

STATE OF ISRAEL
THE OMBUDSMAN

ANNUAL REPORT 26
(1997-1999)

SELECTED CHAPTERS TRANSLATED
FROM THE ORIGINAL HEBREW

JERUSALEM, 1999

EDITOR'S NOTE

Prior to 1998, the Ombudsman was referred to as "Public Complaints Commissioner."

The working year of the Ombudsman corresponds to the Hebrew calendar, which starts approximately in September of each year.

The Twenty-Sixth Report of the Ombudsman, submitted to the Knesset pursuant to section 46(a) of the State Comptroller Law, 5718-1958 [Consolidated Version], presents a general survey of the activity of the Ombudsman in 1997-1999 and an account of the handling of selected complaints from those years.

The previous State Comptroller, Miriam Ben-Porat, who retired on July 4, 1998, served as Ombudsman at the beginning of the period covered by this report. Some of the complaints described in this report were investigated during her tenure.

The dual functions of the State Comptroller - State Comptroller and Ombudsman - enable the State Comptroller to monitor public administration from a comprehensive and broad perspective. This perspective encompasses both the overall public aspect and the aspect of treatment of citizens in their contact with governmental officials. These two aspects have a common denominator: a governmental authority that lacks institutional efficiency will not be able to properly provide the services it is obligated to provide to the citizen, and vice-versa.

The Ombudsman's function is to watch over governmental authorities and public administration to ensure that they do not ignore their obligations to the citizen, that they treat the citizen fairly and in good faith, and that they safeguard his statutory rights, dignity, and liberty.

The Ombudsman will also not investigate the complaint of an individual who, prior to submitting his complaint or during its investigation, filed a lawsuit. In such cases, the complainant must follow to its conclusion the course he selected, and not try to seek assistance from the Ombudsman simultaneously with the court action.

Since July 7, 1998, when I became State Comptroller and Ombudsman, I have observed the Ombudsman's contribution in improving public administration and protecting the rights of the individual. This contribution is illustrated by the description of the handling of the complaints presented in this report.

Eliezer Goldberg
State Comptroller and Ombudsman

Jerusalem, October 1999

TABLE OF CONTENTS

GENERAL SUMMARY

The State Comptroller and Ombudsman	11
The Twenty-Fifth Annual Report.....	11
Data on the number of complaints and their outcome.....	11
Branch offices handling oral complaints.....	12
Interpretation - Rulings of the State Comptroller and Ombudsman	12
International relations.....	15

SUMMARY OF SELECTED CASES

Ministry of Finance

Restitution to the Office for the Rehabilitation of Disabled Persons of excess compensation payments.....	19
--------------------------------------------------------------------------------------------------------------	----

Ministry of Construction and Housing

Reimbursement following lowering of prices to purchasers of apartments.	22
-------------------------------------------------------------------------	----

Ministry of Education, Culture and Sport

Administrative irregularities in an extra-hours school program.....	25
---------------------------------------------------------------------	----

Israel Police Force

Request to change the grounds for closing investigation files.....	27
Unlawful prevention of exit from Israel.....	29

Ministry of Justice

Failure to return bank guaranty.....	32
--------------------------------------	----

Ministry of Labor and Social Welfare

Failure to mention name of theorist in brochure applying his method.....	33
--------------------------------------------------------------------------	----

Ministry of Transport

Restrictions placed on motor vehicle license without informing owner.....	36
---------------------------------------------------------------------------	----

Local Authorities

Municipality of Holon - Charge for paving a sidewalk.....	37
Municipality of Lod - Reduction in municipal property tax for occupiers of property.....	39

Bezek - The Israeli Telecommunications Corporation Ltd.

Dismissal following exposure of acts of corruption.....	40
---------------------------------------------------------	----

APPENDICES

Table 1: Breakdown of Complaints by Agencies Complained Against - 5758 (1997/1998)	47
Table 2: Breakdown of Complaints by Agencies Complained Against - 5759 (1998/1999)	49

GENERAL SUMMARY

1. THE STATE COMPTROLLER AND OMBUDSMAN

On July 4, 1998, State Comptroller and Ombudsman Justice Miriam Ben-Porat retired.

On May 26, 1998, in a secret vote, the Knesset elected Supreme Court Justice Eliezer Goldberg to serve as State Comptroller and Ombudsman.

Justice Goldberg was sworn in before the Knesset on July 1, 1998 and took office on July 5, 1998.

2. THE TWENTY-FIFTH ANNUAL REPORT

Section 46 of the State Comptroller Law, 5718-1958 [Consolidated Version], stipulates that the Ombudsman shall each year submit to the Knesset a report on his activities containing a general survey and an account of the handling of selected complaints. The State Audit Affairs Committee shall deliberate on the report and submit to the Knesset its conclusions and proposals for approval.

On June 29, 1998, the Twenty-fifth Annual Report of the Ombudsman was submitted to the Knesset.

3. DATA ON THE NUMBER OF COMPLAINTS AND THEIR OUTCOME

1. During the years 1997/1998 and 1998/1999, the number of complaints received by the Ombudsman decreased by some fifteen percent in comparison to 1996/1997. However, the number of complaints received at the branch offices for receiving oral complaints did not decline (see below). As in previous years, the Ombudsman received copies of hundreds of complaints that had been submitted to bodies subject to review. As a rule, the Ombudsman does not investigate these latter cases since it is assumed that the addressed bodies will respond directly to the complainant. Nevertheless, the information in these complaints is forwarded to the unit in the State Comptroller's Office charged with auditing the particular body, and the complainant receives notification that the information has been forwarded. If the body to which the complainant wrote does not reply, or the reply does not satisfy him, the complainant may of course complain directly to the Ombudsman.

2. Below are details on the number of complaints received by the Ombudsman in each of the years under review and the outcome of the investigations of complaints completed during that period.

(a) In the year 5758 (1997/1998) 5,917 complaints were submitted directly to the Ombudsman (as compared to 6,921 complaints submitted in the previous year).

Of the 8,817 complaints that were handled in 1997/1998 (including 2,900 complaints remaining from the previous year), the investigation of 6,311 complaints was completed.

(1) Of the 3,605 complaints dealt with substantively, 1,318 (36.6 percent) were found to be justified (35.5 percent in the previous year).

(2) The investigation of 968 complaints was halted at various stages for a variety of reasons, primarily because the matter had been resolved or the complainant withdrew his complaint or did not reply to questions posed by the Ombudsman.

(3) A total of 1,738 complaints could not be investigated because they did not meet the criteria set by sections 36 and 37 of the State Comptroller Law or because they fell into the category of items mentioned in sections 38 or 39 of that Law (see the State Comptroller Law, 5718-1958 [Consolidated Version], appended to this report).

(b) In 1998/1999, 5,250 complaints were submitted directly to the Ombudsman.¹

Of the 7,756 complaints that were handled in 1998/1999 (including 2,506 complaints remaining from the previous year), the investigation of 5,976 complaints was completed.

(1) Of the 3,215 complaints dealt with substantively, 1,179 (36.7 percent) were found to be justified.

(2) The investigation of 1028 complaints was halted at various stages primarily for the reasons mentioned in sub-section (a)(3) above.

3. Data on the breakdown of complaints according to the various bodies is presented in the table appended to this report.

4. BRANCH OFFICES HANDLING ORAL COMPLAINTS

In the years under review, as in previous years, hundreds of citizens applied to the branch offices in Jerusalem, Tel-Aviv, Haifa, Beersheva, and Nazareth.

These offices were set up to meet the requirements of the Law, as set forth in section 34, that the complainant's oral statement be recorded in instances where persons wish to submit complaints in this manner.

The branch office personnel record oral complaints and solve simple problems that can be handled speedily by a telephone call, some good advice, or referring the complainant to the proper body. They provide this assistance without the need to involve the investigative mechanism of the Ombudsman or the body complained against. Many complaints are resolved in this manner.

5. INTERPRETATION - RULINGS OF THE STATE COMPTROLLER AND OMBUDSMAN

1. Section 38 of the State Comptroller Law, 5718-1958 [Consolidated Version] (hereafter: the Law) states, in part:

The following complaints shall not be investigated:

(5) a complaint as to a matter pending in a court or tribunal or in which a court or tribunal has given a decision with regard to the substance thereof;

¹ The data presented above for 1998/1999 relate to the period between September 21, 1998 and September 10, 1999.

The Ombudsman ruled that section 38(5) also applies where the complainant was party to "a complaint as to a matter pending..." even if he did not file the lawsuit himself (for instance, if he was a defendant in an action filed by another person). In these cases, too, the complainant is directly involved and is a party to a matter being resolved in court.

2. Another issue relates to instances where the same matter, or a matter similar to one raised in a complaint to the Ombudsman, has been decided, or is pending in a court or tribunal. To what extent should the Ombudsman (and the State Comptroller as well) be bound by decisions of other judicial bodies in exercising his authority and his normative standpoint?

In this context, it should be noted that rulings of the Supreme Court are considered part of the law. This principle applies vis-a-vis the elements of the decision that are included in the "*ratio decidendi*," and where the facts of the case are indistinguishable from the facts of the complaint submitted to the Ombudsman.

Even where the Supreme Court has established a principle, it is still possible to examine whether, given the complainant's special circumstances, a determination should be made that adhering to the Supreme Court's ruling would lead to an "inflexible attitude or flagrant injustice" (as stated at the end of section 37 of the Law). Of course, this path should not be taken regularly, but only in appropriate cases, where justice demands a different outcome.

3. A complainant submitted a complaint to the Ombudsman against the local authority for denying her claim for compensation for bodily injuries. She alleged that her damages resulted from the authority's negligence in maintaining a road.

