



STATE OF  
ISRAEL

# **THE OMBUDSMAN ANNUAL REPORT 29 2002**

**Selected Chapters**



OFFICE OF  
THE STATE COMPTROLLER  
AND OMBUDSMAN

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*The Twenty-Ninth Report of the Ombudsman* is hereby submitted to the Knesset.

The complaints described in this report deal with three main areas: defects in providing responses to the public's enquiries, illegal collection of fees and defects in tenders for the filling of posts.

All too often the citizen finds himself helpless when confronting government authorities; he repeatedly requests the authority's assistance in matters of concern to him, or an explanation of a decision given which concerns him, or information in a matter within the jurisdiction of the authority. However, he finds that despite his repeated requests he receives no response to his questions, or he receives responses that are irrelevant.

Generally speaking, in these circumstances the citizen does not turn to the courts, their proceedings being inherently lengthy and costly. In many cases he turns to the Ombudsman from whom he can receive relatively prompt assistance in his matter at no expense. Indeed, many of the complaints concerning lack of response to public queries, or irrelevant responses, were resolved due to the intervention of the Ombudsman.

It should be noted that a query addressed to the Ombudsman does not mean that the applicant requests an affirmative answer from the authority, or that

his objection be accepted. He seeks to receive a reasoned response and that his repeated requests not be ignored.

Another problem addressed by some of the complaints described in the report is the unauthorized collection of compulsory fees and payments. Section 1(a) of the Basic Law: The State Economy, states that taxes, compulsory loans and other compulsory payments shall not be imposed, nor shall their rates be changed except by, or according to, law. Despite this provision, some local authorities demanded that their residents pay fees for various services, even though there was no statutory basis for collecting a fee for those services. Following my ruling, the authorities reimbursed the residents for the unauthorized collection of fees.

Filling positions in the civil service is a subject that arises frequently on the public agenda. Filling a post by way of a tender - internal or public - is intended to ensure that the best and most qualified candidate be accepted for a position and that the appointment for an office be made on the basis of relevant considerations, while ensuring the principle of equality in the proceedings, and without bias. This report describes three<sup>1</sup> complaints concerning tenders for managerial positions in public bodies. In these cases the unsuccessful candidates complained about inequality and unfairness in the tender proceedings. When the investigation revealed that their complaints were justified, I informed those bodies of the need to cancel the appointments of the winners of the tender to the position. Finding complaints to have been justified does not mean that the complainants ought to have won the tender. It is intended to indicate that those conducting the tender were not careful to ensure equality and fair competition, which are the life force of the laws of tender.

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1 This translation includes two of the complaints.

Most of the bodies to which I indicated the need to correct defects which were revealed by the investigations of the Office of the Ombudsman, implemented my rulings and amended the defects. In the one exceptional case in which the body complained against failed to comply with my ruling, I brought the matter to the State Audit Affairs Committee of the Knesset and the defect was rectified.

A handwritten signature in black ink, appearing to read 'E. Goldberg', with a long, sweeping horizontal stroke extending to the right.

**Eliezer Goldberg**

State Comptroller  
and Ombudsman

Jerusalem, 2003

## **TABLE OF CONTENTS**

### **General Summary**

1. Powers and areas of activity of the Ombudsman .....	11
2. Submitting a complaint .....	13
3. Data on the number of complaints and their outcome .....	14
4. Application of lessons learned from the investigation beyond the specific complaint .....	16
5. Complaints of discrimination against women .....	17
6. International relations.....	18

## **SUMMARY OF SELECTED CASES**

### **Provision of Services to the Public**

1. Failure to respond to public's enquiries.....	23
--	----

### **Ministry of Education**

2. Prolonged delays in transferring payment to teacher .....	31
--	----

### **Ministry of Labor and Welfare**

3. Reduced payment of income tax due to employer's mistake .....	35
--	----

## **Ministry of Transportation**

4. Absence of manned telephone response in licensing department  
telephone information center..... 39

## **Local Authorities**

5. Fee for examining construction files ..... 43
6. Faulty handling of application to transfer parking report onto  
name of driver who committed parking offense ..... 45
7. Maltreatment of employee following exposure of acts of  
corruption ..... 47
8. Defects in tender procedures for position of director of theater .... 53

## **National Insurance Institute**

9. Defective tender proceedings for selection of branch manager ..... 59
10. Return of mistakenly overpaid pension payments ..... 65
11. Deduction of debt in absence of decision regarding objection  
to debt..... 72

## **Clalit Health Services**

12. Requiring consent of both parents for release of medical  
information regarding minor ..... 77

## **APPENDICES**

1. Table 1: Breakdown of Complaints by Agencies Complained  
Against ..... 83

2. Table 2: Breakdown of Complaints by Principal Subject .....	87
3. Graphs: Comparison of Number of Complaints and Outcome of Investigations .....	90
4. Offices of the Ombudsman and Branch Offices Accepting Oral Complaints: Addresses and Reception Hours .....	97
 <b>BASIC LAW: THE STATE COMPTROLLER .....</b>	 101
 <b>STATE COMPTROLLER LAW, 5718-1958</b> <b>[Consolidated Version] .....</b>	 107



# GENERAL SUMMARY

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## **1. POWERS AND AREAS OF ACTIVITY OF THE OMBUDSMAN**

The State Comptroller also serves in the role of Ombudsman. He discharges this function by way of a special unit in the State Comptroller's Office, known as the Office of the Ombudsman. The Ombudsman investigates complaints against bodies that are statutorily subject to audit by the State Comptroller, including government ministries, local authorities, state enterprises and institutions and government companies, as well as their employees. The State Comptroller Law, 5718-1958 [Consolidated Version] (hereafter - the Law or the State Comptroller Law) regulates the Ombudsman's powers and his method of investigating complaints.

There are certain bodies engaged in the provision of services to the public which the law does not authorize the Ombudsman to investigate, such as banks, insurance companies and other non-governmental entities that serve the public. Complaints against these bodies are often forwarded to bodies statutorily charged with their supervision, examples being the Supervisor of Banks, the Supervisor of Insurance and the Director of Capital, Insurance and Savings.

The Ombudsman may investigate a complaint if it concerns an act - including an omission or delayed action - that is directly injurious to, or directly withholds a benefit from the complainant. In addition, the act must be contrary to law or without lawful authority, or contrary to proper administration, or it involves a too inflexible attitude, or gives rise to

flagrant injustice. Members of Knesset may also complain against an act that harms another person.

Once a complaint has been submitted, the Ombudsman initiates an investigation, unless the complaint does not comply with the statutory conditions for the investigation of complaints, or it is vexatious or intended to annoy, or the Ombudsman believes that he is not the proper body to investigate the complaint.

The Ombudsman may discontinue the investigation of a complaint if he is satisfied that one of the causes 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 or has not responded to the Ombudsman's requests addressed to him.

The Ombudsman may investigate a complaint in any manner he sees fit and is not bound by the rules of procedure or the rules of evidence. He may hear any person if he deems it beneficial and may require any person or body to give him any documents or information that are likely, in his opinion, to assist in the investigation of the complaint.

The State Comptroller Law enumerates the subjects that are not to be investigated and the bodies and officials against whom complaints will not be investigated: complaints against the President of the State, the Knesset, a Knesset committee or a Member of Knesset; against the Government and its committees and against a minister in his capacity as a member of government as opposed to his capacity as the head of a ministry or sphere of activity, and also against the Governor of the Bank of Israel, except with respect to his activities as Head of the Bank. Furthermore, the Ombudsman cannot investigate complaints against judicial or quasi-judicial acts, or concerning matters pending in a court or a tribunal, or in which a court or tribunal has given a decision.

The Ombudsman will not investigate a complaint regarding a matter in which a decision has been given, against which a contestation, objection or appeal can or could have been filed under any law, or 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, unless the Ombudsman finds a special reason justifying the investigation.

The Ombudsman does not have the authority to investigate complaints filed by soldiers, police officers and prison officers concerning service arrangements, terms of service or discipline. The Ombudsman will not investigate complaints of State employees and employees of other audited bodies in matters concerning the service of employees, except for an act alleged to be contrary to any law, regulation, the Civil Service Regulations, a collective agreement or similar general agreements. Exceptions to this are laid down in sections 45A-45E of the State Comptroller Law, which provide for the investigation of a complaint filed by an employee of an audited body against his superior who violated his rights in response to the employee's reporting, in good faith and in accordance with proper procedure, acts of corruption committed in the body in which he is employed, as well as the investigation of a complaint of an internal auditor of an audited body, regarding his transfer from his position, or any other damage he suffered at the hands of his superior, in response to his activities as internal auditor in the fulfillment of his role.

## **2. SUBMITTING A COMPLAINT**

Any person may submit a complaint to the Ombudsman free of charge. The complainant is only required to sign the complaint and state his name and address.

A person may submit a complaint in several ways: in writing - by mail, fax and even email - or orally at the branch offices of the Ombudsman in Jerusalem, Tel-Aviv, Haifa, Beer Sheva and Nazareth.

The addresses of the Ombudsman's offices and of the offices for filing oral complaints, their reception hours and the fax numbers and email addresses for the submission of complaints are listed in the appendices, on page 97.

### **3. DATA ON THE NUMBER OF COMPLAINTS AND THEIR OUTCOME**

Below are details of the number of complaints received in the year 2002 (hereafter - the period reviewed) and the outcome of the investigations of complaints completed during that period.

1. During the period reviewed 6,147 complaints were received, filed directly with the Ombudsman (in the year 2001, 7016 complaints were filed)<sup>1</sup>. The Ombudsman also received copies of hundreds of complaints that were originally submitted to one of the audited bodies. As a rule, the Ombudsman does not investigate these latter cases, on the assumption that the bodies concerned will investigate them. In such circumstances, the Ombudsman notifies the complainant that if the body to which he wrote does not reply, or if the reply does not satisfy him, he may complain directly to the Ombudsman, who will determine whether the Law provides for an investigation of the matter. In addition, the information in these complaints is forwarded to the units in the State Comptroller's Office charged with auditing these bodies.

2. During the period reviewed, of the 7,711 complaints handled (including 1,564 complaints remaining from the year 2001), the investigation of 5,891 complaints was completed, comprising 76.4% of all

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<sup>1</sup> The period reviewed in the Annual Report 28 (2001) covered 15 months.

the complaints. These complaints included 6,053 subjects for investigation, as described below.<sup>2</sup>

Outcome of Investigation	Subjects Investigated in the Period Reviewed	
	Number	Percentage
Subjects resolved substantively <sup>(1)</sup>	3,079	50.9%
Subjects whose investigation was halted <sup>(2)</sup>	1,277	21.1%
Subjects summarily rejected <sup>(3)</sup>	1,697	28.0%
<b>Total Subjects whose Investigation was Completed</b>	<b>6,053</b>	<b>100%</b>

(1) Of which 1,123 subjects of complaints were found to be justified (36.5% compared to 36.6% in the year 2001).

(2) The investigation of these subjects was discontinued at different stages, either because the matter complained of was rectified, or because the complainant withdrew his complaint, or because he failed to respond to questions posed by the Ombudsman, or because the Ombudsman believed that the Office was not the proper investigative body.

(3) With respect to these subjects it was found that they could not be investigated because they did not satisfy the criteria of sections 36 and 37 of the Law, determining against whom a complaint may be filed to the Ombudsman and which matters may be the subject of a complaint, or because they involved matters not subject to investigation, enumerated in sections 38 or 39 of the Law.

At the end of the period reviewed, the handling of 1,820 complaints had not been completed.

<sup>2</sup> The total number of subjects of complaints is greater than the number of complaints because some of the complaints refer to more than one subject.

3. (a) Data on the breakdown of the complaints in accordance with the bodies complained against and the outcome of their investigation are presented in Table 1 (p. 83) and Graphs 1-7 (pp. 90-96)

(b) Table 2 (p. 87) presents the breakdown of complaints in accordance with the principal subjects: welfare services, municipal services, services provided to the public and others.

#### **4. APPLICATION OF LESSONS LEARNED FROM THE INVESTIGATION BEYOND THE SPECIFIC COMPLAINT**

The investigation of complaints occasionally exposes defects that affect not only the individual complainant. In such circumstances the Ombudsman points out the need to rectify the general defect in order to prevent future complaints on the same matter. The Ombudsman's activity has led to many defects being corrected in this manner.

This report describes several cases in which the Ombudsman expressed the need to correct a general defect revealed by the investigation.

The Tel Aviv-Yaffo Municipality collected a fee from persons requesting to examine construction files in the archives of the Municipal Engineering Authority, despite the absence of any statutory provision authorizing the Municipality to charge such a fee. Following the Ombudsman's ruling, the Municipality stopped collecting the fee (complaint 5, p. 43).

