



STATE OF ISRAEL

PUBLIC COMPLAINTS COMMISSIONER

**ANNUAL REPORT 24
(1995-1996)**

SELECTED CHAPTERS TRANSLATED
FROM THE ORIGINAL HEBREW

JERUSALEM, 1997



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EDITOR'S NOTE

In the interest of style and brevity, the statutory name "Public Complaints Commissioner" is referred to as the "Commissioner."

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

The Public Complaints Commissioner's Twenty-Fourth Annual Report includes a relatively large number of complaints against local authorities. The abundance of complaints against local authorities has been a recurring phenomenon over the years and understandably so. The local authorities' areas of responsibility are numerous and varied. In fact, they can be seen as a microcosm of government, whose activities affect the daily lives of the citizens under their jurisdiction. In such circumstances, it is inevitable that there will be friction between local authorities and their residents.

The complaints against the local authorities illustrate once again how vital it is that they act in strict compliance with the principles of legality, proper administration and justice, both in relation to internal affairs - in administering their staff, and externally - in exercising their powers vis-a-vis the citizens who are subject to their authority.

Three complaints in this report deal with the hiring of local authority employees pursuant to tenders. In each of these cases, the tender was nullified after it was found that the person selected did not meet the conditions of the tender. Moreover, in one case, the Tenders Committee had acted without a quorum, while in another, it had been guided in its decision by extraneous considerations.

Also deserving special mention is another case, which relates to the conduct of a local authority towards its employees. Two employees of a local council complained about their dismissal, following their exposing acts of corruption at their place of work. The complaint was investigated pursuant to my authority under section 45A of the State Comptroller Law. I found that the complaint was justified and ordered that their dismissals be revoked, and that the complainants be returned to their positions.

Likewise, there were cases in which the local authorities failed to be sufficiently strict in complying with the law and the principles of proper administration, and in ensuring that local residents be treated justly. For example, a resident of a particular town had been over-paying municipal property tax upon the demand of the municipality, which had ignored the two-thirds rates exemption that according to statute the resident was entitled to as a Nazi war invalid. I ruled that the municipality must reimburse him for the amount overpaid during the seven years prior to the submission of his complaint to my office. I made this ruling since the Ministry of Finance annually provided the municipality with a list of Nazi war invalids and, therefore, the municipality should have made certain that the resident be charged only one-third of the municipal rates.

In another case, a local committee set a uniform property tax rate for residential dwellings in its jurisdiction, regardless of the size of the dwelling. This was in violation of the law, the regulations, and the decision of the Regional Council. In my decision, I emphasized that not only was the charge illegal, but it also infringed upon the sense of justice, since the rate set for the complainant's house was the same as that set for houses three times the size. Under these circumstances, I ruled that the local authority must not only reimburse the complainant for the excess amount of taxes, but must also return excess amounts paid by other residents.

The many complaints against local authorities indicate that they continue to lack sufficient awareness of the importance of consistent and strict compliance with the principles of legality, proper administration and justice. Clearly, it is vital that these authorities, who come into daily contact with citizens, act diligently to improve their functioning.

During the year covered by this report we also investigated complaints against other government authorities, some of which were found to be justified and which exposed actions contrary to law or proper administration, or that were tainted by excessive inflexibility. The reader of this report will find examples of such complaints. However, this year I saw fit to focus on local authorities because of the many complaints submitted against them.



Miriam Ben-Porat
State Comptroller
and Public Complaints Commissioner

Jerusalem, July 1997

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GENERAL SUMMARY

1. KNESSET DELIBERATIONS ON THE TWENTY-THIRD ANNUAL REPORT

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

On July 9, 1996, the Twenty-Third Annual Report of the Public Complaints Commissioner was submitted to the Knesset.

The State Audit Affairs Committee's Subcommittee for Public Complaints, chaired by Knesset member Abraham Hirschson, began to deliberate on the report shortly after it was submitted.

2. DATA ON THE NUMBER OF COMPLAINTS AND THEIR OUTCOME

1. During the year under review, 5756 (1995/1996), the number of complaints received by the Public Complaints Commissioner did not increase in comparison to the previous year - 5755 (1994/1995).

In addition to the complaints that were submitted directly to the Public Complaints Commissioner, she also received copies of hundreds of complaints that had been submitted to bodies subject to review.

The Commissioner does not investigate these latter cases since it is assumed that the addressed bodies will respond directly to the complainant. Nevertheless, the information in these complaints is forwarded to the unit in the State Comptroller's Office charged with auditing the particular body, and the complainant receives notification that the information has been forwarded. If the body to which the complainant wrote does not reply, or the reply does not satisfy him, the complainant may complain directly to the Commissioner, and the complaint will be investigated as the law provides.

In addition to the above, the Commissioner's branch offices for receiving oral complaints handled many complaints and requests submitted to them (see below).

2. Below are details of the number of complaints received by the Commissioner in the year under review and the outcome of the investigations of complaints compiled during that period.

(a) In the year 5756 (1995/1996), 6,227 complaints were submitted directly to the Commissioner (as compared to 7,782 complaints submitted in the previous year).

Of the 10,372 complaints that were handled in the year under review (including 4,145 complaints remaining from the previous year), the investigation of 7,225 complaints was completed.

(1) Of the 3,855 complaints dealt with substantively, 1,377 (35.7 percent) were found to be justified (37.2 percent in the previous year).

(2) The investigation of 1,450 complaints was halted at various stages for a variety of reasons, primarily because the matter had been resolved or the complainant withdrew his complaint or did not reply to questions posed by the Commissioner's office.

(3) A total of 1,920 complaints could not be investigated because they did not meet the criteria set by sections 36 and 37 of the State Comptroller Law, or because they fell into the category of items mentioned in sections 38 or 39 of that law (see the State Comptroller Law, 5718-1958 [Consolidated Version], appended to this report).

(b) 3,147 complaints were still being investigated at the end of the year under review.

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

3. BRANCH OFFICES HANDLING ORAL COMPLAINTS

From the time of the establishment of the office of the Public Complaints Commissioner, branch offices for receiving oral complaints were set up to meet the requirements of the law, as set forth in section 34, that the complainant's oral statement be recorded in instances where persons wish to submit complaints in this manner. As soon as the first complainants appeared, it became clear that the branch offices' activities could not be limited to recording and drafting complaints and forwarding them on for investigation. Reality dictates that branch office personnel be able and willing to assist complainants in various matters within the function of the Commissioner's Office as defined by the law, including assistance going beyond the routine and requiring resourcefulness.

These oral complaints generally deal with matters that are subject to speedy, efficient, and simple resolution by the office's personnel without the necessity of conducting an investigation.

In brief investigations like these, too, we must uphold the principle that the function of the Commissioner's Office is not to provide simple mediation, but to support complainants in achieving just goals, without exerting pressure on the inspected bodies for other purposes.

In the year under review, as in previous years, hundreds of citizens submitted complaints at the branch offices. The primary activity of branch office personnel, particularly those working in

the Tel-Aviv office, which serves the entire population of central Israel, involved preliminary investigation of complaints. In most instances, these preliminary investigations made further handling unnecessary, including recording the matter as a complaint. Branch office personnel also advised citizens, and referred them to bodies intended to handle their problems.

4. INTERNATIONAL CONTACTS

1. The State Comptroller and Public Complaints Commissioner, Justice Miriam Ben-Porat, the Director of the Public Complaints Commissioner's Office, Mr. Avigdor Ravid, and the Senior Assistant to the Public Complaints Commissioner, Mrs. Mirella Bamberger, participated in the 6th International Conference of the International Ombudsman Institute, held in Buenos Aires from October 20-24, 1996. The meeting was organized by the International Ombudsman Institute and the National Ombudsman of Argentina, Dr. Luis Maiorano.

Participants included representatives from numerous countries, primarily those having an ombudsman, a human rights commission, or similar institutions. The conference was the largest meeting of ombudsmen since the first conference was held in Edmonton, Canada, in 1976.

The subject of the meeting was "The Ombudsman and the Strengthening of Citizen Rights: The Challenge of the Twenty-First Century".

2. The State Comptroller and Public Complaints Commissioner, the Director of the Commissioner's Office, and the Commissioner's Senior Assistant attended the Second Meeting of Asian Ombudsmen at the invitation of Mr. Jong Baik Choi, the Chief Ombudsman of Korea. The meeting was held in Seoul on March 25-26, 1997. Representatives from more than twenty countries participated. Justice Ben-Porat addressed the participants on the work of her office.

While in Seoul, Justice Ben-Porat met with senior Korean women active in the field of women's rights.

3. On September 9-11, 1997, the State Comptroller and Public Complaints Commissioner will host, in Jerusalem, the 6th Meeting of the European National Ombudsmen. The subjects to be discussed are:

- a. The Ombudsman as Defender of Human Rights and Democracy;
- b. The Role of the European Ombudsman;
- c. The Ombudsman Annual Report: Its Impact on the Public, Parliament, and the Media;
- d. European Cooperation Concerning Issues of Asylum, Refugees, Foreign Labor and Immigration.

Representatives from more than twenty European countries are expected to participate.

SUMMARIES OF SELECTED CASES

MINISTRY OF FINANCE

REGISTRATION OF PRIVATE DANCE TEACHER AS AN AUTHORIZED DEALER

1. In February 1996, the complainant, a dance teacher, submitted to the Public Complaints Commissioner (hereafter - the Commissioner) a complaint about the Department of Customs and V.A.T. of the Ministry of Finance (hereafter - the Department). The details of the complaint are as follows:

The complainant taught several dance classes at community centers, the classes ranging in size from three or four students to five or more students. The complainant was paid by the students directly, but she did not charge V.A.T.

In 1989, when she began to conduct business as a private dance teacher, the complainant registered at the V.A.T. office. The V.A.T. officials opened a file for her and classified her as an "authorized dealer". Since then, the complainant has at times requested that she be exempt from paying V.A.T., arguing that her income from dance instruction was very low. The Department repeatedly rejected her request.

As a result of the Department's refusal to exempt her from paying V.A.T., the complainant was compelled to submit periodic reports and to pay V.A.T., without, as mentioned above, having charged her students for V.A.T. In her reports, the complainant deducted taxes on inputs for her expenses, and even requested reimbursement for the tax on inputs that exceeded the amount of V.A.T. she owed, but the Department did not reimburse her for these amounts. Furthermore, she was required to pay fines for delay in filing her periodic reports and making the requisite tax payment and the Department carried out measures to collect the tax owing. These measures included attaching her bank account.

In 1995, the complainant stopped teaching dance, and the Department closed her file with a balance due for delayed payment of more than NIS 3,500. The Department demanded that she pay the tax arrears.

The complainant disputed the demand that she pay the debt. She requested of the Commissioner to investigate whether, in light of the minimal income from the tuition she received, she was obligated to pay V.A.T.

2. (a) The V.A.T. Law, 5736-1975, (hereafter - the V.A.T. Law) distinguishes between a "petty dealer" and an "authorized dealer".

According to section 1, a "petty dealer" is "a dealer in whose business not more than two persons are employed and whose turnover in the whole of his business does not exceed NIS 205,000 or a greater amount prescribed by the Minister of Finance, but does not include... a dealer belonging

to a class of dealers in respect of whom the Minister of Finance has prescribed that they shall be registered as authorized dealers."

An "authorized dealer" is a larger enterprise than that of a petty dealer. However, the Finance Minister, in the V.A.T. (Registration) Regulations, 5736-1976 (hereafter - the Regulations), ordered that certain businesses and professions be registered as authorized dealers, even where, based on their business turnover and the number of persons employed, they would be considered petty dealers. A list of these dealers appears in section 13 of the Regulations.

Section 13(4) of the Regulations stipulates that "an owner of a school that teaches or educates students systematically, and is not a non-profit corporation" shall be registered as an authorized dealer.

(b) Section 31(3) of the V.A.T. Law exempts from V.A.T. "transactions of a petty dealer whose turnover is less than NIS... or a greater amount prescribed by the Minister of Finance." The amount set in this section as a ceiling for the exemption is updated each year based on the rise in the Consumer Price Index, and for 1997 is set at NIS 49,795. The exemption is granted, as mentioned previously, only to petty dealers. Consequently, a dealer classified, pursuant to section 13 of the V.A.T. Regulations as an "authorized dealer", is not exempt from paying the tax, even if his income is lower than the amount set in section 31(3).

3. The Commissioner's investigation showed that the complainant's activity as a dance instructor during 1989-1995 was indeed minimal. Her gross income from private instruction was significantly less than the exemption ceiling stipulated in section 31(3).

The Commissioner asked the Department if, because of her low income, the Department should not grant her an exemption from paying V.A.T.

The Department responded that the complainant, who teaches classes of five and more students, is considered an authorized dealer under section 13(4) of the V.A.T. Regulations, insofar as she operates a "school" within the meaning of that regulation. Section 31(3) of the V.A.T. Law does not, therefore, apply to her, and she must pay V.A.T. on her income.

4. The Commissioner investigated a similar case in the past, which appeared in the Public Complaints Commissioner's 17th Annual Report (1988-1989). A summary of this complaint, as far as it relates to the present case, is as follows:

(a) The complainant, a dance teacher, conducted a ballet class in her home. She did not register as an authorized dealer although the V.A.T. Law requires registration. When the Department learned of the ballet class, the Department registered the complainant as an authorized dealer, and she was required to pay V.A.T. on income from the dance class. The Department initiated proceedings to collect the V.A.T., together with fines, and took other punitive measures against her.

(b) After investigating the complaint, the Commissioner concluded that the complainant's type of business activity - instruction and training - and the income it brought in, which was very low, placed her within the category of petty dealer, who is exempt from paying V.A.T. under section 31(3) of the V.A.T. Law. Furthermore, the Department's internal directives at that time stipulated that a private teacher was to be registered as a petty dealer, exempt from V.A.T., where his income was lower than the amount set.

Consequently, the Commissioner pointed out to the Department that there was no legal justification for requiring the complainant to pay V.A.T. The Department agreed and acted accordingly, retroactively granting the complainant an exemption, and reimbursing her the money that had been improperly collected.

(c) (1) After completion of the investigation of that complaint, the Department issued, at the end of 1987, a directive reinterpreting section 13(4) of the V.A.T. Regulations.

