同日決定，公務員減薪應透過立法實施。《公職人員薪酬調整條例草案》的擬稿則以附件形式，在同日隨立法會參考資料簡介發出。正如該參考資料簡介所解釋，由於公務員的服務條件說明書及判例法並不容許單方面削減聘用合約的基本條款(例如薪酬)，因此有必要立法。在2002年5月25日及26日，4個中央評議會中有3個(即高級公務員評議會、第一標準薪級公務員評議會和紀律部隊評議會)的職方反對減薪及上述條例草案的擬稿，並提出維持現狀的實質建議。在2002年5月28日，行政長官會同行政會議決定，該年的公務員薪酬應按原先的建議下調(即無須作出任何修訂)，而減薪決定應透過立法實施。在2002年6月5日，《公職人員薪酬調整條例草案》提交立法會。在2002年7月11日，立法會通過該條例草案。在2002年7月19日，《公職人員薪酬調整條例》在憲報刊登。在2003年6月10日及2003年11月7日，原訟法庭駁回某些就該條例是否合法的問題提出司法覆核的申請。原訟法庭認為沒有任何違反公約151號的情況，因為既定程序容許職方參與。

311. 委員會察悉，申訴人表示，雖然公務員體制中長久以來都設有既定的諮詢機制，但公務員工會在釐定公務員薪酬方面的

角色無足輕重，而一般而言，政府與公務員工會並沒有就公務員薪酬進行磋商。據申訴人所述，在2002年公務員薪酬調整工作進行期間，鑒於由政府提出薪酬建議至行政長官會同行政會議就薪酬調整作最終決定之間只有短短一星期的時間，政府與公務員工會並無進行有意義的磋商。此外，政府向職方公布薪酬調整決定前，早已擬備及公布《公職人員薪酬調整條例草案》。委員會察悉，政府表示，現有諮詢機制運作良好，諮詢範圍廣泛，而就徵詢職方對公務員薪酬事宜的意見而言，該機制既有效又足夠，符合公約第98號第4條及公約第151號第7條的規定。該機制容許各個中央評議會的職方派代表加入薪酬趨勢調查委員會，提出對薪酬調整的要求，供行政長官會同行政會議在提出薪酬建議時加以考慮，以及就政府的薪酬建議提出意見，供行政長官會同行政會議就薪酬調整作最終決定時加以考慮。至於2002年的公務員薪酬調整工作，政府表明該項工作遵照既定的機制進行。職方能夠提出他們對薪酬調整的要求，而行政長官會同行政會議亦有考慮該等要求。公務員減薪這個最終決定是在考慮所有相關因素後作出的。諮詢員工的時間表與往年相同，並因應立法會夏季休會通常在7月初開始的情況而訂定。

312. 委員會察悉，公營部門僱員須受現有諮詢機制規限，而並非受僱於國家行政機關的公營部門僱員是不可以進行集體談判的。委員會回想起來，應把兩類公營部門僱員區分，一類是受僱於國家行政機關的公營部門僱員，而根據公約第98號第6條，他們不屬該公約的適用範圍，另一類是並非受僱於國家行政機關的公營部門僱員，而根據公約第98號第4條，他們應享有集體談判的權利。委員會強調，法例務須訂明特定條文，清晰明確地確認並非以國家行政機關代理人身份行事的公營部門僱員及官員所組成的組織有權訂立集體協議。從國際勞工組織監管機構就公約第98號所訂的原則的角度來看，這項權利只可以不賦予在政府各部及其他相若政府機構工作的官員，而非例如在公營企業或運作自主的公營機構工作的人士[參見**結社自由委員會決定和原則匯編**，第4版，1996年，第795段]。委員會察悉申訴人曾建議採取立法措施，包括訂立客觀程序，以確立公務員工會的代表地位。委員會亦記得，在第1942號個案中，委員會曾要求政府慎重考慮訂立尊重結社自由原則的法例條文，列明客觀程序，以確立職工會在集體談判中的代表地位。委員會最後察悉，實施公約與建議書專家委員會上次就該個案發表意見時，曾要求政府採取一切所需措施，保障並非受僱於國家行政機關的公營部門僱員集體磋商他們的聘用條件及條款的權利[參見**實施公約與建議書專家委員會報告**。國際勞工大會，第92屆會議，1994年]。因此，委員會要求政府從速與各個中央評議會的職方進行協商，以期採取適當的立法措施，設立集體談判機制，讓並非受僱於國家行政機關的公營部門僱員可以根據公約第98號第4條這項未經變通即適用於中國／香港特別行政區地域的公