Under the provisions of the Pensions Administration in the National Insurance Institute (hereafter - the NII) governing the repayment of an overpaid pension payment, the income test is the sole criterion for cancellation of the debt, even if the debt resulted from an act or omission of the NII. The Ombudsman ruled that every demand for the repayment of an overpaid pension payment should be considered in light of the specific circumstances of the case and that the income test cannot be the sole

criterion for cancellation of a debt. Following the Ombudsman's ruling, the NII informed the Ombudsman that these kinds of cases would be presented to the NII Debt Cancellation Committee, which would consider every case on its merits (complaint 10, p. 65).

Numerous complaints received by the Ombudsman revealed that it was impossible to receive a response from the manned information center of the licensing department of the Ministry of Transportation, despite their publicizing this service on the official stationery of the Ministry and in various notices sent to the public. The Ministry of Transportation informed the Ombudsman that it was aware of the problem and that the information center would in the future be managed by a company which had been chosen for this purpose. Nonetheless, the Ombudsman informed the Ministry of Transportation that for as long as it was unable to adequately provide a manned information center it must discontinue publicizing the service on the forms and letters sent out to the public (complaint 4, p. 39)

## **5. COMPLAINTS OF DISCRIMINATION AGAINST WOMEN**

Section 6(c) of the Authority for Promotion of Women's Status Law, 5758-1998 (hereafter - the Law) states as follows:

"The Ombudsman shall submit an annual report to the Knesset regarding all of the complaints filed with him which relate to discrimination against women as women and shall specify his conclusions."

Under section 6(a) of the Law, the Authority for the Promotion of Women (hereafter - the Authority) may submit to the Ombudsman any complaint it received connected with its area of activity, if it considers that the

Ombudsman should investigate the complaint and if the complainant has given her consent.

During the year reviewed the Authority did not submit any complaints to the Ombudsman concerning discrimination against women.

The Ombudsman received a complaint from a woman who claimed that upon her marrying, the Ministry of the Interior had changed her family name to that of her husband, without her having requested it to do so. The Ombudsman had investigated similar complaints in the past (see Annual Report 27, p. 36). Following the investigation of these complaints, the Ministry for Religious Affairs, in conjunction with the Ministry of the Interior, had instructed Marriage Registrars that the name chosen by the couple as their married name should be indicated in the special rubric in the marriage certificate. However, it emerged that if the couple had failed to give a formal declaration of their chosen married name in the Registration Officer's presence, then the computerized system unit of the Ministry of the Interior had automatically changed the family name of the woman to that of her husband. In light of the investigation of the complaint, the Registration Officer in the computerized system unit of the Ministry of the Interior directed that in these cases, the marriage should be registered without changing the family name and that such a change should be made only pursuant to the female spouse's explicit request.

## **6. INTERNATIONAL RELATIONS**

The State Comptroller and Ombudsman, Justice (Ret.) Eliezer Goldberg, the Director of the Office of the Ombudsman, Mr. Avigdor Ravid, Adv., and Mr. Yehoshua Roth, Senior Assistant to the State Comptroller and International Liaison, participated in the Sixth Convention of the European Ombudsman Institute (EOI), held in Krakow, Poland, in May 2002.



The conference dealt with the institution of the ombudsman at the beginning of the 21<sup>st</sup> century and the following subjects were discussed: the ombudsman's role in periods of crisis, the protection of rights of refugees in light of the international legislation and the efficiency of the ombudsman's work.

The Ombudsman, the Director of the Office of the Ombudsman and the Senior Assistant to the State Comptroller and International Liaison also participated in the Annual Meeting of the European Region of the International Ombudsman Institute, held in Slovenia in December 2002.

This conference dealt with the independence of the ombudsman and the subjects discussed were: the role of the ombudsman confronting the political system, the ombudsman and the civil society, the relation between the ombudsman and the press and the budgetary independence of the ombudsman.

## **SUMMARY OF SELECTED CASES**

# PROVISION OF SERVICES TO THE PUBLIC

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## **1. FAILURE TO RESPOND TO PUBLIC'S ENQUIRIES**

The Administrative Procedure Amendment (Statement of Reasons) Law, 5719-1958 prescribes a period of 45 days during which the civil servant must exercise his power and decide upon any application made to him. The obligation applies to a civil servant as defined in law, subject to the fulfillment of the following conditions: (a) an "application" was made to him, as opposed to any other kind of communication to the authority; (b) the application was in writing; (c) the public servant is requested to exercise a "power conferred by law". Section 2(b) of the Law enumerates circumstances which exempt the civil servant from responding to an applicant within the statutory period, directing him, however, to notify the applicant of the reason for not responding to his application within that period.

The Articles of the Civil Service (hereafter - the Articles) determine that a civil servant who received another kind of communication from any person or body, concerning a subject for which he is responsible, must give a reasoned response thereto within 14 days of receiving the communication, and if the communication concerns a subject outside the scope of his responsibility, he must refer it to the person responsible for that subject. The obligation imposed by the Articles is obviously applicable to all bodies

subject to the Articles or who have adopted it as their standard and binding procedure.

The civil servant's obligation to respond to the public's queries is also a derivative of the rules of proper administrative procedure, which bind every public body.

More than 50% of the complaints received by the Ombudsman regarding services provided to the public relate to a failure to respond, or respond appropriately, to an application. The high rate of complaints found justified in this area, ranging between 50%-90%, indicates a certain laxity on the civil servants' part in the fulfillment of the relevant statutory provisions.

Following are the details of complaints concerning the failure to respond to an application, or failure to respond appropriately to an application, and in which the Ombudsman's intervention was required in order for the body complained against to respond to the complainant:

1. A complainant received a warning from the Licensing and Supervision Department of the Ministry of the Interior, according to which he did not comply with the conditions for the renewal of the firearms license in his possession and that should he fail to comply with the conditions for renewal of his license, a criminal file would be opened against him for illegal possession of a firearm. The warning stated that if in the interim the license had been renewed, the addressee should request the licensing clerk to update the register in the Ministry of the Interior, to show that the license had been renewed. The complainant, who had renewed his license long before receiving the notification, promptly forwarded the documents attesting to the renewal of his license to the firearms licensing clerk in the Ministry of the Interior, requesting confirmation that the mistake had been rectified.

In his complaint to the Ombudsman he contended that though **more than a year and a half** had elapsed since he had contacted the Ministry of the Interior, he had not received any response to his request.

The firearms licensing clerk in the Ministry of the Interior informed the Ombudsman that since their office had received numerous similar notifications regarding the renewal of licenses, she had not replied to the applicant, but that following each such notification the date in the computer in the Ministry of the Interior had been revised immediately.

The Director of the Licensing and Supervision Department of the Ministry of the Interior notified the Ombudsman that the licensing clerk's answer contradicted the mandatory directives regarding replies to enquiries of the public and that these directives had been brought to the attention of national licensing clerks in the briefing they had received prior to the department's campaign for the renewal of licenses, within the framework of which the complainant had received the aforementioned warning. He also notified that the licensing clerk's answer to the Ombudsman violated rules of proper administration and that it was inconceivable that enquirers should not be notified that their requests had been received and processed. The Director of the Department instructed the licensing clerk to make the necessary arrangements for providing answers to the public's enquiries in anticipation of the additional campaign to be conducted by the Department.

2. In a letter to the Licensing Department of the Ministry of Transportation, the complainant objected to being charged a licensing fee. Only in the wake of the Ombudsman's letters to the Licensing Department and the Complaints Department of the Ministry, and after the passage of **almost a year** since the complainant's initial letter to the Licensing Department, did the complainant receive a relevant response to his letter. The Licensing Department initially explained that the protracted delay in

the processing of his letter was caused by the replacement of directors in the Department and subsequently that it was the result of "administrative difficulties in locating the material". The Ombudsman pointed out the defect in the actions of the Licensing Department and noted that the given explanations did not justify such a protracted delay in replying.

3. On 19.2.01 a complainant wrote to the Meuchedet Health Fund (hereafter - the Fund) requesting an explanation for the increase in his insurance premiums. In the absence of a reply, on 11.3.01 he sent a reminder to the Fund and on 3.5.01 he received an acknowledgment that his enquiry had been received. No response was forthcoming addressing the matter itself and in June 2001 he wrote to the Director General of the Fund, and to the Fund's Coordinator of Public Enquiries, requesting them to hasten the response. Since no response was given by the Fund despite the complainant's letter to the Director General of the Fund, in November 2001 he turned to the Ombudsman.

Only after the Ombudsman requested that the Fund explain its failure to reply to the complainant, did the latter receive a reasoned response from the Fund, on 20.2.02, **one year** after he had first enquired with the Fund. The Ombudsman pointed out to the Fund the unreasonable and protracted delay in responding to the complainant's enquiry.

4. Following an amendment to the criteria for receiving a firearms license as it applied to residents of the border region, many people attempted to contact the Firearms Department of the Ministry of the Interior in Netanya for details concerning their entitlement to a firearms license. But it was impossible to reach the Department during working hours; even written enquiries faxed to the Department remained unanswered. Numerous complaints on this count reached the Ombudsman.

The Ministry of the Interior explained to the Ombudsman that the district Licensing Department employed only one worker, whose duties included receiving the public and answering letters and telephone calls, in addition to numerous other tasks. Due to her immense work load, she was unable to respond to the public's enquiries.

The Ombudsman pointed out to the Ministry of the Interior the unreasonableness of being unable to establish telephone contact with, or even receive a written reply from, an office that was supposed to provide a service to the public.

The Ministry of the Interior informed the Ombudsman that the district office had employed a new worker in the Firearms Licensing Department in order to improve the service to the public.

5. The complainant, an advocate, wrote in May 2001 on behalf of her client to the National Council for Planning and Construction (hereafter - the Council) with a question concerning a particular Outline Plan. No response was received, so in July 2001 and in the middle of August 2001, the complainant sent two reminders to the Council. On 26.8.01 the complainant received a response to the effect that the subject was under investigation by the Planning Administration and that a detailed response would be sent to her at the earliest possible date. On 15.10.01 the complainant again turned to the Council secretariat. It was only after an additional enquiry, on 12.12.01, that the complainant finally received a detailed response, informing her that her complaint had been forwarded to the Department of Public Works to receive its response. After three additional enquiries, the complainant received a response from the Legal Department of the Ministry of the Interior, informing her that the appropriate procedure for deciding the question raised in her enquiry was the filing of a compensation claim for damage caused to her land by a plan which did not involve

expropriation. Consequently, the Council did not intend to adopt a position vis a vis her enquiry.

In her complaint to the Ombudsman the complainant expressed her dissatisfaction at having to wait **an entire year**, and after sending six reminders, only to receive the Council's answer that it was not the appropriate body for dealing with her question.

The Legal Department of the Ministry of the Interior explained that prior to establishing its position, it was required to forward the complainant's enquiry to those who had prepared the plan, in order to examine various factual issues and that it had no control over the period of time required by them to give an answer, nor for the content of the answer.

The Ombudsman pointed out to the Legal Department that this explanation was not satisfactory. Even if the investigation of the matter raised by the complainant was prolonged, for reasons unrelated to the Ministry of the Interior, it ought to have occasionally updated the complainant regarding the handling of her matter, explaining the reason for the delay.

6. The Supervision of Telecommunications and Mail Department in the Ministry of Communications (hereafter - the Department) receives enquiries from the public relating primarily to complaints against the various telecommunications companies under the supervision of the Department. The Ombudsman received a number of complaints from complainants whose enquires with the Department had remained unanswered for many months, notwithstanding repeated reminders. It was only the Ombudsman's intervention that led to the complainants' receiving reasoned answers to their enquiries.

The Ministry of Communications explained the delay in written responses to the enquiries, as the result of a manpower shortage in the Department for Public Enquiries. The Deputy Director General of the Ministry noted that at



the beginning of the year, the Director General of the Ministry had instructed the employees of the professional branches of the Ministry to allocate part of their time to answering public enquiries, with the aim of reducing the number of unanswered enquiries and to allow the permanent staff workers in the Department to respond to the current enquiries.

# MINISTRY OF EDUCATION

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## **2. PROLONGED DELAYS IN TRANSFERRING PAYMENT TO TEACHER**

1. In December 2001 the complainant submitted a complaint to the Ombudsman against the Ministry of Education (hereafter - the Ministry). Following are the details of the complaint:

During 1997 the complainant worked as a teacher at a school in Holon. In July 2001 the complainant received a letter from the District Treasury of the Ministry of Education in Tel-Aviv (hereafter - the Treasury) informing her that under the wage agreement signed by the teachers organization, the employees had received a fatigue increment for the period between January and August 1997 and that she was therefore entitled to receive the fatigue increment. For receipt of the payment she was requested to update the Treasury regarding the details of her bank to which payment should be transferred.