The directive, which explicitly refers to that complaint, stipulates that the term "school" in section 13(4) shall be interpreted according to its definition in the Income Tax (Bookkeeping) Directives. Under that definition, a private teacher who conducts private classes in theory or practice, in groups of five students and over, will be considered to be operating a "school" within the meaning of section 13(4), and must register as an authorized dealer, regardless of the income received. However, the directive also indicates that a private teacher who teaches groups of less than five students can register as a petty dealer or as a petty dealer exempt from V.A.T., on the basis of his actual income.

(2) In issuing the aforementioned directive, the department intended once again to classify the complainant as an authorized dealer, the change taking effect on the date the directive was issued, thereby nullifying the exemption she had received following the investigation of her complaint by the Commissioner. When the Commissioner learned of this action, it investigated the interpretation directive, and found that it was mistaken and illegal.

(3) The Commissioner reached this conclusion for the following reasons:

The Income Tax (Bookkeeping) Directives indicate the books of accounts that the taxpayer must maintain and instructs taxpayers based on their area of business and the economic sector within which they operate. Appendix 8 of the Directives sets forth which records a taxpayer who operates a school must maintain and defines the term "school" as follows:

"school - a school in which students systematically study or are educated, including kindergarten, and a school where academic or practical vocational training is provided, including training in the arts and sports to groups where each of them contains no fewer than five students..."

The Commissioner was of the opinion that there was no legal basis for using the definition of "school" in the Income Tax Directives, which deal with maintaining records of accounts, as a basis for interpreting the term "school" in the V.A.T. Regulations. Moreover, the Income Tax

Directives define two types of "school", neither of which were applicable to the type of activity in which the complainant was involved.

The Commissioner held that a "school" is, by nature, an institutional entity with a teaching staff and administration, and that a private teacher who gives group lessons should not be considered to be "operating a school" within the meaning of section 13(4) of the V.A.T. Regulations.

(d) The Commissioner concluded, therefore, that section 13(4) did not apply to the complainant or others in a similar situation, and that no legal basis existed to classify the complainant as an authorized dealer under this regulation. The status of a private teacher, whether as an authorized dealer or as a petty dealer, must be determined on the basis of normal criteria of income and the number of persons employed in the business, as mentioned in section 1 of the V.A.T. Law, and in this regard, no distinction should be made between a teacher who teaches up to four students in a class and a teacher who teaches larger groups.

In accordance with this position, the Commissioner ruled that the Department should revoke its aforementioned interpretation. The Department accepted the Commissioner's position and indicated that the directive would be revoked.

5. The Department's response to the Commissioner in the present complaint - that the complainant is not entitled to an exemption from V.A.T. because she is classified as an authorized dealer - was based on the same interpretation directive from 1987, which, despite the Department's statement, had not been revoked.

The Commissioner brought to the attention of the Department the conclusions of its investigation of the previous complaint, and asked why the directive had not yet been cancelled. The Department explained that the failure resulted from the turnover that had occurred in Department personnel.

The Department subsequently amended its directives on this matter and revoked the aforementioned interpretation directive. The amended directives provide that a private teacher who gives private lessons may be registered as a petty dealer or as a petty dealer exempt from V.A.T., as the case may be, based on his income, regardless of the number of students.

The Commissioner held that the Department should emphasize that the exemption applies to a teacher tutoring groups of students, unrelated to the number of students in each class, in order to prevent a misunderstanding in implementing the new directives.

6. As regards the complainant, the investigation resulted in her obtaining an exemption from V.A.T. retroactive from 1989 and the reimbursement of the amounts she had paid, which amounted to NIS 2,859.

Moreover, the Department paid the complainant NIS 2,725 in compensation for the attachment and sale of her personal property.

MINISTRY OF EDUCATION, CULTURE AND SPORT

SETTING UNREASONABLE CRITERIA FOR RECOGNITION OF MARTIAL ARTS TECHNIQUES

1. In June 1993, the complainant filed a complaint with the Public Complaints Commissioner (hereafter - the Commissioner) about the Sports and Physical Education Authority of the Ministry of Education, Culture, and Sport (hereafter - the Authority). The details of the complaint are as follows:

(a) The complainant specializes in martial arts techniques of the Far East, and has even written a book on the subject. He claimed that, over the years, he has accumulated vast experience in this field. In 1987, he developed a new technique of martial arts, and since then, has trained students in classes at clubs throughout Israel.

According to the complainant, he developed the technique with the understanding that the Authority encourages development of martial arts techniques compatible to life in Israel.

(b) In the early 1990s, the complainant requested of the Authority, which had until then only recognized martial arts like judo and karate, to recognize his technique. On July 8, 1991, the head of the School for Trainers, of the Wingate Institute, informed him that the Authority had instructed the school to appoint a broad-based professional committee for the martial arts, whose purpose is to recommend criteria for the recognition of martial arts developed in Israel. Only when the committee had finished its task, the school head added, would a decision be reached whether to recognize the technique. Ultimately, the Authority itself appointed the committee.

(c) The committee established criteria and submitted its recommendations to the Authority, which adopted them. Simultaneously, the Authority recognized four techniques of martial arts that had been previously developed in Israel without requiring that they comply with the criteria (hereafter - the earlier techniques that were recognized), since they had been used prior to the criteria taking effect. Although the complainant's technique also preceded the criteria, the Authority did not include it within "the earlier techniques that were recognized".

(d) The complainant claimed that the criteria barely test the features of the martial arts technique, but rather relate primarily to the qualifications of the developer of the technique. The criteria make unreasonable demands of the developer and make it impossible for the complainant's technique to be recognized.

According to the complainant, three committee members developed martial arts techniques that compete with his technique and they were among the earlier techniques that were recognized. In his opinion, the strict criteria set by the committee are intended to prevent recognition of martial arts techniques that are liable to compete with techniques developed by those committee members.

The complainant requested the Commissioner's intervention.

2. The Commissioner's investigation revealed the following:

(a) On June 27, 1991, the Authority appointed a committee. Three of the committee's seven members had developed their own Israeli martial arts techniques, which were among the earlier techniques that were recognized.

(b) In the letter appointing the committee, the Authority requested the committee to:

1. Propose criteria for each martial arts technique - professional plans, levels, instructional plans, belts, safety procedures, ages of those being trained in the technique.
2. Propose ways to allow a specialist in the field of martial arts to proclaim a new technique.

On July 22, 1991, the committee submitted a document titled "Setting of Criteria for Recognizing Martial Arts techniques". In this document, the committee provided a detailed statement of its recommendations.

These recommendations respond to the questions of "what is a technique" and "who may establish an independent technique", but they do not propose criteria to test a proposed technique. For example, the recommendations do not relate to matters like the dangers inherent in practicing the technique and the safety measures required to lessen them, the instructional programs and the level of instruction.

However, the committee responded at length to the question of "who is entitled to establish a technique". A person who requests that his technique be recognized must be at least forty-five years old, with twenty years experience "as a black belt and full-time professional involvement in the instruction and study of the martial arts... involvement in the field at the national and international level... a minimal professional rating of Dan 5 in one of the recognized techniques... the candidate must have trained at least thirty students who attained a black belt, all of whom were tested in the technique in which the candidate specialized... the candidate trained several candidates who passed the Dan 3 test for the technique in which he specializes... was active... no less than twenty years... in martial arts, had become recognized and respected based on his activity and served in official/professional functions in his profession." The candidate must also be an "authorized trainer (certificate holder) of the School for Trainers, and at least ten of his trainees must have qualified as instructors or trainers."

(c) On November 19, 1991, the deputy director of the Authority, in a document titled "Criteria for Recognizing Martial Arts techniques" (hereafter - the Document), adopted the committee's recommendations. Section 4 of the Document states that, "A person who complies with the provisions of the aforementioned sections and is interested in establishing a new, independent technique,"

may apply to a special committee of the Authority, which will "examine all the information and decide whether to recognize the proposed new technique."

The Document states that, "The provisions shall take effect on November 1, 1991. Nevertheless, the following techniques have already been recognized..." and the four earlier techniques that were recognized and the names of those who developed them are mentioned. Three of these techniques were, as noted above, developed by members of the committee.

3. The Public Complaints Commissioner ruled that the complaint was justified.

The Authority did not act according to proper administrative procedures.

(a) The three committee members who had developed martial arts techniques had a conflict of interests: their public duty required them to utilize all their knowledge, experience, and skill for the benefit of the public, while their personal interest would lead them to recognize the martial arts techniques they had developed and make it difficult for those who develop competing techniques.

The courts have often ruled that the existence of a concrete possibility of conflict of interest, even where it is not realized, is forbidden, because of the need to ensure that fulfillment of a public function will not be subject to personal motives, that public trust in the public authority will not be harmed because of the possibility that decisions will be made based on extraneous considerations and that justice is not only done, but also seen to be done. This rule is particularly applicable in the present matter, insofar as three committee members had a conflict of interests.

(b) The Authority adopted the committee's recommendations, even though the committee did not discuss in depth the nature of the proposed technique, as it was requested to do.

(c) The criteria set by the Authority for recognizing martial arts techniques are unreasonable and unfair. They do not respond to the question of how to determine whether the technique is good and if it should be recognized; rather, the criteria require that the developer of the technique have the professional attainments that ostensibly exceed what is necessary.

(d) The Authority recognized the techniques of three committee members without requiring them to meet the criteria. In requiring the complainant to meet the criteria, the Authority violated the principle of equality, insofar as the complainant also developed his technique prior to the date on which the criteria took effect.

4. The Commissioner ruled, therefore, that the Authority must revoke the Document and the recognition it granted pursuant to it. The Commissioner ruled that it was necessary to appoint a new committee, whose members have no personal interest in the subject being reviewed. This committee should be requested to propose new criteria for the Authority to use in determining whether to recognize Israeli martial arts techniques.

5. The Authority informed the Commissioner that it would act according to her ruling.

CHANGE IN TARIFF OF PAYMENTS TO EXAMINERS WITHOUT NOTICE

1. For several years, the complainant has tested students in the field of raising chickens at schools of agriculture. In April 1996, the complainant complained to the Public Complaints Commissioner (hereafter - the Commissioner) about the Ministry of Education, Culture, and Sport (hereafter - the Ministry). The details of the complaint are as follows:

(a) During the 1991-1993 school years (September 1991 to August 1994), the complainant was paid for his services as an examiner according to a tariff the Ministry set in 1991/1992 and published widely. The tariff set a fixed sum (NIS 60) per hour. The complainant also worked during the 1994/1995 school year, and expected to be paid according to that tariff. However, the Ministry paid him substantially less than in previous years, because it had changed the tariff. According to the new tariff, pay was not based on hours of work but rather on the number of students tested (NIS 26 per student).

The complainant contends that the Ministry should pay him for his work during the 1994/1995 school year according to the 1992/1993 tariff. The same is true as regards his pay for the 1995/1996 school year.

(b) The complainant also contends that the Ministry pays him seven and sometimes eight months after the tests, without compensation for the delay in payment.

2. The Commissioner's investigation revealed the following:

A. Change of Tariff

(1) The Commissioner asked the Ministry if the complainant had received timely notice of the change in tariff, so that he could consider whether to continue to work as an examiner according to the new tariff. The Ministry responded that, during the course of a school year, it employs thousands of examiners, some of them being contacted directly by the schools, sometimes at the last minute. Consequently, the Ministry does not know most of the examiners' names. Under these circumstances, the Ministry argued, it is not obligated, and is unable, to inform the examiners about the change in tariff.

(2) The Public Complaints Commissioner ruled that the complaint was justified.

(a) Although the Ministry may unilaterally change the tariff, it acted improperly in not informing the complainant of the change.

Following the change in tariff in 1994/1995, the complainant's income dropped substantially. As mentioned above, the Ministry did not inform him and other examiners of the change in good time, as it had done when the tariff was changed in 1991/1992. The Ministry's explanation, that because of the large number and nature of examiners, it could not inform the complainant about the change in tariff, is unacceptable. Since the complainant, who has worked as an examiner for

many years, was not notified, he reasonably thought that the 1991/1992 tariff remained in effect for the 1994/1995 school year.

Under these circumstances, the complainant is entitled to be paid as an examiner during 1994/1995 according to the tariff established in 1991/1992.

(b) However, the Commissioner did not accept the complainant's argument that the Ministry must pay him for 1995/1996 according to the 1991/1992 tariff.

When the complainant was paid, in 1994/1995, according to the new tariff, he knew, or could have known, that the basis for calculating his wages had changed. By continuing to work as an examiner in 1995/1996, he indicated his willingness to be paid according to the new tariff.

B. Delay in Payment

(1) The Ministry stated that it expected the examinations to be conducted as close as possible to the end of the school year, and that it was organized to record grades only at the beginning of May.

The complainant produced documents indicating that school principals instructed him to examine students starting in December and January.

The deputy accountant of the Ministry informed the Commissioner that a reasonable period for payment was within thirty days from the time an invoice was submitted to the Ministry's finance department.

(2) The Public Complaints Commissioner ruled that this complaint was also justified.

The Ministry may not demand that the examinations begin in December and that the grades only begin to be recorded in May, causing a substantial delay in paying the examiners, without compensation being paid for the delay.

The Commissioner ruled that the Ministry must determine what it prefers: to record the grades before May in order to prevent delay in paying the examiners, or to leave the situation as it is but compensate the examiners for the delay in payment.

As regards the complainant, he was entitled to receive, in addition to his wages for the 1994/1995 and 1995/1996 school years, compensation for the period exceeding one month from the date he submitted his invoice to the Ministry's finance department until payment was made.

3. The Commissioner ruled, therefore, that the Ministry must:

(a) Supplement the complainant's wages for the 1994/1995 school year according to the 1991/1992 school year tariff.

(b) Pay the complainant compensation for delay in payment of his wages for the 1994/1995 and 1995/1996 school years.

ISRAEL POLICE FORCE

FAILURE TO NOTIFY PARENTS OF ARREST OF MINOR

1. In June 1995, a Member of Knesset complained to the Public Complaints Commissioner (hereafter - the Commissioner) about police conduct in the detention of a thirteen-year-old youth (hereafter - the minor). The complaint was based entirely on a letter of the Managing Director of the Child Welfare Council (hereafter - the Council's Managing Director) to the Minister of Police. The allegations in the letter were based on statements made by the minor's sister, the Juvenile Division investigator who arrested him and the minor's probation officer.

