CHAPTER ONE

PURVIEW OF THE TASKS

THE HANDLING OF PROLONGED INTER-MINISTERIAL DISPUTES

WORK OF THE REVIEW

In the Prime Minister's Office, in the following Ministries: The Ministry of Justice, of Housing and Construction, Health, Education, Agriculture and Rural Development, Welfare and Social Services, and Industry Trade and Labor, means have been examined of dealing with disputes of substance between Government Ministries. Included in this, a questionnaire was sent to the Directors General of 15 Government Ministries with a view to obtaining information about substantive disputes that have arisen between their Ministry and other Government Ministries.

SYNOPSIS

The Government is the executive authority of the State, and the field of its responsibility in terms of governance is extremely wide. Accordingly an in accordance with the Basic Law: The Government, it provides for, with the approval of the Knesset a division of work and fields of expertise according to Ministries. However in practical terms, even after determination of such a division of labor there are fields of activity and powers vested in the hands of several Ministries together. Additionally, on some occasions the division of labor between the Government Ministries is not clear, and therefore from time to time, disputes arise between the Ministries as to the powers and methods of working, including disputes that have continued for many years without being resolved. For as long as such inter-Ministerial disputes are unresolved, they cause damage to the public at large or to specific population groups who are entitled to receive a particular service from the State and are prevented from doing so because of the dispute.

In this report, the office of the State Comptroller has considered disputes that prevailed during the period of 2006-2010 between Government Ministries engaged in executive action[1], which continued for more than one year and caused systemic damage or harm to citizens (hereinafter - Substantive Disputes).

WORK OF THE REVIEW

In March-August 2010 the Office of the State Comptroller examined the methods of dealing with substantive disputes between Government Ministries. The examination was made in the Prime Minister's Office (hereinafter - PMO), in the Ministries of Justice,

1 There are also disputes between Ministries engaged in executive action and the Headquarters Ministries - The Ministry of Finance, The Ministry of Justice and the Civil Service Commission - in relation to budgeting, the rules and regulations and implementation of policy by the executing Ministries. Some of the disputes that are dealt with in the report also have budgetary ramifications.

Housing and Construction, Health, Education, Agriculture and Rural Development, Welfare and Social Services (hereinafter the Ministry of Welfare) and Industry Trade and Labor (hereinafter - The ITL). In addition thereto, the Office of the State Comptroller forwarded a questionnaire to the Directors General of 15 Government Ministries in which they were asked to provide information about substantive disputes that had occurred between their Ministry and other Government Ministries (hereinafter - The Questionnaire). The Office of the State Comptroller also examined how other States cope with the handling of disputes between Ministries by means of laws and working procedures, for example procedures for the establishment of Ministerial Committees in Britain[2].

THE MAIN FINDINGS

Unresolved substantive disputes

1. The large number of prolonged disputes. It was apparent from the answers of those questioned in the Questionnaire that in 2006-2010 there were at least 40 substantive disputes some of which had continued for more than a decade and most of them had not yet been resolved. It should be emphasized that in practical terms the number of disputes is much larger, because the Directors General of the Ministries had only raised the most prominent of them in the Questionnaire.

2. Damage caused by the disputes: The damage caused by the substantive disputes can be classified into direct damage, which has caused harm to various population groups among the public including weaker sections of the population, and, economic-administrative damage to the functioning of the Government, as detailed below:

(a) Direct damage: As a result of disputes, Government Ministries have not provided certain population groups with a service to which they were entitled, and as a consequence have caused them direct damage in various spheres, as illustrated hereafter: (1) Risk to public health - due to a prolonged dispute between the Ministry of Welfare and the Ministry of Health, which has continued for more than 15 years, children and youth staying in institutions of the Ministry of Welfare have not received, following psychiatric hospitalization, an appropriate answer to complex therapy-related problems. (2) Infringement of the principle of equality - because of a dispute between the Ministry of Education and the Ministry of Health, during a period of at least 3 school years the State has not provided ancillary medical funding for some of the students who have complex health related needs and require close medical supervision

2 **Guide to Cabinet and Cabinet Committees,** Cabinet Office, London

during school study hours and are entitled to funding of this by law[3]. Because of this some of them have not regularly participated in studies.

(b) Economic-Administrative damage: The dispute also had an adverse effect on the functioning of Government Ministries due to a waste of resources, absence of a uniform policy and lack of coordination of action between various bodies: (1) Duplication of systems in various Ministries, such as two systems for supervision of approved engineering and technical training colleges that were being operated at least until the end of 2010 by the Ministry of Education and the Ministry of ITL[4], and who worked without coordination between them. (2) Increase of the load on public systems, such as the Courts; for example, because of the aforementioned dispute between the Ministry of Education and the Ministry of Health regarding the responsibility for medical supervision funding for needy students, the District Court, in August 2009, was required to charge the State with providing funding for medical supervision for students where they were prevented from receiving it.[5]

Mechanisms for Resolution of Disputes

Basic Law: the Government provides, *inter alia* that the Government bears joint responsibility *vis a vis* the Legislative Authority, and every Minister is responsible, as a Minister, for the affairs of his Ministry *vis a vis* the Prime Minister. In other words the implementation of Government decisions is laid at the door of the Ministers and they are responsible for carrying them out even where disputes between the Ministries arise in respect of them.

Over the years, several *ad-hoc* mechanisms have been formulated for solving substantive disputes. Government Ministries who were in dispute maintained contacts at the various ranking levels, and sometimes appointed working teams or inter-Ministerial Committees for solving the disputes. A process of this nature is important and worthy, but it does not provide an answer for all the disputes - and the evidence for this is that our examination revealed scores of substantive disputes that had continued for a long time and remained unresolved and not having been dealt with.

Mechanisms prescribed for the handling of disputes: The Government in its decision[6], and the Attorney General in his directives[7], have prescribed that in a case of a legal dispute between the State Authorities, the Attorney General shall decide the issue. The Government has stipulated in the Government Working Code (hereinafter – The

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3 Under the Compulsory Education Law, 5709-1949; the National Health Insurance Law, 5754-1994, and the Special Education Law 5748-1988

4 The State Comptroller, Annual Report 59B (2009) Chapter entitled "Aspects of Actions of the Government Institute for Training in Technology and Science (GTT), page 1184 and subsequently.

5 Appeal ???(Jerusalem) 1645/09.

6 In Decision Number TM/78 of April 28, 1993.

7 In Directive Number 1.0000 and in Directive Number 9.1000

Government Code) that "where legal authority is vested in two or more Ministers and there is no agreement between them as to the exercise of such authority, the Minister that has requested that his colleague exercise joint authority and has not received a reply within 30 days - shall bring the dispute before the Prime Minister". The responsibility for resolving inter-Ministerial Disputes thus rests first and foremost with the Government Ministries and the Ministers heading them, and if there is a dispute that has not yet been successfully resolved, the Minsters must refer it to the Prime Minister.

The Attorney General: As a general rule disputes have reached the Ministry of Justice for decision principally as a result of a request of Ministries in respect of legal issues that are in dispute in relation to them, or as a result of legal proceedings brought against the State, where the Attorney General is required to make a decision regarding the State's position. On frequent occasions the Ministry of Justice has handled disputes referred to it by external agencies, for example: It was only as a result of an application of the "By Right" [8]non-profit society to the Ministry of Justice in a preliminary High Court of Justice petition[9] proceeding in July 2009, regarding a dispute as to the responsibility for funding medical supervision, the Ministry of Justice intervened in the dispute and prodded the Directors of the Ministries involved in the dispute to advance along the route that would enable students to be provided with the essential service to which they were entitled by statute. In addition to purely legal disputes, the Attorney General has also dealt with complex disputes that have budgetary aspects and aspects of determination of policy. It is apparent that the Attorney General handled the legal aspects of some of these disputes and a further stage was necessary in order to resolve the dispute following a referral of continued attempts to resolve it, to other headquarters agencies, such as the Ministry of Finance or the Prime Minister's Office; this has caused a prolongation of the process of resolving the dispute.

The Prime Minister and his Office: It appears that the Prime Minister's Office has handled disputes that Ministers have referred to the Prime Minister in relation to matters that stand at the head of the Government's order of priorities, on matters relating to policy, and those with political ramifications and in respect of disputes that entail major budgetary aspects. It also arose from the examination that the Prime Minister's representatives play a substantial role in resolving disputes referred to him. However it appeared on the one hand that Ministers and Government Ministries had referred to the Prime Minister, *inter alia,* inter-Ministerial disputes that it was not necessary to refer to him as the Authority in the matter was vested in other statutory agencies, and on the other hand the Ministries had not referred to the Prime Minister in

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8 The Non-Profit Society "By Right - The Center for Human Rights of Persons With Disabilities".