The complainant updated the Treasury with the requisite particulars on a number of occasions, by fax and telephone, but she did not receive the payment.

2. The Ombudsman's investigation revealed the following:

(a) The Treasury informed the Ombudsman that the fatigue increment of NIS 112.62 had already been transferred to the complainant's bank account at the beginning of November 2001, but the complainant presented

printouts from her account which showed that the sum had not been deposited in her account.

(b) The Ombudsman notified the District Treasurer accordingly, but the latter maintained that the sum had already been transferred to the complainant's account and as proof thereof, attached the complainant's salary slip which, it was claimed, attested to the transfer of the money to the complainant's bank account. An examination of the pay slip showed that the complainant's name did not appear and that it bore her identity number only. Responding to the Treasurer's claim, the complainant presented the Ombudsman with a certification from the branch of the bank which stated that its records did not indicate any credit for the sum of NIS 112.62 during the period from August 2001 to May 2002.

(c) An additional enquiry from the Ombudsman to the District Treasurer, to which the bank certification was appended, received no answer; nor did the Treasurer even respond to the various reminders sent by the Ombudsman.

(d) An investigation in the Head Office of the Ministry in Jerusalem indicated that any employee in the Treasury knows, or is supposed to know, that the absence of the name of the employee on the pay slip is clear evidence that the payment was not transferred to his account. After the Ombudsman informed the Treasurer of this, the Treasurer stated that in her response to the Ombudsman she had relied upon information given to her by a Treasury employee, according to which the money had been transferred to the complainant's account. The Treasurer added that she would ensure that the payment be made immediately and would certify this in writing to the Ombudsman. The Ombudsman never received such a response.

(e) It was only on 15.9.02 that the complainant notified the Ombudsman that at the beginning of September her account had been credited with the sum of NIS 112.62 and she demanded that the Ministry also be obligated to pay her linkage differentials on that sum, compensation for wage arrears, as well as compensation for the unnecessary expenses she had incurred due to the delay in the transfer of the sum (phone calls, sending letters by post and fax).

(f) Responding to an additional enquiry from the Ombudsman, the District Treasurer informed the Ombudsman that since the handling of the complainant's matter had been delayed, she had given instructions to credit the complainant with linkage differentials, from the day upon which she had been entitled to receive payment, and that the sum had been transferred to the complainant's account. In addition, a letter had been sent to the complainant apologizing for "the endless problems that had arisen in the releasing of the payment".

### **3. The Ombudsman ruled that the complaint was justified.**

In view of the omissions and the mistakes of the Treasury and the District Treasurer, the payment of linkage differentials only was insufficient to compensate the complainant. Therefore the Ombudsman ruled that the Ministry should compensate the complainant for her expenses for the sum of NIS 150.

The Ombudsman further ruled that the Ministry should adopt measures to prevent similar defects.

# MINISTRY OF LABOR AND WELFARE

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## **3. REDUCED PAYMENT OF INCOME TAX DUE TO EMPLOYER'S MISTAKE**

1. In the month of July 2001 the complainant filed a complaint with the Ombudsman against the Ministry of Labor and Welfare (hereafter - the Ministry). Following are the details of the complaint:

(a) The complainant, a single mother of two children, is an employee of the Ministry. In the year 2000 she received a demand from the Income Tax Authorities for the payment of NIS 5,000 - owed to Income Tax for the year 1999 (hereafter - the debt). After inquiring the matter with the Income Tax Authorities and the Ministry, the complainant discovered that the debt originated in a mistake in the Ministry's records, dating back to 1994, to the effect that the complainant had a third child. As a result of the mistaken record, she had received a tax credit in excess of her entitlement and the Ministry had deducted income tax from her salary at a rate lower than her tax liability.

(b) The complainant claimed to the Ministry that she was not obligated to bear the payment of the debt, given that the mistake originated in the Ministry and the Ministry should therefore bear the payment. After the tax authorities sent her a warning before imposing a lien by reason of the debt, the Ministry paid the debt to the Income Tax Authorities but demanded that

the complainant reimburse it for the sum paid, in monthly payments of NIS 200.

(c) In her complaint to the Ombudsman the complainant argued that the debt was caused by a mistake in the Ministry's records, which had occurred without her knowledge and without her involvement, and that she had already spent the money that she was now being requested to pay to Income Tax, in providing for herself and her children. She added that in view of her low salary, she was unable to pay the Ministry the payments it was demanding from her.

2. The Ombudsman's investigation revealed the following:

(a) There was no means of determining the reason for the mistaken recording of the Ministry, but the Ministry did not dispute the fact that the recording was the result of a mistake in its salary department and that the complainant had in no way contributed to the mistake.

(b) The sum added to her monthly salary, due to the mistake in the deduction of Income Tax, was small and could not have aroused her suspicions as to a mistake in the amount of her salary.

(c) From the year 1994, when the mistaken record was entered in the Ministry, until the month of February 1997, the Ministry's salary slips did not contain the personal details of the employee. In the month of 1997 the salary slips were changed to include personal details, including the number of children. However, examination of the complainant's salary slips since February 1997 showed that only for a few months did they indicate that the complainant had three children, and after that they indicated two children. The reason for this was that her daughter had reached the age of 18 and thus was no longer included as a child in the salary slips of the complainant.

(d) The mistaken recording only became known in the year 2000 (six years after it had occurred), in light of the Income Tax Authorities' demand of the complainant to repay the debt and after her enquiries regarding the nature of the request.

(e) In response to the complainant's request that the Ministry pay the debt imposed upon her, the Ministry informed her that the accountant of the Ministry would bring the matter before the Accountant General of the Ministry of Finance and would act in accordance with the latter's instructions.

(f) The Deputy Accountant General of the Ministry of Finance instructed the Ministry to pay the debt to Income Tax and to collect the sum of the debt from the complainant in monthly installments of NIS 200 and the Ministry had acted accordingly.

### **3. The Ombudsman ruled that the complaint was justified.**

The constellation of circumstances justify the complainant's claim that she is not obligated to return the sum of the debt to the Ministry, in reliance upon the case law of the Supreme Court and the Labor Court:<sup>1</sup>

(a) It is the Ministry's duty to handle the account of the complainant's salary and to calculate the deduction from her salary that is transferred to Income Tax and it is therefore responsible for the mistake.

(b) The complainant did not contribute to the Ministry's mistake, for she never reported having three children and her good faith was not in doubt.

(c) The Ministry had failed to discover the mistake over a long period, until the tax authorities demanded that the complainant pay the debt.

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<sup>1</sup> CA 780/70 *Tel Aviv Municipality v. Sapir*, 25 (2) IsrSct, p.486 & L.C. 39/99 *Yehoshua Asraf v. State of Israel*, TK.AR. 3 (2001) 1471

(d) There is no basis for imputing to the complainant "potential knowledge" of the mistake; the addition to her monthly salary not being of an amount to raise the suspicion of a mistake in the calculation of her salary.

(e) In light of all these circumstances, the complainant could rightfully assume that she was entitled to the entire sum of the salary paid to her.

(f) Having consideration for the complainant's personal situation (single mother of two children) and the amount of her salary, it may be presumed that during the entire period she had calculated her expenses on the basis of the salary she had received and that the additional sum served for her livelihood.

(g) In view of the above, the Ombudsman indicated to the Ministry that there was no basis for its request that the complainant return the sum it had paid to Income Tax.

(h) In light of the Ombudsman's ruling, the Ministry cancelled its request from the complainant.



# MINISTRY OF TRANSPORTATION

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## **4. ABSENCE OF MANNED TELEPHONE RESPONSE IN LICENSING DEPARTMENT TELEPHONE INFORMATION CENTER**

1. During the years 2001 and 2002 numerous complaints were filed with the Ombudsman against the Licensing Department (hereafter - the Department) of the Ministry of Transportation (hereafter - the Ministry), concerning the manned telephone response in the information center of the Department (hereafter - the Information Center).

In their complaints the complainants claimed that they had telephoned the Information Center during working hours in order to clarify matters connected with driving licenses and vehicle licenses, but there had been no response from the Center or the line was permanently busy. When they called after working hours, a taped recording was heard, requesting enquirers to call during working hours, but as said, calls made during working hours were never answered.

2. The Ombudsman's investigation revealed the following:

(a) On its official stationery as well as in its various notifications to the public, the Department indicates the possibility of contacting the Information Center, for example in a form attached to the driving license

sent by mail to the driver, which states: "manned response at telephone number 03-5027777 from 07.30 to 19.00, Sunday to Friday".

(b) The Information Center is intended to provide the public with information concerning driving licenses and vehicle licenses, as well as various other services which can be provided by telephone, in order to prevent the public from having to come to the licensing offices.

(c) The Ministry informed the Ombudsman that indeed as the complainants had found, it is not possible to receive a manned response at the telephone indicated in the notifications to the public. The Ministry claimed that this situation, which had existed for the last three years, was the result of a shortage in manpower to manage the Information Center. The issue had already been raised in August 1999 in an internal audit report published by the Comptroller of the Ministry. The Comptroller had directed the attention of the Director to the issue, but the problem had never been solved.

(d) The Ombudsman requested that the Ministry inform him if any measures were being adopted to enable the provision of a telephone service in the Information Center.

The Ministry responded to the Ombudsman that following a tender which it had issued in December 2002, a company had been chosen to manage and operate the Information Center but that it had not yet started operating the Center.

(e) The investigation revealed that in its notifications to the public, the Department continued to advertise the Information Center, despite the impossibility of receiving a response from the Center; this caused much bother and wasted time for anyone who tried, in vain, to receive a telephone response.

**3. The Ombudsman ruled that the complaints were justified.**

By continuing to advertise the possibility of receiving services from the Information Center, in the knowledge that it cannot supply this service, the Department misleads the public, causing it unnecessary bother and wasted time.

The Ombudsman therefore indicated to the Ministry that for as long as the telephone service is not being operated by the company that had won the tender, and for as long as the Ministry remains unable to provide adequately the services of a manned information center in any other way, it must discontinue the advertising of such a service in the forms and letters it sends to the public.

# LOCAL AUTHORITIES

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## 5. FEE FOR EXAMINING CONSTRUCTION FILES

1. Two complaints were filed with the Ombudsman against the Tel-Aviv-Yaffo Municipality (hereafter - the Municipality) concerning the same problem. Following are the details of the complaints:

(a) The complainants requested to examine the construction files located in the archives of the Engineering Authority of the Municipality and were requested to pay a fee of NIS 103 per file to examine the files.

(b) Complainant A requested to examine two construction files in order to verify whether a particular applicant, who had requested building permits in these buildings, had actually received concessions in respect of the provisions of the Outline Plan. He paid the fee and examined the files.

(c) Complainant B requested to examine a construction file in order to verify whether construction offences had been committed in relation to the building dealt with in the file. Upon being requested to pay the fee, he decided not to examine the file.

(d) In their complaints to the Ombudsman, the complainants requested that the Ombudsman examine the legality of the collection of the fee. Complainant A requested that if the Ombudsman determined that the fee was illegal, he should order the Municipality to refund the fee that was collected from him.

2. Replying to the Ombudsman's enquiry, the Municipality claimed that the fee was collected pursuant to regulation 2 of the Archives (Fees) Regulations, 5742-1982, which states the following:

"A person requesting to examine, whether by himself or via one of the Archive employees, archive material in any book, file, or registration (hereafter - certificate) of the institutions or of the category enumerated below, or who requests to receive a copy of a certificate as stated shall, upon filing the application, pay a fee in accordance with detail 1 of the Schedule in respect of each certificate:

Certificate of a court or tribunal;

Certificate of the land register;

Certificate regarding corporations;

Certificate regarding personal status;

Certificate regarding the payment of taxes or other compulsory payments;

Certificate of a public notary."

The Municipality claimed that since the construction files opened up in their entirety for the applicants' examination are likely to contain certificates as enumerated above, the collection of the fee was legal.

### **3. The Ombudsman ruled that the complaints were justified.**

Since a construction file is not included among the certificates enumerated in regulation 2, this regulation, which the Municipality relies upon, does not provide a legal basis for the collection of a fee for the examination of the construction files.

4. In the absence of any other legal provision authorizing the Municipality to collect such a fee, the Ombudsman indicated to the Municipality that it must discontinue its collection of a fee for the examination of construction files and that it must refund the money paid by complainant A.

5. The Municipality notified the Ombudsman that it had discontinued collection of the fee and that the payment had been refunded to complainant A against presentation of the receipt of payment.