The details of the complaint are as follows:

(a) The minor was arrested on the suspicion that he had stolen a teacher's bag and had attacked a fellow pupil. That same day, he was brought before a juvenile court judge, who issued an order, at the Police's request, to detain him for seven days. According to the Juvenile Division investigator, the school authorities were requested to notify the parents that their child had been arrested.

(b) The Council's Managing Director contended that the alleged offenses and the investigation did not require such a long period of detention and that placing the minor under house arrest would have sufficed.

(c) The Council's Managing Director also stated the parents' contentions: (1) the Police did not inform the family of the arrest, which they learned about only by chance - more than twenty-four hours later - from a family friend who had been detained at the same place, and (2) the Police did not enable the minor's relatives to visit him during his detention.

2. The Commissioner's investigation revealed the following:

(a) The Request for Detention

Section 38(5) of the State Comptroller Law, 5718-1958 [Consolidated Version], stipulates that the Commissioner shall not investigate "a complaint as to a matter pending in a court or tribunal or in which a court or tribunal has given a decision with regard to the substance thereof". Therefore, the Commissioner did not review the substance of the decision to detain, but rather only investigated the request of the Police to detain the minor.

In its response to the Commissioner, the Police indicated that the minor was questioned at the school and was brought that same day, in coordination with a welfare officer, to the juvenile court. The probation officer and the welfare officer were present during the court hearing, at which the Police requested that the minor be detained for seven days. The court granted the request, on the grounds that several criminal files had been opened against him over a short period of

time; he often stayed away from home for several days at a time; his family was unable to control him; he was suspected of being exposed to drugs and of being involved in acts of violence.

(b) Notification of the Parents about the Arrest

In response to the parents' contention that they had not been notified about the arrest, the Internal Auditor of the Israel Police Force informed the Commissioner that, according to the Juvenile Division investigators who had handled the matter, they had telephoned the parents but there had been no answer. The Internal Auditor noted that the Police file did not contain any indication that such a telephone call had been made.

The Internal Auditor informed the Commissioner that he had advised those responsible for the investigation and detention of the minor that in the future they must make every effort to contact parents, or another relative, of a child who has been arrested, to inform them of the arrest and to record the notification in the investigation file.

The Internal Auditor further indicated that the welfare officer informed the court during the hearing that the mother had agreed to the removal of the child from the home. The Police contend that it was reasonable to have deduced from this alleged consent of the mother, that the welfare officer had informed the parents about the arrest that same day.

The Commissioner was not satisfied with these explanations. Police guidelines, as set forth in section 03.300.195 of the directives of the Investigations Department - "Summoning of minor under suspicion for criminal investigation via his parents, their presence during questioning, and release on bail", section 3A(2) - require the parents to be notified that their child is at the police station already at the stage of his being detained for questioning.

Section 11 of the Youth Law (Trial, Punishment and Modes of Treatment), 5731-1971, stipulates as follows:

The person in charge of a police station to whom an arrested minor has been brought shall as soon as possible notify one of the parents or, if this is not possible, any person close to the minor; but if he apprehends that the notification may prejudice the welfare of the minor, he shall only notify a probation officer.

The responsibility for notifying of the arrest is also imposed on the officer responsible for detention. Section 3A(2) of the Police Ordinance: Treatment of Persons Incarcerated in Detention Centers" stipulates:

A person shall not be incarcerated in a detention center unless the officer in charge of the investigation or the detention informed the detainee's relatives of the detention...

The welfare officer informed the Commissioner that she had not been in contact with the minor's family on the day he was detained. At the court hearing, she had asked the Police officers where

the parents were and the judge had asked the same question. The Police officers had indicated that they had been unable to locate the minor's parents.

Since the Juvenile Division investigators had not contacted the family while the minor was being held, and no one in the Police was aware that the parents had not been notified, the minor was detained by court order. The parents were not informed of the court order.

When a person is arrested, the procedures require that a form be completed which, in part, records who was informed about the arrest and when. This form is intended for the head of the detention center to which the detainee is sent.

(c) Family Visitation at the Detention Center

In response to the family's contention that they were not allowed to visit the minor at any time during the period of his detention, the Police indicated that the family did not request to visit the minor.

3. The Public Complaints Commissioner ruled that the complaint of failure to notify the parents about the detention was justified.

(a) The discretion exercised by the Police in requesting that the minor be detained was based on the facts and the judge granted the request. The judge even noted in his decision that, with Police consent, "in the event the welfare officer finds him an appropriate educational framework, the Police would welcome his early release."

(b) The Police acted improperly in not notifying the family that the minor was being detained. This applied to both the Juvenile Division investigators and the head of the detention center.

4. The Commissioner ruled that the Police should prepare a form concerning the transfer of a minor to a detention center by court order. The chief of the police station, or another police officer so empowered, should note on the form whether the family had been notified of the detention.

5. The Police informed the Commissioner that, in accordance with her ruling, the Police Order had been amended to include directive 14.01.05 - "Police Handling of Minors". Chapter 10, under the heading "Incarceration of Minors - Rights", stipulates, in section 2, as follows:

It shall be verified that the parents of the minor have been notified and that they have been informed of their right to contact an attorney, and that notification has been sent to the juvenile probation officer, notice of such being recorded in the appropriate place in the documents ordering the incarceration of the minor. This requirement is also applicable where the minor is being held under court order and no such document has been completed.

PRISONS SERVICE

FAILURE TO COMPLY WITH DIRECTIVES CONCERNING HOLDING A PRISONER IN SOLITARY CONFINEMENT

1. The complainant, a prisoner in Ashmore Prison (hereafter - the prison), complained, in August 1995, to the Public Complaints Commissioner (hereafter - the Commissioner) about the Prisons Service. The details of his complaint are as follows:

The complainant contends that he was held for some ten months in a drug-free prison wing and was about to be transferred to the rehabilitation wing. Another prisoner falsely accused him of being involved in drug dealing and consequently, on July 11, 1995, the authorities placed the complainant in solitary confinement (hereafter - solitary), holding him there for nine days. While in solitary, the complainant went on a hunger strike for five days.

The complainant further contends:

- (a) The authorities did not provide him with medical care, and did not even examine him, during the hunger strike;
- (b) The prison director told him that, according to the prison records, he was not recorded as being on a hunger strike;
- (c) While on the hunger strike, the authorities denied him his right to a daily walk.

The complainant requested that the Commissioner to investigate his complaint.

2. The provisions of the Prisons Services Commissioner's Order (hereafter - the directives), which deal with holding a prisoner in solitary, stipulate:

- d. 1. A prisoner shall not be held in solitary confinement unless he is duly found to be guilty in disciplinary hearing proceedings and received a sentence of solitary confinement.
- 2. Notwithstanding the above, a prisoner may be held in solitary confinement... in the following instances: ...
- c) Where a suspicion exists that the prisoner is carrying drugs in his body, and in accordance with the following rules:

- 1) the decision to isolate him... was made by the prison director...

- 2) the prisoner is to be held in solitary confinement for follow-up and supervision until he relieves himself, and not more than seventy-two hours. Where a reasonable suspicion exists that the prisoner concealed the material suspected to be drugs, he may be held in solitary for an additional forty-eight hours upon the approval of the unit director...

Section 17 of the directives stipulates:

2. The officer in charge of solitary shall keep a daily log of solitary confinement, in which shall be recorded... the date the prisoner was placed in solitary, each exit from solitary and the date the prisoner was removed from solitary confinement...
3. According to the daily log on solitary confinement, the complainant was placed in solitary on July 11, 1995. The reason given was suspicion of "dealing in drugs".

The Commissioner's investigation revealed that the documents covering the period of the complainant's solitary confinement were missing. The documents submitted to the Commissioner were imprecise, making it impossible to determine with certainty how much time the complainant was held in solitary, whether the solitary confinement was justified and whether the authorities complied with the directives concerning solitary confinement.

The Commissioner's investigation revealed the following:

- (a) The complainant was not convicted at a disciplinary hearing; consequently, the reason for the punishment of solitary confinement must have another basis.

Apart from an entry in the solitary confinement log according to which the complainant was suspected of concealing drugs on his body, there was no other record. It was impossible, therefore, to determine whether it was justified to hold him in solitary without a disciplinary hearing.

- (b) The solitary confinement log also shows that the order to place the complainant in solitary was given by the security officer and not the prison director, as required by the directives.
- (c) No record was found concerning the date the prisoner relieved himself, on which, pursuant to the directives, he was to have been removed from solitary.
- (d) Contrary to the directives, the solitary confinement log does not mention when the complainant was removed from solitary. However, the authorities provided the Commissioner with documents that indicate that the complainant was held in solitary for at least five days, until July 16, 1995.

The prison authorities presented no document containing the prison director's approval that the complainant be held in solitary for more than seventy-two hours, or indicating that a reasonable suspicion existed that the complainant had concealed substances suspected of being drugs.

Consequently, the prison authorities ostensibly held the complainant in solitary for more than the permitted amount of time.

(e) There is no documentation of the prison wings in which the complainant was held from July 16 to July 19. According to the decision of the Transfer Committee, dated July 19, the complainant was moved on that date from the "solitary - separate confinement cell" to the drug-free wing. The term "solitary - separate confinement cell" is unclear: it is uncertain, therefore, whether the complainant was held in solitary from July 16-19, as he contends, or whether he was simply held in separate confinement.

4. As previously mentioned, the complainant contends that he went on a hunger strike while in solitary and did not receive medical attention.

(a) The Commissioner found no support in the Prisons Service records for the contention that the complainant was on a hunger strike between July 11-16, the time he was in solitary. The public liaison coordinator of the Prisons Service contacted the prison guards who handled the complainant during that period, but none of them remembered the incident. Four of the senior officials during the relevant period have been replaced.

The coordinator mentioned that one of the problems in compiling the information was the closing of prison facilities in Judea and Samaria, following which the prison underwent reorganization and documents were transferred from place to place.

(b) Nevertheless, the investigation revealed that the complainant was on a hunger strike from July 28, 1995 to August 8, 1995, during which he was held in isolation and was not allowed his daily walk.

The Prisons Service informed the Commissioner that, "A prisoner who violates discipline, including the refusal to eat, is not entitled to any privileges", among them the daily walk.

However, the directives dealing with hunger strikes indicate that the daily walk of a prisoner on hunger strike should be limited to one hour per day and not be totally eliminated.

5. **The Public Complaints Commissioner ruled that the complaint was justified.**

(a) There were defects in documenting the decisions and actions taken relating to holding the complainant in solitary.

The Commissioner is of the opinion that holding a prisoner in solitary where he has not been convicted of violating the disciplinary rules must be done cautiously, in full compliance with all applicable rules and provisions of law. In the case under review, the facts were not fully documented, record-keeping was imprecise, the decision to hold the complainant in solitary ostensibly was not made by the duly authorized officer, and it is impossible to determine the considerations that were taken into account in making that decision.

(b) When the complainant went on a hunger strike, the authorities denied him his right to a daily walk, even though the directives stipulate that he be entitled to a one-hour daily walk.

6. The Public Complaints Commissioner informed the Prisons Service Commissioner that, since holding a prisoner in solitary severely prejudices the prisoner and his rights, it is important to ensure meticulous compliance with the relevant directives, particularly directives relating to placing a prisoner in solitary where he has not been convicted of a disciplinary violation.

The Commissioner also ruled that the prison authorities may not deny a prisoner on hunger strike his right to a daily walk, but rather may only limit it to one hour per day.

7. The Prisons Service Commissioner informed the Commissioner that he accepted her ruling and that he and his senior staff had discussed the defects brought to his attention by the Commissioner and the lessons to be learned from them, in order to ensure that they do not recur.

MINISTRY OF JUSTICE

PROHIBITING EXIT FROM ISRAEL BASED ON REVOKED ORDERS

1. The complainant resides and works in Japan. In February 1995, he complained to the Public Complaints Commissioner (hereafter - the Commissioner) about the Execution Office. The details of his complaint are as follows:

(a) Two orders prohibiting exit from Israel were issued against the complainant (hereafter - the exit prohibition orders) in two Execution Office files against him. On October 12, 1994, some two months after issuance of the exit prohibition orders, the complainant succeeded in having them revoked.

(b) On December 5, 1994, the complainant was about to return to Japan, but, to his astonishment, the Border Police at Ben-Gurion Airport did not let him leave because of the exit prohibition orders.

(c) The complainant was compelled, therefore, to return to the Execution Office to receive confirmation that the exit prohibition orders had been revoked. On returning to the airport he showed the Border Police the Execution Office's confirmation and was allowed to leave Israel the same day, but an hour later than originally planned.

(d) According to the complainant, the improper delay at the airport caused him financial loss in addition to the mental anguish he suffered. He requested compensation from the Execution Office, but the latter rejected his request.

(e) The complainant requested that the Commissioner assist him to receive the requested compensation.

2. In order to investigate the matter, the Commissioner contacted the Courts Administration and the Israel Police Force.

(a) The Courts Administration informed the Commissioner that where the head of the Execution Office issues an order prohibiting exit from Israel or revoking such an order, the details of the order are generally typed into the Execution Office's computer and notice of such is issued automatically. The Execution Office forwards the notices to the Police in packages to update its records; each package contains some fifty to one hundred notices; the confirmation of receipt attached to each package does not indicate the notices included within. Consequently, the Execution Office has no document proving that the notices of the cancellation of the relevant exit prohibition orders were sent to the Police shortly after they had been issued (October 12, 1994).

However, the Courts Administration noted that, based on the aforementioned operating procedure, it may be assumed that the notices had been sent to the Police shortly after being issued and that the Police were at fault for not updating their computer records.

(b) The Israel Police Force informed the Commissioner that it had not received any notice of the cancellation of the exit prohibition orders prior to December 5, 1995. That afternoon, the Police National Headquarters received telexes from Ben-Gurion Airport stating that the complainant had left the country after he had provided the Border Police with a confirmation from the Execution Office that the exit prohibition orders had been revoked.

3. In light of the response of the Police, and since the Execution Office had no document proving it had indeed notified the Police of the cancellation of the exit prohibition orders shortly after the time of cancellation, the Commissioner requested that the Courts Administration consider compensating the complainant for the damages that he contended he had suffered as a result of the refusal to allow him to leave Israel.

4. The Courts Administration complied with the request of the Commissioner, and paid the complainant NIS 1,600 in compensation.