Section 37 of the Law stipulates:

The subject of a complaint may be –

- (1) an act directly injurious to, or directly withholding a benefit from, the complainant...
- (2) ...

such act being contrary to law or done without lawful authority or contrary to good administration or involving a too inflexible attitude or flagrant injustice; for this purpose, "act" includes an omission or delay in acting.

The preliminary question that had to be decided was whether the complaint came within the confines of section 37 of the Law. If so, the Ombudsman must open an investigation of the complaint. If not, the Ombudsman has to inform the complainant in writing that he will not handle the complaint and state his reasons, as provided in section 40(b) of the Law, or inform him in writing that he has discontinued investigating the complaint, because "one of the grounds justifying the non-opening of an investigation" exists, and state his reasons, as provided in section 42 of the Law.

A distinction should be made between a case where the complaint to the Ombudsman contends that a local authority did not meet its duty to fill a hole in the road, and the complainant requests the Ombudsman to point out to the local authority its duty to eliminate the obstacle, and a case where the complainant complains that he tripped as a result of a hole in the road, and after the local authority denied his claim for compensation, requests the Ombudsman to inform the local authority that it must compensate him.

“The injurious act” about which the complainant complained is not that the local council did not meet its duty as a local authority to properly maintain a public area where he (allegedly) slipped. “The injurious act” is, according to the complainant, the local council’s denial of his compensation claim for the damages (allegedly) resulting from his stumbling on the road as a result of the council’s negligence.

Thus, the question is whether “denying the claim constitutes an act contrary to law or done without lawful authority or contrary to good administration or involving a too inflexible attitude or flagrant injustice” – as stated at the end of section 37 of the Law. In other words, is the refusal of the inspected body to respond favorably to a compensation claim by the complainant an act that lies within the domain of cases handled by the Ombudsman pursuant to section 37 of the Law?

It should be noted that this question is likely to arise with regard to the various sources of obligation found in private law (contracts, torts, unjust enrichment), and even in situations where the complainant is required by the inspected body to make a payment pursuant to one of these sources of obligation. On the other hand, the question does not arise when the source of the monetary dispute lies solely within public law, such as payment of taxes, municipal property tax, allowances, and support payments.

Alongside their "administrative hat," governing authorities also wear a "private hat." They enter into contracts; hold assets; sue and are sued for damages; and more. In their activities within the private law, the governing authorities are subject to a system of "normative duality." Thus, alongside the laws from the sphere of private law that apply to the legal relationship between the citizen and the authorities in a particular case, administrative law also applies. This is expressed in the added duties imposed on the authority (primarily the duty of fairness to the individual) in giving special content to norms and concepts from private law (like "good faith" and "reasonableness"), and also in special rights vested in the authority as a result of its status (like release from contractual liability and immunity in torts).

Indeed, where the question involves liability for damages of a governing authority, the claim results (in some instances) from the activities of government and from the arrangements establishing its liability, and not from liability for its "private" activities. However, it is necessary to distinguish between the initial basis of conduct that established the liability (the governmental act) and the process through which the injured individual exercises his right to obtain relief, which is "private" in nature.

In any event, whether the governing authority’s act is "private," as a result of which it is demanded to make payment to an individual pursuant to an obligation whose source lies in private law, or if the individual's monetary claim finds its source in the governmental act allegedly forming the basis for the claim, the authority may usually act as a private citizen acts when demanded to pay a sum of money. It may deny its liability, dispute the elements creating the liability, or raise other defenses. Similarly, it is entitled to negotiate a settlement.

The authority to act in such a manner is not granted to enable the authority to defend its own interests, but to discharge its duty to defend the public's interests. Being entrusted with public resources and being subject to rigid rules regarding public moneys, the authority must not compensate or provide any other relief to an individual unless there exists, in its opinion, a basis for doing so. Thus, it is inconsequential that an individual making a monetary claim is dissatisfied with the position taken by the authority. It is sufficient if the authority believes

(in good faith and reasonably) that it is not required to pay the monetary claim and that the law supports its position.

Consequently, if, in good faith and reasonably, the authority denies its liability (as to the liability itself or to the type or amount of relief), its refusal to pay the claim is not considered illegal, lacking statutory authority, improper administration, excessive inflexibility, or flagrant injustice. Such a case is not encompassed within section 37 of the Law.

The above applies to complaints relating to rejection of monetary claims. Clearly, if the individual complains that his claim was not properly handled or examined substantively, the Ombudsman will investigate the complaint, as he would investigate any other complaint that the authority did not fulfill its governmental duty.

The legal aspect described above, according to which rejection of a monetary claim (based on the contracts, torts, and unjust enrichment laws) does not come within the provisions of section 37 of the Law, is also compatible with policy considerations, which would lead to the same conclusion.

In a dispute arising from a contractual claim, a claim for damages or a claim of unjust enrichment, a plenitude of contentions - factual and legal - generally arise regarding the existence and scope of the liability. These include: the amount of damages, division of liability, remoteness of damages, mitigation of damages, contributory negligence, and where the demand is based on contract, who breached first, were the damages foreseeable, and the amount of damages.

The Ombudsman is of the opinion that, given the manner in which he handles complaints and the tools available to him, it would be difficult for him to decide all the complex questions that arise.

In the matter of the complaint mentioned above, the local council rejected the complainant's monetary claim, on the grounds that it is not liable for the damages claimed by the complainant.

The council's rejection of the claim does not manifest the absence of good faith or the presence of arbitrary action. Furthermore, it could not be said that the council did not properly handle the claim, or that it was not investigated as required. Thus, the Ombudsman did not consider it appropriate to continue investigation of the complaint, and informed the complainant that his investigation had ceased for the reasons mentioned above.

6. INTERNATIONAL RELATIONS

1. In June 1998, at the invitation of the Commissioner for Human Rights of Slovenia, Mr. Ivan Bizjak, the State Comptroller and Ombudsman, Justice Miriam Ben-Porat, visited Slovenia, accompanied by the Director of the Office of the Ombudsman, Mr. Avigdor Ravid, and the Ombudsman's senior assistant, Mrs. Mirella Bamberger.

The State Comptroller held working meetings with her hosts. She met with the President of Slovenia, the Chief Justices of the Supreme Court and the Constitutional Court, and the Slovenian State Comptroller.

2. In October 1998, Mr. Joseph Sammut, the Ombudsman of Malta, hosted in Malta the Seventh Annual Meeting of the National Ombudsmen of Europe and the Sixth Roundtable of the European Council with the European Ombudsmen. Mrs. Bamberger represented the State Comptroller and Ombudsman at these meetings.

SUMMARIES OF SELECTED CASES

MINISTRY OF FINANCE

RESTITUTION TO THE OFFICE FOR THE REHABILITATION OF DISABLED PERSONS OF EXCESS COMPENSATION PAYMENTS

1. In February 1998, the complainant complained to the Ombudsman against the Office for the Rehabilitation of Disabled Persons, of the Ministry of Finance (hereafter - the Office). The details of her complaint are as follows:

(a) The Office recognizes the complainant as a disabled person from the war against the Nazis, with a sixty-nine percent disability. She has received disability payments since 1958.

In 1988, the complainant applied for an allowance as a needy disabled person unable to make a living.

According to the complainant, she had not applied to be recognized as a needy disabled person before because she did not know that she was entitled to it, even though, with an amputated leg, she had never worked outside her home. After an investigation, she was recognized as a needy disabled person and began to receive a higher pension. However, the Office refused to compensate her retroactively.

(b) In September 1994, the complainant's husband died, and she notified the Office, as required. Pursuant to the Invalids from the War with the Nazis Law, 5714-1954, the Office should have started to deduct from the complainant's pension added income that she began to receive due to her husband's death. However, the complainant's notification was filed without any action being taken, until the mistake was discovered in December 1997. As a result of the error, the Office paid the complainant a higher pension than she was entitled to for a period of more than three years.

(c) Upon discovering the error, the Office informed the complainant that, as a result of the failure to deduct the additional income, she had accrued a debt of approximately NIS 90,000.² Thus, the Office began to deduct NIS 500 from her monthly pension in restitution of the debt.

(d) In her complaint, the complainant argued that she was being treated unjustly, because she was required to reimburse the Office for a debt that did not result from her wrongdoing.

2. (a) Section 9(e) of the Invalids from the War with the Nazis Law, 5714-1954, provides:

Where moneys have been paid to an invalid in excess of the pension due to him, a competent authority may retain out of his pension an amount equal to the excess.

(b) Section 1(a) of the Unjust Enrichment Law, 5739-1979 (hereafter - the Unjust Enrichment Law), provides:

Where a person obtains any property, service or other benefit from another person without legal cause (the two persons hereafter respectively referred to as "the beneficiary" and "the benefactor")... the beneficiary shall make restitution to the benefactor..

² Approximately US\$ 21,000.

Section 2 of the Unjust Enrichment Law states:

The Court may exempt the beneficiary from the whole or part of the duty of restitution under section 1 if it considers that the receipt of the benefit did not involve a loss to the benefactor or that other circumstances render restitution unjust.

3. (a) In the matter of the exemption from restitution, set forth in section 2 of the Unjust Enrichment Law, the Supreme Court has stated as follows:

The purpose of the said defense is to release a person from the duty of restitution where his circumstances have deteriorated to the degree that it makes his duty of restitution unjust. Changing of circumstances can occur, for example, where the beneficiary no longer possesses the benefit and is unable to obtain it again for himself in order to make restitution to the benefactor. The duty of restitution, in these circumstances, causes him a monetary loss. If the beneficiary has removed the benefit from his possession, believing in good faith that he received it lawfully and that it belonged to him, it would be unjust to require him to make restitution...