約條文，集體磋商他們的聘用條款及條件。委員會要求政府繼續向委員會報告此方面的發展。

313. 關於另一類公營部門僱員(那些受僱於國家行政機關，因而根據公約第98號第6條不屬該公約適用範圍的公營部門僱員)，委員會認為引述《1978年(公務員)勞動關係公約》第151號(第7條)的條款是有用的。該條文訂明，“在有需要時應採取切合國家情況的措施，鼓勵及推動充分發展及利用可供有關公共當局與公營部門僱員組織磋商聘用條款及條件的機制，或其他可以讓公營部門僱員的代表參與釐定此等事宜的方法。”委員會承認，公約第151號第7條容許在選用哪種程序釐定聘用條款及條件時有某程度的彈性[參見**匯編**，同上，第923段]。因此，諮詢機制可讓受僱於國家行政機關的公營部門僱員參與釐定他們聘用條款及條件的工作。
314. 據委員會觀察所得，在2002年的公務員薪酬調整工作進行期間，諮詢期持續了兩星期，由2002年5月15日3個中央評議會的職方建議凍薪該日開始，至2002年5月28日行政長官會同行政會議決定按原先的建議在該年削減公務員薪酬該日結束。此外，最終決定僅在政府提出初步薪酬建議的一星期後，以及在該等中央評議會的職方提出反建議的兩至3天後作出。諮詢結果是，雖然職方直截了當地提出反對，但政府決定採納原先的減薪建議，不作任何修訂。雖然政府在有關機制下會考慮額外的因素，特別是各個中央評議會的職方對薪酬調整的要求，但減薪幅度與該年的薪酬趨勢淨指標相同。委員會亦從日期為2002年5月22日的立法會參考資料簡介得悉，《公職人員薪酬調整條例草案》的擬稿在2002年5月22日已經備妥，而當天正是政府向職方公布減薪建議的日子。根據以上各點，委員會認為在2002年公務員薪酬調整工作進行期間的諮詢似乎敷衍了事。
315. 鑒於國家在公約第151號的框架內設立的機制依賴諮詢而非磋商，委員會強調有需要真正而徹底地諮詢公營部門僱員組織。當局在邀請各個中央評議會的職方出席會談時應給予充分的事前通知，並預留充裕時間就聘用條件諮詢他們。當局亦應就彼此關注的事宜徹底諮詢職方，諮詢事宜包括所有與擬備及應用關乎他們聘用條款及條件的法例有關的事宜；此舉有助為公共當局須採取或實施的法例、計劃及措施建立更穩固的基礎，亦會促使更多人遵從有關法例及有助更妥善地落實有關法例。政府亦應盡可能以與中央評議會的職方達成協議為目標。委員會期望各個中央評議會的職方日後可根據公約第151號第7條這項未經變通即適用於中國／香港特別行政區地域的公約條文，就受僱於與政府行政機關的公營部門僱員的聘用條款及條件，與政府全面而坦誠地進行協商。