5. The Courts Administration informed the Commissioner that it would soon install a communications line between the Execution Office and the Israel Police Force, through which details on the issue and revocation of exit prohibition orders would be fed directly into the Police computer.

The Commissioner's follow-up revealed that, in December 1996, a communications line was indeed installed. Hopefully, the line will prevent similar failures in the future.

MINISTRY OF LABOR AND SOCIAL WELFARE

PROVIDING RECRUITING OFFICE WITH INFORMATION ABOUT A YOUTH FORMERLY ON PROBATION

1. The complainant submitted a complaint to the Public Complaints Commissioner (hereafter - the Commissioner) about the Ministry of Labor and Social Affairs - Youth Probation Service (hereafter - the Probation Service). The details of the complaint are as follows:

The complainant committed a crime in his youth and was under the care of the Probation Service. In July 1993, the Israel Defense Forces (hereafter - the IDF) Recruiting Office decided not to accept him for compulsory military service.

According to the complainant, the youth probation officer who handled his case forwarded information about him to the IDF Recruiting Office just prior to recruitment and contributed, in his opinion, to his not being accepted for service in the IDF.

The complainant contends that the probation officer acted improperly and unlawfully, violating his right to privacy.

The complainant requested of the Commissioner to determine whether the probation officer acted lawfully.

2. The Commissioner's investigation revealed the following:

The questionnaire that a candidate for defense service (hereafter - the candidate) completes at the recruiting office asks whether he has a file at the Probation Service; most of the candidates with such a file respond in the affirmative.

The Israel Police Force forwards to the IDF twice a year a list of the candidates who have a criminal record. As regards a candidate who has a criminal record, or indicated that he has a file at the Probation Service, the mental health officer of the recruiting office contacts the Probation Service and requests information on the candidate. Upon receipt of the request, the probation officer forwards the information.

The Probation Service provides information on the following subjects: the criminal record of the candidate and his family background, education and employment. It also provides information on the candidate's personality and development and on his suitability for military service, such as his ability to function in a framework in which he must obey orders and act under pressure.

The Probation Service provides the information in order to supply the IDF with data that will assist it in assessing whether the candidate is suitable for military service. The IDF makes the ultimate decision on this question.

3. The Commissioner reviewed the relevant enactments.

(a) Pursuant to section 5 of the Defense Service Law [Consolidated Version], 5746-1986, the calling-up officer "may, by order, call upon any person of military age to report, at the place and time prescribed in the order, with a view to determining his fitness for defense service... A person of military age who has been called upon to report... shall report... and shall undergo any examination which in the opinion of a medical board is necessary in order to determine his medical fitness for defense service and shall also undergo, in accordance with the instructions of the calling-up officer, any other examination to determine his suitability for a particular assignment in the defense service..."

(b) Pursuant to section 52(b) of the Defense Service Law, the calling-up officer has all the powers granted under the Commissions of Inquiry Law, 5729-1969, to collect evidence, including the power to summon a person to produce documents.

(c) Under section 5(a) of the Crime Registry and Rehabilitation of Offenders Law, 5741-1981, the Police shall submit information from the registry to the authorities and office-holders specified in the first schedule to the law. The "calling-up officer" within the meaning of the Defense Service Law is among the persons listed.

(d) Section 23B of the Protection of Privacy Law, 5741-1981, stipulates the general rule: "It is prohibited for public bodies to transmit information." However, section 23C(2) of that law provides that "Information may be transmitted... from a public body to a government ministry or other State authority... if transmission of the information serves the purpose of the implementation of any enactment or any purpose within the scope of the powers or functions of the body transmitting or receiving the information."

(e) Regulation 29 of the Criminal Probation (Probation Services) Regulations, 5719-1959, which involves the obligation to maintain confidentiality, allows the disclosure of information if it serves the purpose of the implementation of any enactment.

4. In addition to the justification for providing information pursuant to the aforementioned enactments, the purpose of providing information is proper insofar as service in the IDF is known to be demanding and pressure-laden. Consequently, candidates with uncommon behavior are likely to be a burden on the army and ultimately will themselves not fit in.

5. In light of the above, the Public Complaints Commissioner ruled that the complaint was not justified.

The Commissioner found no prohibited violation of privacy in the Probation Service providing information to the IDF about the complainant. The information was necessary for a proper purpose under the powers granted to the IDF and was forwarded as stipulated in the enactments mentioned above.

LOCAL AUTHORITIES

RESPONSIBILITY FOR DAMAGE CAUSED BY OBSTRUCTION IN STREET

The complainant, a resident of Jerusalem, complained to the Public Complaints Commissioner (hereafter - the Commissioner) about the Jerusalem Municipality (hereafter - the Municipality). The details of the complaint are as follows:

1. (a) On November 27, 1994, just before dark, the complainant drove his car along Churchill Boulevard, near Hadassah Hospital, Mount Scopus (hereafter - the street). It was difficult to see at the time because of the torrential rains that were falling. The complainant was driving at an appropriate speed under the conditions. Suddenly, one of the car's wheels drove into a pothole unseen by the complainant since it was full of water and because of the poor visibility. There was no sign warning about the obstruction, even though the street was well used by local traffic.
- (b) The complainant claimed that he was injured in the incident, requiring medical treatment and that his car was also damaged.
- (c) The complainant requested that the Municipality compensate him NIS 2,460 for his damages, some NIS 1300 of which were to cover his expenses in repairing his car.

The Municipality disclaimed responsibility, arguing that the street was the property of the Hebrew University (hereafter - the University) and that the complainant should address his demand to the University. The complainant did this, but the University responded that the street was a public thoroughfare, for which the Municipality was responsible, and that the complainant should contact the Municipality.

- (d) The complainant requested that the Commissioner investigate his complaint and ensure that the party responsible for the obstruction compensate him.
2. The relevant enactments are the following:
 - (a) Section 1 of the Interpretation Ordinance [New Version], defines a street in the following manner:

"street" or "road" includes any highway, avenue, lane, bridle-way, footway, square, court, parade, alley, passage, or open place used or frequented by the public, or to which the public have or are permitted to have access.

(b) Section 235 of the Municipalities Ordinance [New Version] stipulates:

As regards streets, the Municipality shall --

....

(3) prevent and abate obstructions and encroachments on any street.

3. In its response to the Commissioner, the Municipality argued as follows:

(a) The streets within the University campus, including the relevant street, were paved by a developer - the University.

(b) A street paved by a developer is maintained by the Municipality after the work is completed and an inspection is made to determine that the street is properly constructed. As of the date of the complaint, the University had not yet completed stratification of the roads, and none of the streets on the University campus had been transferred to the maintenance of the Municipality. Consequently, the University was responsible for any damages suffered by the complainant.

4. (a) The Commissioner did not accept the Municipality's argument. The Municipality's obligations under section 235(3) of the Municipalities Ordinance are unrelated to whether the Municipality or a developer paved the street, or who owns it.

The Municipality must, under the aforementioned section, prevent and abate obstructions in streets. As noted above, the definition of street includes, *inter alia*, an "open place used or frequented by the public, or to which the public have or are permitted to have access". The street on which the complainant suffered damages is such an area. Consequently, the Municipality is responsible for the street, though it may, if it wants, demand indemnification from the University.

(b) This opinion is supported by the comments of the former President of the Supreme Court, Justice Shamgar, in a recent High Court decision:

The legislature distinguished between municipal streets as regards "street" as a general term that includes all types of streets, and a "street that is not private property," a concept for which words were used to define it as such. The legislature set obligations as regards each street, whether or not it is private property. In other words, by using the term "street" without further description, and from the ad hoc term "street that is not private property," a street can be private property and not be private property; and where the legislature wants to restrict its provisions to a street that is not private property, it states so explicitly.

As regards the present case: concerning prevention of obstructions and encroachments, the legislature spoke of a "street" in general. This distinction is understandable and reasonable, since the duty to repair private property rests with the owner of the property, while the

duty to prevent obstructions that would endanger passersby on the "street," as defined in the Interpretation Ordinance [New Version], is general and applies to every street. Preventing the obstruction's inherent danger to persons and property, at a place frequented by the public, was the major concern of the legislature and of the municipality it empowered.

5. The Municipality informed the Commissioner that the Municipality's legal advisor accepted her opinion. The Municipality ultimately settled the complainant's claim and paid him NIS 1300.

6. The Public Complaints Commissioner ruled that the complaint was justified.

The Municipality improperly rejected the complainant's demand for compensation. Even if the Municipality's contention that the street belongs to the University (which is ostensibly not the case) is accepted, the Municipality is responsible to passersby for the removal of obstructions such as the pothole, the subject of the complaint. Consequently, the Municipality acted improperly in referring the complainant to the University.

REDUCTION IN PROPERTY TAX FOR A PERSON DISABLED BY NAZI PERSECUTION

1. The complainant, a resident of Ramat Hasharon, submitted, in July 1996, a complaint to the Public Complaints Commissioner (hereafter - the Commissioner) about the Ramat Hasharon Local Council (hereafter - the Council). The details of the complaint are as follows:

(a) The complainant is disabled as a result of Nazi persecution, for which she receives a pension from the Dutch government. This entitlement is based on an agreement between Holland and Germany.

(b) In March 1996, the complainant requested the Council to grant her a reduction from municipal property tax on the grounds of her being disabled as a result of Nazi persecution. The Council responded that under the State Economy Arrangements (Reduction in Property Tax) (Amendment no. 2) Regulations, 5756-1996 (hereafter - the Arrangements Regulations), the reduction is given to persons who receive a disability pension from the Finance Ministry pursuant to the Persons Disabled by Nazi Persecution Law, 5717-1957, and to those who receive pensions directly from the German government. Since the complainant receives a pension from Holland, the law does not entitle her to the reduction.

(c) The complainant contends that she is being discriminated against solely because she does not receive her pension from the Israeli or German governments. Consequently, she requested of the Commissioner to rule that she is entitled to the reduction as a person disabled as a result of Nazi persecution.

2. The Commissioner's investigation revealed that the Council's interpretation of the relevant laws was correct, and that the complainant was not entitled by law to a tax reduction.

3. The Commissioner considers discrimination based on the complainant's receiving her pension from Holland unjustifiable.

4. The Commissioner presented the problem to the Interior Ministry. Subsequently, the Minister of the Interior amended the Arrangements Regulations to include persons such as the complainant among those entitled to a tax reduction. The Interior Minister amended section 2(4) of the Arrangements Regulations, which includes a list of the pensions the receivers of which are entitled to a tax reduction, as follows:

(d) A disability pension paid by the Dutch government because of Nazi persecution in accordance with the Dutch Pension Law for Victims of the 1940-1945 Persecution (WUV), to a person who proved his entitlement thereto to the satisfaction of the Local Authority.

The amendment took effect on January 1, 1996.

5. The Commissioner notified the Council that, based on the aforementioned amendment, it must grant the complainant a tax reduction from January 1, 1996, insofar as she is a person disabled by Nazi persecution. Consequently, the Council must reimburse her the amount of the reduction that she paid for 1996.

6. The Council complied with the ruling.

DISMISSAL OF EMPLOYEES WHO RAISED SUSPICIONS OF IRREGULARITIES AND CORRUPTION

1. The complainants are two former senior employees - the treasurer and secretary - of the Alfe Menashe Local Council (hereafter - the Council). In September 1996, the complainants complained to the Public Complaints Commissioner (hereafter - the Commissioner) against the Council regarding their dismissal. They contended that they were dismissed because they raised suspicions of irregularities and corruption relating to the Council's community center.

The details of their complaint are as follows:

The complainants worked for the Council for some seven years prior to submitting their complaint. According to them, the Head of the Council (hereafter -the Head) was satisfied with their work and they worked with him closely.

(a) In April 1996, the bookkeeper of the community center since 1990 was appointed director of the community center and director of culture for the Council (hereafter - the community center director).

In May 1996, a month after her appointment, the community center director informed the complainants that the Council had reimbursed her for her car registration fees and comprehensive automobile insurance (hereafter - car fees) since 1990, from the time she began working as bookkeeper.

The Council customarily reimbursed only department managers for car fees. Consequently, the complainants were surprised to learn that she had been reimbursed for car fees prior to her becoming community center director (whose status is like that of a department manager).

The complainants immediately requested clarification from the Head. The Head informed them that he had not been involved in setting the terms of compensation of the community center director when she was bookkeeper and requested that the complainants cease their inquiry into the matter.

On May 14, 1996, the Head again requested, this time in writing, that the complainants let the matter rest.

On May 19, 1996, the Head summoned the complainants to meet with him in his office. During the meeting, he removed from the community center director's personal file a contract, showed it to them, remarking that he recalled, in the meantime, the circumstances in which he had signed the contract. According to the complainants, the contract was dated February 15, 1992 and the terms in the blank spaces had been filled in in the handwriting of the community center director. The following is taken from the contract: "The aforementioned will be reimbursed for obligatory and comprehensive car insurance." Under this sentence appears the Head's signature.

It appeared to the complainants that the aforesaid sentence had been written and signed in fresh ink, different from the rest of the contract's details and they suspected that the sentence had been inserted only recently to approve retroactively the reimbursement of car fees that the community center director had received while she was bookkeeper. During the meeting, the complainants stated their suspicion to the Head and insisted that he send the contract to a laboratory for analysis. The Head snatched the contract and returned it to the community center director's personal file. The complainants reported the incident to the Council's legal advisor.

(b) Since then, relations between the Head and the complainants deteriorated. He was hostile towards them and his hostility increased after he accused them of leaking the matter to the local newspaper. Shortly afterwards, he accused them of sending anonymous faxes to his office about irregularities at the community center. The complainants offered to take a polygraph test to prove that they had not leaked the matter or sent the faxes, but the Head rejected their offer.

(c) Despite the Head's hostility towards them, the complainants expected him to suppress his anger, after which they could clarify the matter with him. However, when they lost hope, they took the matter, on September 3, 1996, to the Council's Auditing Committee, stating their suspicions concerning the aforementioned sentence of the contract.

The Head submitted to the Auditing Committee a contract with the community center director dated September 15, 1992, which included the above-mentioned sentence. Whereas the complainants contended that the date of the contract was February 15, 1992, the Head insisted that there was no contract bearing that date.

On September 11, 1996, the Auditing Committee praised the treasurer and secretary for their alertness in this matter, but decided there was no need for further inquiry because the "factual basis is insufficient."