## **6. FAULTY HANDLING OF APPLICATION TO TRANSFER PARKING REPORT ONTO NAME OF DRIVER WHO COMMITTED PARKING OFFENSE**

1. The complainant filed a complaint with the Ombudsman against the Municipality of Eilat (hereafter - the Municipality). Following are the details of the complaint:

(a) The complainant was a manager in a company. In June 1999 the company received a notification requesting payment of a fine in the complainant's name for a parking offence committed in Eilat by a car that the company had hired from a car rental agency (hereafter - the car).

(b) On 29.6.99 the Director General of the company notified the Municipality in writing of the details of the company employee who had driven the car and committed the parking offence, including his name, address and identity number, requesting that the parking report be transferred onto the driver's name. The Municipality did not reply to the Director General's letter.

(c) In April 2001 an advocate appointed by the Municipality as a tax collector (hereafter - the tax collector), sent the complainant a demand, pursuant to the Taxes (Collection) Ordinance to pay the debt of NIS 577 to the Municipality. This sum included the fine for the traffic offense, a double fine and an arrears increment.

(d) On 26.4.01 the complainant wrote to the tax collector notifying him that he had never driven the car and that the parking offence was recorded in his name only because the rental company had recorded his name as the hirer of the car. In his letter, the complainant again gave the particulars of the employee who had driven the car and requested that the parking report be transferred onto the name of that driver.

(e) In his response, the tax collector informed the complainant, in a letter dated 1.5.01, that the collection proceedings against him had been stayed and that his request had been forwarded to the appropriate bodies in the Municipality.

(f) On 31.12.01 the Municipality sent the complainant an additional demand that he pay the parking fine, notifying him of the campaign for the payment of reduced fines.

(g) On 24.1.02 the complainant again wrote to the Municipality, expressing his astonishment that despite the contents of the tax collector's letter of 1.5.01, the Municipality was again demanding payment of the debt for the parking offense. Once again he requested that the debt be cancelled immediately.

(h) In his letter of 14.3.02, the Director of the Municipal Parking Authority informed the complainant that his application had been rejected, since according to the Criminal Procedure [Consolidated Version] Law 5742-1982, "a transfer cannot be effected if two years have elapsed since the commission of the offence". On the letter there was also a handwritten

addition stating: "We received your details from the rental company...if you have any objections, please address them exclusively to the company you worked for and not to us".

(i) After receiving that letter the complainant filed the complaint with the Ombudsman.

(2) After the Ombudsman had pointed the matter out to the Municipality, the Municipality decided to cancel the parking fine and notified the complainant accordingly, also apologizing for the delay in responding to his letters.

(3) The Ombudsman notified the Municipality of the defects in its handling of the complainant's letters and of the need to take immediate action in order to prevent similar defects. To this purpose, the Municipality was requested to formulate guidelines for its employees who handled parking fines, requiring them to respond to enquiries made to the Municipality regarding parking fines and to address directly the contents of the enquiries and claims made therein.

## **7. MALTREATMENT OF EMPLOYEE FOLLOWING EXPOSURE OF ACTS OF CORRUPTION**

1. The complainant is the manager of the Sanitation Department in the Local Council of Giva't Ze'ev (hereafter - the Council). On 23.12.01 he filed a complaint with the Ombudsman claiming that in response to his having reported acts of corruption in the Council, the Head of the Council was maltreating him and had restricted his powers as manager of the Sanitation Department.



Following are the details of the complaint:

(a) On 20.11.01 representatives of the State Comptroller's Office interviewed the complainant in the course of an audit they were conducting in the Council (hereafter - the interview). In the interview the complainant gave information to the representatives of the State Comptroller's Office concerning various actions, some of which concerned acts of corruption.

(b) Immediately after the interview, the Head of the Council ordered the complainant to report to him regarding the information that he had given to the State Comptroller's Office, which the complainant did. The complainant claimed that the tone of the conversation between himself and the Head of the Council had been harsh.

(c) The complainant claimed that immediately after the conversation, the Head of the Council began a campaign of maltreatment against him:

On 25.11.01 the Head of the Council expelled him from the weekly staff meeting of the senior Council staff. From that time onwards he was no longer invited to the weekly staff meetings to which he had previously been permanently invited in his capacity as a department manager. One of his subordinates was invited in his place. He was forbidden to use the department car that for 17 years had served him, inter alia, for supervising and patrolling the town.

In a letter he received from the Secretary of the Council on 12.12.01 he was told that as a result of grave irregularities in his management of the department, he was being stripped of his authority to approve holidays for the employees and that this authority would be transferred to an employee who was his subordinate.

In a meeting conducted by the Secretary of the Council on 23.12.01 with the employees of the Sanitation Department, to which the complainant was

not invited, the Secretary informed the employees that the subordinate employee would hereafter be directly responsible for Department employees and the planning of work procedures, instead of the complainant.

2. In his complaint, the complainant requested that the Ombudsman order the Head of the Council to reinvest him with all the powers that were previously his, prior to 20.11.01, in his capacity as manager of the Sanitation Department.

3. The complaint was investigated in accordance with sections 45A-45E of the State Comptroller Law, 5718-1958 [Consolidated Version] (hereafter - the Law), which deal with a complaint filed by a civil servant concerning an infringement of his rights by his superior in reaction to his reporting in good faith and in accordance with proper procedure, acts of corruption committed in the body in which he is employed.

4. In his response to the Ombudsman, the Head of the Council denied the complainant's claims regarding the connection between the interview with the representatives of the State Comptroller's Office and the measures that he had adopted to restrict the powers of the complainant. The Head of the Council claimed that he had not even been aware that the interview had taken place and that the complainant had reported it to him on his own initiative.

The Head of the Council claimed that for many years there had been defects in the performance of the complainant and that his personal file was replete with warning letters and reprimands extending over the entire period of his employment. The Head of the Council further claimed that the complainant was known among Council employees as someone whose interpersonal relations were terrible and that this behavior had found expression in the staff meeting from which he had been expelled, after he

had insulted and humiliated the Council Engineer in the presence of the entire staff by disparaging his professional ability.

The Head of the Council claimed that the most serious infraction had been the complainant's behavior during the festival of Hanukah 5742 (10.12.01-14.12.01), when, according to him, the town remained without sanitation services and rubbish collection, as a result of the complainant having approved holidays for crucial employees of the Department, knowing that their absence would have severe repercussions on the town's cleanliness. In the aftermath of an examination conducted by the Secretary of the Council regarding the complainant's actions during the festival, the Secretary decided to transfer responsibility for work arrangements in the Sanitation Department to another employee, with the intention of preventing further harm to the cleanliness of the town.

According to the Head of the Council, it was these factors that had led to the curtailing of the complainant's powers. He further mentioned that an examination recently begun regarding irregularities in the complainant's approval of extra hours for the employees of the Department had vindicated this measure.

5. The Ombudsman's investigation revealed the following:

(a) On 20.11.01 the complainant had given the representatives of the State Comptroller's Office information concerning acts committed in the Council which could be considered acts of corruption. On the same day he was summoned to the office of the Head of the Council and ordered to give him a report of the information he had given to the representatives of the State Comptroller's Office.

(b) From that day onwards the Head of the Council initiated measures that led to the curtailing of the complainant's powers as the manager of the Sanitation Department. He was expelled from the weekly meetings of the

senior staff of the Council, he was denied his right to use the Council car and finally was divested of most of his powers as manager of the Sanitation Department, which were given to his subordinate employee in the Department.

(c) Seven letters were submitted to the Ombudsman which contained disciplinary notes, written to the complainant beginning as of 1990, the last of which was from 9.7.00. None of these had led to any measures being taken to curtail his powers.

(d) As for the Head of the Council's claim that he had curtailed the complainant's powers due to the complainant's defective actions during the Hanukah festival, the investigation revealed that the Head of the Council had already begun curtailing the complainant's powers before the festival. This emerged, *inter alia*, from the contents of the protocols of the weekly meetings conducted on 2.12.01 and 9.12.01. This fact raises a doubt as to whether the complainant was even responsible for the work arrangements of the Department employees during Hanukah.

The investigation further indicated that between 11.12.01 and 14.12.01 the rubbish truck for the removal of rubbish from the town worked every day on schedule; four workers were engaged as usual in the cleaning of the town, both in sweeping up and removing rubbish.

It should be noted that when the Secretary of the Council conducted his examination of the complainant's actions during Hanukah, he did not give the complainant the opportunity of stating his case and did not receive the complainant's account of events.

It should also be noted that even the decisions to curtail the powers of the complainant and downgrade his employment conditions were adopted without the complainant having been given the right to state his claims

before the Head of the Council or before the Secretary of the Council, as required by law.

The Ombudsman did not receive any data to substantiate the claim regarding irregularities in the complainant's approval of overtime for the employees of the Sanitation Department.

**6. The Ombudsman ruled that the complaint was justified.**

The findings of the investigation indicate that the exposure of acts of corruption by the complainant, done in good faith and in accordance with proper procedure, was the real reason for the curtailing of his powers.

This conclusion is supported by the chronological proximity between the interview with the representatives of the State Comptroller's Office, the details of which the complainant reported to the Head of the Council, and the curtailing of the majority of the complainant's powers and their transfer to his subordinate worker, as well as his expulsion from the weekly staff meetings, to which he had previously had a standing invitation.

The explanations given by the Head of the Council for the curtailing of the complainant's powers and for the additional measures adopted against him, are not consistent with the findings indicated by the Ombudsman's investigation. Not only that, but the complainant was not given the opportunity of stating his claims before the Secretary of the Council and the Head of the Council as required by law, before these measures were adopted against him.

7. In view of the above, the Ombudsman decided by virtue of his authority under section 45C(a) of the Law and after consideration of the facts in their entirety, to issue an order instructing the Head of the Local Council of Givat Ze'ev to restore all of the complainant's powers as the

manager of the Sanitation Department of the Council, as they had been until 20.11.01.

8. The Head of the Council informed the Ombudsman that he had executed the order issued by the Ombudsman.

## **8. DEFECTS IN TENDER PROCEDURES FOR POSITION OF DIRECTOR OF THEATER**

1. In October 2002 the complainant filed a complaint with the Ombudsman against the Local Council of Ganei Tikvah (hereafter - the Council). Following are the details of the complaint:

(a) On 5.7.02 and 12.7.02 an advertisement was published in the newspaper under the logo of the Council, stating: "Wanted: A Director for the Theater and Theater Gallery 'Mercaz Habama - Ganei Tikvah'".

(b) The complainant applied for the position publicized in the tender (hereafter - the position) and in a letter dated 29.7.02 was notified by the "Position Evaluation Staff" that following the initial selection, she had been found suitable for the job and was requested to send letters of recommendation and written specification of her merits and of her suitability for the position. The complainant complied and was subsequently invited to an interview with the Head of the Council, conducted in August 2002.

(c) After the interview, the secretary of the Head of the Council informed the complainant by telephone that she had passed the initial stages of the selection process and that she was invited to an additional interview with

two members of the Council administration, scheduled for 25.8.02. On that particular date the complainant was unable to come to an interview, since she was going abroad for a few days. In the same conversation, she asked the Head of the Council's secretary to set another date for the interview, following her return from abroad. The secretary told her that she would fix another date for the interview, as requested (hereafter - the additional interview).

Immediately after returning from abroad on 26.8.02, the complainant phoned the secretary and requested that she schedule the additional interview. The secretary told her that they would inform her of the date. Time passed and the complainant did not receive any notification regarding a date for the interview. She phoned the secretary a few times and each time was told that she would be informed of the date.

(d) On 6.10.02, a letter was sent to the complainant on stationery bearing the name of the Head of the Council, informing her that another candidate had been chosen instead of her. Immediately upon receiving the letter, the complainant wrote a letter to the Head of the Council protesting that she had not been invited to the additional interview as promised and that another candidate had been chosen without her having been given an appropriate opportunity to contend for the position. At the same time the complainant filed a complaint with the Ombudsman.

2. In its response to the Ombudsman's enquiry, the Council claimed that the position in question was in a non-profit organization (*amuta*) known as "Ganei Tikvah Arts and Culture" (hereafter - the Amuta), which operates the "Mercaz Habama" theater. The Head of the Council serves as chairman of the Amuta and the Council members are members of the Amuta, however the procedures for deciding upon the position were conducted by the Amuta and not by the Council. The Head of the Council had acted as

chairman of the Amuta and the members of the Council had acted as members of the Amuta. The Amuta management had made the decision regarding the candidate who received the position.

The Council claimed further that this was not the case of a tender. Choosing a person to fill the role did not necessitate a tender, both because the statutes dealing with duty of tenders do not apply to the Amuta and because the nature of the position, being of a unique professional character requiring knowledge and expertise, does not require a tender to be conducted in order to fill it.