In another case, the Supreme Court ruled:

The respondent did not contribute in any way to the mistake. On the contrary, she reported every year about her work and salary, as was required... The appellant did not discover the mistake until more than five years had passed. During that time, not only did the respondent spend the money that she received to cover her and her son's living expenses, but had she known that, because of her work... her allowance was liable to be reduced, she could have found another place of employment... The appellant's mistake is that which caused a deterioration of the respondent's situation, and in my opinion, she is prevented now from demanding rectification of the mistake at the expense of the respondent.

(b) Taking into account the decisions of the Supreme Court in the matter of restitution, the Ombudsman ruled in previous cases of similar circumstances that each case should be investigated substantively. If the investigation shows that the complainant did not create the mistake leading to the debt, did not know about it, and in the meantime has changed his situation for the worse, it is improper to demand that he make restitution.

(c) The State Comptroller's annual reports also dealt with restitution of excessive payments. The State Comptroller ruled as follows:

If the recipient of the payment did not cause the creation of the debt, restitution of the excessive payment, without payment of linkage differentials and interest, should suffice. If the recipient of the payment did not contribute at all to the mistake, did not know and should not have known that he received more than what he was entitled to, and his economic situation would suffer, it is improper to demand him to make restitution. However, if the recipient of the excessive payment continues to receive an allowance, deducting the debt from the allowance in convenient payments should be considered even if the recipient did not contribute to the mistake.

4. The Ombudsman's investigation revealed the following:

(a) The complainant receives a monthly pension, after deduction of additional income, of NIS 2,300. The Office began to deduct the debt from her pension, in monthly payments of NIS 500, without interest or linkage.

(b) The social worker sent by the Office to investigate the complainant's situation reported that the complainant was in poor economic straits, and recommended cancellation of the debt. Following this, the Office's Debts Committee met. This committee has the authority to recommend to the Accountant General of the Ministry of Finance to cancel, in whole or in part, a debt of a disabled person, and to approve convenient terms of payment. The committee decided to reduce the monthly restitution payment to NIS 400.

(c) In its response to the Ombudsman, the Office argued that spreading the debt over a long period without interest and linkage was, in effect, cancellation of part of the debt, and did not think it proper to cancel the entire debt.

5. The Ombudsman ruled that the complaint was justified.

(a) The complainant's debt was created following an error by the Office, and the complainant did not contribute at all in the making of the mistake.

(b) The complainant did not know, and, in the circumstances of the case, had no reason to know, that she had received in error payments greater than she was entitled to.

(c) The Office only discovered the mistake after more than three years had passed, during which substantial excessive payments had been made.

(d) The Office's social worker's report, which indicates the difficult financial economic condition of the complainant, leads to the conclusion that the complainant spent the excess moneys to meet her living expenses, and thus, as explained in the Supreme Court's decision, changed her situation for the worse.

(e) In addition, the Ombudsman took into account the fact that, for many years, the complainant did not receive greater compensation as a needy disabled person, which she was entitled to though she did not know it.

6. Therefore, the Ombudsman ruled that the circumstances mentioned in section 2 of the Unjust Enrichment Law exist, pursuant to which it is unjust to demand restitution of the excessive payments made to the complainant. The Ombudsman informed the Office that it should refrain from collecting the remainder of the debt from the complainant by deductions from her pension or in any other manner.

7. Following the ruling of the Ombudsman, the Office informed the Ombudsman that the deduction from the payments made to the complainant had ceased.

MINISTRY OF CONSTRUCTION AND HOUSING

REIMBURSEMENT FOLLOWING LOWERING OF PRICES TO PURCHASERS OF APARTMENTS

1. The complainant is a new immigrant living in Ofakim. In July 1996, she complained to the Ombudsman against the Ministry of Construction and Housing (hereafter- the Ministry). The details of her complaint are as follows:

(a) In early May 1994, the complainant purchased an apartment in a development project in Ofakim's Shapira neighborhood (hereafter - the Project) from a housing company (hereafter - the Company) at a price of NIS 132,000. After only two months, those responsible for the Project decided to lower the price of all the apartments in the Project, including those that had already been sold, to NIS 94,000.

(b) According to the complainant, when she went to the Company's offices to receive the key to her apartment, a clerk in the office informed her that, following the reduction in the prices of the Project's apartment, she was entitled to a reimbursement of NIS 24,000, which would be deposited in her bank account.

(c) The money was not reimbursed as promised, despite the Company's assurance that she was indeed entitled to the reimbursement.

(d) The complainant complained to the Ministry, which informed her, on May 7, 1995, that the Properties and Housing Division was handling the matter. However, in her complaint to the Ombudsman, she stated that she had not received the money.

2. The Ombudsman's investigation revealed the following:

(a) According to the minutes of the Prices Committee, which met on May 25, 1994, at which representatives of the Ministry, the Company, and the Accountant General of the Ministry of Finance (hereafter - the Accountant General), among others, participated, the Committee decided (hereafter - Decision 730) that the apartments in the Project would be sold at reduced prices, and "purchasers of apartments before the sale started would receive the sale terms."

(b) According to the minutes of the January 21, 1997 meeting of the Prices Committee, at which representatives of the Company and the Accountant General participated, the Committee decided (hereafter - Decision 772) that three of its members - among them representatives of the Ministry of Finance - would determine how to implement Decision 730.

It should be noted that, according to the minutes relating to Decision 772, the Committee discussed a previous request for retroactive reimbursement regarding another project. It was stated that, in 1991, the Minister of Construction and Housing decided to reduce apartment prices in Ofakim, Sderot, and Netivot by NIS 10,000, and also grant the reduction retroactively. Since the Ministry did not agree to reduce the prices retroactively, apartment purchasers from Netivot filed a claim against the Minister in the Beersheva Magistrate's Court, and the court ruled that the Minister must grant them the reduction.

(c) In July 1997, the Ministry informed the Ombudsman that, in order to reimburse the purchasers of apartments in the Project, according to Decision 772, it requested that the Company provide it with details on the purchasers, and upon receiving the requested details, they would be forwarded to the head of assistance programs in the Ministry for decision and execution of payment.

After receiving the details, the Ministry prepared instructions to the banks to reimburse purchasers of apartments in the Project, and requested the approval of the Accountant General. The Accountant General requested the opinion of the legal department of the Ministry, which responded that, “because the Prices Committee reached decision on the matter under discussion both in 1994 and in January of this year, at which representatives of the Accountant General participated and did not object, as appears from the minutes of the Committee’s meeting, that ‘purchasers of apartments before the sale started would receive the sale terms...,’ execution of the aforementioned decisions should not be delayed.”

(d) Despite the response of the legal department, the Budgets Department of the Ministry of Finance (hereafter - the Budgets Department) did not agree to sign the instructions to the mortgage banks to reimburse the purchasers of apartments in the Project. The Ministry several times contacted the interior and environmental quality coordinator in the Budgets Department (hereinafter - the Coordinator), who had participated in the discussion on Decision 772, and was one of the three persons assigned to determine how to implement Decision 730 - but received no assistance.

3. (a) In his response to the Ombudsman, the Coordinator contended that Decision 772 called for consulting with the legal advisor of the Ministry about canceling Decision 730, because of the precedent that it created. The Coordinator also contended that he did not recall any Decision 772 of the Prices Committee regarding the manner of implementing Decision 730 of the Prices Committee.

(b) The Ombudsman again contacted the Coordinator, asking how to reconcile his contention that Decision 772 called for examining the possibility of canceling Decision 730, with the Committee’s minutes stating that it was agreed that three of its members would resolve “how to *implement* Decision 730 of the Prices Committee” (emphasis added).

The Ombudsman also noted that, as was stated in the minutes relating to Decision 772, the court had already ruled in a similar case that purchasers of apartments should be reimbursed the difference between the sale price and the amount they had paid for their apartments. Thus, a precedent had already been set.

(c) In his response, the Coordinator contended that the minutes did not accurately state Decision 772, and that he had not approved the minutes. He claimed that when Decision 772 was discussed, there was much opposition to Decision 730, so another meeting was set, at which the Ministry’s legal department provided a legal opinion on the questions of whether the Prices Committee had the authority to alter an earlier decision and whether it was entitled to make reimbursements.

According to the Coordinator, the legal opinion did not respond to these questions.

No evidence was provided to the Ombudsman that supports the claim that the minutes relating to Decision 772 do not accurately reflect the decision.

4. The Ombudsman ruled that the complaint was justified.

The facts presented above indicate that the decisions of the Prices Committee were consistent with the decision of the Minister of Construction and Housing, for which there was a legal precedent. Furthermore, representatives of the Ministry of Finance participated in the Committee’s meetings, and according to the minutes, they did not object to the decisions. In spite of this, the Ministry of Finance refused to approve reimbursement to the complainant and other purchasers of apartments in the Project, without providing any reasons justifying its refusal.

Israeli courts have ruled that where a governmental promise has been made - that is, a promise given by a person holding authority within the confines of his lawful authority with the intent that it have legal effect, and the other party accepts it as such - public integrity requires that the promise be kept. This is so when the promisor is able to implement it, even if the individual did not change his situation for the worse on account of the promise, as long as there is no legal justification to change or cancel it, and where the authority did not indicate any change in circumstances that had occurred following the promise, making its keeping unjustifiable in light of the changed circumstances.

The Ombudsman ruled that, in the circumstances of the complaint, all the conditions of a governmental promise of the Ministry existed, which raised the complainant's expectations. It was unreasonable and legally unjustifiable to change or cancel the promise, and thus the authority must keep it.