9 The High Court of Justice Petitions Dispute in the Ministry of Justice so that their reference would be dealt with in an examination process such as judicial, without depending on the filing of a petition to the High Court of Justice.

relation to some of the substantive disputes which according to the Government Code should necessarily involved the Prime Minister's Office, and he was therefore not able to take action in order to resolve them due to the involvement of outside agencies that had raised them, such as the Knesset, The High Court of Justice and the State Comptroller.

Committees of Ministers: The Government Code prescribes, *inter alia* that the Government shall appoint permanent, interchangeable committees of Ministers or for particular matters and shall determine their composition and their powers. According to the Director General of the Prime Minister's Office, the Committees of Ministers mechanism is one of the mechanisms prescribed for the resolution of inter-Ministerial disputes and it is intended to facilitate discussion and a decision in disputes between Ministers on subjects not requiring the convening of the Cabinet. However it appears that of the 41 Committees of Ministers established by the 32nd Government up to December 2010, it had not empowered any Committee to discuss a solution to inter-Ministerial disputes.[10] It should be noted that among the disputes examined by the office of the State Comptroller no dispute was found where the Ministers had referred to the Committees of Ministers. It is apparent from this that although it would appear that the Committee of Ministers are likely to act as a mechanism for the resolution of inter-Ministerial disputes in the spheres with which they are charged with responsibility - by means of engaging in joint deliberations of the parties concerned in the dispute - it has not been prescribed that they will act as such a mechanism and they are accordingly not acting as such a mechanism.

Non-use of mechanisms prescribed for the handling of disputes: Cases were found in which the Ministers and the Directors General had not submitted the substantive disputes to the mechanisms that were intended to deal with them - the PMO and the Attorney General. For example in the case of a dispute between the Ministry of Welfare and the Ministry of Health because of which the State did not provide any auxiliary aids for rehabilitation, such as wheelchairs for disabled persons staying in support institutions of the Ministry of Welfare; also during the period of service in office of the 31st Government the Minister of Welfare at that time, Knesset Member Yitzhak Herzog raised the dispute in a discussion with the Minister of Health at that time, Knesset Member Yaacov Ben Izri, and subsequently, in June 2009, the dispute was raised for discussion with the Deputy Health Minister, Knesset Member Yaakov Litzman. As the then Minister of Welfare did not succeed in resolving the dispute with the Minister of Health within 30 days, he should have brought it before the Prime Minister as prescribed in the Government Code and not refer the matter back for dealing with by the Director General of his Ministry in conjunction with the Director General of the Ministry of Health, which is what he actually did.

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10 In addition to these Committees, the 32nd Government established two Ministerial Committees for resolving specific disputes.

The need for a regularized procedure for the resolution of inter-Ministerial disputes

It appears from the foregoing that both the Prime Minister and the Attorney General have a substantial role to play in the resolution of disputes. However many substantive disputes have not been brought to their attention. It is therefore incumbent upon the Prime Minister's Office to create tools for identifying these disputes and for the Prime Minister's attention to be drawn to the matter in question. Such tools could be based, *inter alia* on public complaints and advertisements in the media, as well as on reports of the State Comptroller and the Public Complaints Ombudsman.

It is the Government's duty to exercise its executive responsibility and reduce, as far as is possible, the amount of inter-Ministerial substantive disputes. This is not only a legal-constitutional obligation originating in the Basic Law, but it is also a public duty of the Government *vis a vis* the citizens of the State. As part of this duty it is appropriate that the Government shall determine a general outline for the resolution of inter-Ministerial disputes in order to improve the means of handling them and to mitigate the damage caused by them. First of all in this outline the governance-public responsibility of the Ministries and the Ministers must be sharpened not to neglect substantive disputes, especially those that adversely effect the public and in particular weaker sections of the population, whose voice is not always heard. The Government must act in respect of this outline in two principal approaches:

1. A proactive approach: It is not possible to completely prevent such disputes arising but proactive steps must be taken to reduce them and prevent them ahead of time, which should properly define the spheres of authority and responsibility and diminish the chance of such disputes arising. This must be done by "tightening up" actions on subjects of legislation, as well as by means of the strengthening and regulation of the inter-Ministerial coordination actions, including the creation of forums for discourse, such as joint committees of Ministries engaged in inter-related fields and a forum of Directors General of the Government Ministries.

2. A reactive and regulatory approach: A structured program must be formulated which will include procedures and mechanisms for the existence of an efficient and beneficial process for resolution of disputes. In this context it would be appropriate to set a timetable for every stage of the dispute resolution process until its conclusion. Additionally, responsibility for resolution of the dispute must be assigned first and foremost to the Ministers and Ministers concerned, and in addition to stipulate that the Government is committed to act proactively in identifying disputes and working to resolve them.

CONCLUDING SUMMARY AND RECOMMENDATIONS

The findings of this report reveal one of the problems encountered in the difficult tasks of all past Israeli Governments: There are tens of disputes between the Government Ministries, some of them continuing for many years without any solution being arrived at. These disputes have caused substantial damage to the public - some of it direct, principally to the weaker population groups, and some of it indirect, economic-administrative damage to the Government Ministries and to the State Treasury.

At the time of conclusion of the review there is no structured and methodical process for the resolution of inter-Ministerial disputes, and within this empty space the Ministries who are in dispute are proceeding with casual initiatives without a guiding hand and in the absence of any clear framework; they are doing this by various means, which are worthwhile so long as they are effective and facilitate resolution of the dispute within a reasonable period of time.

The findings of this report also reveal that the existing mechanisms for the handling of inter-Ministerial disputes are insufficient. The responsibility for resolution of the disputes does indeed lie with the Ministries and the Ministers, each in his own sphere and should they not succeed in doing so it is incumbent upon them to bring them to the attention of the Prime Minister; however the Government is also committed by virtue of its joint responsibility to act in a proactive manner in order to identify prolonged disputes that are damaging to the public and resolve them in any way that it deems appropriate.

In view of the findings of this report, an in depth discussion is required by the Government and the making of a decision to deal with the existing problem by means of a regulatory process for the resolution of inter-Ministerial disputes that adversely impact on citizens who are unsuccessful in obtaining the services to which they are entitled and economic-administrative damage.

INTRODUCTION

The Government is the executive authority of the State and it bears common responsibility towards the Knesset. In order that the Government is able to govern it is required, *inter alia* to function normally and provide an efficient, egalitarian and qualitative service to the general public with full coordination between its various Ministries. The Governmental sphere of authority of the Government is extremely wide; accordingly and pursuant to the Basic Law: The Government, it prescribes, with approval of the Knesset, a division of work and spheres of expertise according to Ministries. Combined and coordinated activity of all the Government Ministries in fulfilling the tasks of the Government require full collaboration between them, clarity as regards the spheres of authority and responsibility of every Ministry, accessibility to relevant information and sufficient resources in order to complete the tasks.

However in practical terms, even after determination of the division of labor as aforesaid, there are spheres of activity and powers that remain jointly in the hands of several Government Ministries. Additionally, on some occasions the division of work between the Government Ministries is unclear and therefore, from time to time disputes arise between the Ministries concerning powers and ways of proceeding, including those that continued unresolved for many years. For as long as these inter-Ministerial disputes are unresolved they cause damage to the public at large or to special population groups who are entitled to receive a certain service from the State and are prevented from doing so by reason of the dispute. Accordingly what is required is the formulation of an efficient and speedy process for resolving the disputes when they arise so as to put back in order, as quickly as possible, the normal workings of the Government Ministry involved in the matter, and including the provision of a service to which the citizen is entitled by law.

Disputes between Government Ministries arise as a result of discrepancies between various laws or failure to agree with regard to the interpretation of a law or as regards policy, as well as when a request or complaint of one Ministry is met with a refusal, a counterclaim or a denial of the other Ministry. As a general rule it is possible to distinguish between two categories of inter-Ministerial disputes: (a) Disputes between implementing Ministries the source of which is in the overlapping of areas of responsibility, the lack of clarity of these areas or in problems necessitating handling of several Ministries together in respect of identical population groups. For example the Ministry of Welfare and the Ministry of Health both deal with the low socio-economic group suffering from health difficulties; (b) Disputes between the implementing Ministries and the Flagship Ministries (the Finance Ministry, the Justice Ministry and the Civil Service Commission) in relation to budgeting, to the Code or the implementation of policy by the implementing Ministry.

In this report, the office of the State Comptroller has considered disputes prevailing the period of 2006-2010 between Government Ministries engaged in its implementation, which have

continued for more than a year and have caused systemic damage or harm to citizens (hereinafter - Substantive Disputes).[11]

The issue of inter-Ministerial disputes engages many countries worldwide; some of them have regularized the handling of these disputes by means of procedures[12]. In Israel, by contrast, we still lack comprehensive regulation of the subject. It should be mentioned that in Israel there are also barriers originating in the systematic features of the regime and the manner of management of human resources in the civil service. For example, changes of government in Israel in the framework of which Ministers and Directors General of Ministries change, are relatively frequent and cut down the continuity of the handling of various matters, in particular matters that involve contacts with other Ministries. There is also a barrier the source of which is such that as a general rule, the paths to promotion of state employees in Israel are intra-ministerial and do not include spatial functions in other ministries, and because of this managers in the government ministries sometime base their decisions on extraneous considerations without a general system-related view and create barriers between the ministries[13]. Therefore, in the absence of regulation and also because of these barriers, the handling of inter-ministerial disputes in Israel is a long and cumbersome process with many of them not being resolved within a reasonable period of time.