## 拒絕解決爭議

316. 關於申訴人對政府拒絕解決爭議的指控，委員會察悉雙方同意的事實。在2002年5月31日，高級公務員評議會的職方致函行政長官，要求根據政府與主要公務員協會簽訂的《一九六八年協議》成立獨立調查委員會，負責處理有關該年薪酬調整的爭議。根據《一九六八年協議》第七條，假如不可能在該協議範圍內就某事項達成協議，只要行政長官認為所爭議的事項並非瑣事，或並非已落實的公共政策，或並不影響香港特區的安全，行政長官便可委任一個獨立調查委員會。在2002年6月5日，67個公務員工會聯署聲明支持成立調查委員會的要求。在6月11日，行政長官決定無須成立調查委員會，理由是政府每年釐定公務員薪酬的調整幅度時會考慮某些因素，這是已落實的公共政策，而部分考慮的因素(薪酬趨勢淨指標和生活費用)是可以下跌的，因此現行機制本身容許向上和向下調整公務員薪酬。鑒於公務員薪酬調整是已落實的政策，有關透過立法實施公務員薪酬調整的決定，關乎實施已落實政策的方法。至於該項決定是否無須透過立法也可以實施，則屬法律問題，並非調查委員會所能解決。在2003年6月10日及2003年11月7日，原訟法庭認為有關事項屬已落實的公共政策，因為在公務員薪酬調整的既定程序下，公務員減薪的可能必然存在。法庭認為並無任何違反公約第151號的情況，因為既定的薪酬調整程序容許職方參與。因此，在該階段，唯一爭議的事項關乎實施有關決定的方法，而該事項並非調查委員會所能處理。
317. 委員會察悉，據申訴人所述，政府既拒絕延長諮詢期，又拒絕按要求成立獨立調查委員會處理有關事項，違反了公約第151號第8條。該條文訂明，與釐定聘用條款及條件有關的爭議應以切合國家情況的方式，透過有關各方之間的磋商，或透過設立確保所涉各方信任的獨立和公正機制(例如調停、和解及仲裁機制)謀求解決。委員會察悉，政府表示情況正好相反，有關爭議不屬第8條的適用範圍，因為有關爭議並非關乎釐定聘用條款及條件的事宜，而是關乎釐定聘用條款及條件後如何實施的事宜。據政府所述，按照《一九六八年協議》第七條，行政長官因而有權拒絕委任調查委員會。
318. 委員會察悉，政府與3個中央評議會的職方對公務員減薪決定一直有爭議。據委員會觀察所得，原訟法庭基本上從根據既定程序可否減薪這個角度來研究有關爭議。委員會認為在這宗個案中，所爭議的基本事項並非純粹可否削減公務員的薪酬，而是可否在沒有真正諮詢的情況下減薪。委員會認為原訟法庭並無探討這事項，只着眼於既定薪酬調整程序容許職方參與。因此，委員會認為所爭議的基本事項仍未解決，而這事項若加以研究，顯然屬公約第151號第8條的適用範圍。委員會認為，政府不按照《一九六八年協議》成立調查委員

會處理爭議，是避開以現有程序解決爭議，並單方面了結爭議的做法，因而違反公約第151號第8條及公約第98號第4條。鑒於2002年公務員薪酬調整工作距今已有一段時間，委員會認為在現階段堅持委任調查委員會，是不切實際的。然而，委員會期望日後在釐定公營部門僱員聘用條款及條件方面如再有爭議，當局會接受按政府與主要公務員協會所簽訂的《一九六八年協議》成立調查委員會的做法。

319. 鑒於近期關乎中國／香港特別行政區的個案涉及常見及嚴重的事項，委員會提醒政府可利用本局提供的技術性協助，令當地的法律及處事方式完全符合自由結社標準及原則。

## 委員會的建議

320. 鑒於上文所作的結論，委員會要求理事會通過以下建議：

- (a) 委員會要求政府從速與各個中央評議會的職方進行協商，以期採取適當的立法措施，設立集體談判機制，讓並非受僱於國家行政機關的公營部門僱員可以根據公約第98號第4條這項未經變通即適用於中國／香港特別行政區地域的公約條文，集體磋商他們的聘用條款及條件。委員會要求政府繼續向委員會報告此方面的發展。
- (b) 委員會期望各個中央評議會的職方日後可根據公約第151號第7條這項未經變通即適用於中國／香港特別行政區地域的公約條文，就受僱於與政府行政機關的公營部門僱員的聘用條款及條件，與政府全面而坦誠地進行協商。
- (c) 委員會期望日後在釐定公營部門僱員聘用條款及條件方面如再有爭議，當局會接受按政府與主要公務員協會所簽訂的《一九六八年協議》成立調查委員會的做法。
- (d) 鑒於近期關乎中國／香港特別行政區的個案涉及常見及嚴重的事項，委員會建議政府利用本局提供的技術性協助，令當地的法律及處事方式完全符合自由結社標準及原則。