5. The Ombudsman ruled that the Ministry of Construction and Housing and the Ministry of Finance should reimburse the complainant the differential between the price that she paid for the apartment and the sale price of a similar apartment, plus interest.

6. The Minister of Finance informed the Ombudsman that, in order to prevent future reimbursements on apartments that had previously been acquired, it would demand amending the procedures of the Prices Committee and establishing that the Committee's decisions shall only be prospective .

Nevertheless, the Ministry of Finance indicated that it did not oppose partial reimbursement to purchasers of apartments in the Project, and that the payment would be executed pursuant to the procedure set in 1996 for reimbursement to purchasers of apartments in Netivot.

MINISTRY OF EDUCATION, CULTURE AND SPORT

ADMINISTRATIVE IRREGULARITIES IN AN EXTRA-HOURS SCHOOL PROGRAM

1. In February 1999, the complainant complained to the Ombudsman against the Ministry of Education, Culture and Sport (hereafter - the Ministry). The details of his complaint are as follows:

(a) The complainant's son was a pupil in a primary school in his local neighborhood (hereafter - the school). On January 5, 1999, the complainant received a letter, delivered by his son, from the school (hereafter - the letter). The letter stated that, since the complainant did not pay for the extra-hours program (hereafter- the Program) conducted in the school, starting on January 10, 1999, his son would not take part in the program's classes, and while his son's friends were in the classes, he would study in a different classroom.

(b) The complainant contended that the school should not have sent him the letter via his son, because his son and his son's friends should not know about the family's difficult economic straits that made them unable to pay for the Program.

(c) The complainant also contended that, if the Program's classes were not held during regular school hours, but had been set for after-school hours, his son could go home while his friends were in the Program. The complainant contended that the school's decision to place his son in a different classroom during regular school hours was improper.

2. The State Education Law, 5713-1953, and the State Education Regulations (Supplemental Program and Additional Program), 5713-1953, provide that, beside the regular scholastic program, which is provided free, additional classes may be provided by the Program with the consent of the parents interested in the Program. The Law and Regulations further provide that financing the Program is the responsibility of the parents, or the local educational authority, if the latter undertook to cover the Program's expenses.

The Law and Regulations do not enable the authorities to require the parents to pay for the Program if they are not interested in it or do not want to finance it.

3. In investigating a similar complaint submitted to the Ombudsman in 1994, the Ministry agreed that pupils should not suffer if their parents do not agree with the proposed Program or do not agree to finance it. Thus, the Program should be held before or after normal school hours.

To remove all doubt, the Director General of the Ministry issued the following directives:

- (A) The additional program's studies shall be conducted before school or at the end of the school day, outside the standard daily school hours. If all of the pupils in the class participate in the additional program, its hours may be integrated in the regular school hours.
- (B) A parent shall not be required to pay if he does not want his child to participate in the Program, and registering for the Program or paying for it shall not be a precondition to school registration. Subject to the Program being held at the end of the school day, it is not required that pupils be allowed to take part in the program if their parents did not pay for it (provided that non-payment does not result from a justifiable economic reason).

4. Furthermore, on September 3, 1996, the Minister of Education, Culture and Sport directed that school principals be instructed that the matter of payments are to be handled directly with the parents, without the pupils being involved.

5. The Ombudsman ruled that the complaint was justified.

The school's letter did not comply with the Director General's circular, and the letter was sent to the complainant via his son, in violation of the directive of the Minister of Education, Culture and Sport.

6. The Ministry informed the Ombudsman that it was revising the procedures and their enforcement, and indicated that the school had clearly violated the procedures and that the school's principal would be so advised.

ISRAEL POLICE FORCE

REQUEST TO CHANGE THE GROUNDS FOR CLOSING INVESTIGATION FILES

1. In April 1998, a resident of Upper Nazareth complained to the Ombudsman against the Israel Police Force for its handling of two investigation files against him. The details of his complaint are as follows:

(a) A person who stole money from the complainant and was compelled to return it to him (hereafter - the accuser) complained to the Police that the complainant threatened and assaulted him. The complainant contended that the complaint was totally groundless and was only filed to cause him injury.

(b) The Police opened two investigation files concerning the complaints and ultimately closed them on the grounds of "lack of evidence." The complainant requested the Police to change the grounds for closing the files to "lack of guilt," but the Police refused, contending that, although "there are several puzzling facts, which weaken the reliability of the accuser's contentions," the investigation did produce unequivocal evidence that the accuser had not spoken truthfully. Thus, it would be improper to close the file against the complainant on the grounds of "lack of guilt."

(c) Closing a file on the grounds of "lack of guilt" means that the investigation showed that there is no basis to the accusation against the suspect. On the other hand, closing a file on the grounds of "lack of proof" does not indicate that the complaint was baseless, but only that it could not be proven. When a file is closed because of "lack of proof," the Police is entitled to maintain the record of the details of the case, whereas in a file that is closed due to "lack of guilt," the details of the case are totally deleted.

2. (a) The Ombudsman's investigation revealed that the accuser filed two complaints against the complainant.

(1) The complaint alleging threat:

The accuser contended that, around 8:30 P.M. on September 22, 1997, the complainant threatened him with a steel bar and said that if the accuser did not pay his debt, he would physically injure him, but the accuser's neighbor got him to leave the area. The accuser did not provide the Police, despite several requests, with details about the neighbor whom he claimed was present at the time of the incident. The accuser contended that he did not know the neighbor's family name, and that he had since left the city.

In contrast, the complainant contended that, on September 22, 1997, he was in Migdal Haemek with his friend until around 9:00 P.M. The accuser had already given his testimony to the Police at 8:45 P.M. The complainant's friend confirmed the complainant's statement to the Police.

(2) The complaint alleging assault:

The accuser contended that, at around 8:10 P.M. on December 7, 1997, he met the complainant and that the latter shouted at him, insulted him in front of his [the accuser's] friends, and assaulted him. In response, the accuser struck him in the face, and the complainant fell and apparently broke his tooth. In his statement to the Police, the accuser gave another version, indicating that there were no witnesses.

The next day, the complainant was summoned to the Police station, and, according to the memo of the police officer handling the complaint, the officer did not notice any signs of violence on the complainant, and during the questioning (about one week after the incident), saw no evidence of a broken tooth.

The complainant denied outright the description of the incident, and claimed that he had spent that entire evening at home. His wife testified that he came home that night around 6:45 P.M., and did not leave the house again that day. She also stated she did not notice any signs of punches or slaps on his face.

(b) The investigator who handled the two investigations recommended that they be closed on the grounds of “lack of guilt,” but the officer-in-charge determined that the files should be closed due to “lack of proof.” Regarding the complaint about the threat, the officer-in-charge’s position was that the testimony of the complainant’s friend does not eliminate with certainty the possibility that the complainant threatened the accuser around 8:30 P.M. - 8:45 P.M. As for the complaint alleging assault, the officer-in-charge wrote that the version given by the accuser was indeed peculiar and his reliability was unclear, in that the complainant had no marks on him, and that the complainant’s wife provided an alibi for him, but “despite the above, there is no concrete, neutral, and unequivocal evidence that the accuser was lying as to the substance of his allegation.”

3. In a precedent set by the Supreme Court, the Court ruled that the test of “reasonable doubt of the innocence of a suspect” requires distinction between closing a file for “lack of proof” and closing it due to “lack of guilt.” The Court ruled that it is not proper that, because of some tiny bit of evidence, a stain of suspicion should remain on an individual, and thus required that there be evidence that raised a reasonable doubt about his innocence.

Following the said decision, the Investigations Department of the National Headquarters of the Israel Police Force (hereafter - the NHID) issued directives regarding determining the grounds for closing investigation files (hereafter - the Directives), which provide, in part, that:

To record that the file was closed due to lack of proof, the file must still contain evidence (that meets the test of administrative proof) that are sufficient to maintain a reasonable doubt of the innocence of the suspect.

4. The Ombudsman pointed out to the Police that it was relying on testimony of very questionable reliability in determining that there was a reasonable doubt about the complainant’s innocence.

The officer of the Investigations Department of the Northern District (hereafter - the Officer) responded to the Ombudsman that, in his opinion, the facts in the files meet the test of reasonable doubt. The Ombudsman requested that the Officer explain which facts raise a reasonable doubt about the complainant’s innocence, and he responded that the facts are the complaints filed by the accuser against the complainant.

The response of the Officer indicates that, in his opinion, a complaint is itself sufficient to serve as a basis for closing an investigations file on the grounds of “lack of proof,” even if there is no other fact linking the suspect with the act attributed to him.

5. Because the Ombudsman was of the opinion that this was not the intention of the Court and the Directives, it requested the head of the NHID, who is responsible for issuing the Directives, to indicate whether the Police consider the complaint itself to be sufficient to

meet the requirement that there be proof capable of maintaining a reasonable doubt of the innocence of a suspect, without any additional proof to support the complainant's allegations.

The NHID responded that it is difficult to implement the test of reasonable doubt in files where there are only the versions of the complainant and the person against whom the complaint is made. In these cases, the person filing the complaint may be lying, but he may also be telling the truth, in which case an offense has been committed. (In this context, the Police mentioned that some offenses are, by their nature, perpetrated with no witnesses present, such as sexual offenses and family-violence offenses). "Thus, simply because no evidence was found supporting the complaint does not lead to the conclusion that there is no *prima facie* evidential basis for filing an indictment or to close such a file, as a rule, on the grounds of lack of guilt."