(d) The complainants contend that the Auditing Committee conducted a superficial inquiry into the matter, as appears in particular from the report prepared by the committee's accountant. The report concluded that, "It is possible to accept the contention of the Head that past payments were not made to the community center director for car fees in violation of the law." According to the complainants, the accountant's conclusions, on which the committee's decision was based, totally ignores several peculiarities that must be considered. These are:

(1) Seven pay slips from 1991-1993 were missing from the community center director's personal file, while no reasonable explanation was provided as to why it is impossible to reconstruct the data by computer means.

(2) The document dated February 15, 1992, which the Head showed to the complainants, ostensibly approved reimbursement of car fees of the community center director from that date; however, she only began to be reimbursed in October 1993.

Furthermore, "reimbursement for car fees" appears in the pay slip for October 1993 under the heading "differentials," rather than under its explicit name, as is customary. This may indicate, therefore, an intention to hide something.

(3) The car fees "were reimbursed" to the community center director during 1993-1995 without her providing receipts for payment of car fees, as required by proper administrative procedures and as set forth in the Council's procedures.

(4) It is customary that reimbursement of car fees be approved by an internal committee of the Council, on which the secretary and the treasurer sit. According to the complainants, the Council has no documentation proving that the committee approved reimbursement of car fees for the community center director while she was bookkeeper.

(e) On September 4, 1996, the Head informed the treasurer that he was suspended, and subsequently compelled him to take vacation leave. A few days later, the secretary also was compelled to take vacation leave.

(f) On September 19, 1996, the Head convened a special meeting of the Council and requested it to dismiss the complainants, his reasons being as follows: he has no trust in them because they instigate and provoke the employees.

The Council decided, by majority vote, to dismiss the complainants and their dismissal took effect on September 20, 1996.

(g) The complainants requested the Commissioner to direct the Head to revoke their dismissal and return them to the positions they held at the time they were dismissed.

2. Section 45A of the State Comptroller Law, 5718-1958 [Consolidated Version], stipulates that a complaint by an employee about an act by his superior in reaction to his reporting, in good faith and in accordance with proper procedure, any acts of corruption committed in the body in which he is employed, shall be investigated by the Commissioner.

Under section 45C(a), the Commissioner may make any order he deems right and just to protect the rights of the employee, having regard to the proper functioning of the body in which he is employed.

The provisions of sub-section (b) stipulate that, where the complaint relates to the dismissal of the employee, the Commissioner may order revocation of the dismissal.

3. The Commissioner's investigation verified the facts mentioned in the complaint.

(a) Under the circumstances described above, the complainants thought in good faith that the aforementioned sentence, handwritten by the community center director and signed by the Head, in the contract he had shown them on May 19, 1996 had recently been added in order to approve retroactively reimbursement of car fees for the period in which the community center director had served as bookkeeper.

The complainants thought that there was an ostensible basis for their demand that the contract be analyzed. They indicated their suspicions without delay to the Council's legal advisor, and then to the Auditing Committee. They took these measures in good faith, with the hope that the contract would be examined. As mentioned previously, the Auditing Committee never questioned their good faith.

(b) The Commissioner's representative spoke with Council employees, who indicated that the complainants were extremely devoted employees, and that, until the car fees reimbursement matter arose, had enjoyed excellent working relations with the Head and with the community center director. After the matter arose, they continued to perform their tasks devotedly, efficiently and pleasantly, even when the Head put obstacles in their way.

(c) The Head's accusations that the complainants had leaked information to the local newspaper and sent anonymous faxes to him are baseless. The Head's inquiry into these allegations did not indicate that the complainants had been involved. Moreover, the complainants offered to take a polygraph test, but the Head rejected their offer.

4. On the basis of the above, the Commissioner issued the following order:

ORDER

Being convinced that a causal relationship exists between the complainants' reporting the suspicion of corruption in the community center, which had been forwarded in good faith and according to proper procedures, and their dismissal and having regard to the proper functioning of the Council, I hereby order, pursuant to my authority under section 45C of the State Comptroller Law, 5718-1958 [Consolidated Version], as follows:

- a. The decision of the Council plenum of September 19, 1996 concerning the dismissal of the complainants is hereby null and void, and the procedures taken in this matter are without force and effect. The complainants shall be considered Council employees for all purposes as regards their rights and obligations as employees.
 - b. The Council shall continue to employ the complainants in the positions they held at the time of their dismissal and all the authority they had at the time the dispute arose between them and the Head shall be restored to them.
 - c. The Head and the Council shall do everything necessary to enable the complainants to perform their duties in a proper manner and without hindrance, in accordance with instructions properly given by their supervisors.
5. At first, the Head opposed reinstating the complainants, but he ultimately complied with the order.

NATIONAL INSURANCE INSTITUTE

NON-RECOGNITION OF OPTIONAL INSURANCE

1. The complainant, a retired teacher, complained to the Public Complaints Commissioner (hereafter - the Commissioner) about the National Insurance Institute (hereafter - the NII). The details of the complaint are as follows:

(a) The complainant retired at the age of fifty-two.

(b) Shortly prior to retiring, she went to the NII office in Tel-Aviv and to the Retired Teachers' Department of the Finance Ministry (hereafter - the Department), to clarify if she could continue to be insured by the NII on the basis of optional insurance, as a non-working, married woman until she reached sixty, at which time she would be entitled to an old-age pension. Optional insurance would provide her with additional seniority and consequently would increase the old-age pension that she would receive.

(c) The Department informed her by telephone that it had arranged the matter with the NII, and that the insurance payment would be deducted from her monthly pension and forwarded to the NII to ensure her rights within the framework of the optional insurance.

(d) The NII requested that the complainant go to the NII branch office to arrange the insurance. The complainant thought that, since the Department had made the arrangement with the NII, as the Department had notified her, it was not necessary for her to go to the NII. Consequently, she did not go.

(e) Each month, the Department forwarded to the NII the monies it deducted from the complainant's pension.

(f) When she turned sixty, the complainant went to the NII branch office in Tel-Aviv to file her claim for an old-age pension. To her astonishment, the NII informed her that it did not recognize the optional insurance even though monies had been deducted and forwarded to the NII, as mentioned above. The NII argued that she was obligated to arrange the optional insurance at the NII offices, as required by the National Insurance Law [Consolidated Version], 5755-1995 (hereafter - the Law), and the National Insurance (Optional Insurance) Regulations, 5739-1979 (hereafter - the Regulations). The NII further argued that it was not possible to provide her with optional insurance retroactively. Consequently, the NII offered to reimburse her the monies that had been deducted.

2. In her complaint, the complainant questioned whether the NII was entitled not to recognize her optional insurance after it had received, for eight years, payments that had been deducted from her teacher's pension, without having notified her that these payments did not acquire any rights.

3. (a) Section 241 of the Law stipulates that, as regards a married woman whose husband is insured and who only works as a housewife, the NII may insure her subject to conditions that will be prescribed.

(b) Section 2(5)(a) of the Regulations stipulates that the NII may insure a housewife, provided that she was insured by the NII for at least three consecutive years, or five years non-consecutively, during the seven years preceding the day on which the applicant requested optional insurance; and provided that the applicant files an application for optional insurance within one year of the date that she ceased to be insured on a compulsory basis by the NII.

(c) As regards the need to submit the application for optional insurance, section 19 of the Regulations provides that a person who paid during the determining period, i.e., within the year from the time of cessation of insurance, an amount that he would have paid had he been insured by optional insurance, would be considered as one who had submitted a request for optional insurance. This indicates that submission of the request is not an indispensable condition for receiving optional insurance.

4. The complainant fulfilled the first condition, but not the second. She relied on the Department's notice that it had made arrangements with the NII and consequently did not submit a request in writing to the NII, even though she had received a letter from NII directing her to do so.

5. The Commissioner's investigation indicated that the Department was not authorized to deduct monies from the complainant's pension and insure her with optional insurance and that the sums that had been deducted were smaller than those required by law.

The Commissioner also found that the Department forwards to the NII an annual report on pensioners from whose pensions insurance payments are deducted. However, according to the director of the NII's Verification and Identification Department (hereafter - Verification Department), it is impossible to locate pensioners, among them the complainant, whose deductions from their pension are not recognized by the NII as insurance payments. The director told the Commissioner that he relies on the Department to comply with the directives of the NII in these matters.

6. As mentioned above, if the complainant had paid, within one year from the time she had ceased to be insured, the sum comparable to that paid by a person optionally insured, the payment would have been considered as a type of request for optional insurance. However, unfortunately the deducted payments were smaller than required.

7. The Public Complaints Commissioner ruled that the complaint was justified.

The Commissioner considers the NII's position to be unjust and too inflexible. The complainant's error in believing that she was already covered by optional insurance, based on her contacts with the Department, was reasonable and was made in good faith.

The Department's notice that it had arranged the optional insurance gave her good reason to believe that the Department, which is the professional body handling pensions, had the authority to arrange the insurance and that it had done so. Consequently, it was reasonable for her not to relate to the correspondence she received from the NII directing her to go to its office.

The complainant's conclusion was proven to her unequivocally when she learned that the Department had begun to forward monies to the NII from her pension and that it did so until the complainant turned sixty. The NII received the payments and did nothing to bring to the complainant's attention that she had erred.

In these circumstances, the NII may not argue that it does not recognize that the complainant is covered by optional insurance.

The complainant's case does not involve the failure to comply with a significant condition, which would deny the complainant the entitlement of registering for optional insurance, but rather the failure to meet a purely formal condition - submitting the relevant application to the NII.

8. The Commissioner notified the NII that it must pay the complainant, as of the date she turned sixty, the supplementary pension to which she was entitled under the optional insurance, as if she had been properly insured, and according to the updated amount in effect on the day of payment. On the other hand, the complainant should be charged the difference between the amounts that the Department had forwarded to the NII and the full amount of the payments that had been due for optional insurance, for the period between the time she retired, up until she reached the age of sixty.

9. The NII informed the Commissioner that it would comply with her ruling.

ISRAEL AIRPORTS AUTHORITY

ORDER PROHIBITING ENTRY TO BEN-GURION AIRPORT FOR AN INDEFINITE PERIOD

1. The complainant owned a taxicab that transported passengers to and from Ben-Gurion Airport (hereafter - the airport). Because he violated the general rules of conduct set by the Airports Authority, the Airport Director issued an order prohibiting him indefinitely from entering the airport. Consequently, the complainant sold his taxicab and left the taxicab business.

The complainant is currently employed as a driver for a bus company that operates, *inter alia*, in the airport. The company's work supervisor informed the complainant that if the order was not revoked, he may be dismissed.

In his complaint to the Public Complaints Commissioner (hereafter - Commissioner), the complainant pointed out that he had not entered the airport for eighteen months and he questioned the justification of such an order for an indefinite period of time. He claimed that the order severely prejudices his ability to make a living, as he had already been compelled to sell his taxicab and was now in danger of losing his job.

The complainant requested that the Commissioner act to revoke the order.

2. The Commissioner's investigation revealed that the order was issued pursuant to section 2(b) of the Airports Authority (Maintaining Order at Airports) Rules, 5744-1984, which stipulates:

The Authority or the director may, upon written notification setting forth the reasons, prohibit a person from entering the airport; upon such order, that person shall not enter that airport except as a passenger in good faith with a ticket valid for that day.

3. The Commissioner contacted the office of the legal advisor of the Airports Authority (hereafter - the legal advisor's office), and noted that the aforementioned rule was too general. The order in this case restricted the complainant's freedom of movement more than necessary, was not restricted to a particular section of the airport or to a specific activity that it sought to prevent, and was not limited in time. Furthermore, the order was issued without giving the complainant a chance to state his case or appeal the order administratively.

The Commissioner pointed out to the legal advisor's office that it was necessary to amend the aforementioned rule to ensure, as much as possible, the freedom of a person who is prohibited from entering an airport, as well as his right to argue his case.

4. The legal advisor's office informed the Commissioner that the order against the complainant would be revoked, provided that he sign an undertaking that he would act in accordance with the Airports Authority (Transport of Passengers in Taxis from Ben-Gurion Airport) Rules, 5743-1983, and the Airports Authority (Maintaining Order at Airports) Rules, 5744-1984, in the knowledge

that should he violate these regulations, the director would consider issuing another order prohibiting him from entering the airport.

The complainant signed the letter of undertaking, and the order was revoked.

5. The Airports Authority accepted the Commissioner's remarks and amended the aforementioned rule 2(a) as follows:

- (b) (1) The director may, upon written notification setting forth the reasons, prohibit a person from entering the airport, provided that the said individual is first given the opportunity to state his case to the director; upon such order, that person shall not enter that airport except as a passenger in good faith with a ticket valid for that day. The prohibition shall not remain in effect for more than twelve months from the time the said person is so notified;
- (2) A person whom the director has prohibited from entering, as aforesaid, may appeal the director's decision to the Director of the Authority within fourteen days from the time he is notified of the prohibition.