In the period of March-August 2010, the office of the State Comptroller examined the means of dealing with substantive disputes between government ministries. The examination was made in the Prime Ministers Office, the Ministry of Justice, the Ministry of Housing and Construction, the Ministry of Health, the Ministry of Education, the Ministry of Agriculture and Rural Development (hereinafter - the Ministry of Agriculture) in the Ministry of Welfare and Social Services (hereinafter - the Ministry of Welfare) and in the Ministry of Industry, Trade and Labor (hereinafter - Ministry of ITL). In addition to this the office of the State Comptroller forwarded a questionnaire to the Directors General of 15 ministries, in which they were asked to provide information about substantive disputes that had arisen between their ministry and the other government ministries (hereinafter - the questionnaire. The State Comptrollers Office also examined how other countries coped with dealing with inter-ministerial disputes by means of laws and working procedures, for example procedures for the establishment of Cabinet Committees in Britain.[14]

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11 Some of the disputes considered in this report also have budgetary ramifications

12 The British Government for example, has introduced procedures that govern the work of the Committees of Ministers, which are one of the mechanisms for dealing with inter-ministerial disputes, see: **Guide to Cabinet and Cabinet Committees,** the Cabinet Office, London.

13 Yitzhak Gal-Nur, **Public Administration in Israel, the Developments, structure, functioning and reforms (2007), Page 81.**

14 **Guide to Cabinet and Cabinet Committees,** the Cabinet Office, London.

SUBSTANTIVE DISPUTES THAT HAVE REMAINED TOTALLY UNRESOLVED

The large number of prolonged disputes.

As has been mentioned the State Comptrollers Office has reviewed the ways of dealing with inter-ministerial disputes by means of a questionnaire sent to the Directors General of the government ministries. The review reveals that in the period 2006 - 2010 there were at least 40 substantive disputes between the ministries; at the time of completing the questionnaire, most of the disputes had not yet been resolved, and 15 of them had continued for more than 10 years. It should be stressed that in practice the number of disputes is much larger than the number revealed in the questionnaire, because the Directors General of the ministries only enumerated prominent disputes. It follows from this that there are a large number of disputes.

It should be noted that in a report that it submitted in June 2010 the Government Commission of Enquiry examining the handling of the relevant authorities of those evacuated from Gush Katif and Northern Samaria,[15] it pointed to the significant difficulties of governments which to a large extent had made onerous the work of rehabilitating the evacuees. The Commission pointed *inter alia,* to difficulties in combined inter-ministerial action, such as insufficient internal discourse between the ministries and a tendency to proceed according to a queue - one after the other instead of in parallel - alongside each other, as well as the lack of a efficient determining mechanism regarding disputes between the government ministries. The Commission emphasized that these difficulties are a feature of the routine activities of the governmental authorities in Israel.

Damage Caused by the Disputes

The damage due to the substantive disputes can be classified into two categories: direct damage where various groups of the public have been adversely affected including weaker members of the population on whose behalf there are external mechanism serving them in order to expedite dispute resolution, such as the High Court of Justice or the media and are not sufficiently accessible: and economic-administrative damage that has caused systemic damage to the functioning of the Government, namely the overall functioning of one or more government ministries as a result of a waste of resources - time, money or manpower, lack of a uniform policy and lack of coordination in actions of various government agencies.

15 The Government Commission of Enquiry on the subject of Handling of the Relevant Authorities of Gush Katif and Northern Samaria Evacuees, Report (2010), Page 470

Direct Damage

It is apparent that as a result of disputes the Government Ministries have not provided certain population groups with the service to which they were entitled, and thus direct damage has been caused to them in various spheres as appears from the following examples:

1. **Public Health risk:** an inter-ministerial dispute sometimes leads to a failure to provide service designed to preserve public health, and thus certain sections of the population are exposed to health hazards. The following are two example:

(a) A psychiatric solution for post-hospitalization youth in Ministry of Welfare Institutions: the National Health Insurance Law, 5754-1994 (hereinafter- Health Insurance Law) provides that every resident is entitled to receive health services from the State, including *inter alia*, outpatients medical treatment which includes psychiatric treatment, in a clinic or at home, including in a Home as defined in the Homes (Supervision) Law, 5725-1965. In the Ministry of Health Institutions (hereinafter - the Institutions), about 700 children and youth are staying in them following psychiatric hospitalization (hereinafter - the Protected Patients). Patients in mental wards, and in particular children and youth, following their discharge from psychiatric hospitalization during a sensitive period even where they are in a balanced mental state, and they still need treatment with medications, and sometimes also a repeat hospitalization. Accordingly, the Institutions who receive the protected patients have need of a professional party, who will be responsible for psychological and psychiatric counselling in the Institution and will determine on their behalf an overall treatment policy for the protected patients.

An examination by the State Comptroller's office has revealed that since 1995, for more than 10 years, the Ministry of Welfare and the Ministry of Health have been in dispute with regard to the professional responsibility, standards and financing of such psychological and psychiatric counselling in the Institutions of the Ministry of Welfare. It is the opinion of the Director General of the Ministry of Welfare that the Ministry of Health has to bear the said professional responsibility and fund the clinical psychologists and the psychiatric counselling in the Institutions. As opposed to this, the Ministry of Health takes the view that responsibility for mental treatment of protected persons staying in a non-home environment rests with the Sick Funds. It appeared that during the period of the dispute the Institutions had indeed purchased services of clinic psychologists and psychiatrists for protected patients but there was not one professional party that bore overall responsibility for operation of the services and determining a policy as regards the treatment of protected patients. Because of this, complex treatment-related problems requiring a psychiatric solution have not been resolved.

It is therefore apparent that children and youth staying in the Ministry's of Welfare Institutions following psychiatric hospitalization have not receive adequate medical treatment due to a prolonged dispute between the Ministry of Welfare and the Ministry of Health as to which body is responsible for dealing with them.

(b) Supervision of medical food stuffs given to animals from whom humans are nourished: Breeders of animals who provide a source of food for humans, sometimes feed the animals with medical food stuffs.[16] The manufacture of this food requires supervision because it is likely to include residues of veterinary medications above the maximum permitted level[17] and there is thus a danger to public health emanating from food produced from these animals (meat, eggs and dairy products).

The Pharmacists Ordinance [New Version] 5741-1981, provides that powers of supervision over medical food for animals (fodder containing a veterinary preparation) rests with the Ministry of Health. As opposed to this the Control of Commodities and Services (Manufacture of Fodder and Trading therein) 5731-1971, provides that the medical food for animals comes within the definition of "Fodder", and that the Services Unit for Plant Protection in the Ministry of Agriculture is the body that is supposed to supervise its manufacture.

This is the source of the dispute between the Ministry of Health and the Ministry of Agriculture with regard to the power of supervision of medical food for animals that are a source of human food,[18] and it has been going on for more than 10 years. These two ministries assign to each other the responsibility for supervision on the subject of medical food given to those animals, and in practice neither of the ministries are supervising the issue. It is apparent from the above that the public consuming food originating in animals fed with medical food has been exposed to health risks.

The response of the Ministry of Health to Report 59B of May 2009[19] revealed that the solution to the dispute lies in and extension of the powers of supervision and control of employees of the Ministry of Agriculture over veterinary medications, by updating the Pharmacists Regulations (Supply of Veterinary Preparations), 5748-1988 (hereinafter - the Regulations). However it was only in June 2009, more than 10 years after the dispute arose, that the Veterinary Services Unit of the Ministry of Agriculture forwarded a final draft of the Regulations to the Ministry of Health; moreover, in December 2010, a year and a half

16 Food containing veterinary preparations.
17 The maximum permitted level under the Animal Diseases (Prevention of Biological Residues) Regulations, 5760-2000.
18 See the State Comptroller Report, **Annual Report 59B** (2009), "the Control of Food for Animals" Page 787
19 **Comments of the Prime Minister on the State Comptroller's Report 59B** (2009), Page 194.

afterwards, the Ministry of Health had still not concluded the process of updating the Regulations and has thus delayed a resolution of the dispute.

In the Ministry's reply to the State Comptroller in November 2010, the Director General of the Ministry of Agriculture, Mr. Yossi Yeshai, stated that he was working in conjunction with the Ministry of Health to formulate a draft of the Regulations, and that this would be concluded in June 2009. In his reply to the office of the State Comptroller in February 2011, the Deputy Director General of the Ministry of Health, Dr. Boaz Lev, stated that completion of the process of updating the Regulations required the attention of various parties and that "due to the Ministry's order of priorities, the process had not been completed". The two Ministries stated that they would work together in order to make progress with updating the Regulations.