According to the Police, the State Attorney informed them that, in files where no additional evidence exists, the complaint should be substantively examined and a determination made whether there is reasonable doubt of the innocence of the persons complained against, and that a decision should be made whether to close the file for "lack of guilt" or "lack of proof."

6. Following the Ombudsman's request, the NHID reviewed the evidence in the two files and found that the grounds for closing the files should be changed to "lack of guilt." In the file on the allegations of threat it was held that, in light of the alibi, there was no reasonable doubt of the innocence of the complainant regarding the allegations against him. In the complaint alleging assault, although some suspicion remained, as the Supreme Court ruled, it is not proper to rely on some tiny bit of evidence to allow a stain of suspicion to remain on an individual.

7. The Police amended the reason for closing the files from "lack of proof" to "lack of guilt."

UNLAWFUL PREVENTION OF EXIT FROM ISRAEL

1. In March 1998, the complainant complained to the Ombudsman against the Border Police for refusing to let him exit Israel because of an order prohibiting exit from Israel (hereafter - the exit prohibition order) issued against him, even though the exit prohibition order had been revoked (hereafter - the order of revocation) approximately one month earlier. The details of his complaint are as follows:

(a) On February 22, 1998, the Execution Office in Jerusalem (hereafter - the Office) issued the order of revocation canceling the exit prohibition order that had been issued against the complainant in a file involving payment of support, and so informed the Border Police.

(b) On March 17, 1998, the complainant arrived at Ben-Gurion Airport to fly abroad, but he was informed that the order of revocation had not been recorded in the computer of the Border Police. The complainant showed the Border Police a copy of the order of revocation, but to no avail.

(c) As a result, the complainant had to postpone his flight, and was only able to leave the country after he presented the original order of revocation.

(d) The complainant contended that he was caused mental anguish and financial loss, and requested that action be taken against those responsible.

2. The Ombudsman's investigation revealed the following:

(a) On January 25, 1998, a file for payment of support was opened against the complainant in the Office. At the request of the party to whom the support payments were due, an order prohibiting his exit from Israel was issued against the complainant. On February 22, 1998, also at the request of the party to whom the support payments were due, the order of revocation was granted. That same day, the order of revocation was sent by computer to the Border Police at the National Headquarters of the Israel Police Force, and on February 24, 1998, the Office received confirmation that the order of revocation had been recorded by the Police.

(b) On February 13, 1998, the District Court in Jerusalem, in a criminal action against the complainant, issued an order of indefinite duration prohibiting the complainant from exiting Israel (hereafter - the criminal order). At the request of the complainant, the court revoked the criminal order temporarily, from March 17, 1998 to March 26, 1998.

(c) In response to the Ombudsman's question why the Border Police prevented the complainant from leaving Israel, the Police answered that "revocation of the order prohibiting exit was not reported to the Police computer terminal." Though it was not stated directly, the response indicated that the Police referred to the exit prohibition order in the file for support payments.

(d) The Courts Administration and the Office contended that the prohibition on the complainant from exiting Israel was not pursuant to the order prohibiting exit in the file for support payments, since that order had been revoked, as mentioned, on February 22, 1998. Receipt of the order of revocation was confirmed by the Police on February 24, 1998.

In the opinion of the Courts Administration and the Office, the complainant was prohibited from exiting Israel pursuant to the criminal order, although it had been temporarily revoked, as noted above, from March 17 to March 26, 1998.

(e) In response to further investigation by the Ombudsman, the Police indicated that on March 17, 1998, the complainant showed the Police the temporary revocation of the criminal order, and the revocation was recorded by the Police a few hours before the complainant arrived at Ben-Gurion airport to exit Israel.

The Police did not repeat its contention that the exit order in the support-payments file "was not reported to the Police computer terminal," and did not try to conceal the facts that the Courts Administration and the Office had presented, but claimed that the reason the complainant was prohibited from exiting Israel "is not clear... It may be that another exit prohibition order was pending against him," and expressed its dismay that it was unable to "investigate the complaint thoroughly."

The Police offered no facts to support its assumption that another exit prohibition order was pending against the complainant. The Courts Administration informed the Ombudsman that it had checked this possibility and found that on the day of the incident, there was no outstanding exit prohibition order against the complainant in any of the files pending against him.

(f) From the above, it is clear that the two exit prohibitions orders against the complainant were not in effect at the time that he was about to leave the country. Despite the fact that the police had recorded the revocation of both orders, the complainant was prevented from exiting Israel, for which the Police had no reasonable explanation.

5. The Ombudsman ruled that the complaint was justified.

The Police acted improperly in prohibiting the complainant from exiting Israel although there was no valid exit prohibition order against him.

The complainant was informed that if he contends he was caused damages as a result of being prohibited from exiting the country, he could address his request directly to the Police.

MINISTRY OF JUSTICE

FAILURE TO RETURN BANK GUARANTY

1. In August 1997, the complainant complained to the Ombudsman about the failure to return to him a bank guaranty that he had deposited with the District Court in Tel-Aviv (hereafter - the Court). The details of his complaint are as follows:
 - (a) In December 1991, the complainant deposited in the Court a bank guaranty to enable the release on bail of a criminal defendant.
 - (b) The defendant served his punishment and was released some time ago, but, according to the complainant, despite his requests and those of the defendant's attorney to the office of the clerk of the Court (hereafter: the Court's Office), the Court's Office did not return the guaranty to the guarantor bank.
 - (c) According to the complainant, the delay in returning the guaranty has caused him financial loss because it increases his financial obligations to the bank.
2. The Ombudsman's investigation revealed the following:
 - (a) On March 17, 1993, the defendant's criminal file was transferred to the Supreme Court on appeal. The file was transferred with the deposited guaranties, among them the complainant's bank guaranty. Seven days later, a judge of the District Court decided, at the request of the State Attorney's Office, to return all the guaranties in the file. However, since the file had been transferred to the Supreme Court, the Court's Office did not return the guaranties, as required by the judge's ruling.
 - (b) In January 1995, the Supreme Court returned the criminal file to the District Court, but the Court's Office still did not take any actions to return the guaranties.
 - (c) Only on October 16, 1997, as a result of the Ombudsman's investigation, did the Court's Office return the guaranty to the guarantor bank. The chief clerk of the District Court apologized for the mishap regarding the handling of the guaranty.
3. The Ombudsman brought the case to the attention of the legal advisor of the Courts Administration. The Ombudsman noted that, following the decision of the judge of the Court to return the guaranties, the Court's Office should have immediately contacted the clerk of the Supreme Court to obtain the guaranties and ensure their return. The Ombudsman requested the Courts Administration to consider compensating the complainant for his monetary loss resulting from the prolonged and unjustifiable delay in canceling and returning the guaranty.
4. The Courts Administration decided to pay the complainant NIS 2000 in compensation.
5. The Ombudsman informed the legal advisor of the Courts Administration that directives should be issued regarding the operating procedures in returning guaranties.
6. In light of the recommendation of the Ombudsman, the Courts Administration prepared directives for the handling of the return of guaranties in criminal files and in detention files.

MINISTRY OF LABOR AND SOCIAL WELFARE

FAILURE TO MENTION NAME OF THEORIST IN BROCHURE APPLYING HIS METHOD

1. In February 1997, the complainant complained to the Ombudsman against the Ministry of Labor and Social Welfare (hereafter - the Ministry). The details of his complaint are as follows:

(a) The complainant developed a method for allocating social workers in welfare services in the local authorities. The method takes into account the needs of each authority.

(b) The Ministry adopted the method, and since 1978 has applied it in allocating social workers to welfare services in the local authorities. The Ministry periodically published a brochure on the subject of allocating social workers to welfare services and noted that distribution of the positions was based on the "Pardes method," after the name of the complainant.

(c) In 1996, too, the Ministry published a brochure applying the method (hereafter - the 1996 brochure). However, in this brochure, the name of the complainant as developer of the method was deleted.

(d) The complainant contends that deleting his name from the 1996 brochure violates an moral right granted to him by law as the developer of the method, and that the deletion is tantamount to theft. He does not oppose the Ministry's using his method and does not request compensation for its using a method that he created and developed. He only demands that the Ministry mention his name, and not give the impression that the editors of the brochure created the method.

(e) The complainant contends that all of his requests to the Ministry in this matter were rejected, and he requested the Ombudsman to intervene in order to rectify the alleged injustice he suffered.

2. In its response to the Ombudsman, the Ministry explained that it did not dispute that the complainant developed, in his Masters thesis, the method for determining the number of social worker positions and that this method was the basis of the 1996 brochure.

The Ministry contended, however, that deletion of the complainant's name was justified, because the mathematical formula included in the brochure did not appear in the original work, the data presented in the brochure was computer-generated, and variables were added in accordance with a government decision. The Ministry added that it was not "good for the system" to use the term "Pardes method," because that term "is perceived as an outdated method that has not been rejuvenated, which, as seen above, is not the case."

3. The Ministry attached to its response the 1996 brochure as well as the 1991 brochure. Study of the brochures shows:

(a) The two brochures fixed the number of social workers required for each of the local authorities in the same manner.

(b) Other than some insignificant changes, which do not affect the method, the text of the 1996 brochure was identical to that of the 1991 brochure.

(c) The chapter explaining the principles of the method and its application was identical in the two brochures, and the same mathematical formula was used.

(d) The 1991 brochure explicitly stated in several places that it applies the "Pardes method," while the 1996 brochure deleted mention of the complainant in those places.

4. The above indicates that the two brochures did not differ significantly, and that the Ministry was unable to give any reason justifying the decision to delete the complainant's name in the 1996 brochure.