APPENDICES

Breakdown of Complaints by Agencies Complained Against - 5756 (1995/1996)
(25 September 1995 - 13 September 1996)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Complaints	Total ¹ Subjects	Number of Complaints	Number of Subjects	Subjects Resolved Substantively	Complaints Found Justified
Prime Minister's Office	20	22	19	20	17	2
Ministry of Finance ²	338	365	346	379	314	109
Income Tax	105	112	60	63	58	25
Property Tax and Compensation Fund	77	84	81	89	82	23
Customs and V.A.T.	33	35	52	58	48	18
Land Appreciation Tax	21	21	25	26	23	6
Capital, Insurance, and Savings Department	32	34	21	23	13	3
Civil Service Commission	19	22	34	39	29	3
Ministry of the Environment	27	28	32	33	33	21
Ministry of Defense ²	99	111	168	184	125	29
Rehabilitation Department	64	74	129	143	106	23
Israel Defense Forces	126	130	178	181	56	18
Ministry of Construction and Housing	218	226	265	281	236	88
Ministry of Health	162	171	210	227	142	36
Ministry of Religious Affairs	76	78	81	85	56	31
Ministry of Foreign Affairs	10	10	11	12	12	5
Ministry of Education, Culture & Sport	151	159	160	172	98	31
Ministry of Agriculture and Rural Development	20	23	31	31	20	2
Ministry of Science	1	1	1	1	1	1
Ministry of Justice ²	311	325	326	337	140	48
Courts Administration	124	128	120	122	25	10
Execution Office	79	83	87	90	40	10
Ministry of Labor and Social Welfare ²	169	188	167	186	97	33
Labor	31	34	38	41	23	9
Social Welfare	47	50	32	34	22	7
Employment Services	70	82	66	77	31	12
Ministry of Police ²	523	573	545	603	322	97
Israel Police Force	452	489	486	533	291	85
Prisons Service	69	82	58	69	31	12
Ministry of the Interior	218	239	239	258	130	38
Ministry of Immigrant Absorption	108	110	174	180	139	35
Ministry of Transportation ²	135	141	174	192	154	32
Licensing Division	44	44	57	62	59	17
Ministry of Tourism	16	16	23	25	22	6
Ministry of Industry and Trade	22	25	28	31	24	13
Ministry of Communications	22	22	32	33	20	7

(continued)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Complaints	Total ¹ Subjects	Number of Complaints	Number of Subjects	Subjects Resolved Substantively	Complaints Found Justified
Bezeq, Israel Telecommunications Corporation Ltd.	130	142	176	190	88	46
Postal Authority	82	92	101	115	68	37
Ministry of National Infrastructure	6	6	4	4	2	1
Bank of Israel	32	33	38	41	30	11
National Insurance Institute	398	427	466	508	253	109
Israel Lands Administration	160	168	162	172	88	30
Broadcasting Authority	72	74	73	74	58	36
Local Authorities ³	1,345	1,495	1,570	1,748	930	394
Jerusalem	92	96	128	142	88	48
Tel Aviv - Jaffa	88	102	124	140	98	21
Haifa	68	74	80	89	53	15
Bnei Brak	70	79	92	106	34	22
Netanya	41	43	42	42	16	3
Holon	34	37	47	52	33	10
Hadera	33	37	39	43	17	11
Ramat Gan	33	36	51	57	23	13
Petach Tikva	31	32	40	42	42	12
Rishon Le-Tzion	31	37	30	33	14	5
Others	824	922	897	1,002	512	234
Other Agencies ³	524	559	689	754	523	152
Amidar	130	139	244	266	215	73
Sick Fund of the General Federation of Labor	64	73	72	81	38	13
Israel Electric Corporation	54	56	65	73	63	7
Israel Bar Association	34	35	42	44	31	10
Others	242	256	266	290	176	49
Agencies Not Subject to Ombudsman Inspection ⁴	706	706	736	736		
Total	6,227	6,665	7,225	7,793	4,198	1,498

1. Many of the complaints refer to more than one subject.
2. Detailed data have been presented only on units particularly subject to complaint.
3. Data have been presented on local authorities and other bodies against whom thirty or more complaints were filed.
4. Some complaints, because of their public interest, were investigated by the supervising bodies over the areas to which the complaints referred.

BASIC LAW: THE STATE COMPTROLLER

**STATE COMPTROLLER LAW, 5718-1958
[CONSOLIDATED VERSION]**

BASIC LAW: THE STATE COMPTROLLER

1. State audit is vested in the State Comptroller. Substance

2. (a) The State Comptroller shall inspect the economy, the property, the finances, the obligations and the administration of the State, of Government offices, of all enterprises, institutions or corporations of the State, of local authorities and of the other bodies or institutions made subject by law to the inspection of the State Comptroller. State Audit

(b) The State Comptroller shall examine the legality, moral integrity, orderly management, efficiency and economy of the inspected bodies, and any other matter which he deems necessary.

3. A body subject to the inspection of the State Comptroller shall at his request, without delay, provide the State Comptroller with information, documents, explanations, or any other material which the Comptroller deems necessary for the purposes of inspection. Duty to provide information

4. The State Comptroller shall investigate complaints from the public about bodies and persons, as provided by or under law; in this capacity the State Comptroller shall bear the title "Public Complaints Commissioner". Complaints from the public

5. The State Comptroller shall carry out other functions as provided by law. Other functions

6. In carrying out his functions, the State Comptroller shall be responsible only to the Knesset and shall not be dependent upon the Government. Responsibility to the Knesset

7. (a) The State Comptroller shall be elected by the Knesset in a secret ballot; the election procedures shall be prescribed by law. Election and term of office

(b) The term of office of the State Comptroller shall be five years.

Passed by the Knesset on February 15, 1988.

Eligibility	8. Every Israeli citizen, resident in Israel, is eligible to be a candidate for the office of State Comptroller; additional qualifications may be prescribed by law; a person who has served two consecutive terms as State Comptroller shall not be a candidate for election to the next consecutive term.
Declaration of allegiance	9. The State Comptroller-elect shall make and sign before the Knesset the following declaration of allegiance: "I pledge myself to bear allegiance to the State of Israel and to its laws, and faithfully to carry out my functions as State Comptroller".
Budget	10. The budget of the State Comptroller's Office shall be determined by the Finance Committee of the Knesset, upon the proposal of the State Comptroller, and shall be published together with the budget of the State.
Salary and benefits	11. The salary of the State Comptroller and other payments payable to him during, or after, his term of office, or to his survivors after his death, shall be determined by law or by a resolution of the Knesset or of a committee of the Knesset authorized by the Knesset for this purpose.
Contact with the Knesset and submission of reports	12. (a) The State Comptroller shall maintain contact with the Knesset, as prescribed by law. (b) The State Comptroller shall submit to the Knesset reports and opinions within the scope of his functions and shall publish them, in the manner and subject to the restrictions prescribed by law.
Removal from office	13. The State Comptroller shall not be removed from office except by resolution of the Knesset carried by a two thirds majority of those voting; procedures for removal from office shall be prescribed by law.
Acting Comptroller	14. If the State Comptroller is unable to carry out his functions, an acting Comptroller shall be appointed, in a manner and for a period prescribed by law.

STATE COMPTROLLER LAW, 5718-1958
[CONSOLIDATED VERSION]

CHAPTER ONE: THE COMPTROLLER

1. (a) The State Comptroller (hereafter – the Comptroller) shall be elected by the Knesset in a secret ballot, at a session convened exclusively for that purpose.

Election of
Comptroller

(b) The candidate for whom a majority of Members of the Knesset vote – is elected; if no candidate receives such a

The original State Comptroller Law, 5709-1949, was passed by the Knesset on May 18, 1949. It was amended in 1952, in 1954, and in 1958. The amended law was then consolidated in 1958.

This version contains the following amendments: State Comptroller (Amendment) Law, 5722-1961; State Comptroller (Amendment No. 2) Law, 5722-1962; State Comptroller (Amendment No. 3) Law, 5724-1964; Holders of Public Office (Benefits) Law, 5729-1969; State Comptroller (Amendment No. 5) Law, 5731-1971; State Comptroller (Amendment No. 6) Law, 5732-1972; State Comptroller (Amendment No. 7) Law, 5734-1974; State Comptroller (Amendment No. 8) Law, 5735-1975; State Comptroller (Amendment No. 9) Law, 5738-1978; Police Ordinance (Amendment No. 7) Law, 5740-1980; State Comptroller (Amendment No. 11) Law, 5741-1981; State Comptroller (Amendment No. 12) Law, 5744-1983; State Comptroller (Amendment No. 13) Law, 5744-1984; State Comptroller (Transitional Provisions) Law, 5748-1988; State Comptroller (Amendment No. 15) Law, 5750-1990; State Comptroller (Amendment No. 16) Law, 5751-1990; State Comptroller (Amendment No. 17) Law, 5752-1992; State Comptroller (Amendment No. 18) Law, 5753-1993; State Comptroller (Amendment No. 19) Law, 5754-1993; State Comptroller (Amendment No. 20) Law, 5754-1994; State Comptroller (Amendment No. 21) Law, 5754-1994; State Comptroller (Amendment No. 22) Law, 5754-1994; State Comptroller (Amendment No. 23) Law, 5755-1995; State Comptroller (Amendment No. 24) Law, 5755-1995; State Comptroller (Amendment No. 25) Law, 5755-1995; State Comptroller (Amendment No. 26) Law, 5755-1995; Bank of Israel (Amendment No. 19) Law, 5755-1995; State Comptroller (Amendment No. 27) Law, 5755-1995 (should be Amendment No. 28); State Comptroller (Amendment No. 29) Law, 5756-1996; State Comptroller (Amendment No. 30) Law, 5756-1996; State Comptroller (Amendment No. 31) Law, 5757-1997.

majority – a second ballot shall be held; if again no candidate receives such a majority, another ballot shall be held; in the third and every subsequent ballot, the candidate who received the smallest number of votes in the previous ballot, shall no longer be a candidate; the candidate who receives a majority of the votes of the Members of the Knesset present and voting in the third or subsequent ballots – is elected; if two candidates receive an equal number of votes, the ballot shall be repeated.

Date of election

2. (a) The election of the Comptroller shall take place not earlier than ninety days and not later than thirty days before the expiration of the serving Comptroller's term of office; if the office of the Comptroller falls vacant before the expiration of his term, the election shall be held within forty-five days from the day the office fell vacant.

(b) The Chairman of the Knesset, in consultation with his deputies, shall set the date of the election and shall give notice of it in writing to all the Members of the Knesset at least twenty days before the election.

(c) If the date of election falls at a time when the Knesset is not in session, the Chairman shall convene the Knesset for the election.

Nomination of candidates

3. (a) When the date of the election has been set, ten or more Members of the Knesset may nominate a candidate; the nomination shall be in writing and shall be delivered to the Chairman of the Knesset not later than ten days before the date of the election; the candidate's consent, in writing or by telegram, shall be attached to the nomination; no Member of the Knesset shall sponsor the nomination of more than one candidate.

(b) The Chairman of the Knesset shall notify all Members of the Knesset, in writing, not later than seven days before the date of the election, of every candidate nominated and of those Members of the Knesset who nominated him, and shall announce the names of the candidates at the opening of the election session.

Comptroller's address in the Knesset

4. On the occasion of his declaration of allegiance, in accordance with section 9 of the Basic Law: The State Comptroller, the Comptroller may, in coordination with the Chairman of the Knesset, address the Knesset.

4A and 5. (Repealed).

6. (a) The Comptroller shall carry on his activities in contact with the State Audit Affairs Committee of the Knesset (in this Law referred to as "the Committee") and shall report to the Committee on his activities whenever he thinks fit or is required to do so by the Committee.

The Committee

(b) A person who served as a Minister, as a Deputy Minister or as a Director-General or Deputy Director-General of any of the Government offices shall not be Chairman of the Committee within two years from the day of termination of his tenure of such office.

(c) A member of the Committee who served in one of the posts specified in subsection (b) or in the Schedule to the State Service (Appointments) Law, 5719-1959, shall not participate in the discussions of the Committee relating to his area of responsibility during the period in which he served as aforesaid.

7. (a) During his term of office, the Comptroller shall not be actively engaged in politics and shall not –

Prohibited
activities

(1) be a member, or a candidate for membership of the Knesset, or of the council of a local authority;

(2) be a member of the management of a body of persons carrying on business for purposes of profit;

(3) hold any other office or engage, either directly or indirectly, in any business, trade or profession;

(4) participate, either directly or indirectly, in any enterprise institution, fund or other body holding a concession from or assisted by the Government or in the management of which the Government has a share or which has been made subject to the control of the Government or the inspection of the Comptroller, and shall not benefit, either directly or indirectly, from the income thereof;

(5) buy, rent or hire, accept as a gift, use, or hold in any other manner, any State property, whether immovable or movable, or accept from the Government any contract or concession or any other benefit, in addition to his remuneration, except land or a loan for the purpose of settlement or housing.

(b) A person who has been Comptroller shall not, for three years from the termination of his tenure, be a member of the management of a body of persons carrying on business for purposes of profit and being an inspected body within the meaning of section 9(3), (5), (6), (7), (8) and (9).

Termination
of tenure of
office

8. The Comptroller's tenure of office terminates –

- (1) upon expiration of his term of office;
- (2) upon his resignation or death;
- (3) upon his removal from office.

Removal of the
Comptroller
from office

8A. (a) The Knesset shall not remove the Comptroller from office, except upon the demand of at least twenty Members of the Knesset, submitted in writing to the Constitution, Law and Justice Committee of the Knesset, and upon the proposal of that Committee.

(b) The Constitution, Law and Justice Committee of the Knesset shall not propose removing the Comptroller from office before he has been given an opportunity to be heard.

(c) The proceedings of the Knesset under this section shall be held at a session, or successive sessions, devoted exclusively to this matter; the proceedings shall begin not later than twenty days after the decision of the Constitution, Law and Justice Committee; the Chairman of the Knesset shall notify all the Members of the Knesset, in writing, at least ten days in advance, of the date on which the proceedings are to begin; if that date falls when the Knesset is not in session, the Chairman shall convene the Knesset to hold the proceedings.

CHAPTER TWO: SPHERE OF INSPECTION

Inspected
bodies

9. The following bodies (hereafter referred to as "inspected bodies") shall be subject to the inspection of the Comptroller:

- (1) every Government office;
- (2) every enterprise or institution of the State;

(3) every person or body holding, otherwise than under contract, any State property or managing or controlling any State property on behalf of the State;

(4) every local authority;

(5) every enterprise, institution, fund or other body in the management of which the Government has a share;

(6) every person, enterprise, institution, fund or other body made subject to inspection by law, by decision of the Knesset or by agreement between him or it and the Government;

(7) every enterprise, institution, fund or other body in the management of which one of the bodies enumerated in paragraphs (2), (4), (5) and (6) has a share; but the inspection of such a body shall not be actually carried out unless and in so far as the Committee or the Comptroller so decides;

(8) every enterprise, institution, fund or other body assisted, either directly or indirectly, by the Government or by one of the bodies enumerated in paragraphs (2), (4), (5) and (6) by way of a grant, a guarantee or the like; but the inspection of such a body shall not be actually carried out unless and in so far as the Committee or the Comptroller so decides;

(9) every general employees' organization, and every enterprise, institution, fund or other body in the management of which such employees' organization has a share, provided that the inspection shall not be carried out on their activities as a trade union; but the inspection of such a body shall not be actually carried out unless and in so far as the Comptroller so decides and subject to international conventions to which the State of Israel is party; if the Comptroller decides to carry out such inspection, the Comptroller shall have all the powers granted him in respect of an inspected body, even in respect of the activities of such general employees' organization, enterprise, institution, fund or body, as a trade union, provided that the Comptroller deems that necessary for the purposes of the inspection of their other activities.