The State Comptroller's Office observes that the Ministry of Health is not progressing with the subject with appropriate expedition despite the risk caused to the population over the years; further, the Director General of the Ministry of Agriculture has not pointed to any action taken by his Ministry for a year and a half to make progress with updating the Regulations. The two Ministries must complete the solution to the issue of the lack of supervision of the medical food stuffs, as soon as possible, and not draw out the process any further.

2. Infringement of the principle of equality, it appears that an inter-ministerial dispute sometimes causes a situation in which some of those entitled to a service, and whose physical or socio-economic status is especially difficult, have not received the requisite service and others have received the service or the funding to which they were entitled. The following are examples of this:

(a) Funding for aids for the rehabilitation of the disabled in the framework of the Ministry of Welfare: as stated, the Health Insurance Law provides that every resident is entitled to receive health services from the State including, *inter alia,* appliances and medical aids. It appears that disabled persons living in the community have indeed received funding from the Ministry of Health of 90% of the aids they required (normal wheelchairs as motorized, and other accessories)[20], but this is not so regarding disabled persons staying in the Ministry of Welfare's Institutions; more than 10 years ago a dispute arose between the Ministry of Health and the Ministry of Welfare regarding responsibility for financing accessories for such disabled persons, and each ministry has claimed that the other is responsible. It is therefore precisely those disabled persons who need to stay in institutions - about 500 in 2010 - who have not received funding from the State in respect of the appliances and the State has only in respect of a small minority, purchased the required appliance after a prolonged wait; the reason being that the amount for the purchase has been allocated out of disabled person's

20 The State Comptroller, **Annual Report 59B** (2009), in the Chapter entitled "allocation of rehabilitation and mobility appliances for disabled persons", Page 507.

allowances of all the occupants of the Homes and has only been enough to purchase one or two motorized chairs for every Home annually.

As a result of this, because of the dispute between the Ministry of Health and the Ministry of Welfare the State has displayed a lack of equality towards the disabled: disabled persons whose condition is severe and who nee to stay in institutions are not being provided with any medical appliance and aids by the State whereas those living in the community are being funded 90% of the cost of such appliances and aids by the Ministry of Health. In light of this situation and as without these aids these disabled persons are unable to perform simple and routine actions, the families have been forced to contribute out of their own pocket in so far as they can afford the expense, to the purchase for them of wheelchairs.

(b) Funding of medical accompaniment for pupils: about 800 pupils who have complex health needs are studying in the normal[21] educational institutions, and require close medical supervision during their study hours. By law[22] they are entitled to State funding for medical accompaniment. Since 1996, the Ministry of Health has annually funded medical accompaniment for about 500 pupils of compulsory education ages who have been studying in the normal educational framework and require invasive treatment as a matter of routine[23], according to criteria set for such purpose; and the Ministry of Education has financed ancillary services including medical services for pupils who have studied in the special education system.

Over the years, there has been a substantial increase in demands for ancillary medical funding for students with complex health needs in the normal education system. It is apparent that since 2007, the Ministry of Health and the Ministry of Education have been in dispute as to the responsibility for such funding and the two ministries have claimed that the other is responsible for the funding. As a result, for at least three academic years the State has not funded medical accompaniment for some of the students in the normal education system who are entitled to this by law, including two groups: pupils with special needs[24], who have been integrated into the normal system[25] who would need invasive treatment as a matter of routine (hereinafter - integrated students); and pupils who have suffered from life threatening health

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21 Under the Special Education Law, 5748 - 1988 (hereinafter - Special Education Law) a normal educational institution is a recognized educational institution as defined in the Compulsory Education Law, 5709-1949, which is not a special education institution as defined in the Special Education Law.

22 Under the Compulsory Education Law, 5709-1949; the National Health Insurance Law, 5754-1994; and the Special Education Law, 5748-1988

23 Giving oxygen, breathing apparatus, feeding continuing for more than an hour due to physical defect, catheterization of the bladder, feeding through a tube, checking sugar level and checking and injecting insulin.

24 As defined in the Special Education Law, Section 1(a)

25 The amendment to the Special Education Law of November 2002 added to the Law Chapter D/1: "Integration of Child with Special Needs into the Normal System", called the Integration Chapter. The amendment prescribes instructions for the integration of pupils with special needs into the normal education system, and including supply of special services that include *inter alia*, help services

problems[26] and need close supervision but have not the criteria set by the Ministry of Health for approval of ancillary funding and who do not require invasive treatment as a matter of routine (hereinafter - students in life threatening condition). Some of the students who did not receive state funding for medical assistance have not regularly participated in studies and sometimes their parents have been compelled to oversee them themselves during school hours and lose time at their employment.

The dispute between the Ministries of Education and Health has thus disrupted the students regular studies and has thus infringed their rights under the Compulsory Education Law. Furthermore, the principle of equality has been infringed. As some of the students have been integrated into the normal education system most of those in life threatening situations have not received ancillary medical funding from the State, as opposed to which those who are not integrated and need invasive treatment as a matter of routine, have received such funding; also, those who are pupils in the special education system and needed medical oversight have received funding for this from the State.

Economic-Administrative damage

The State Comptroller's reports[27] point to systemic failures the source of which is the disputes between Ministries and have adversely affected the functioning of the Government in promoting the national interests and have wasted public money, as detailed below:

1. **Duplication of systems:** often, as a result of inter-ministry disputes, corresponding units in Ministries dealing with the same matters have not coordinated action between them and consequently have not formulated a uniform policy on a particular topic as well as leading to a waste of resources.

For example, courses for the training of qualified engineers and technicians are currently held in colleges who are under the control of two Government Ministries - some of the colleges come under the Ministry of Education and are intended for pre-military service students, and others are under the ITL Ministry and are intended for adults. Until 1998, two Ministries - Education and Labor and Welfare[28] - collaborated in terms of determining national policy in all that relates to regulation of these professions as is done worldwide depending on the needs of the national economy, and in relation to approval of new study subjects.[29] In Report 59B the State Comptroller stated that since 1998 the two Ministries had not been working in coordination in setting study subjects, in the standards of being taught, as regards the final examinations and the qualification requirements. This has given rise to a situation of lack of a national vision on this subject and thus preventing the possibility of planning on the national

26 Such as life threatening allergies to food and severe illnesses such as serious epilepsy
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level of the development of manpower in terms of qualified engineers and technicians who meet the requirements of the national economy. In addition to this a waste of State resources has occurred as a result of duplication of work done by two Ministries in the system of supervision of colleges. The State Comptroller observed in the Report that the two Ministries should take action to establish a mechanism of inter-ministry coordination on the subject of the training of qualified engineers and technicians and formulate a national policy in this sphere.

It appears however, that at the time of completion of the review, almost two years after publication of the report on the subject, the Directors of the two Ministries have yet to establish a coordinating mechanism between the Ministries on this subject. it should be noted that a private members bill[30] (hereinafter - the bill) place table in the Knesset in March 2010 contains a proposal for a coordinating mechanism between the Ministries.

It is thus apparent that for more than 12 years there has been no coordination between the ITL Ministry and the Ministry of Education concerning the training of qualified engineers and technicians, a uniform national policy has still not been formulated, and up to the date of the writing of this Report the situation is continuing of duplication the systems of supervision of the colleges and the attendant waste of resources. All this is because the Ministries have not made progress with resolving the differences between them on the subject.

In his response to the State Comptroller in November 2010 the Director of the Information and Technology Administration in the Ministry of Education stated that the question of the training of qualified engineers and technicians had bee in dispute for over 10 years as a result of unilateral decisions of the ITL Ministry. He further stated that the Ministry of Education was unaware of the drafting of a bill on this subject, and that the Chairman of the Engineers Federation had brought this to his attention about two months after the bill had been presented to the Knesset, and since then tens of meetings had taken place with all the relevant representatives for the purpose of drafting the law. According to him, it was only in October 2010, as a result of the State Comptroller's Office review and the pressure brought to bear on the management of the ITL Ministry, that a turnabout occurred in the attitude of the ITL Ministry on the subject and considerable progress was made possible in the work of the team and formulation of the draft law, and that towards the end of 2010 the bill was supposed to be submitted for approval of the managements of both Ministries.

In its reply to the State Comptroller's office in November 2010, the Manpower Training and Development Department of the ITL Ministry stated that the ITL Minister had decided to establish an advisory committee for all matters relating to professional training, and including the question of training of engineers and technicians, in which representatives of the Ministry of Education would participate as well as other entities in the national economy and professional educationalists. In its reply to the State Comptroller's Office in February 2011,

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the ITL Ministry stated that it had been decided that one of the functions of the Minister's Advisory Committee in relation to professional; training would be to ensure inter-ministerial coordination and collaboration in this matter.