3. (a) The Ombudsman's investigation revealed that the advertisement published in the paper regarding the position bore the logo of the Council and indicated the Council's fax number; it was the Council that had ordered the advertisement and financed its publication. The letters to the candidates were signed by the Head of the Council in his capacity as the Head of the Council and were written on Council stationery, bearing its logo. Inviting candidates within the framework of the selection process was done by the secretariat of the Council and interviews were conducted in the office of the Head of the Council and the interviewers were the Head of the Council and the members of the Council. The word "amuta" was not mentioned in any of the documents.

Even the Head of the Council's response to the Ombudsman on 10.10.02, which appeared on official Council stationery, stated explicitly that it was a tender and that the procedure was being conducted and financed by the Council.

(b) The Head of the Council notified the Ombudsman that the complainant had not been invited to an additional interview because over time a "more precise professional profile" had emerged regarding the characteristics required of the candidate, this being "proven stage



experience". The complainant lacked such experience and was therefore not suitable for the position. The Head of the Council had notified the complainant herself that this was the reason for her not being invited for an additional interview.

The Legal Advisor of the Council contended before the Ombudsman that the reason for her not being invited to a second interview was that the complainant "preferred a weekend holiday to an invitation for an interview" and that this reflects her attitude to the position and her candidacy for the position. The Legal Advisor further claimed in his letter that "in any event, there was no obligation to invite her for an additional interview, ... the examiner has absolute discretion and cannot be forced to employ someone who, in his opinion, is not suitable for the position."

(c) On 10.12.02 the Head of the Council notified the Ombudsman that a winner had been chosen for the position and supplied his name. This being the case, the Ombudsman found it appropriate to inform the winner of the defects that had arisen, *prima facie*, in the tender proceedings and requested his reaction, as someone likely to be harmed by a decision of the Ombudsman regarding the irregularity of the selection process. The winner never gave his response to the Ombudsman. Contrary to the notification of the Head of the Council that a winner had been chosen, the Legal Advisor of the Council notified the Ombudsman in his letter dated 16.12.02 that the management of the Amuta had not yet decided who was to receive the position.

In a letter dated 1.1.03, the Legal Advisor of the Council informed the Ombudsman that on 17.12.02 the management of the Amuta had decided to appoint the winner to the position in Mercaz Habama, which is managed by the Amuta.

(d) The investigation made it clear that there were no protocols or accurate records of the selection process for the candidates, or of the considerations determining the candidates' progress from one stage to the next in the selection process.

**4. The Ombudsman ruled that the complaint was justified.**

(a) The findings of the investigation showed that even if the theater itself was owned by the Amuta or was under its management, the process of choosing candidates was handled by the Local Council on behalf of the Amuta and not by the Amuta itself.

(b) A procedure consisting of publication of an advertisement in the papers on the Council's behalf, in respect of a position to be filled, with competition between the candidates and a process governing the selection and choice of the winning candidate, is a process of a tender. The type of the procedure is not determined by the term or name given by the ordering authority, but rather by the essence of the procedure. The procedure related to in the complaint is, in fact, a tender<sup>1</sup>.

(c) Even if the position was exempt from the obligation of tenders procedures as the Council claimed, once the Council had adopted the procedure of a tender it was subject to the basic principles of tenders law, including the obligation of fair and equality-based conduct, which obligate any public body.<sup>2</sup>

(d) The reason given by the Head of the Council for not inviting the complainant back for a second interview was her lack of "proven stage experience". However, the requirement of proven stage experience was not included among the requirements for the position as published in the

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1 See: G. Shalev, *Contracts and Tenders of Public Authorities* (Jer. Din), 1999, p.161.(Heb)

2 See: S. Hertzog, *The Law of Tenders* (Borsi) 2001, pp.40-41(Heb).

tender. "The emergence of a more precise professional profile" and the addition of this requirement during the selection process contravenes the law of tenders, nor was the complainant given the opportunity of addressing the additional condition which, as stated, was not included among the requirements for the position.

(e) The argument submitted by the Council's Legal Advisor regarding the reason for not inviting her for an additional interview is unacceptable. Prior to her trip, the complainant had requested to postpone the date of the additional interview; her request was accepted and she was told that another interview date would be set.

5. In view of all the above, the Ombudsman indicated to the Council that it must cancel the selection proceedings that were adopted, from the moment at which the complainant was first invited to an additional interview. This meant, inter alia, that the Council would have to cancel the appointment of the winner to the position.

# NATIONAL INSURANCE INSTITUTE

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## **9. DEFECTIVE TENDER PROCEEDINGS FOR SELECTION OF BRANCH MANAGER**

1. In July 2001 the complainant filed a complaint with the Ombudsman against the National Insurance Institute (hereafter - the NII). Following are details of the complaint:

(a) The complainant filed his candidacy in a public tender published by the NII for the position of branch manager of one of the branch offices of the NII, but was not selected for the position. He claimed that he was more qualified than the candidate who had been selected and that the candidate had been selected by reason of his political connections and not because of his experience or qualifications.

(b) Parallel to his complaint with the Ombudsman, the complainant also wrote to the Director General of the NII, requesting to be informed of the reasons for the choice of the winner and for his not having been chosen for the position. The Director General informed the complainant, inter alia, that the Administration of the NII had chosen the winner because they thought that he was the most suitable candidate and he did not intend to specify the reasons for the choice to the complainant.

2. (a) Section 23 of the National Insurance [Consolidated Version] Law, 5755-1995, stipulates that the Minister of Labor and Welfare is

permitted to prescribe provisions governing the appointment of NII branch managers.

Regulation 3(a) of the National Insurance Institute (Opening of Branches and Appointment of Managers) Regulations, 5733-1973, states that the Administration, which is the administrative and executive authority of the NII (comprising the Director General of the NII, the Assistant Director General and the deputies), shall appoint the branch managers.

(b) On 7.1.96 the Administration decided that all candidates for the position of branch manager would be invited to a complete aptitude test which, inter alia, would assess the candidate's analytical capacity and character traits and that a candidate's failure to take these tests would be regarded as the withdrawal of his candidacy.

3. The Ombudsman's investigation disclosed the following:

(a) The tender for the position specified among the required qualifications for the position: experience in managing a large working staff, judgment and assessment ability in decision making, ability to conduct high level negotiations, knowledge and understanding of the welfare services operating within the community and thorough familiarity with the National Insurance Law. The tender also stated that candidates would be required to pass aptitude tests and that the winner would be employed on a trial basis for twenty four months.

(b) About 50 candidates applied for the position of branch manager and the selection was conducted in three stages:

(1) Preliminary aptitude tests, which tested only the intellectual abilities of the candidates. After receiving the results of these tests, there was an initial gradation of the candidates by the Manager of the Selection and Assessment Department of the NII, the Deputy Manager of the Manpower

Division and a representative of the Legal Department. The gradation was determined by the grade received in the aptitude tests and according to the particulars appearing in the curriculum vitae and other documents appended to the application.

(2) An interview (of about 15 minutes duration) with the Selection Committee, comprising three deputy director generals of the NII. 21 candidates were invited to this interview chosen in accordance with the initial gradation as stated above.

(3) An interview with the NII Administration. Seven candidates were invited to this interview, having been recommended for the interview by the Selection Committee.

(c) In a memorandum of 29.5.02 written by the Manager of the Selection and Assessment Department and attached to the document specifying the initial grading of the candidates, the Manager wrote that it was important that all of the candidates who had passed the initial grading undergo complete aptitude tests, as customary when dealing with external candidates, for these tests "provide an indication of the personality traits of the candidates, their interpersonal talents, ability to function under pressure, ability to manage subordinates, ability to make independent decisions and handle difficulties, their sensitivity to others and a wide range of other traits which are particularly important for people intending to fill senior, sensitive and important positions such as the position being offered".

(d) The candidates did not undergo complete aptitude tests and consequently the Administration could not assess whether they possessed the requisite qualifications enumerated in the tender, i.e. the ability to conduct high level negotiations, the ability to make judgments and assessments in the decision making process, thus the branch manager had

been chosen without there having been an examination of all the qualifications demanded of candidates in the tender.

(e) The candidate that was selected by the NII's Administration had not even passed the preliminary aptitude tests, which all the candidates had undergone, and he was chosen in contravention of the requirement specified in the tender that all candidates pass aptitude tests.

(f) The protocol of the Administration meeting in which the winner of the tender was decided upon contained no indication of the particular reasons and considerations guiding the choice of the particular candidate and only mentioned, summarily, that he was chosen "by a majority, having consideration for his qualifications and extensive experience". The protocol indicates that the Committee did not receive the results of the aptitude tests given to the candidates.

(g) The Director General of the NII responded to the Ombudsman's enquiry, stating that he was unaware of the NII Administration's decision of 7.1.96 regarding the manner of choosing branch managers, since the decision was adopted prior to his assuming his position. The Director General stated that candidates had not been sent for complete aptitude tests in view of the large number of candidates and in order to save time and costs. According to the Director General, candidates had undergone a selection process involving a number of stages, including two personal interviews, and consideration was had for the candidates' personal backgrounds, their experience, articulateness and education.

The Director General claimed that passing the aptitude test is only one of various considerations to be taken into account, which also include personal background, experience, articulateness, education and the impression made in personal interviews. Consequently, even if a candidate had not passed the aptitude test, his candidacy was not to be summarily rejected, for he

may be suited in accordance with other parameters of equal and perhaps greater importance.

The Director General added that special significance had been attributed to the fact that the winner had experience in all matters related to receiving the public, given that a significant part of a branch manager's work involves dealing with all matters involved in receiving the public.

With respect to the protocol of the Administration's meeting, according to the Director General there is no need or justification for giving a full account of the proceedings of the meeting regarding the candidates for the position, for this would constitute a breach of privacy.

**4. The Ombudsman ruled that the complaint was justified.**

(a) The conditions of the tender specified that the candidates would be required to pass aptitude tests. The candidates who had participated in the tender had only performed the preliminary aptitude tests, but the winner had not passed these tests. Having specified this requirement in the tender, the publisher of the tender is obligated by it and cannot choose a person who does not comply with it.

(b) The candidates were not sent for a complete aptitude test, in contravention of the Administrator's decision of 7.1.96, which was valid at the time the tender was conducted. The Director General's explanation - that they were not sent for complete aptitude tests in order to save time and expenses - neither explains nor justifies the failure to conduct complete aptitude tests, at least for the final candidates who had successfully completed the preliminary test, as stated by the Manager of the Selection and Assessment Department in her memorandum of 29.5.01 as stated above.



(c) From the documents of the tender and the NII's answers to the Ombudsman, it emerges that within the framework of the selection procedures of the tender, not all of the qualifications specified in the tender were actually examined, among them: the ability to make judgments and assessments in the decision making process and the ability to conduct high level negotiations, both of which can only be tested by complete aptitude tests, as stated in the memorandum of the Manager of the Selection and Assessment Department.

(d) The qualifications of the winner in "the multitude of subjects involved in receiving the public", which according to the Director General were ascribed greater significance in the selection process, were not relevant to the choice of the winner, since they were not included among the qualifications required in the tender.

(e) The protocol of the Administration's meeting in which the winner was chosen contains no details of the reasons and considerations for his being chosen. Clearly, the privacy of the individual must be maintained, but this is achieved by ensuring that the contents of the protocol do not reach unauthorized hands. However, considerations of personal privacy cannot justify the failure to record in the protocol the reasons and considerations that led to a particular choice.

5. Before the Ombudsman made his decision, he contacted the winner, as a party liable to be harmed by the decision, and directed his attention to the fact that he had not passed the aptitude tests required in the tender. He was asked to address this point.

The winner responded that he had not received the results of the tests and that he was unaware of any defects in the process of his selection, but that he presumed that the bodies that had chosen him had done their work honestly and faithfully.

6. In view of all of the above, the Ombudsman indicated to the NII that the appointment of the winner must be cancelled and that a new and proper tender must be conducted for the position.
7. Following the ruling of the Ombudsman, the Director General of the NII gave notice to the winner terminating his work in the position and in the NII.

## **10. RETURN OF MISTAKENLY OVERPAID PENSION PAYMENTS**

1. In December 2000 the complainant filed a complaint with the Ombudsman against the National Insurance Institute (hereafter - the NII). Following are the details of the complaint:

The NII had been paying the complainant an old age pension since February 1996. In December 2000 the complainant received a demand to pay a debt of NIS 38,898, which had arisen from excess pension payments (hereafter - the debt). The demand came from the Tel-Aviv branch of the NII (hereafter - the branch).

- (b) In his complaint to the Ombudsman the complainant claimed that upon filing his application for an old age pension, he had given the NII all the details required and that if there had been a mistake in the payment of his pension, the NII should bear the consequences of the mistake. The complainant further complained that the NII had begun deducting the debt at the rate of 50% of the monthly pension paid to him.