In this paragraph –

"activities as a trade union" means representation of employees with regard to the advancement, realization or protection of their rights as employees;

"general employees' organization" means a national employees' organization, operating as a trade union in more than one branch of employment.

(10) a body which, after 9 February 1997, ceased to be included in the list of the bodies enumerated in paragraphs (1) through (9), regarding the period in which it was included in the said list of bodies, provided that three years have not elapsed since the day that it ceased to be included therein; with regards to a body falling within this paragraph, the Comptroller shall, according to the circumstances, have all the powers granted him in respect of an inspected body.

Extent of
inspection

10. (a) Within the scope of his functions the Comptroller shall, as far as necessary, examine –

(1) [a] whether every expenditure has been incurred within the limits of the legal appropriation and for the purpose for which it has been assigned;

[b] whether the income has been received in accordance with law and is authorized by law;

[c] whether there are sufficient vouchers in respect of all expenditure and income;

[d] whether every act within the sphere of his inspection has been done in accordance with law and by the person competent to do it;

[e] whether the keeping of accounts, the drawing-up of balance-sheets, the checking of the cash-in-hand and the stock, and the voucher system are efficient;

[f] whether the method of keeping moneys and safeguarding property is satisfactory;

[g] whether the state of the cash-in-hand and the stock tallies with the accounts.

(2) whether the inspected bodies within the meaning of section 9(1), (2), (4) and (5) have operated economically, efficiently and in a morally irreproachable manner; this examination shall also comprise bodies supervised under section 9(6) unless the law, decision or agreement referred to in that paragraph otherwise provides, and bodies inspected under section 9(7), (8) and (9) if and to the extent that their inspection thereof is actually carried out;

(3) any such other matter as he may deem necessary.

(b) The Committee may, upon the proposal of the Government or the Comptroller, prescribe from time to time, in respect of an inspected body or an item of its budget, special or limited forms of inspection.

CHAPTER THREE: INSPECTION PROCEDURE

11. (a) An inspected body shall, within such time as the Comptroller may prescribe, but not later than four months after the expiration of its financial year, submit a report on its income and expenditure during that year.

Inspected
body to submit
report,
balance-sheet,
survey and
information

(b) The Comptroller may require of an inspected body, within such time as he may prescribe –

(1) a balance-sheet showing its assets and liabilities as at the expiration of the year;

(2) a detailed survey factually describing the economic and administrative operations carried out by the body during that year.

(c) The report and balance-sheet shall be accompanied by any such document as the Comptroller may require for the purpose of verification.

(d) The Comptroller may require a report and balance-sheet as aforesaid of any enterprise, institution, fund or other body

which is an inspected body within the meaning of section 9(7), (8) or (9) even though the inspection thereof, in respect of the year to which the report or balance-sheet relates, may not have been actually carried out.

(e) (Repealed).

Minister of
Finance to
submit
comprehensive
report and
balance-sheet
of the State

12. The Minister of Finance shall, within such time as the Comptroller may prescribe, but not later than six months after the expiration of the financial year of the State, submit a comprehensive report on the income and expenditure of the State during that year together with any document which the Comptroller may require for the verification of the report; moreover, the Minister of Finance shall, within such time as the Comptroller may prescribe, but not later than nine months after the expiration of the financial year of the State, submit a balance-sheet showing the assets and liabilities of the State as at the expiration of that financial year, together with any document which the Comptroller may prescribe for the verification of the balance-sheet.

Inspection of
associations

13. The following provisions shall apply to inspected bodies within the meaning of section 9(5), (7) and (8) (in this section referred to as "associations") in addition to the other provisions of this Law and the provisions of any other law;

(1) the Comptroller may, after consultation with the Minister of Finance, lay down directives for associations with regard to their accounting system and the drawing up of their balance-sheet;

(2) the Comptroller may lay down directives for the auditor who audits the accounts of an association with regard to the scope and mode of the checks to be carried out by him, and of his report, in respect of that association, and with regard to the circumstances under which he is to report direct to the Comptroller;

(3) the Comptroller may require every association to draw up an annual plan of operations, based on the financial-economic situation during the current year and containing a forecast of its future financial and economic operations, and to submit that plan to him within such period as he may prescribe; he may also lay down directives for the drawing up of the said annual plan.

14. (a) Where an inspection has revealed defects which have not been explained, or infringements of any law, of the principles of economy and efficiency or of moral standards, the Comptroller shall communicate to the inspected body the results of the inspection and his demands for the rectification of the defects and, if he deems it necessary to do so, shall bring the matter to the knowledge of the Minister concerned and of the Minister of Economy and Planning. (*)

(b) Where an inspection has revealed defects or infringements which the Comptroller, in view of their bearing upon a fundamental problem or in the interests of upholding moral standards or for any other reason, deems worthy of consideration by the Committee prior to the submission of a report under section 15 or 20, he shall submit a separate report to the Committee; and upon his doing so, the Committee may, of its own motion or upon the proposal of the Comptroller, decide upon the appointment of a commission of enquiry; if the Committee so decides, the President of the Supreme Court shall appoint a commission of enquiry to investigate the matter; the provisions of the Commissions of Enquiry Law, 5729-1968, shall apply, mutatis mutandis, to the commission of enquiry.

(b1) The Committee may, in special circumstances and with the agreement of the Comptroller, decide upon the appointment of a commission of enquiry, also on a subject included in a report under section 15 or 20, and the provisions at the end of subsection (b) will apply thereto. But the Committee shall not so decide, except by a majority of at least two-thirds of its members, in a meeting convened solely for that matter; the invitation to the first meeting shall be by notice given at least ten days in advance.

(c) Where an inspection has revealed that an inspected body has operated in a manner arousing suspicion of a criminal act, the Comptroller shall bring the matter to the knowledge of the Attorney-General. The Attorney-General shall notify the Comptroller and the Committee, within six months after the matter was brought before him, on the manner in which he has dealt with the subject.

(*) By Government decision of 18 February 1996, the powers and functions of the Minister of Economy and Planning were transferred to the Prime Minister, as from 1 April 1996.

CHAPTER FOUR:
REPORTS AND OPINIONS OF THE COMPTROLLER

Comptroller's
report on
Government
offices and
State
institutions

15. (a) Not later than the 15th of February each year, the Comptroller shall present a report for the consideration of the Minister of Economy and Planning and of the Chairman of the State Audit Affairs Committee of the Knesset on the results of the inspection of the inspected bodies, within the meaning of section 9(1) and (2), carried out during the course of the past financial year.(*)

(b) In a report under subsection (a) the Comptroller shall summarize his activities in the field of inspection and –

- (1) specify any infringement of moral standards;
- (2) specify any such defect and any such infringement of a law or of the principles of economy and efficiency as in his opinion deserve to be included in the report;
- (3) make recommendations for the rectification and prevention of the defects.

Observations
by Minister of
Economy and
Planning and
laying on the
table of the
Knesset

16. (a) The Minister of Economy and Planning shall make his observations within ten weeks from the day on which he received the report, and upon the expiration of that period the report shall be laid on the table of the Knesset.(*)

(b) The Comptroller, on his own initiative or upon the proposal of the Committee, may determine, in consultation with the Committee, that in a certain year the period stipulated in subsection (a) shall be shorter or longer by not more than fourteen days; such decision shall be made and brought to the notice of the Committee and the Minister of Economy and Planning not later than the 15th of February of that year.(*)

Safeguarding
security and
foreign
relations of
the State

17. (a) Within the ten weeks referred to in section 16(a), or within the period determined under section 16(b), the Committee may, upon the proposal of the Comptroller, decide that certain

(*) By Government decision of 18 February 1996, the powers and functions of the Minister of Economy and Planning were transferred to the Prime Minister, as from 1 April 1996.

parts of the report shall not be laid on the table of the Knesset if it deems it necessary to do so in the interests of safeguarding the security of the State or in order to avoid an impairment of its foreign relations or its international trade relations.

(b) The provisions of sections 15 and 16 shall apply also to such part of the report as deals with the Defense Establishment, but the Comptroller shall submit that part to the Committee at the same time as he submits it to the Minister of Economy and Planning, and the Committee, after consultation with the Comptroller and having regard to the necessity of safeguarding the security of the State and of avoiding an impairment of its foreign relations, shall decide whether to lay the whole of that part of the report on the table of the Knesset or to dispense with the tabling of certain chapters thereof. (*)

(c) Having regard to the necessity of safeguarding the security of the State, the Comptroller may, if the Government so requests on grounds which he is satisfied are reasonable, give a limited report, or refrain from giving a report, on a branch or unit inspected by him; the Comptroller shall intimate to the Committee, orally and in such form as he may think fit, on what unit or branch inspected by him, he has given a limited report or refrained from giving a report.

18. (a) When the report has been laid on the table of the Knesset, the Committee shall consider it and submit its conclusions and proposals for the approval of the Knesset, and it may submit them chapter by chapter.

Procedure in
the Committee
and in the
Knesset

(b) If the Committee does not submit its conclusions and proposals as aforesaid in subsection (a), the Knesset shall consider the report when the subsequent report is laid on the table of the Knesset.

(c) The conclusions and proposals of the Committee in respect of those parts of the report which, in pursuance of section 17(a) or (b), have not been laid on the table of the Knesset shall also not be laid on the table of the Knesset and shall be deemed to have been approved by the Knesset.

(*) By Government decision of 18 February 1996, the powers and functions of the Minister of Economy and Planning were transferred to the Prime Minister, as from 1 April 1996.

Appearance
before the
Committee

18A. (a) For the purpose of preparing the conclusions and proposals of the Committee in accordance with sections 18 and 20 with respect to a certain inspected body, the chairman of the Committee may invite any person, who held office or fulfilled a function in the inspected body during the period covered by the Comptroller's report, to appear before the Committee in order to respond to the report in regard to matters with which the said person is connected; he may also invite any person who holds such office or fulfills such a function at the time or who held such office or fulfilled such a function in the past in order to respond to the report; the chairman of the Committee must invite such a person if he is requested to do so by the Committee or by at least three of its members; in this subsection, "held office or fulfilled a function", in an inspected body – including the exercise of a power with respect to it by law, or by virtue of being a member of its management or an employee

(b) Whenever a person who was invited according to subsection (a) did not appear, the Committee may, by a majority of its members, demand that he appear before it, as aforesaid; the demand shall be in writing, signed by the chairman of the Committee, and attached to it shall be a copy of the Comptroller's report or that part of it to which the demand is directed; the demand shall be submitted at least ten days before the time stipulated for his appearance.

(c) A person required to appear before the Committee by invitation or demand shall submit to it, at least two days before the time stipulated for his appearance, a written summary of his response, together with copies of the documents which he intends to submit to the Committee.

(d) Any person who received a demand to appear as aforesaid in subsection (b) and did not do so, and did not show a justifiable reason for such, is liable to a fine.

(e) A demand to appear according to this section shall not be sent to –

(1) The President of the State or the Chairman of the Knesset;

(2) In a matter under judicial consideration – a person holding judicial office.

19. The Comptroller shall submit the report on the balance-sheet showing the assets and liabilities of the State, for the consideration of the Minister of Finance, not later than the end of the month of March following the submission of the balance-sheet by the Minister of Finance, and shall lay it on the table of the Knesset at the same time as the report under section 15.

Comptroller's
report on
balance-sheet
of the State

20. (a) Upon completion of the inspection of the inspected bodies within the meaning of section 9(3), (4), (5), (6), (7), (8) and (9), the Comptroller shall prepare a report on the result of such inspection.

Comptroller's
report on
other
inspected
bodies

(b) The Comptroller shall submit each report on the inspection of an inspected body within the meaning of section 9(4) to the head of the local authority inspected, together with copies for all the members of such local authority; a copy of the report shall be submitted by the Comptroller to the Committee, to the Minister of Economy and Planning and to the Minister of the Interior.*

(c) Each report on the inspection of an inspected body within the meaning of section 9(3), (5), (6), (7), (8) and (9) shall be submitted by the Comptroller to the Committee; a copy of the report shall be submitted by the Comptroller to the Minister of Economy and Planning, to the Minister concerned and to the inspected body; but a copy of such a report on an inspected body within the meaning of section 9(9) shall only be submitted by the Comptroller to the inspected body itself.*

(d) After publication under section 27 of a report submitted to the Committee under subsection (b) or (c) or of an opinion under section 21, the Committee may lay its conclusions and proposals as to the report or opinion on the table of the Knesset and, if it deems it necessary to do so in view of the special importance of the matter, may ask the Knesset's approval for such conclusions and proposals.

21. The Comptroller shall, if requested to do so by the Knesset, the Committee or the Government, prepare an opinion as to any matter within the scope of his functions.

Opinion

(*) By Government decision of 18 February 1996, the powers and functions of the Minister of Economy and Planning were transferred to the Prime Minister, as from 1 April 1996.

CHAPTER FIVE: THE COMPTROLLER'S OFFICE

Staff of the
Comptroller's
Office

22. (a) The staff of the Comptroller's Office shall have the same status as other State employees, but as regards the receipt of instructions, and as regards dismissals, it shall be under the sole authority of the Comptroller.

(b) (1) The prohibitions applying to the Comptroller under section 7(a) shall apply also to such members of the staff of his Office as are employed in inspection work, but the Comptroller may, upon the request of a staff member as aforesaid, permit him to do any of the things enumerated in section 7(a)(2), (3) or (4) (hereafter - the activity), if in his opinion the activity does not infringe upon the inspection work or create a conflict of interests; the aforesaid permission does not exempt the staff member from meeting the requirements of any law or custom regulating the activity.

(2) A staff member as aforesaid in paragraph (1) who leaves his post shall not, save with the approval of the Comptroller, be employed by an inspected body within two years from the day of leaving.

(c) In carrying out his functions, the Comptroller may, to the extent that he deems it necessary to do so, avail himself of the assistance of persons who are not members of the staff of his Office.

Duty of
secrecy

23. The staff of the Comptroller's Office and any person with whose assistance the Comptroller carries out his functions shall keep secret any information obtained by them in the course of their work and shall give a written undertaking to such effect upon starting work.