The State Comptroller's Office takes a grave view of the fact that over such a long period of time, the two corresponding systems in the two Ministries have been operating without coordination between them, as this has given rise to an absence of a uniform national policy on the subject and a waste of resources, which continued the end of 2010.

2. Increase of the load on the public systems: the prolongation of disputes has sometimes led to an overloading of public systems, as detailed below.

(a) The Courts: The lengthy continuation of disputes causes citizens who have suffered damage by not receiving the service from the Government Ministries to which they are entitled to appeal to the Courts requesting that the State be ordered to provide them with the service that it is obligated to provide. It should be noted that in August 2000 (31) the High Court of Justice held that "in any case of a dispute between Government Ministries where each of them has authority in the matter concerned, the Government must decide the dispute" and the reference is to a judgment in 1980 in which the High Court of Justice also expressed surprise (32) as to the fact that the dispute between two Ministers about their economic policies had led to the Court having to decide the issue.

For example, in August 2009 the non-profit society "By-Right - the Center for Human Rights for Persons with Disabilities" (hereinafter - "By-Right") together with a female student with complex health needs who was entitled to ancillary medical funding from the State, brought an administrative petition in the District Court (33), *inter alia* requiring that the State be charged with financing the oversight required for the student who because of the dispute between the Ministry of Education and the Ministry of Health in this matter had been prevented from receiving it. As a result of the filing of the petition the State informed the Court that it would accede to the petitioner's request and her medical ancillary services would be funded, as a result of which the petition was discontinued.

(b) The Prime Minister's Office: The Prime Minister's Office (hereinafter - PMO) is the body that coordinated the work of the Government Ministries and assists the Prime Minister in dealing with issues referred to him. The PMO does indeed deal with the resolution of disputes between Ministries and also has, over the years resolved many of them, but it is apparent that there are times where disputes have been referred to the PMO by Ministries that should not have been referred to the PMO, which is busy with day to day activities. We are talking for example about disputes that are currently in the process of resolution between the Ministries, of disputes, the substance of which is inappropriate for discussion in the PMO, or disputes, the handling of which has been carried out along an organized resolution track where the authority regarding it lies with other statutory bodies, such as subjects within the scope of the authority of the National Planning and Building Council.

It is thus apparent that in the absence of a regular procedure for dispute resolution, Government Ministries have attempted to involve the PMO in some of the inter-Ministry disputes in order for it to expedite the solution or even decide the dispute instead of those with authority in the matter, thus giving rise to additional and unnecessary pressure on the PMO.

From all the foregoing it is apparent that scores of disputes have been discovered between Government Ministries which have continued for many years, causing economic - administrative damage and damage to the public, and in particular to the weaker sections of the populations, sometimes to the extent of adversely effecting their welfare and constituting a danger to health.

MECHANISMS FOR DISPUTE RESOLUTION

The Basic Law: The Government provides *inter alia* that the Government is the executive authority and it bears joint responsibility *vis a vis* the legislative authority, and that every Minister bears ministerial responsibility for the affairs of his Ministry *vis a vis* the Prime Minister. In other words the Ministers are responsible to the Prime Minister for the implementation of Government decisions, even if because of them, disputes arise between the Ministries.

Over the years, several *ad-hoc* mechanisms have been formulated in Israel for the resolution of substantive disputes. The disputes are sometimes resolved after the Ministers get into dispute when contacts are made between them through the various echelons in the Ministries. The processes of dispute resolution are different in each case - in some of the disputes the contacts have taken place between the Ministries on the professional level only -between corresponding branches in the various Ministries, some of them brought up for discussion at the Director General level. There have also been disputes that have reached the ministerial level. Sometimes functionaries in the Ministries in dispute have decided to appoint working teams or inter-Ministry Committees to resolve the disputes. A process of this nature is important and worthy, but it does not provide a solution for all the disputes - and the evidence for this is that the examination has revealed scores of substantive disputes that have continued for a long time and have been left undecided and not dealt with.

Mechanisms prescribed for the handling of disputes

The Government in its decision (34) and the Attorney General in his directives (35) have stipulated that in the case of a legal dispute between the State Authorities, the Attorney General will decide the issue. The Government has prescribed in the Government Working Code (36) (hereinafter - The Government Code) that: "where legal authority is vested in two

or more Ministers and there is no agreement between them as to the exercise of such authority, the Minister who has asked his colleague to exercise joint authority and has not received a reply within 30 days - shall refer the dispute to the Prime Minister".

The responsibility for resolving inter-Ministry disputes thus rests first and foremost with the Government Ministries and the Ministers heading them, and where there is a dispute that they have not succeeded in resolving, they must refer it to the Prime Minister.

The Attorney General

As a general rule, disputes have been referred for decision in the Ministry of Justice principally against the background of incompatibility or even conflict between a legal opinion of legal advisors of various Ministries in relation to powers or obligations of the Ministries in certain matters, or alternatively against a background of disputes with regard to the legal position that is to be presented in Court on behalf of the State, as to which the Attorney General has been required to make a decision. On a considerable number of occasions the Ministry of Justice has handled disputes referred to it by external agencies, for example:

Funding of medical attention for pupils: As previously mentioned, as a result of the dispute between the Ministry of Education and the Ministry of Health, the State has not funded medical attention for pupils who have been entitled to it. In July the "By-Right" non-profit Society applied to the High Court of Justice Petitions Department of the State Attorney's Office in a pre-petition proceeding (37) and requested that the State fund the aforementioned medical attention, and that the Ministry of Education or in conjunction with the Ministry of Health would prescribe, clear, binding and public instructions regarding the right of every pupil with complex health needs studying in the normal education system, to receive the said attention.

As a result of the reference of the State Attorney's Office to the legal departments of the two Ministries, in September 2009 the Director General of the Ministry of Education and the Deputy Director General of the Ministry of Health held a discussion with representatives of the Ministry of Finance and the Ministry of Justice, in which however the dispute was not decided, but they agreed *inter alia* that the budgetary cost of financing medical attention for the integrated pupils and those in a life threatening situation "would be divided equally between the Ministry of Finance, the Ministry of Education, the Ministry of Health and the Local Authority".

Thus, merely because of the pre-High Court of Justice petition proceeding, the Ministry of Justice intervened in the said dispute and persuaded the management of the Ministries in dispute to proceed along a track that would enable the pupils to receive the vital service to which they were entitled by law.

In addition to purely legal disputes, the Attorney General has also dealt with complex disputes having budgetary ramifications and of determination of policy. In such cases, it is appropriate that he take steps to assemble all the staff personnel involved in order to have a discussion with all those involved in the dispute with a view to them resolving the dispute in all its aspects. It is apparent that the Attorney General has handled the legal aspects of some of these disputes and an additional stage is necessary following referral of continuation of its resolution to other staff agencies, such as the Ministry of Finance or the Prime Minister's Office, this has caused the prolongation of the process of resolving the dispute.

THE PRIME MINISTER AND HIS OFFICE

As previously mentioned, under the provisions of the Basic Law: The Government, the main powers and responsibility regarding the work of Government Ministries are in the hands of the Ministers. Each of the Ministers bears responsibility towards the Prime Minister for a position to which he has been appointed, and the Government bears joint responsibility *vis a vis* the Knesset. According to the Government Code, the Prime Minister "sets the Government's agenda", in other words he determines his initiative or as a result of requests of the Ministers, what subjects will be laid on the Government's table, according to the national order of priorities; in these matters the Prime Minister works with the Government Minsters, either direct or through his office in order to assure the planning, coordination and action of the Government Agencies.

It is apparent that in accordance with the provisions of the Government Code, the Prime Minister's Office has handled disputes that Ministers have referred to the Prime Minister, disputes on subjects that are at the head of the Government's order of priorities, on matters of policy, on matters having political ramifications and disputes involving the extent of large budgets.

In his reply to the State Comptroller's Office in November 2010, the Director General of the PMO, Mr. Eyal Gabai, stated that the responsibility for dealing with disputes between Ministries lies with the Ministers involved in the dispute, and from time to time it is the practice of Ministers to refer substantive disputes to the Prime Minister, in accordance with the provisions of the Government Code and he is required to deal with the matter to the best of his judgment. On frequent occasions the Prime Minister decides, in the context of a personal referral or in the context of a Government decision to assign the task of resolving the dispute to the Director General of his office or the Government Secretary, this, according to the Director General, "in light of their in-depth familiarity with the Government's order of priorities and principally because they have the Prime Minister's mandate to decide the dispute, and to enforce the decision, or to refer their decision for approval of the Prime Minister or the Government".