5. The Ombudsman ruled that the complaint was justified.

The Ministry had improperly deleted the name of the complainant in the 1996 brochure. The Ombudsman emphasized that his conclusion was based on the norms of fairness and proper administration, without resolving whether it was also required by law and pursuant to his moral right, as contended by the complainant.

6. On September 9, 1998, the Director General of the Ministry was informed of the Ombudsman's conclusions, and he so informed the Minister of Labor and Social Welfare. On October 20, 1998, the Minister wrote to the Director General that he understood the complainant's contention and requested the Director General to rectify the problem in a manner consistent with the saying of the Sages that "He who quotes in the name of the author brings redemption to the world."

MINISTRY OF TRANSPORT

RESTRICTIONS PLACED ON MOTOR VEHICLE LICENSE WITHOUT INFORMING OWNER

1. In January 1999, the complainant, a resident of Ashdod, complained to the Ombudsman against the Ministry of Transport (hereafter - the Ministry). The details of his complaint are as follows:

(a) On October 21, 1997, the complainant paid the license fee for his motor vehicle with a check made out by his employer, in accordance with the employer-employee agreement between them.

(b) The following year, the complainant requested that his license be renewed. To his surprise, he was informed that his employer's check had not been honored, and that a restriction had been placed on the vehicle. In order to renew the license, the complainant was required to pay the license fee for the previous year, plus interest and the fees of the attorney retained by the Ministry to collect the check. The complainant requested that he be allowed to pay only the registration fee, but the Ministry refused to receive the payment without the complainant also paying the attorney's fees.

(c) According to the complainant, the Ministry did not inform him directly, as the owner of the vehicle, about the refusal of the bank to honor the check or about the restriction on the license. He also contended that his employer did not inform him about the notices the employer had received from the Ministry. Thus, he contends that he should not have to pay the attorney's fees.

2. The Ombudsman's investigation revealed the following:

(a) The Ministry's procedures provide that, if the Ministry's records do not indicate that payment of the registration fee was made at the time set for payment, the license is automatically "restricted." That is, the license cannot be renewed, nor can the vehicle be sold and registered in the name of the purchaser, as long as the debt has not been paid and the restriction removed. Six months prior to the expiration of the license, the owner of the vehicle receives a letter of warning about the restriction on the license. However, if the license fee is paid by check, and the check is not honored, the license is not automatically restricted. In these cases, the Postal Bank sends a warning to the drawer of the check, and if the fee is not paid after the warning has been given, the restriction is placed on the vehicle and the check is forwarded to a law firm for collection, the drawer of the check being charged with interest and attorney's fees.

(b) The procedures provide no instruction on how to act when the drawer of the check is not the owner of the vehicle. Since the details of the employer were stated on the check, the employer was sent the Ministry's notices and the warning letters of the Postal Bank and the law firm, on the assumption that the drawer of the check was the owner of the vehicle. Thus, the complainant did not receive any notice or demand about the refusal to honor the check, and the employer did not deal with the matter, nor did he inform the complainant about it. As a result, the restriction was placed on the license.

(c) In its response to the Ombudsman, the Ministry contended that the owner of the car was responsible for paying the fee, and the fact that the employer-employee agreement stipulated that the employer pay the fee did not eliminate the complainant's said responsibility. According to the Ministry, the complainant should pay the entire debt, including attorney's fees, and sue his employer for the payment, on the grounds that the employer did not fulfill the labor agreement between them.

3. The Ombudsman ruled that the complaint was justified.

There is no dispute that it is the duty of the owner to pay the license fee on his motor vehicle, but precisely for this reason, the Ministry should have informed the complainant, who is the owner of the vehicle, that the check had not been honored, that a restriction would be placed on the license, and that a law firm would initiate legal proceedings in order to collect the moneys owing on the check. Since no action was taken to inform the complainant that the check had not been honored, and the notices were sent only to the employer, there was no reason to charge the complainant for attorney's fees.

4. The Ombudsman informed the Ministry that it should allow the complainant to pay the license fee for the previous year according to the amount of the fee at the time that the complainant offered to pay it, that is, close to the time of renewing the license fee for the following year (October, 21, 1998).

5. The Ministry informed the Ombudsman that it would act in accordance with the Ombudsman's ruling.

The Ministry also notified the Ombudsman that, during investigation of the complaint, it realized that a mistake had occurred in not sending notices to the owner himself. To prevent this mistake from recurring, the Ministry's computer was programmed to send notices, in cases where the registration fee was paid by a person other than the owner of the vehicle and the check is not honored, to both the drawer of the check and the owner of the vehicle.

LOCAL AUTHORITIES

CHARGE FOR PAVING A SIDEWALK

1. The complainant, a resident of Holon, complained in October 1996 to the Ombudsman against the Holon Municipality (hereafter - the Municipality) for charging him for development fees for paving the sidewalk near his home. The details of his complaint are as follows:

- (a) The complainant lives in a house built on a lot that he purchased in 1945.
- (b) In March 1996, the complainant received from the Municipality a warning about the debt of NIS 11,267 for "Development fee - roadway and/or sidewalk and/or conduits and/or sewerage and/or drainage."
- (c) In response to the complainant's query about the debt, the Municipality informed him that on May 15, 1989, the sidewalk bordering his house had been paved, for which he had been charged NIS 2,197. Since he had failed to pay his debt, he had also been charged interest and linkage differentials according to the Consumer Price Index (hereafter - linkage), resulting in the amount set forth in the letter of warning.
- (d) To prevent the charge continuing to accumulate interest and linkage, on October 9, 1996 the complainant paid the Municipality NIS 9,500 (after the Municipality cancelled the interest on the debt). However, he made it clear that he would complain to the Ombudsman, and if his complaint was found to be justified, he would request reimbursement of the sum he paid.
- (e) The complainant set forth two contentions:
 - (1) The charge was imposed unlawfully, because he had already paid development fees for paving the sidewalk.
 - (2) Until he received the warning, he had not received any notice about the debt. He contended that, even if the charge were justified, because the Municipality had failed to send an earlier notice, he should not have to pay linkage.

2. The Ombudsman's investigation revealed the following:

(a) **Legality of the Charge**

This is a factual question: was the sidewalk paved in 1988 for the first time - in which case the charge would be lawful - or was it replaced or repaired, in which case the charge was unlawful. Pursuant to a decision of the Supreme Court, once a municipality has exercised its authority under a municipal by-law to pave a road, it is not allowed to use the by-law again in a matter relating to the same road. Based on this principle, payments to establish infrastructure, including a sidewalk, are paid once in the life of the property, and replacing or repairing the infrastructure does not justify an addition to the general *arnona* [municipal property tax] payment.

The Municipality contended that the sidewalk was paved in 1988 for the first time, and that there had not previously been a sidewalk along that segment of the street. In contrast, the complainant contended that there had been a sidewalk, which was made of large square blocks, which had been replaced by small blocks in 1988 or 1989.

The complainant's next-door neighbor also recalled that the sidewalk had been paved with large blocks, and that they had been replaced by small blocks.

A visit by members of the Ombudsman's staff to the site revealed that small blocks had been placed only along a certain part of the street, whereas the sidewalk in front of the complainant's house, the sidewalk along the rest of the street, and the sidewalk on the street perpendicular to it were made of old large blocks. It is unreasonable to assume that there were no paving blocks at all just in the section of the sidewalk bordering the home of the complainant.

Furthermore, the Municipality did not produce any evidence that the sidewalk had been paved in 1988 for the first time, and that there had not been a sidewalk previously. The file in the Municipality's Engineering Department also contained no record indicating that the sidewalk had been paved in 1988 for the first time or describing the work that was done then.

The Municipality did not produce any document supporting its contentions and did not establish an evidential foundation for demanding the payment.

(b) Lack of Demand prior to March 1996

The Municipality contended that it sends demands for payment every year to residents owing development fees, but other than the original demand it contends was sent to the complainant, the Municipality did not provide the Ombudsman with copies of demands for payment that had been sent to the complainant over the years. The Municipality stated that it did not keep copies of the demands.

There was no evidence indicating that the Municipality had sent the demands for payment by registered mail or by any other means set by the Holon Municipality By-Law (Paving of Roads), 5735-1974.

The Municipality did not prove, therefore, that over the years it had sent demands for payment and did not refute the complainant's contention that prior to March 1996, he had not received any demand for payment.

The Municipality also did not produce documents indicating that other residents on the street had received demands for payment, as it had contended, or that they had paid for paving the new sidewalk.

3. The Ombudsman ruled that the complaint was justified.

4. The Ombudsman informed the Municipality that it should reimburse the complainant the amount that he had paid, according to its real value at the time of reimbursement.

The Ombudsman also pointed out to the Municipality that the text of the letter sent to the complainant in March 1996 was general, and did not provide any information about the nature of the debt.

5. The Municipality acted in accordance with the ruling, and reimbursed the complainant the sum he had paid.

REDUCTION IN MUNICIPAL PROPERTY TAX FOR OCCUPIERS OF PROPERTY

1. In June 1998, the complainant, a resident of Lod, complained to the Ombudsman against the Lod Municipality (hereafter- the Municipality). The details of her complaint are as follows:

(a) The complainant owns an apartment in Lod in which she lives with her mother.

(b) In 1998, the complainant requested a reduction in municipal property tax (hereafter-tax reduction) on the grounds that her mother is a pensioner who receives a dependent's allowance from the National Insurance Institute.

The Municipality approved the tax reduction, but subsequently cancelled it, contending that the complainant, and not her mother, was the owner of the apartment. Thus, the complainant was not entitled to a tax reduction on the apartment or any part of it.