2. (a) Section 315 of the National Insurance [Consolidated Version] Law, 5755-1995 (hereafter - the Law) states the following:

"Where the NII has paid, by mistake or illegally, a monetary stipend or other payment under this Law or under any other law, the following provisions shall apply:

(1) The NII is entitled to deduct the sums paid as above from any payment owing from it, whether in one payment or in several payments, as determined by the NII, having consideration for the position of the recipient of the payment and the circumstances of the matter;

(2) The NII may request the repayment of the entire sum that it paid, by mistake or illegally, if the recipient of the money did not receive the money in good faith."

(b) The guidelines issued by the Pensions Administration of the NII (hereafter - the pension provisions) regarding the repayment of a debt caused by the excess payment of stipends under section 315 of the National Insurance Law, stipulate that a debt created due to an action or omission of the NII, with respect to a debtor whose monthly income does not exceed 50% of the monthly average wage of a single person, or 75% of the monthly average wage of a couple, shall be cancelled in its entirety.

A debtor whose income is higher, but lower than twice the monthly average wage, shall be entitled to a partial cancellation of the debt. However, a debtor whose income and the income of his spouse exceed twice the monthly average wage, shall not be entitled to any cancellation even if the debt was caused exclusively by the NII.

The pension provisions further state that in the case of debtors receiving an old age pension from the NII, who received a general disability stipend

prior to reaching pension age, the debt shall be deducted from the old age pension at a monthly rate of 10% only.

(c) Section 1 of the Unjust Enrichment Law 5739-1979 (hereafter - the Enrichment Law) states:

"(a) Where a person obtains any property, service, or other benefit from another person without legal cause (the two persons hereafter respectively referred to as "the beneficiary" and the "benefactor"), the beneficiary shall make restitution to the benefactor, and if restitution in kind is impossible or unreasonable, shall pay him the value of the benefit."

Section 2 of the Enrichment Law states:

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

(d) In the case law of the Supreme Court addressing section 2 of the Enrichment Law, the Court ruled that the purpose of the protection conferred to a beneficiary under section 2 is to protect a beneficiary whose circumstances had changed for the worse in a manner that rendered his obligation of restitution unjust.

Regarding the circumstances that may exempt the beneficiary from the obligation of restitution, the Supreme Court stated:<sup>1</sup>

"A change in circumstances may exist for example, when the beneficiary is no longer in possession of the benefit he received and cannot reclaim it in order to restore it to the

<sup>1</sup> C.A. 588/87 *Cohen v. Shemesh*, 45 (5) P.D. 297,328. See also: C.A. 780/70 *Tel-Aviv Municipality v. Sapir*, 25 (2) P.D. 486, 494.

benefactor. Under these circumstances the obligation of restitution would cause him monetary loss. If the beneficiary has disposed of the benefit, believing in good faith that he received it lawfully and that it belonged to him, it would be unjust to oblige him to return it, for had he known that whatever came into his possession was not lawfully due to him, he would most certainly not have disposed of it."

A similar ruling was made by the National Labor Court:<sup>2</sup>

"Within the framework of the considerations under section 2 of the Law, consideration must be had on the one hand for the degree of the respondent's negligence, who for an extended period - ten years - did not discover its mistake... on the other hand, from the appellant's perspective, no evidence was presented to this Court regarding his lack of good faith when he received the payment. Naturally during that entire extended period, his actions were probably calculated in accordance with the amount of his salary..."

(e) Based on the case law pertaining to section 2 of the Enrichment Law, the Ombudsman has already ruled in previous complaints<sup>3</sup> that no request can be made for restitution of overpayment made through the fault of the paying body, in the following circumstances:

(1) The debtor in no way contributed to the overpayment and did not know that the payment was made in excess, or the reasons causing it.

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<sup>2</sup> L.A 39/99 *Asraf Yehoshua v. State of Israel*, Tak. Lab. 2001 (3) 1471.

<sup>3</sup> See Ombudsman Annual Report 6, p. 55; Annual Report 8, p. 82; Annual Report 25, p. 90; Annual Report 26, p. 23.

(2) The debtor has changed his situation for the worse following receipt of the payment. A change for the worse can also be the accumulation of a debt without his knowledge.

(3) A long time has passed from the time of the crystallization of the circumstances that led to the excess payment until its discovery.

3. The Ombudsman's investigation disclosed the following:

(a) The debt was caused by the payment of a dependent's supplement to the pension payment of the complainant, for his wife, from February 1996 to November 2000, during which period his wife had worked and had earned in excess of the sum entitling him to a supplement. In his application form for the pension payment filed in January 1996, the complainant had declared that his wife worked and had provided complete details of her income, according to which he was not entitled to any supplement for dependents and there is no dispute that the NII mistakenly paid him the dependent's supplement. The complainant was unaware of the mistake and that he was receiving excess payment.

(b) In November 2000 the complainant's wife filed her own application for pension payment and only then did it become clear to the branch that the complainant had been receiving the dependent's supplement for his wife, despite his not being entitled. The NII discontinued payment of the dependent's supplement to the complainant and began deducting from his pension payments the sums that had mistakenly been paid to him for some five years, at the rate of 50% of the allowance.

(c) The NII claimed to the Ombudsman that the debt should not be cancelled, since the incomes of the complainant and his wife were in excess of twice the monthly average wage and under the pensions provisions, a debt should not be cancelled for a person with that income, even if the overpayment was exclusively the NII's fault. The NII was not prepared to

consider the circumstances in their entirety, including the complainant's good faith, the long period that had passed from the crystallization of the mistake until its discovery and the fact that the complainant had changed his position for the worse, given that he had calculated his ongoing expenses in reliance upon the entire stipend being paid to him.

(d) In the course of the investigation it emerged that the complainant had received a general disability stipend prior to reaching pension age and that accordingly, under the pensions provisions, it was not permitted to deduct more than 10% from the monthly stipend. After the Ombudsman pointed this out to the NII, the latter reduced the deduction to the rate of 10% of the complainant's monthly stipend.

#### **4. The Ombudsman ruled that the complaint was justified.**

(a) The NII's right to deduct debts under section 315 of the National Insurance Law is not unlimited and must be exercised "having consideration for the situation of the receiver of the payment and the circumstances of the matter". The NII must exercise its discretion in accordance with the criteria set by case law regarding restitution of sums paid in excess, on the basis of the general principle enunciated in section 2 of the Enrichment Law, according to which exemption from restitution, either full or partial, may be considered under circumstances that render the restitution unjust.

(b) According to the accepted interpretation of section 2 of the Enrichment Law and of section 315 of the National Insurance Law, consideration is had, inter alia, for the extent to which the payer contributed to the mistake, as opposed to the extent of contribution of the receiver of the payment, the receiver's reliance upon the payer's conduct, the resultant change for the worse in his position (for example, the fact that he has

already spent the money he received) and the time period during which the mistake was made.

(c) The exercise of the income criterion as one of the parameters for the cancellation of debts caused through the fault of the NII, as used by the NII's Pensions Administrator, is legitimate as such, given that it can promote equality. However, this criterion cannot supercede statutory provisions which mandate the consideration of additional factors and it does not preclude consideration of the special circumstances of the case brought for resolution.

(d) The Ombudsman ruled that in the matter of the complainant there were circumstances justifying reduction of the sum of the debt and fixing it at 20% of the total debt. The Ombudsman took into consideration the NII's exclusive responsibility for the mistake that had caused the accumulation of the debt and its failure to conduct appropriate auditory measures, which might have disclosed the mistake at an earlier stage. Had it done so, the debt would not have accumulated to such a large amount. The complainant had reported his wife's income to the NII and was entitled to assume that prior to payment of the pension, the NII had made the necessary checks for determining his entitlement to a stipend and the sum of the stipend and that he would receive the stipend owing to him by law. As a result, during the entire period he had calculated his expenses on the basis of the stipend paid to him.

5. Under these circumstances it would be unjust to obligate the complainant to return the entire debt that had accumulated over the years and the Ombudsman therefore ruled that the debt should be reduced and fixed at 20% of the overall amount.

6. The NII informed the Ombudsman that it accepted his ruling. It further notified him that in the future, these kinds of cases would be



presented to the Committee for the Cancellation of Debts in the NII, which would consider each case on its merits.

## **11. DEDUCTION OF DEBT IN ABSENCE OF DECISION REGARDING OBJECTION TO DEBT**

1. In August 2001 the complainant, the owner of a private business, filed a complaint with the Ombudsman against the National Insurance Institute (hereafter - the NII). Following are the details of the complaint:

(a) In April 2001 the NII deducted the sum of NIS 14,663 that was to the complainant's credit in his account in the employers' department of the NII, due to a debt for which the NII had demanded payment in 1989 (hereafter - the debt).

(b) The complainant requested the particulars of the debt from the NII's branch in Petach Tikvah and was informed that the debt resulted from his having paid car expenses for one of his employees (hereafter - the employee) at a time when she had neither a driving license nor a car and was therefore not entitled to an exemption from insurance payments for that payment.

(c) Following the complainant's enquiry, the NII cancelled only the fines and the linkage differentials on the debt principal and after deduction of the principal (the sum of NIS 3,287) from the balance in the complainant's account, it returned to him the sum of NIS 11,376.

(d) In his complaint to the Ombudsman the complainant claimed that in 1989 he had indeed received a demand for payment of a debt owed to the

NII, but he had responded with a number of letters to the NII in which he had objected to the demand. In his objection he had claimed that although the car was not registered in the employee's name, she was its exclusive user and had paid all of the expenses. In his objection he also stated that the employee had a driving license and attached a copy of the license to one of his letters to the NII.

He claimed that the NII had not replied to his objection and that only now, after many years, had it collected the money from the balance to his credit in his account. The complainant demanded that the NII also return to him the principal of the debt, which it had deducted from his account.

Regulation 2 of the National Insurance (Payment and Exemption from Insurance Payment) Regulations, 5741-1981, as valid in 1989<sup>1</sup>, stipulates as follows:

"Insurance payments shall not be paid from an employee's income as follows:

(1) Payments given to the employee to cover his expenses in maintaining a car as well as the value of the use of the car which was put at the employee's disposal."

3. The Ombudsman's investigation revealed the following:

(a) In its letters of 18.6.89 and 22.11.89, the NII requested that the complainant pay national insurance payments for payments he had made to the employee for car maintenance expenses, since the NII had found out

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1 These regulations were revoked on 1.1.95, by the Law for Reducing Dimensions of Poverty and Income Discrepancies (Legislative Amendments), 5754-1994 and were replaced by the National Insurance (Payment and Exemption from Insurance Payment) Regulations, 5755-1995, which have a different provision in this context.

that no car was registered in her name and that she did not even possess a driving license.

(b) The complainant's tax consultant (hereafter - the tax consultant) responded to the NII's letters. In his letter of 9.7.89 he stated that the employee was the complainant's daughter, that she had a driving license and that she had been driving her own car, registered in her mother's name, for the needs of the business. The tax consultant claimed that the provisions of the National Insurance Law do not make the exemption from paying insurance fees for payments made towards car maintenance expenses contingent upon the car being registered in the employee's name.

In his letter to the NII on 5.12.89, the complainant wrote that his daughter used the car and bore all of its maintenance expenses. The complainant explained that ownership of the car in the Licensing Office was registered in his wife's name and that the registration had not been transferred onto the daughter's name, as he did not want it to be registered as 'second hand'. He claimed that he had not been aware of the NII's position, namely that exemption from insurance payments was contingent upon the car being registered in the name of the employee. He appended a copy of his daughter's driving license to his letter, as well as her declaration that she had had exclusive use of the car since 1.1.88 and had paid all of its maintenance expenses out of her own pocket.

(c) On 24.6.90 the Director of the Collection Department of the NII (hereafter - the Department Director) notified the complainant that he was waiting for a legal opinion before responding to his objection. The Department Director further noted in his letter that he might require further details and that when he visited the NII branch he would request to meet with the complainant in order to clarify the details.

On 18.11.90 the tax consultant wrote an additional letter to the Department Director, in which he claimed that even though his client (the complainant) had not yet received a response to his objection, the NII had begun proceedings against him for collection of the debt.

(d) On the dates 29.8.90 and 13.6.91 the Manager of the Collection Department in the NII branch wrote to the Department Director and requested that he complete his handling of the complainant's matter. Nonetheless, the Department Director did not respond to the letters of the complainant and of the tax consultant.

(e) Examination of the complainant's file in the NII indicates that in April 2001 the debt was deducted from the credit balance in the complainant's account without any decision having been reached regarding the complainant's objection to the debt and without the NII ever having given him a substantive response to his letters.