The Director General of the PMO further stated that in addition to these disputes and according to the order of priorities, the Government is promoting the achievement of its aims, the Prime Minister's Office takes active charge in solving problems and managing the complex inter-Ministry processes in order to ensure coordination and collaboration between the Ministries. According to the Director General he is investing a not inconsiderable amount of his time and effort in the resolution of disputes between Ministries of a prolonged nature on complex and sensitive subjects and has made achievements that are worthy of note. Many of these solutions are approved in government decisions; for example, the PMO took action to resolve the dispute between the Environmental Protection Ministry and the Ministry of Defence with regard to responsibility for budgeting the connection of IDF camps to the sewage disposal systems and the treatment thereof, and the decision that was made on the subject - to the effect that both Ministries would bear responsibility for budgeting on the subject - was approved by a Government decision (38).

The examination revealed that representatives of the Prime Minister make a substantial contribution to the resolution of disputes referred to him. However it appears that on the one hand, Ministers and Government Ministries have referred to the Prime Minister, *inter alia,* disputes between Ministries which it was not necessary to refer to him as the authority on the subject was with other statutory agencies, and on the other hand, the Ministries did not refer to the Prime Minister in the case of some of the substantive disputes which, according to the Government Code, should have necessitated the involvement of the PMO. In addition to the statements of the Director General of the PMO in June 2010, on many occasions the PMO has handled disputes as a result of the involvement of outside elements who have brought them to its attention, such as the Knesset, the High Court of Justice and the State Comptroller, but many substantive disputes have not been so referred for the attention of the Prime Minister, and he was therefore unable to take action in order to resolve them. It is appropriate that the PMO should have the tools to identify disputes and to deal with them root and branch, and at a time when it is appropriate for the Government to intervene in the obligation of the Ministries and Ministers to raise substantive disputes in accordance with the appropriate mechanisms where they have not succeeded in resolving them between them, which has so far not been done properly.

Committees of Ministers

The Government Code provides *inter alia*, that the Government shall appoint permanent committees of Ministers, either in general terms or for particular matters, and it shall determine their composition and their powers. In this regard, the Director General of the PMO, in his reply to the State Comptroller's office in November 2010, made reference and wrote that apart from the mechanisms referred to in the report, one of the mechanisms

prescribed for the resolution of inter-Ministry disputes is the Committee of Ministers mechanisms which is intended to facilitate discussion and decision of disputes between Ministers in respect of matters that do not require the convening of the Government plenum.

The 32nd Government, in December 2010, established 41 Ministerial Committees to deal with a variety of issues (39) it however agreed that 6 of them would deal with coordination between Government Ministries on certain subjects, but not even one of them was empowered to deal with the resolution of inter-Ministry disputes.

The examination also revealed that Government Ministries and Ministries had not referred disputes to Ministerial Committees which the State Comptroller's Office has examined in the framework of this report. It follows from this that although it is apparent that the Ministerial Committees are likely to act as a mechanism for resolving inter-Ministry disputes in the fields in which they are charged with responsibility - by means of holding joint discussions with the parties involved in the dispute - it has not been prescribed that they will service as such a mechanism and indeed they are not doing so.

Non-use of mechanisms prescribed for the handling of disputes

As mentioned, the Government Code provides that in cases of non-agreement between Ministers with regard to the exercise of authority vested in them by law, the Minister who has asked his colleague to exercise joint authority and has not received an answer within 30 days shall refer the dispute to the Prime Minister.

It is apparent that in relation to many issues the disputes between the Government Ministries have not arrived at an agreed solution. On occasions the Ministers and the Directors General have not referred the substantive disputes for dealing with by the mechanisms intended for such purpose - the PMO and the Attorney General - thus for example in the following cases:

1. Funding of appliances for the rehabilitation of the disabled in the Ministry of Welfare frameworks: In relation to disputes between the Ministry of Welfare and the Ministry of Health, due to which the State has not as a general rule supplied rehabilitation appliances, such as wheelchairs, for disabled persons staying in support institutions of the Ministry of Welfare, the Deputy Director General of the Ministry of Health Dr. Boaz Lev, stated in his reply to the State Comptroller's Office in December 2010, that there had indeed been ambiguity regarding the legal obligation of the Ministry of Health and the Ministry of Welfare for the funding of accessories for those staying in the institutions. He stated that the Ministry of Health's budget allocated for contribution to the funding of wheelchairs was decided according to the needs of the population not staying in institutions, so that in the main the dispute related to a lack of designated budget funding in the Ministry of Health for such purpose.

It is apparent that for more than a decade, the Directors General of the Welfare and Health Ministries have attempted to resolve this dispute *inter alia* by the establishment of several joint committees of the two Ministries - but unsuccessfully. In June 2009 the Minister of Welfare and Social Services at the time, Knesset Member Yitzhak Herzog (hereinafter - The Then Minister of Welfare) and the Deputy Minister of Health, Knesset Member Yaakov Litzman discussed the matter but they also failed to reach agreement regarding a joint mechanism for the funding accessory appliances for disabled persons staying in the institutions of the Ministry of Welfare.

However, after the then Minister of Welfare and Deputy Health Minister had discussed the dispute and had not reached agreement, the then Health Minister did not refer the issue to the Prime Minister, despite the relevant provision in the Government Code.

In his reply to the Office of the State Comptroller in January 2011, the then Minister of Welfare, Knesset Yitzhak Herzog stated that the Director General of the Ministry had approached him on several occasions with regard to the dispute with the Ministry of Health regarding the appliances for disabled persons and that as a result of this he had a meeting with the then Minister of Health, Knesset Member Yaakov Ben Izri and subsequently with the Deputy Minister of Health, and he had warned them about the situation. He further stated that the Director General of the Ministry of Welfare was taking action in the matter in conjunction with the Director General of the Ministry of Health and that if the attempt to complete the discourse in the matter between the two Ministries was unsuccessful - he would refer the issue to the Prime Minister.

As the then Minister of Welfare did not succeed in resolving the dispute with the Minister of Health within 30 days, he should have referred the matter to the Prime Minister as prescribed in the Government Code, and not have referred it back to be dealt with by the Director General of his Ministry with the Director General of the Ministry of Health, as he did in practice.

In his reply to the State Comptroller's Office in February 2011, the Director General of the Ministry of Welfare, Mr. Nahum Izhicovitz, stated that in his meeting with the Director General of the Ministry of Health, that month, it was agreed that a joint team of both Ministries would map out the needs of the disabled in the institutions of the Ministry of Welfare and "would take action to dispose of the waiting list for the supply of appliances". Additionally the Ministries would work with the Ministry of Finance in order to "formulate a long term solution in terms of joint budgeting".

The State Comptroller's Office observes that by means of a structured and orderly process of handling this dispute, which had continued for more than a decade, it should have been possible to resolve the dispute earlier and thus ease the suffering of the disabled persons in the Ministry of Welfare's Institutions.

2. Psychiatric solution for post-hospitalization youth in Ministry of Welfare Institutions: As previously mentioned, children and youth staying in institutions of the Ministry of Welfare following psychiatric hospitalization did not receive adequate medical treatment due to a prolonged dispute between the Ministry of Welfare and the Ministry of Health regarding which body bore responsibility for dealing with them.

(a) As the protected patients had not received adequate medical treatment when staying in institutions for which the Ministry of Welfare was responsible, it would have been proper, under the Government Code, for the Ministry of Welfare to refer the dispute for handling by the Minister in charge, and in the event of having not succeeded in reaching a solution with the Minister of Health, he should have referred the issue to the Prime Minister.

According to the Director General of the Ministry of Welfare in June 2010, the subject was raised in every professional discussion between the Ministries at the professional departmental level and Director General level, but they did not reach agreements. In the further answer to the State Comptroller's Office in February 2011, the Director General of the Ministry of Welfare stated that the subject had been raised in regular working meetings with the Minister in 2009 - 2011 and that in light of the taking of a firm decision between the Ministries, the then Minister of Welfare did not deem it necessary to refer the issue to the Prime Minister, and indeed it is apparent as previously stated, the State did not provide children and youth staying in Ministry of Welfare Institutions with the complete psychiatric treatment that they needed, as a consequence of failure to resolve the dispute.

(b) It should further be noted that according to the rules of good governance, discussions and actions of the Ministries should be recorded. This relates to disputes between Ministries; the documenting of procedures undertaken by the professional and administrative elements for resolution of the disputes serves as an infrastructure for continuous handling of disputes and making progress with resolving them as far as is possible, and all the more so when we are concerned with the handling of a dispute that has continued for several years.

However, the review revealed that no documentary evidence was found that documents the contacts made by professional parties in the Ministry of Welfare with corresponding persons in the Ministry of Health or discussions that took place between the two Ministries at various levels on this subject up to the end of the review period. Furthermore, according to the statements of the Deputy Director General of Personal and Social Services in the Ministry of Welfare, Mr. Motti Winter, all referrals in the matter to the Ministry of Health were made verbally and it is therefore apparent that the professional and administrative parties in the Ministry of Welfare did not efficiently promote the resolution of the dispute causing a failure in providing adequate medical

treatment for the aforementioned group, *inter alia* as there had been no documenting of their actions to resolve the dispute, which prevented continuous handling of it.