(c) The complainant requested the Ombudsman to intervene and rule that, based on her mother's status, she was entitled to the tax reduction.

2. Section 2 of the State Economy Arrangements Regulations (Reduction in Municipal Property Tax), 5753-1993, provides:

A Council may reduce the amount of municipal property tax imposed in that fiscal year on *occupiers* of property where the following conditions are met, in an amount set forth below:... (emphasis of "occupiers" added)

Section 1 of the above regulations defines "occupier," "owner," "building," as within the meaning of sections 1 and 269 of the Municipalities Ordinance.

"Occupier" is defined in section 1 of the Municipalities Ordinance [New Version] as follows:

a person *in actual occupation of any* property, whether as owner or lessee or in any other manner, except a person residing in a hotel or boarding-house" (emphasis added)

3. The Ombudsman drew the Municipality's attention to these statutory provisions and to the mother's being within the definition of "occupier" of the property. After the Municipality reviewed the matter, it informed the Ombudsman that it would grant a thirty percent tax reduction (in accordance with the Senior Citizens Law (Amendment No. 3), 5758-1998) on one-half of the apartment, which the mother occupies, if the mother submits an affidavit that she actually occupies one-half of the property and does not receive a tax reduction on another property.

In June 1999, the Municipality informed the Ombudsman that the complainant had received the tax reduction for 1998 and 1999.

BEZEK - THE ISRAELI TELECOMMUNICATIONS CORPORATION LTD.

DISMISSAL FOLLOWING EXPOSURE OF ACTS OF CORRUPTION

1. In July 1997, the complainant, an employee of Bezek - The Israeli Telecommunications Corporation Ltd. (hereafter - Bezek), complained to the Ombudsman against Bezek. The complainant contended that he was dismissed because he had revealed acts of corruption in the unit in which he worked. The details of his complaint are as follows:

(a) The complainant began to work at Bezek as a temporary employee in the Nahariya subscribers' services unit (hereafter - Subscribers' Services) on September 9, 1992. Since December 1992, he has worked in the unit that makes checks on Subscribers' Services (hereafter - the Unit). The purpose of the Unit is to operate a hotline for customers' complaints. Since January 1, 1995, the complainant has been employed on the basis of a personal contract which was periodically extended.

(b) In October-November 1996, the Director General of Bezek, the Deputy Director General, the internal auditor, the head of discipline, and the chairperson of the workers' representative body received anonymous letters describing violations of procedures by the Unit's director, and acts that constituted disciplinary offenses. The letters also contended that the Unit's director was appointed in violation of criteria set by the company.

At the Director General's request, the internal auditor and head of discipline began independent investigations of the contentions raised in the letters.

(c) In his letter of December 2, 1996, the head of Bezek's personnel department for the Haifa and the Northern District (hereafter - the District) notified the complainant that he could no longer be retained as an employee, and that his employment would cease on December 31, 1996, the date his employment contract expired.

(d) In his letter of January 2, 1997, the District director requested the director of Subscribers' Services not to change the status of employees in the Unit, until completion of the investigation, and to extend the complainant's employment contract. Following receipt of this letter, the complainant's employment contract was extended until July 31, 1997.

(e) On July 7, 1997, the District's organization and administration division notified the complainant that Bezek could no longer continue to employ him, and that his employment would cease on July 31, 1997. No reasons were given for the dismissal.

2. (a) The complaint was investigated pursuant to sections 45A-45E of the State Comptroller Law, 5718-1958 [New Version] (hereafter - the Law), which deal with the complaint of a public employee about an act performed by his superior in reaction to the employee's reporting, in good faith and in accordance with proper procedure, acts of corruption in the body in which he is employed.

(b) On July 31, 1997, the Ombudsman issued, pursuant to her authority under section 45C of the Law, a provisional order nullifying the notice of July 7, 1997 regarding the termination of the complainant's employment, and directing Bezek to continue to employ the complainant in his position and that the terms of employment be those that were in effect until July 31, 1997.

The Ombudsman also directed that Bezek enable the complainant to continue his work without disturbance and in accordance with every instruction properly given by his superiors, and that none of his rights were to be prejudiced, whether existing or appropriate, pursuant to any proper and binding law, agreement, custom, or procedure. In her order, the Ombudsman ruled that the order would remain in effect until she issued another order or directive in the matter.

3. The Ombudsman's investigation of the complaint revealed the following:

(a) The Unit's director did not fulfill any of the criteria Bezek set for filling the position of director of the Unit. Shortly after taking over her new position, the director issued directives that were illegal and contrary to Bezek's directives regarding recording of problems in the Unit's computer system. The objective of the directives was to conceal some of these problems.

(b) The complainant and other Unit employees warned the chairperson of the employees committee of Subscribers' Services and the chairperson of the District employees committee and the head of the Unit herself about her illegal directives, and in the beginning of 1996, informed the relevant division of the office of the State Comptroller about the said directives.

In October-November 1996, anonymous letters were sent to the Bezek management and to the District alleging acts of fraud in computer entries in the Unit, and the punching of the director's work attendance card by other employees, as well as about her appointment in violation of the company's criteria and procedures.

The director of Subscribers' Services thought that the complainant was among the letter writers, and the Ombudsman's investigation revealed that he was indeed one of them.

The Dismissal of December 1996

(a) On December 2, 1996, the director of Subscribers' Services contacted the director of the District's personnel department and informed him that "there are problems" with the complainant, and requested that he terminate his employment. The director of the personnel department asked the director of Subscribers' Services to make his request in writing. The same day, the director of Subscribers' Services sent a fax requesting that the employment of the complainant be terminated on December 31, 1996, because of "extreme deterioration in his performance." On December 2, 1996, the director of the District's personnel department also sent a letter to the complainant notifying him that his employment would be terminated at the end of the month, the date of the expiration of his employment contract. The letter reached Subscribers' Services on December 5, 1996 and was forwarded to the complainant on December 8, 1996.

(b) Following the complainant's complaint to the supervisor of discipline at Bezek and the company's internal auditor, the District director instructed the director of Subscribers' Services to extend the complainant's contract, and it was extended until July 31, 1997.

(c) In June 1997, the internal auditor made his investigative findings and forwarded them to the chairperson of Bezek and its Director General. The principal conclusion was that the warnings by the complainant and other employees about acts of corruption in the Unit were justified, and the acts were done with the knowledge of the director of Subscribers' Services.

(d) The investigative findings refuted the contention of the director of Subscribers' Services, that the termination of the complainant's employment was due to "extreme deterioration in his performance." In 1995, the director of Subscribers' Services wrote several letters to the complainant, praising his devotion and diligence in performing his tasks; the complainant was given an outstanding employee award for 1995; in two evaluation reports, of June 5, 1996 and October 6, 1996, the director of Subscribers' Services joined the favorable opinion of the complainant's supervisors, and recommended that he be granted tenure. The investigation revealed that, until the complainant was dismissed, no deterioration in his performance had occurred.

(e) The director of Subscribers' Services was aware of what was going on in the Unit since the appointment of the director, and the Unit director reported to him about every act that she had performed in the Unit. The director of Subscribers' Services also knew about the anonymous letters and the investigation conducted by the head of discipline and the internal auditor.

(f) The urgent request of December 2, 1996 by the director of Subscribers' Services to the director of the District's personnel department to terminate the employment of the complainant was puzzling and required explanation. He was unable to explain satisfactorily the urgency of his request.

The Dismissal of July 1997

(a) On November 17, 1996, Bezek's "Tenure Committee" recommended to the Deputy Director General for Organization and Human Resources that the employment of the complainant be terminated. The reason given was that he did not have a matriculation or engineering certificate. The committee's minutes of its meeting on December 16, 1996 were approved by the Deputy Director General and sent to the District (apparently, when the director of the District's personnel department sent his letter of December 2, 1996 to the complainant, which terminated his employment, he [the director of the personnel department] did not know about the decision taken by the Deputy Director General for Organization and Human Resources).

(b) The National Labor Court ruled in several cases that an interim employee at Bezek who completed forty-eight months of work and had not been dismissed becomes a temporary employee covered by the collective labor agreement, and no special act of Bezek was necessary to grant him this status. On December 16, 1996, when it was decided to dismiss the complainant, he already had the status of temporary employee, whose rights regarding dismissal were the same as a tenured employee.

The provisions of the collective labor agreement in effect at Bezek and the company's procedures stipulate that the authority for dismissing a tenured employee lies solely with the Director General.

(c) The provisions of the collective labor agreement and the company's procedures also provide that the employee shall be given the reasons for his dismissal, be allowed to plead his case before a final decision is reached, and the Employee's Committee must consent to the dismissal. The Ombudsman's investigation revealed that these provisions were not fulfilled.

4. The Ombudsman ruled that the complaint was justified.

5.

(a) The findings of the Ombudsman's investigation revealed that the alleged deterioration in the complainant's performance was not the reason for the request of the director of Subscribers' Services that his employment be terminated in December 1996. Rather, the reason for the dismissal was his notices about the acts of corruption that had been taking place in Subscribers' Services.

(b) The dismissal of the complainant in July 1997 was contrary to the collective labor agreement and the company's procedures. By not granting the complainant the opportunity to state his claims against the dismissal, the principles of natural justice were also violated. Such a violation comprises a fundamental breach of the dismissal procedure.

Since the dismissal of the complainant was done unlawfully and without authority, the dismissal is null and void, and any actions taken against him are of no force or effect.