#### **4. The Ombudsman ruled that the complaint was justified.**

(a) The complainant and his tax consultant had objected to the NII's decision to charge the complainant with payment of national insurance on payments made to the employee as expenses for vehicle maintenance.

(b) In his letter to the complainant of 24.6.90, the Department Director informed the complainant that he was waiting for a legal opinion in this matter and would even request to meet with him. Nonetheless, the debt was deducted from his credit balance in his account in the NII, without any decision having been reached regarding his objection and despite the fact that 11 years had passed since the first demand for payment of the debt, to which he had objected.

(c) In view of all of the above, the Ombudsman ruled that the complainant should also be reimbursed the sum deducted from him in April 2001 (the sum of the principal).

(d) The NII informed the Ombudsman that it had acted in accordance with the Ombudsman's ruling.

# CLALIT HEALTH SERVICES

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## **12. REQUIRING CONSENT OF BOTH PARENTS FOR RELEASE OF MEDICAL INFORMATION REGARDING MINOR**

1. Two identical complaints were filed with the Ombudsman against Clalit Health Services (hereafter - Clalit). Following are the details of the complaints:

(a) Each of the complainants has a child who is a minor. One complainant lives separately from her husband and their child is in her custody. The other complainant lives separately from his wife and their child is in her custody.

(b) Each of the complainants wrote to Clalit, requesting to receive a copy of the medical file of their child (hereafter - the medical information). Upon receiving the request, Clalit requested the consent of the other parent in order to release the medical information. Since the other parent objected to the release of the information, Clalit rejected the request.

(c) In their complaints, the complainants requested the Ombudsman to instruct Clalit to give them the medical information, even without the consent of the other parent.

(d) Clalit claimed to the Ombudsman that its refusal to release information without the other parent's consent was based on the provisions of section 18 of the Legal Capacity and Guardianship Law, 5722-1962 (hereafter - the Capacity Law) which instructs as follows:

### **"Cooperation between parents**

In any matter within the scope of their guardianship the parents shall act in agreement. The consent of one of them to an act of the other may be given in advance or retroactively, expressly or by implication, to a particular matter or generally. Either parent shall be presumed to have agreed to an act of the other unless the contrary be proved. In a matter admitting of no delay, either parent may act on his own."

Clalit claimed that the presumption in section 18 that the parent agreed to the act of the other parent was *prima facie* refuted in the case of the complainants, where the parents lived apart and were in dispute.

Clalit maintained that in the absence of both parents' consent to supplying information, the complainants would have to apply to the courts for an order instructing Clalit to release the information.

#### **4. The Ombudsman ruled that the complaint was justified.**

Under section 18 of the Capacity Law the consent of one of the parents was required for an "act" of the other parent in a matter within the scope of their guardianship. However, a request to receive medical information concerning the minor is not regarded as an "act" pertaining to the minor within the meaning of section 18 of the Capacity Law. Consequently, there was no basis for making the release of medical information conditional upon the consent of the other parent, nor for Clalit's refusal to release the information by reason of the other parent's refusal to consent.

The Ombudsman indicated to Clalit that it must accede to the complainants' requests and provide them the medical information that they requested, even without the consent of the other parent.

5. Clalit informed the Ombudsman of its compliance with the Ombudsman's ruling.



# **APPENDICES**

**Table 1**  
**Breakdown of Complaints by Agencies Complained Against**  
(1.1.2002 - 31.12.2002)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Compl- aints	Total Subjects <sup>1</sup>	Number of Compl- aints	Number of Subjects	Subjects Resolved Substan- tively	Compl- aints Found Justified
<b>Prime Minister's Office</b>	22	22	34	34	25	9
<b>Ministry of Finance<sup>2</sup></b>	241	242	253	256	212	105
Income Tax	86	87	109	111	96	48
Customs and V.A.T.	29	29	26	26	20	4
Capital, Insurance and Savings Department	41	41	36	36	35	29
<b>Civil Service Commission</b>	27	28	29	30	20	6
<b>Ministry of the Environment</b>	26	26	34	35	32	10
<b>Ministry of Defense<sup>2</sup></b>	78	82	79	82	45	10
Rehabilitation Department	50	52	48	49	24	4
<b>Israel Defense Forces</b>	86	86	76	77	30	16
<b>Ministry of Public Security</b>	8	8	6	6	4	2
<b>Israel Police Force</b>	327	335	326	335	181	76
<b>Prisons Service</b>	52	52	55	56	26	3
<b>Ministry of Construction and Housing</b>	197	198	212	213	163	20
<b>Housing Companies<sup>3</sup></b>	110	115	128	133	109	35
Amidar, the National Housing Company of Israel Ltd.	87	92	107	112	92	29
Others	23	23	21	21	17	6
<b>Ministry of Health</b>	190	194	154	154	58	16
<b>Health Funds<sup>3</sup></b>	140	142	104	104	54	14
Clalit Health Services	93	94	66	66	33	5
Others	47	48	38	38	21	9

- 1 Some of the complaints refer to more than one subject.
- 2 Detailed data have been presented only on agencies particularly subject to complaints - generally twenty five complaints or more.
- 3 Data have been presented on local authorities and other bodies against whom twenty five or more complaints were filed.

**Table 1 (Continued)**  
**Breakdown of Complaints by Agencies Complained Against**  
 (1.1.2002 - 31.12.2002)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Compl- aints	Total Subjects <sup>1</sup>	Number of Compl- aints	Number of Subjects	Subjects Resolved Substan- tively	Compl- aints Found Justified
<b>Ministry of Religious Affairs<sup>2</sup></b>	48	48	57	61	39	21
<b>Ministry of Foreign Affairs</b>	16	17	16	18	14	9
<b>Ministry of Education</b>	142	143	114	115	51	23
<b>Ministry of Agriculture and Rural Development</b>	15	15	19	19	9	1
<b>Ministry of Science, Culture and Sport</b>	6	7	6	7	4	2
<b>Ministry of Justice<sup>2</sup></b>	183	190	166	176	84	28
Dept. of the Public Trustee and Official Receiver	26	26	23	23	5	1
State Attorney's Office	41	43	32	34	20	9
<b>Courts System</b>	221	227	224	230	61	20
Courts Administration and Courts	152	158	154	160	38	14
Execution Offices	69	69	70	70	23	6
<b>Ministry of Labor and Social Welfare<sup>2</sup></b>	116	116	95	95	56	19
Labor	28	28	28	28	15	6
Social Welfare	33	33	28	28	27	7
<b>Employment Service</b>	107	108	107	108	35	12
<b>Ministry of the Interior</b>	325	332	287	289	143	31
<b>Ministry of Immigrant Absorption</b>	48	48	50	50	31	8
<b>Ministry of Transportation<sup>2</sup></b>	142	146	148	154	89	40
Licensing Division	54	55	60	62	38	19
<b>Ministry of Tourism</b>	8	9	8	9	5	1
<b>Ministry of Industry and Trade</b>	26	26	27	27	23	11

**Table 1 (Continued)**  
**Breakdown of Complaints by Agencies Complained Against**  
**(1.1.2002 - 31.12.2002)**

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Compl- aints	Total Subjects <sup>1</sup>	Number of Compl- aints	Number of Subjects	Subjects Resolved Substan- tively	Compl- aints Found Justified
<b>Ministry of Communications</b>	20	20	18	18	12	10
<b>Bezeq, Israel Telecommunications Corporation Ltd.</b>	75	76	67	67	35	13
<b>Postal Authority</b>	107	109	105	109	79	37
<b>Ministry of National Infrastructure</b>	34	35	30	31	16	5
<b>Israel Lands Administration</b>	106	107	104	106	60	29
<b>Bank of Israel</b>	39	39	39	39	27	1
<b>National Insurance Institute</b>	605	660	575	625	403	128
<b>Broadcasting Authority</b>	133	136	117	119	79	47
<b>Local Authorities<sup>3</sup></b>	1,258	1,319	1,163	1,205	679	283
Jerusalem Municipality	112	115	106	109	45	17
Tel Aviv-Yaffo Municipality	118	120	105	106	59	12
Haifa Municipality	64	65	50	50	19	5
Ashdod Municipality	26	30	28	32	25	10
Bnei Brak Municipality	30	31	20	20	11	8
Holon Municipality	44	44	30	30	10	5
Netanya Municipality	31	32	37	38	25	8
Ramat Gan Municipality	29	29	29	30	18	9
Other Municipalities	445	466	450	466	285	121
Local Councils	209	229	177	187	105	43
District Councils	76	81	60	64	40	26
Local Planning and Building Committees	41	43	35	35	17	9
Others	33	34	36	38	20	10

**Table 1** (Continued)  
**Breakdown of Complaints by Agencies Complained Against**  
 (1.1.2002 - 31.12.2002)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Compl- aints	Total Subjects <sup>1</sup>	Number of Compl- aints	Number of Subjects	Subjects Resolved Substan- tively	Compl- aints Found Justified
<b>Other Agencies<sup>3</sup></b>	165	167	171	173	86	22
Israel Electric Corporation Ltd.	41	41	43	43	24	4
Others	124	126	128	130	62	18
<b>Agencies Not Subject to Ombudsman Inspection</b>	698	698	688	688		
<b>Total</b>	<b>6,147</b>	<b>6,328</b>	<b>5,891</b>	<b>6,053</b>	<b>3,079</b>	<b>1,123</b>

**Table 2**  
**Breakdown of Complaints by Principal Subject**  
(1.1.2002 - 31.12.2002)<sup>1</sup>

Subject	Total Complaints Received	Cases Resolved During Report Year (Including Cases Received Previously)		
		Total Subjects <sup>2</sup>	Substantively Resolved	Found Justified
<b>A. Welfare Services</b>	<b>1,507</b>	<b>1,417</b>	<b>910</b>	<b>219</b>
1. Housing	307	339	258	52
Improving housing conditions	68	77	62	3
Construction defects	38	35	25	15
Immigrant housing	30	34	22	4
Arrangements for paying rent	47	65	58	7
2. Welfare	221	192	136	18
Income support benefit	88	77	49	6
Social Workers	26	19	15	1
3. Education	170	160	88	26
Schools	78	69	40	13
Kindergartens	29	36	24	9
Vocational training	29	26	12	1
4. Disabled persons	218	206	109	27
Disabled persons (general)	173	165	89	25
IDF/defense agencies disabled persons	45	41	20	2
5. National Insurance	382	356	247	81
Insurance premiums	98	84	59	29
Unemployment payments	36	29	21	4
Work-related injuries	56	50	30	10
6. Health	209	164	72	15
National Health Insurance	105	78	39	7
Hospitals	39	31	9	2

- 1 The numbers under the headings of the principal subjects and the numbered sub-headings, which classify the sub-subjects, relate to principal matters that the complaints involved. Some of the complaints in each subject or sub-subject relate to matters that cannot be classified according to significant groups and are, therefore, not included in the table. As a result, the numbers appearing alongside the headings are not identical to their sum total.
- 2 The overall number of subjects of complaints appearing in this table is larger than the number of complaints received, because many complaints relate to two or more subjects.