In the opinion of the State Comptroller's office, a situation cannot be accepted in which a dispute has continued for more than a decade between two Government Ministries causing harm in respect of the medical treatment of the helpless group of the population. Both Ministries must take action as soon as possible, and if necessary through the Ministers, to resolve the dispute between them and to regularize adequate psychiatric treatment for the aforementioned youth. If the Ministers do not reach agreement on the subject, the Minister of Welfare must refer the dispute to the Prime Minister.

3. Funding of attendant medical facilities for pupils: As previously mentioned the State has not been funding ancillary medical treatment for a period of at least three academic years, for some of the pupils in the normal education system, who are entitled to this by law, due to a dispute between the Ministry of Health and the Ministry of Education with regard to responsibility for such funding.

It would have been proper for the management of Government Ministries in dispute in respect of this dispute due to which they were not providing a vital service to the public entitled to it, to have met in order to find ways of resolving it, and had they not succeeded in reaching agreement about it, to refer to the Attorney General seeing that the dispute was purely of a legal nature.

No documentary evidence was found that the Directors General of the Ministry of Health and the Ministry of Education had initiated a referral to the Attorney General in order to progress a resolution of the dispute. As stated, only as a result of the referral by the "By-Right" non-profit society in July 2009 to the Ministry of Justice in a pre-High Court of Justice procedure, did the Ministry of Justice intervene in the dispute and as a result of this the Ministries reached an agreement as to a way of providing the service to which they were committed by Law. It was only in August 2010, shortly before the start of the 5771 Academic Year (which began in September 2010, that the pedagogic secretariat in the Ministry of Education referred back to the Education Departments in the Local Authorities and from which it appears that from that Academic Year the criteria was widened for funding of attendant medical treatment for pupils and also included the integrated pupils and those in life threatening situations.

It is apparent that for a period of at least three academic years some of the pupils with complex health needs did not receive such medical treatment, and some of them were unable to participate regularly in studies.

In its reply to the State Comptroller's Office in November 2010, the Ministry of Education stated that so far no agreement had been received from the Ministry of Finance and the Center for Local Government regarding the necessary budgetary contribution and that as the Ministry of Education was required to find a solution to the issue urgently, the Director General of the Ministry of Education and Deputy Director General of the Ministry of Health had decided

that both of their Ministries should bear the budgetary burden and joint professional responsibility through an inter-Ministerial Committee that would consider the requests and allocate the requisite resources to the Local Authorities. In his answer to the State Comptroller's Office in February 2011, the Ministry of Education added that the Ministries of Education, Health and Finance had reached agreement about the manner of funding.

In his reply to the State Comptroller's Office in December 2010, the Deputy Director General of the Ministry of Health stated that so far the Ministry of Finance had not approved the additional budget for inclusion of pupils in the aforementioned situations in such an arrangement. In his reply to the State Comptroller's Office in February 2010 the Deputy Director General of the Ministry of Health stated that in his meeting with the Director General of the Ministry of Education and the Ministry of Finance it was agreed that the attendant medical treatment in the framework of normal education would continue to its full extent.

The State Comptroller's Office observes that it was incumbent upon the managements of the Ministries of Education and Health to act more quickly in finding a solution to this dispute in order to assure continuous funding of the medical treatment for all the pupils entitled to it.

In his reply to the State Comptroller's Office in February 2011, the Director General of the Ministry of Health at the time (40), Dr. Avi Israeli, stated that the subject had been dealt with by the Deputy Director General of the Ministry in a professional and businesslike manner and according to the tools at his disposal, and that despite the agreement between the Ministries, the solution had been delayed in light of the non-allocation of a budget by the Ministry of Finance. The then Director General also stated that many inter-Ministry disputes originate in the fact that the budgets are not updated according to a change occurring in needs, and also in this case the budget was not updated according to the increase in the number of pupils entitled to attendant medical attention.

In the opinion of the State Comptroller's office as the managements of the Ministries of Education and Health did not succeed in resolving the dispute between them, they should have referred to the Attorney General for him to decide the dispute.

THE NEED FOR AN ORDERLY PROCEDURE FOR RESOLUTION OF INTER-MINISTERIAL DISPUTES

It appears from the foregoing that the Prime Minister and the Attorney General had a substantial role to play in dispute resolution. However, many substantive disputes, which have sometimes continued for long periods of time, have not been referred to them. It is therefore up to the Prime Minister's Office to create tools for identifying these disputes and drawing the attention of the Prime Minister to the matter. These tools can be based, *inter alia* on public complaints and publicity in the media, as well as on the State Comptroller's reports and that of the public complaints Ombudsman.

As outlined in this report, the use of the existing mechanisms of governments in Israel to resolve inter-Ministry disputes is partial; many of the disputes between Ministries in Israel continue for a long time, often for more than a decade, causing severe harm to various population groups; the treatment of disputes is deficient: No binding timetable has been set for the resolution of disputes nor has a clear track been outlined of a dispute resolution process; a substantial portion of the disputes have not reached the decisive mechanisms for dealing with them as prescribed - the PMO and the Ministry of Justice; some of the disputes dealt with by these mechanisms have only come to their attention as a result of the involvement of outside forces such as the Courts.

In addition to this, in meetings of the revue team with Director Generals of the Prime Minister's Office both past and present, with veteran Director Generals of Government Ministries and with experienced persons in senior positions in the flagship Ministries - the Ministry of Justice and the Ministry of Finance - everybody agreed that too many disputes are not quickly and efficiently resolved.

As mentioned, the issue of disputes between Ministries is not unique to Israel and it engages many countries worldwide. Thus, in most of the OECD countries (41) a Director General's committee meets regularly prior to cabinet meetings; in most cases the Government Secretary conducts these meetings. The Director General of Ministries are frequently engaged in these meetings in solving disputes between Ministries on policy issues, as a summary stage prior to discussion of the subject in Cabinet (42).

In Britain (43) for example, alongside most of the committees of Ministers, committees of Directors General are also working and meet prior to every meeting of the committee of Ministers in order to discuss, *inter alia* disputes between Ministries. The Director Generals often initially resolve all the disputes to the effect there is no need to convene the committee of Ministers on the subject. In other cases deliberations of the Directors General on a certain issue render the discussion in committee of Ministers more efficient. In other countries such as Denmark and Germany (44) systematic use is made of committees or inter-Ministry working teams to resolve inter-Ministry disputes.

It should be noted that also in Israel, regular procedures exist for the resolution of disputes between public bodies. For example, in light of the multiplicity of disputes in matters concerning infrastructures, the Legislator has made provision for a systemic process of resolving disputes between governmental companies engaged in matters relating to infrastructures (hereinafter - Infrastructure Companies) in the framework of an amendment to the Government Companies Law 5735-1975. (45) (Hereinafter - The Law). The process provides, *inter alia*, that a committee shall be established for resolving disputes (hereinafter - The Committee) which will adjudicate in disputes between Infrastructure Companies in the matters specified in the Law including a dispute that is delaying or is likely to delay infrastructure works; as a general rule, the Committee has exclusive power to deal with a

dispute and make a ruling in respect of it; an Infrastructure Company, the Minister in charge of the Infrastructure Company or the Minister of Finance may apply to the Committee requesting a ruling in the matter of a dispute if it is authorized to do so; generally speaking, the Committee has to decide the matter in dispute within 45 days, and such a decision is treated as a final judgment of a Court, unless an appeal is submitted to the Administrative Affairs Court on a point of Law relating to it.

The Government's obligation to exercise its executive authority and reduce as far as is possible the number of substantive inter-Ministry disputes - especially disputes that have continued for a long time - is not only a legal-constitutional obligation whose source is in a Basic Law, but it is also a public obligation of the Government towards citizens of the State who expect that the Government will govern and decide substantive issues that arise owing to disputes between its Ministries and which continue for a long time and aversely effect the quality of the services and the products for whose provision it is responsible. As part of such obligation it is proper that the Government sets out a complete outline for resolving inter-Ministry disputes in a written procedure or guidelines, in order to improve the ways of handling them and minimize the damage caused by them.

Firstly in respect of this outline, the Governmental-public responsibility must be set out before the Ministries and the Ministers not to neglect substantive disputes, especially those that have an adverse effect on the public and in particular the weak sections of the population, whose voice is not always heard and the Government must act under this outline in two principle paths:

1. A proactive approach: It is appropriate that the Government take steps to prevent disputes arising between Ministries, including governing the coordination between Ministries at the various levels by means of joint, clear and systematic procedures, the creation of forums for discourse between Ministries engaged in interrelating fields, prevention of inconsistencies between Laws (46), prevention of ambiguity in the division of powers and functions, etc.