5. Based on the above, the Ombudsman ordered as follows:

ORDER

Being convinced there is a direct causal relationship between the statements in good faith of the complainant about the acts of corruption in the Subscribers' Services Unit and the decision of December 2, 1996 to terminate his employment, and because the dismissal procedures taken in July 1997 were unlawful, and were, therefore, a nullity and of no effect, I hereby order, pursuant to my authority under section 45C of the State Comptroller Law, 5718-1958 [Consolidated Version] as follows:

a. The provisional order given by me on July 31, 1997 is final, such that the complainant will continue to be employed at Bezek as a "temporary employee" as regards all his rights and obligations as an employee pursuant to any binding law, agreement, practice, or procedure.

b. Taking into account the proper performance of the Subscribers' Services Unit, Bezek may consider placing the complainant in another appropriate position, which does not prejudice his status or working conditions.

c. The basis of this order is that the dismissal procedures used were unlawful. This order does not prevent dismissal if a basis for dismissal exists and if the dismissal procedure is proper.

APPENDICES

Table 1: Breakdown of Complaints by Agencies Complained Against - 5758 (1997/1998)
(October 2, 1997 - September 20, 1998)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Complaints	Total Subjects ¹	Number of Complaints	Number of Subjects	Subjects Resolved Substantively	Complaints Found Justified
Prime Minister's Office	17	17	11	11	9	3
Ministry of Finance²	295	331	323	357	303	127
Income Tax	88	102	116	128	122	50
Property Tax and Compensation Fund	56	62	56	63	50	16
Customs and V.A.T.	30	35	39	42	35	18
Land Appreciation Tax	24	25	22	22	19	5
Capital, Insurance, and Savings Department	32	36	31	36	23	17
Civil Service Commission	23	25	21	24	21	7
Ministry of the Environment	21	24	27	31	24	9
Ministry of Defense²	83	87	98	112	71	17
Rehabilitation Department	58	62	63	76	45	10
Israel Defense Forces	137	142	139	145	57	18
Ministry for Public Security²	563	678	585	692	510	156
Israel Police Force	512	622	521	620	480	151
Prisons Service	50	54	63	70	30	5
Ministry of Construction and Housing	303	313	283	295	256	95
Housing Companies³	126	139	177	199	171	50
Amidar, the National Housing Company in Israel, Ltd.	92	103	143	163	140	44
Others	34	36	35	36	31	6
Ministry of Health	162	193	189	225	170	45
Health Funds³	110	129	88	97	52	19
Histadrut Health fund	73	85	58	63	33	10
Others	37	44	30	34	19	9
Ministry of Religious Affairs	72	77	66	68	24	13
Ministry of Foreign Affairs	9	9	9	9	5	1
Ministry of Education, Culture and Sport	155	163	198	207	101	45
Ministry of Agriculture and Rural Development	18	19	15	15	6	1
Ministry of Science and Development	1	1	--	--	--	--
Ministry of Justice²	321	337	341	359	155	53
Courts Administration	97	100	112	116	31	13
Execution Office	81	83	83	85	20	1
Ministry of Labor and Social Welfare²	148	156	194	213	132	71
Labor	48	50	51	57	32	17
Social Welfare	27	28	58	61	53	26
Employment Services	51	56	60	69	30	18

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Agency	Cases Resolved During Report Year					
	New Cases		Including Cases Received Previously)			
	Total Complaints	Total Subjects ¹	Number of		Resolved Substantively	Complaints Found Justified
			Complaints	Subjects		
Ministry of the Interior	241	265	226	244	126	50
Ministry of Immigrant Absorption	81	91	88	95	87	19
Ministry of Transportation²	134	159	156	174	132	47
Licensing Division	48	58	57	61	52	21
Ministry of Tourism	9	11	13	14	13	1
Ministry of Industry and Trade	19	23	20	21	20	5
Ministry of Communications	8	8	10	11	5	4
Bezeq, Israel Telecommunica- tions Corporation Ltd.	121	141	159	181	96	46
Postal Authority	117	136	101	115	63	31
Ministry of National Infrastructure	23	27	31	33	26	11
Israel Lands Administration	138	143	141	151	88	18
Bank of Israel	15	15	32	32	27	9
National Insurance Institute	370	433	414	474	258	103
Broadcasting Authority	131	132	103	103	60	43
Local Authorities³	1,186	1,393	1,297	1,476	866	311
Jerusalem Municipality	99	116	108	122	85	29
Tel-Aviv - Jaffa Municipality	83	106	103	121	91	20
Haifa Municipality	90	114	83	98	61	31
Bnei Brak Municipality	39	50	40	44	31	13
Petach Tikva Municipality	32	35	35	38	33	9
Rehovot Municipality	31	35	37	41	20	10
Other Municipalities	494	579	554	634	351	119
Local Councils	187	211	200	226	120	51
District Councils	70	81	76	89	46	16
Local Planning and Building Committees	32	34	36	37	21	9
Others	29	32	25	26	7	4
Other Agencies³	156	172	185	203	133	57
Israel Electric Corporation Ltd.	45	52	55	62	55	22
Others	111	120	130	141	78	35
Agencies Not Subject to Ombudsman Inspection	627	630	592	595		
Total	5,917	6,594	6,311	6,957	4,046	1,478

¹ Some of the complaints refer to more than one subject.

² Detailed data have been presented only on units particularly subject to complaints - generally thirty complaints or more.

³ Data have been presented on local authorities and other bodies against whom thirty or more complaints were filed.

Table 2: Breakdown of Complaints by Agencies Complained Against - 5759 (1997/1998)
(September 21, 1998 - August 31, 1999)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Complaints	Total Subjects ¹	Number of Complaints	Number of Subjects	Resolved Substantively	Subjects Complaints Found Justified
Prime Minister's Office	12	12	16	16	10	3
Ministry of Finance²	272	317	361	417	351	176
Income Tax	110	126	134	155	144	78
Property Tax and Compensation Fund	36	44	54	65	56	17
Customs and V.A.T.	37	47	48	61	54	33
Land Appreciation Tax	12	15	20	22	18	9
Capital, Insurance, and Savings Department	37	41	51	54	38	21
Civil Service Commission	10	12	11	12	8	2
Ministry of the Environment	46	51	30	36	29	13
Ministry of Defense²	70	87	68	73	48	12
Rehabilitation Department	47	62	44	47	30	8
Israel Defense Forces	81	93	93	103	36	20
Ministry for Public Security²	443	557	501	626	396	128
Israel Police Force	396	495	463	577	366	124
Prisons Service	47	62	38	49	30	4
Ministry of Construction and Housing	178	194	250	266	223	49
Housing Companies³	105	114	107	118	99	22
Amidar, the National Housing Company in Israel, Ltd.	74	81	75	83	70	16
Others	31	33	32	35	29	6
Ministry of Health	161	188	126	182	119	28
Health Funds³	103	118	26	148	76	19
Histadrut Health fund	76	87	83	96	51	13
Others	27	31	43	52	25	6
Ministry of Religious Affairs	57	71	54	64	31	24
Ministry of Foreign Affairs	7	8	10	10	5	1
Ministry of Education, Culture and Sport	132	153	132	146	69	44
Ministry of Agriculture and Rural Development	11	11	16	17	10	1
Ministry of Science and Development	--	--	1	1	--	--
Ministry of Justice²	313	350	345	376	116	44
Courts Administration	127	141	129	140	21	9
Execution Office	53	61	66	72	18	4
Ministry of Labor and Social Welfare²	160	185	149	169	83	35
Labor	34	36	34	36	15	10
Social Welfare	35	36	33	35	30	9
Employment Services	76	98	63	79	30	15

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Agency	New Cases		Cases Resolved During Report Year Including Cases Received Previously)			
	Total	Total Complaints	Number of Subjects ¹	Number of Complaints	Subjects Resolved	Complaints Found Substantively Justified
Ministry of the Interior	192	222	225	255	143	62
Ministry of Immigrant Absorption	66	72	86	95	72	16
Ministry of Transportation²	98	111	120	143	97	39
Licensing Division	27	29	37	49	36	22
Ministry of Tourism	4	5	9	12	10	2
Ministry of Industry and Trade	29	35	33	39	31	12
Ministry of Communications	5	6	7	8	7	3
Bezeq, Israel Telecommunica- tions Corporation Ltd.	105	133	118	143	85	32
Postal Authority	81	102	108	135	68	24
Ministry of National Infrastructure	14	16	18	22	10	4
Israel Lands Administration	101	117	132	149	95	33
Bank of Israel	28	28	36	36	31	4
National Insurance Institute	410	519	397	484	276	127
Broadcasting Authority	80	86	104	108	81	41
Local Authorities³	1,033	1,254	1,210	1,466	853	308
Jerusalem Municipality	92	112	106	128	74	39
Tel-Aviv - Jaffa Municipality	84	105	108	134	87	20
Haifa Municipality	80	102	101	134	86	23
Ashdod Municipality	31	33	25	28	21	5
Bnei Brak Municipality	25	31	38	50	22	17
Other Municipalities	414	497	500	598	355	136
Local Councils	174	213	192	224	125	41
District Councils	66	78	67	80	37	14
Local Planning and Building Committees	49	61	50	62	31	10
Others	18	22	23	28	15	3
Other Agencies³	149	177	148	168	102	39
Israel Electric Corporation Ltd.	35	44	34	40	33	10
Others	114	133	114	128	69	29
Agencies Not Subject to Ombudsman Inspection	551	552	606	607		
Total	5,097	5,944	5,778	6,638	3,662	1,365

¹ Some of the complaints refer to more than one subject.

² Detailed data have been presented only on units particularly subject to complaints.

³ Data have been presented on local authorities and other bodies against whom twenty-five or more complaints were filed.