Budget of the
Office

24. The budget of the Comptroller's Office shall be determined by the Finance Committee of the Knesset, upon the proposal of the Comptroller, and shall be published together with the budget of the State. The Finance Committee may, upon the proposal of the Comptroller, approve changes in the budget of his Office.

Financial
report to
Committee

25. After the expiration of the financial year, the Comptroller shall submit the financial report of his Office for the approval of the Committee.

CHAPTER SIX: MISCELLANEOUS PROVISIONS

26. The Comptroller and any person appointed by him for that purpose with the approval of the Committee shall, mutatis mutandis, have all the powers referred to in sections 8 to 11 and 27(b) and (d) of the Commissions of Enquiry Law, 5729-1968.

Powers of
commission of
enquiry

27. (a) Reports of the Comptroller and an opinion under section 21 may be published at the expiration of the financial year in which they were given; provided that the Comptroller, the Minister of Economy and Planning or the Committee may permit them to be published before then. (*)

Publication

(b) Notwithstanding the provisions of subsection (a), the Committee may, having regard to the necessity of safeguarding the security of the State or in order to avoid an impairment of its foreign relations or its international trade relations, decide, after consultation with the Comptroller, that the whole or a part of any report or opinion as aforesaid shall not be published.

(c) At the expiration of every financial year, the Comptroller shall lay on the table of the Knesset a list of the reports and opinions given by him during the financial year and permitted for publication under the provisions of this section.

(d) In this section, "report" does not include the annual report under section 15.

28. (a) The following are liable to imprisonment for a term of one year or to a fine of 600 pounds (**) or to both such penalties:

Penalties

(1) a person who publishes the annual report or a part thereof or of the contents thereof before it is laid on the table of the Knesset;

(2) a person who publishes any report or opinion or a part thereof or of the contents thereof in contravention of the provisions of section 27;

(*) By Government decision of 18 February 1996, the powers and functions of the Minister of Economy and Planning were transferred to the Prime Minister, as from 1 April 1996.

(**) Updated periodically.

(3) a person who without obtaining the Comptroller's permission publishes the results of an inspection carried out by the Comptroller.

(b) The provisions of this section shall not release a person from criminal responsibility under any other law.

Acting
Comptroller

29. If the Comptroller is temporarily unable to carry out his functions, the Committee shall appoint an Acting Comptroller for a period not exceeding three months; the Committee may extend the appointment for additional periods, provided that the sum total of all the periods served by the Acting Comptroller shall not exceed six months; if the Comptroller is unable to carry out his functions for a period of six consecutive months, he shall be considered to have resigned.

Material not
to serve as
evidence

30. (a) No reports, opinions or other documents issued or prepared by the Comptroller in the discharge of his functions shall serve as evidence in any legal or disciplinary proceeding.

(b) A statement received in the course of the discharge of the Comptroller's functions shall not serve as evidence in a legal or disciplinary proceeding, other than a criminal proceeding in respect of testimony on oath or affirmation obtained by virtue of the powers referred to in section 26.

CHAPTER SEVEN:

INVESTIGATION OF COMPLAINTS FROM THE PUBLIC

31. (Repealed).

Unit for
investigation
of complaints

32. (a) The Public Complaints Commissioner (hereafter in this translation - "the Commissioner") shall carry out his functions with the assistance of a special unit in the State Comptroller's Office, to be known as the Office of the Public Complaints Commissioner. The Director of the Commissioner's Office shall be appointed by the Committee upon the proposal of the Commissioner and shall be directly responsible to him. The duty of announcing the vacancy under section 19 of the State Service (Appointments) Law, 5719-1959, shall not apply to the appointment of the Director of the Commissioner's Office.

(b) If the post of Director of the Commissioner's Office falls vacant or if the Director is for any reason unable to

carry out his functions, the Commissioner may entrust the carrying out of such functions to another person for a period not exceeding three months.

33. Any person may submit a complaint to the Commissioner. Complaint by whom

34. A complaint submitted in writing or taken down according to the complainant's oral statement shall be signed by the complainant and shall indicate his name and address. Modes of submitting a complaint

35. A complaint by a prisoner within the meaning of the Prisons Ordinance [New Version], 5732-1971, shall be submitted in a closed envelope, and the Commissioner of Prisons or a person empowered by him in that behalf shall forward it unopened to the Commissioner. Complaint by prisoner

36. A complaint may be submitted against one of the following: Complaint against whom

(1) an inspected body within the meaning of paragraphs (1) to (6) of section 9;

(2) one of the bodies referred to in paragraphs (7) and (8) of section 9, to the extent that the Committee or the Commissioner has decided that this chapter shall apply in respect thereof and notice to such effect has been published in Reshumot;

(3) an employee, office-holder or bearer of any function in any such body as referred to in paragraphs (1) or (2) of this section.

37. The subject of a complaint may be – Complaint about what

(1) an act directly injurious to, or directly withholding a benefit from, the complainant and –

(2) if the complainant is a Member of the Knesset – also an act directly injurious to, or directly withholding a benefit from, another person,

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

Complaints
not to be
investigated

38. The following complaints shall not be investigated:

- (1) a complaint against the President of the State;
- (2) a complaint against the Knesset, a Committee of the Knesset or a Member of the Knesset in respect of an act done in, or for the purpose of, the discharge of his functions as a Member of the Knesset;
- (3) a complaint against the Government, a Committee of Ministers or a Minister as to his activity as a member of the Government, except his activity as the person in charge of a Ministry or sphere of activity;
- (4) a complaint against a judicial act of a court or a judge, of a tribunal or a member thereof or of a committee constituted by enactment or a member thereof;
- (5) a complaint as to a matter pending in a court or tribunal or in which a court or tribunal has given a decision with regard to the substance thereof;
- (6) a complaint by a person serving on regular service, or on active service in the reserves, under the Defense Service Law [Consolidated Version], 5746-1986, with regard to service arrangements, terms of service, or discipline;
- (7) a complaint by a police officer or prison officer with regard to service arrangements and terms of service or discipline in the Israel Police or the Prison Service;
- (8) a complaint by a State employee, or by an employee of a body referred to in section 36, in a matter relating to his service as an employee; but there shall be investigated an act alleged to be contrary to the provisions of any law or regulations, the State Service Regulations, a collective agreement or general arrangements prescribed on behalf of the State Service Commissioner or, in the case of a body referred to in section 36, similar general arrangements.

39. The following complaints shall not be investigated unless the Commissioner finds that there is a special reason justifying the same:

Complaints only to be investigated for special reason

(1) a complaint in a matter, other than of the class of matters referred to in section 38(5), in which a decision has been given against which a contestation, objection or appeal can be, or could have been filed under any law;

(2) a complaint filed after a year has elapsed from the date of the act to which it relates or the date on which such act became known to the complainant, whichever is later.

40. (a) When a complaint has been filed, the Commissioner shall open the investigation thereof unless it appears to him that it does not comply with section 34, or that it does not come within the scope of section 36 or 37, or that it should not be investigated for one of the reasons enumerated in sections 38 and 39, or that it is vexatious or intended merely to annoy.

Opening of investigation

(b) In the cases referred to in subsection (a), the Commissioner shall notify the complainant in writing that he will not deal with the complaint, stating his reasons.

41. (a) The Commissioner may investigate a complaint in any manner he thinks fit and shall not be bound by rules of procedure or rules of evidence.

Modes of investigation

(b) The Commissioner shall bring the complaint to the knowledge of the person or body complained against and, if such person is an employee as specified in section 36(3), also to the knowledge of his superior (hereafter referred to as "the superior") and shall give him, it or them a suitable opportunity to answer it. The Commissioner may require the person or body complained against to answer the complaint within the period specified in his request.

(c) The Commissioner may hear the complainant, the person or body complained against and any other person if he deems it useful so to do.

(d) For the purpose of the investigation, the Commissioner may require any person or body to give him, within such period and in such manner as he shall prescribe in the request, any

information or documents likely, in his opinion, to assist in the investigation of the complaint. A person or body required to deliver information or a document as aforesaid shall comply with the request. The provisions of this subsection shall not derogate from the provisions of sections 47 to 51 of the Evidence Ordinance [New Version], 5731-1971.

Discontinuance
of
investigation

42. The Commissioner may discontinue the investigation of a complaint if he is satisfied that one of the grounds justifying the non-opening of an investigation exists or that the matter to which the complaint relates has been rectified or that the complainant has withdrawn the complaint. In this case, he shall notify the complainant, the person or body complained against and the superior, in writing, that he has discontinued the investigation, stating his reasons.

Consequences
of
investigation

43. (a) Where the Commissioner finds that the complaint is justified he shall notify the complainant, the person or body complained against, and if he so deems fit, the superior, to such effect, stating his reasons. He may set out a summary of his findings in his reply, and may point out, to the person or body complained against and to the superior, the need to rectify a defect revealed by the investigation and how and by what time it is to be rectified.

(b) The person or body complained against or the superior shall, within the time referred to in subsection (a), inform the Commissioner of the steps which have been taken. If he or it fails to do so, or if the information does not satisfy the Commissioner, the Commissioner may bring the matter to the knowledge of the Minister concerned or of the Committee.

(c) Where the Commissioner finds that the complaint is not justified, he shall notify the complainant, the person or body complained against and, if he so deems fit, the superior, to such effect, stating his reasons. He may set out a summary of his findings in his reply.

(d) Where the investigation of the complaint gives rise to the suspicion that a criminal offence has been committed, the Commissioner shall bring the matter to the knowledge of the Attorney-General; and he may do so where the investigation of a complaint gives rise to the suspicion that a disciplinary offence has been committed under any law.

44. (a) A notification by the Commissioner under section 43(a) or (c) shall not contain or disclose any material or information which in the opinion of the Prime Minister or the Minister of Defense is a matter of State security or which in the opinion of the Prime Minister or the Minister of Foreign Affairs is a matter of foreign relations or international trade relations of the State.

Restrictions
on
notification

(b) Where it appears to the Commissioner that his notification is likely to contain or disclose any material or information as referred to in subsection (a) and neither the Prime Minister nor the Minister of Defense or the Minister of Foreign Affairs has expressed an opinion as specified in that subsection, the Commissioner shall ask the opinion of the Prime Minister or the Minister of Defense or the Minister of Foreign Affairs, as the case may be, before making his notification.

(c) The Commissioner shall be exempt from stating his findings or reasons –

(1) where the complaint relates to an appointment to a particular post or the assignment of a particular function;

(2) where in his opinion the material or evidence may unlawfully prejudice the right of any person other than the complainant;

(3) where in his opinion the disclosure of the material or evidence will involve the disclosure of a professional secret, or of secret information, within the meaning of any law.

45. (a) The decisions and findings of the Commissioner as to a complaint –

Rights and
relief

(1) shall not grant to the complainant or any other person any right or relief in any court or tribunal which he did not previously have;

(2) shall not prevent the complainant or any other person from exercising any right or applying for any relief to which he is entitled; but where a time-limit is set thereof by any enactment, the submission or investigation of the complaint shall not entail an extension of time.

(b) No court shall entertain an application for relief against the decisions or findings of the Commissioner in the matter of a complaint.

Complaint by
public servant
who has
exposed acts
of corruption

45A. Notwithstanding anything contained in section 38(8) –

(1) a complaint by an employee referred to in section 36(3), other than a police officer, prison officer or soldier (such an employee hereafter in this chapter referred to as "the employee"), about an act referred to in section 37 by which his superior reacted to his reporting, in good faith and in accordance with proper procedure, any acts of corruption committed in the body in which he is employed, shall be investigated under the provisions of this chapter, subject to sections 45B to 45E.

(2) a complaint by an employee, who is an internal auditor in a body referred to in section 36(1) or (2), other than a police officer, prison officer or soldier, relating to his removal from that post or to an act contrary to the provisions of any law or regulations, the State Service Regulations, a collective agreement, or general arrangements prescribed on behalf of the State Service Commissioner, or similar general arrangements, which is directly injurious to or directly withholds a benefit from the complainant and which was committed by his superior in reaction to his activities in fulfilling his function as internal auditor – shall be investigated under the provisions of this chapter, subject to sections 45C to 45E.

Complaint
only to be
investigated
for special
reason

45B. Where the Commissioner finds that there is a reason justifying it, he may investigate a complaint under section 45A(1) even if the employee reported the acts of corruption otherwise than in accordance with proper procedure.

Relief

45C. (a) The Commissioner may make any order he deems right and just, including a provisional order, to protect the rights of the employee, having regard to the proper functioning of the body in which he is employed.

(b) Where the complaint relates to the dismissal of the employee, the Commissioner may order revocation of the dismissal

or the award of special compensation to the employee, in money or in rights.

(c) The Commissioner may order the transfer of the employee to another post in the service of his employer.

(d) An order under this section shall be binding on any superior of the employee and on the employee himself, and a person who contravenes it commits a disciplinary offence. But their responsibility for a disciplinary offence, shall not detract from their criminal responsibility for the contravention of that order.

45D. The Attorney-General may request the Commissioner to reconsider a decision given under section 45C. The State Service Commissioner may so request in the case of a complaint by a State employee; in the case of a complaint by someone who is not a State employee, the head of the inspected body may also so request.

Reconsideration

45E. The submission of a complaint under section 45A or 45B otherwise than in good faith, or vexatiously, shall be a disciplinary offence.

Submission of complaint otherwise than in good faith

46. (a) The Commissioner shall each year submit to the Knesset, at the beginning of its session, a report on his activities, containing a general survey and an account of the handling of selected complaints:

Report

(b) The Commissioner may, prior to the submission of the annual report, submit to the Knesset a special report.

(c) When a report has been tabled in the Knesset, the Committee shall consider it and shall submit to the Knesset its conclusions and proposals for approval.

(d) A report under this section shall not be published before being tabled in the Knesset.

(e) The provisions of section 44 shall also apply, mutatis mutandis, to a report under this section.

47. (a) Sections 22, 23, 26, 28 and 30 shall apply, mutatis mutandis, for the purposes of this chapter.

Application of provisions

(b) The provisions of this chapter shall not derogate from the power of the State Comptroller to make use in his other activities of material which reached him in connection with a complaint, whether or not he has investigated it.

Priority of
powers and
status

48. The provisions of any law according to which there shall be appointed in an inspected body a person, whose function is to investigate complaints against that body, shall not derogate from the powers and status of the Public Complaints Commissioner under this law.