(a) Thus, the Government Ministries and Joint Committees have been set up in order to deal with difficult areas between them, such as committees set up by the Ministry of Welfare and the Ministry of Health by means of which the Ministries have succeeded in reducing the continued harm to citizens adversely effected due to disputes between them as well as to make progress with resolving the disputes. Thus periodic meetings have also been prescribed of the staff of the Ministries - working together - at Ministry Director level.

(b) Thus also, in response to the office of the State Comptroller in November 2010, the Director General of the PMO, Mr. Ayal Gabai, stated that he agrees that a proactive approach must be taken for the resolution of inter-Ministerial disputes, and accordingly, he states, it is his usual practice to convene in his Ministry, once monthly, a forum of Director Generals of the Government Ministries, which enables a discussion to take place on various issues and

also sometimes leads to the resolution of disputes between them. Such action is likely to reduce the amount of the disputes, or at least to open up a bridge for direct discourse which will assist in progressing the process of resolving the disputes.

In his reply to the State Comptroller's office in December 2010, the former Director General of the Prime Minister's Office, Mr. Raanan Dinor, reinforced these statements and stated that the various gatherings that took place with Director Generals of the Government Ministries - and including an annual conference for the presentation of ideas and working plans of the Ministries - made a significant contribution to inter-Ministry cooperation, the identification of duplication of activities of the various Ministries and direct discourse between the Director Generals also on subject in dispute between the Ministries.

In his reply to the State Comptroller's Office in November 2010 the Director General of the Ministry of Education, Dr, Shimshon Shoshani, stated that the clear definitions of the areas of responsibility and authority of each designated Ministry are likely to obviate the necessity of dealing with inter-ministry disputes, and that the fact that the Ministries are engaged in areas outside their responsibility, authority and their original purpose, caused confusion, disputes and above all it impinges adversely on the service to the citizen.

In a complex and cumbersome system in which the government dominates the system of its Ministries, it is natural that there are many overlapping areas as between designated Ministries, and also sometimes in common areas being dealt with by two or more Ministries, Therefore, it is not possible to completely prevent the occurrence of disputes; at the same time proactive steps must be taken to reduce the amount of disputes and prevent them ahead of time, which will properly define the areas of authority and responsibility and diminish the chance of a dispute arising; this must be done by actions to "trim the edges" in matters of legislation, and also by reinforcing and regularizing inter-ministry coordinating actions, including creating forums for regular discourse, such as a joint committee of Ministries engaged in interrelated fields and forums of Director Generals of the Ministries.

2. A reactive approach: a structured program must be formulated which will include procedures and mechanisms for the existence of an efficient and beneficial process for resolution of disputes. This appropriately includes setting a timetable for each stage of the dispute resolution process until it is concluded, Likewise, the responsibility for resolution of disputes must lie, first and foremost, with the relevant Ministries and Ministers, and additionally to stipulate that the Government is committed to act proactively to identify disputes and take action to resolve them.

As appears from this Report, the handling of many disputes has taken many years or had not been concluded by the date of the review. Sometimes the process of dispute resolution in the Ministries concerned was terminated, and sometimes at stages of the involvement of flagship elements. It should also be noted that sometimes the process of handling the dispute was lengthened due to lack of efficiency, for example it was found that the flagship Ministries

dealt with some of the complex disputes in turn - one after the other - instead of a unified process encompassing all the aspects of the issue, and thus extended the process of dispute resolution.

In his answer to the State Comptroller's Office in November 2010, the Director General of the PMO stated that he is of the view that the Government Code provides the Ministers with good tools to bring the disputes to a decision, and it provides that the Ministerial responsibility for resolving the disputes or referring them to the Prime minister lies with them. The Director general of the PMO distinguished between inter-ministry disputes referred to the Prime Minister or the Government, under the Government Code, with which he is committed to dealing, and disputes refereed to him through other channels the handling of which is preferable on the Prime Minister's or the Government's agenda, and that this is intended to ensure that the PMO will act with regard to the main issues, in which its intervention and leadership is essential for making progress with processes in which the Government has defined its order of priorities. He further stated that it is no coincidence that there is no mechanism that binds the Prime Minister or to deal with all inter-ministry disputes; such a mechanism would paralyze the PMO and not enable it to assist the Government in achieving the goals it has set for itself; accordingly, the order of priorities of the PMO in dealing with disputes and the proper criterion for the allocation of the time resource and administrative attention of the Prime Minister and of the most senior forum in the PMO for the handling of disputes must be determined according to the substance of the dispute and the agenda of the Prime Minister and the Government. In the opinion of the Director General of the PMO, the main reason for the multiplicity of inter-ministry disputes that have not been resolved over time, is the non-use by the Ministers or their Director Generals of the mechanisms available to them for resolving disputes such as forums established at the initiative of the Director Generals of the Ministries, a forum of the Director Generals in the PMO, and inter-ministerial committees, as well as referral to the Prime Minister in cases in which agreement has not been achieved.

In hi reply to the State Comptroller's Office in December 2010, the former director General of the PMO, Mr. Yossi Kutchik stated that a way must be set that will obligate the Government Ministries to make decisions in the matter of disputes. For example, as to the importance attached to settling disputes Mr. Kutchik pointed to the Fire-Fighting services, where the requisite process to convert them into one Government Authority requires the resolution of many disputes between the Ministries, of Finance, Interior, Local Government and other agencies, and an inability to resolve these disputes has caused a prolonged failure. He further stated that if no way is found that obligated the dissolution of the disputes, then in light of the existing political structure in the State of Israel, many matters of importance will not be dealt with in the future.

The findings of this report show that show that the existing mechanisms for dealing with inter-ministry disputes are not sufficient; the responsibility for resolving them is indeed

that of the ministries and the ministers, each in his own field, and if they do not succeed in doing so they must refer them to the Prime Minister, but the Government is also obligated, by virtue of its joint responsibility, to act proactively to identify prolonged disputes which harm the public, and to resolve them.

Identification of inter-ministry disputes and their solution may be made possible in various ways by the PMO or by another agency, provided that it is an agency with an overall valid governmental vision and active status which will not cease dealing with disputes until after they have been fully resolved, this with a commitment to a binding time table and as short as possible.

It is also possible to identify disputes in the course of meetings of the Director Generals of the Ministries that the Director General of the PMO holds from time to time or as part of the discussion of the annual program of work of the ministries. In dealing with disputes the staff personnel currently handling the disputes can participate - the Ministry of Justice in purely legal disputes or the PMO in disputes touching upon subjects at the head of the Government's order of priorities - but this is not the end of the story. The best mechanism for dealing with complex disputes with policy aspects as well as with legal and budgetary aspects is the joint forum (Round Table) of the Flag Ship Ministries headed by the Prime Minister. This forum can encompass all aspects of the inter-ministry disputes and thus prevent prolongation of disputes deriving from the handling of them in a queue.

In light of the findings arising from this report, an in depth discussion is necessary of the Government and for a decision to resolve the existing problem by an inter-ministry dispute resolution process that causes *inter alia,* harm to citizens who do not get the services to which they are entitled from the State and economic-administrative damage to Government Ministries.

CONCLUDING SUMMARY

The findings of this report highlight one of the serious problems of governance of a succession of Israeli Government: there are scores of disputes between Government Ministries some of which have lasted for many years, often for more than a decade, without being resolved. Sometimes they have been disputes that "have fallen between two stools" or where the handling of them was only renewed after the intervention of an external source such as the High Court of Justice. The disputes have caused substantial damage to the public, some direct principally, weaker sections of the population, in denying them the rights conferred on them by law, in unequal handling and also at risk to public health; and some of them have caused economic-administrative damage to the Government Ministries and the State Treasury.

The Government code provides that a minister shall refer a dispute between him and another minister regarding the exercise of joint authority, to the Prime Minister. The

responsibility for resolving purely legal disputes is that of the Attorney General. However apart from these findings, on the date of completion of the review, there is still no structured and systemic process for resolving inter-ministry disputes, and ministries in dispute are working within this space with random initiatives, with no guiding hand and no clear time framework; resolution of disputes in this manner has occurred by various means including inter-ministry discussions, inter-ministerial committees, requesting for assistance from the flag ship ministries. These methods are appropriate as long as they are efficient and enable disputes to be dissolved within a reasonable period of time.

The findings of this report also reveal that the existing mechanisms for dealing with inter-ministerial disputes are insufficient . The responsibility for resolving the disputes does indeed lie with the ministries and the ministers, each in his own field, but if they do not succeed in this they must bring them to the attention of the Prime Minister; however the Government, by virtue of its joint responsibility, is also committed to taking proactive steps to identify prolonged disputes which harm the public and to resolve them by any way that it sees fit.

In light of the findings of this report, the Government needs to hold an in-depth discussion and make a decision to deal with the existing problem by means of regularization of a process of settling inter-ministries disputes that cause harm to citizens who do not receive the services to which they are entitled, and causes economic-administrative damage.