**Table 2 (Continued)**  
**Breakdown of Complaints by Principal Subject**  
 (1.1.2002 - 31.12.2002)<sup>1</sup>

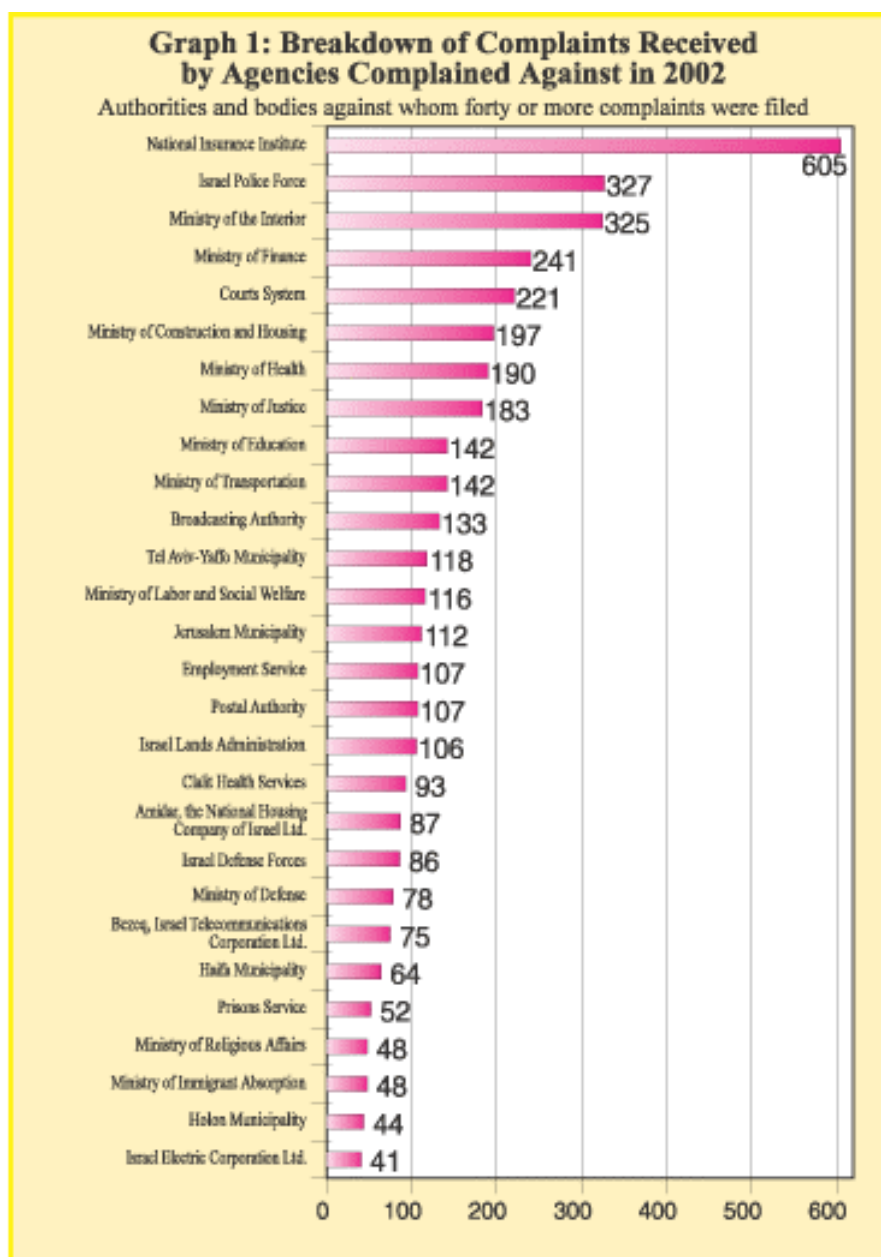
Subject	Total Complaints Received	Cases Resolved During Report Year (Including Cases Received Previously)		
		Total Subjects <sup>2</sup>	Substantively Resolved	Found Justified
<b>B. Services by Local Authorities</b>	<b>600</b>	<b>586</b>	<b>324</b>	<b>150</b>
Nuisances and hindrances	157	147	99	57
Building and building permits	206	217	93	38
Roads, sidewalks and garbage disposal	45	42	29	14
Fines for parking in violation of municipal by-laws	75	65	33	7
Business licenses	36	31	15	6
<b>C. Provision of public services</b>	<b>1,017</b>	<b>1,017</b>	<b>660</b>	<b>317</b>
Failure to provide response	512	550	381	230
Population Registry matters	166	150	75	9
Faulty service to citizen in public institution	45	52	35	22
Improper conduct by public servant	60	48	34	5
<b>D. Telephone and postal services</b>	<b>128</b>	<b>119</b>	<b>78</b>	<b>28</b>
Telephone services	67	58	30	9
Postal services	61	61	48	19
<b>E. Taxes and fees</b>	<b>508</b>	<b>466</b>	<b>314</b>	<b>142</b>
1. Income tax	69	88	81	45
2. Radio and television fees	106	93	62	35
3. Local authorities' taxes and fees	285	242	137	57
Municipal property tax	174	167	92	37
Water charges	66	42	26	11
<b>F. Employees' rights and employment</b>	<b>416</b>	<b>384</b>	<b>143</b>	<b>50</b>
Wages and salary	32	29	16	12
Dismissal and severance pay	32	29	9	1
Employment	130	119	48	15

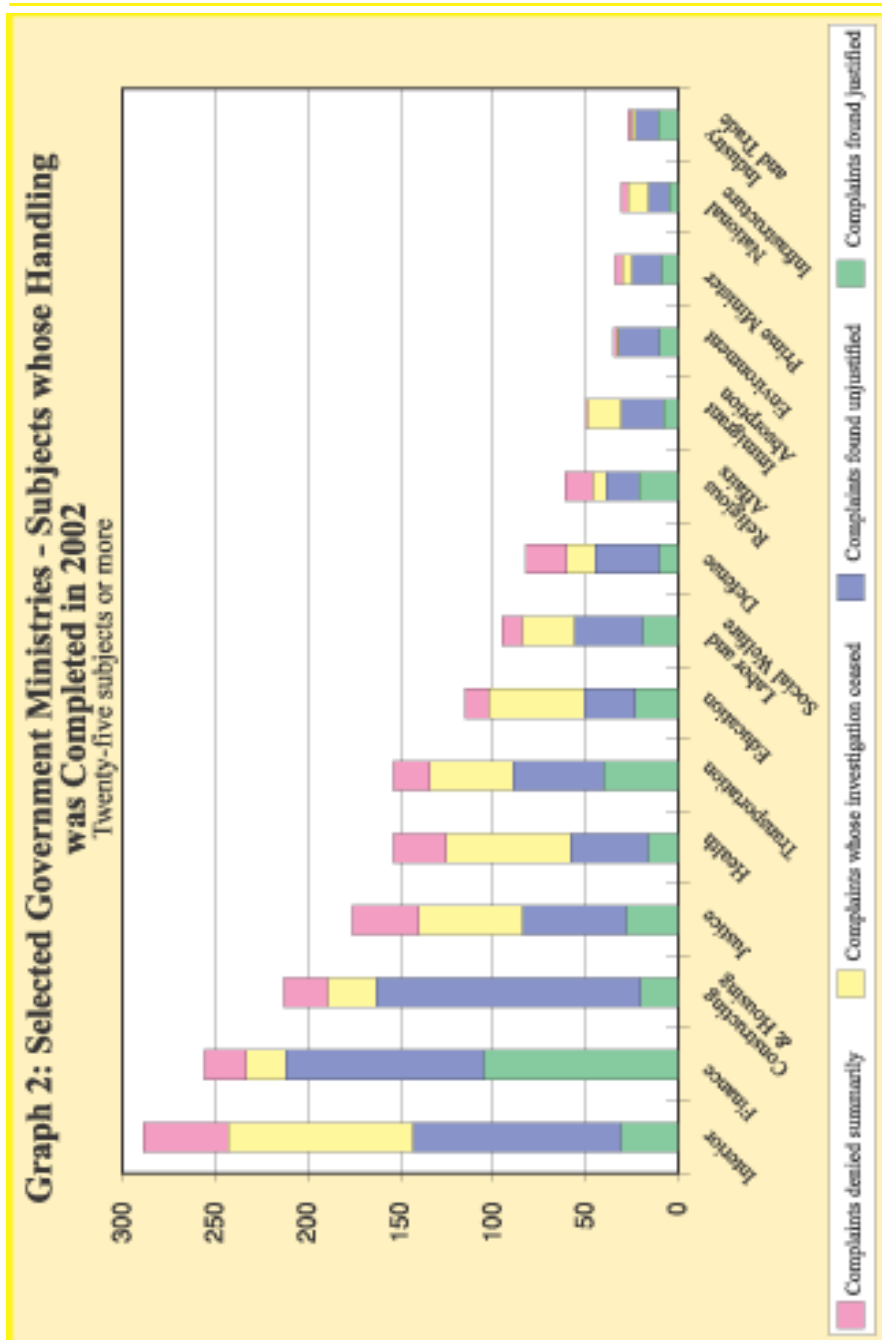
**Table 2 (Continued)**  
**Breakdown of Complaints by Principal Subject**  
 (1.1.2002 - 31.12.2002)<sup>1</sup>

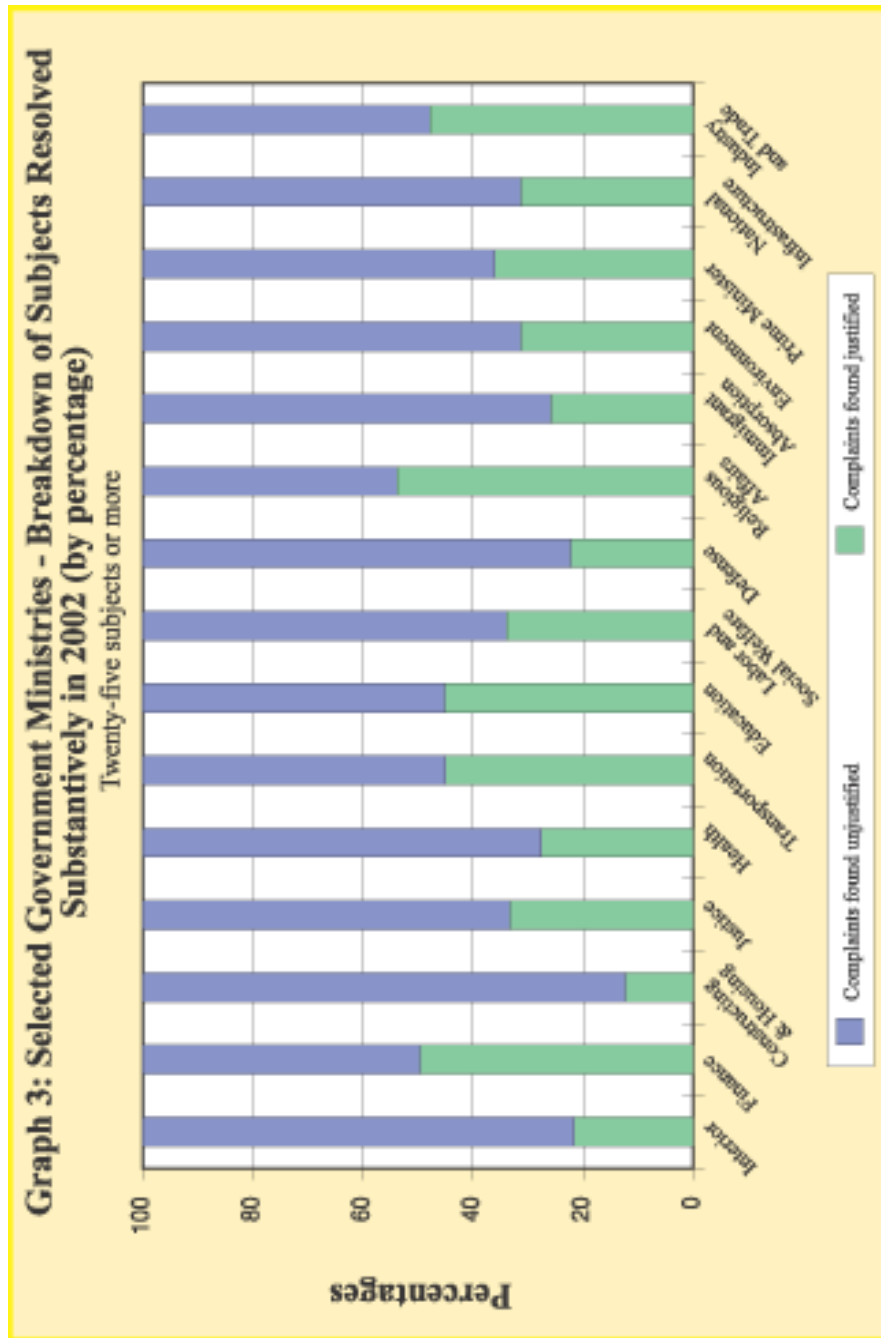
Subject	Total Complaints Received	Cases Resolved During Report Year (Including Cases Received Previously)		
		Total Subjects <sup>2</sup>	Substantively Resolved	Found Justified
<b>G. Miscellaneous</b>	<b>2,152</b>	<b>2,064</b>	<b>650</b>	<b>217</b>
1. Police	333	307	161	60
Traffic violations	66	70	36	16
Failure to handle complaints	67	62	32	12
2. Courts	185	184	47	16
Judicial ruling	43	46	6	2
State Attorney's Office	40	34	18	9
3. Prisoners	44	46	23	3
4. Execution Office	66	69	20	6
5. Transportation	124	130	63	20
Motor vehicle	63	66	35	14
Public transportation	45	46	22	5
6. Purchase and expropriation of land	85	80	40	8
7. Lease and consent fees	28	24	12	8
8. Common dwellings	26	24	7	2
9. Minorities - Unification of Families	47	33	15	1
10. Banks	53	53	31	10
11. Electricity	28	34	20	5
12. Tenders for work and services	34	26	8	1
13. Israel Defense Forces	65	59	18	6
14. Objections to procedures for investigating complaints	47	47	34	21
<b>Total<sup>2</sup></b>	<b>6,328</b>	<b>6,053</b>	<b>3,079</b>	<b>1,123</b>

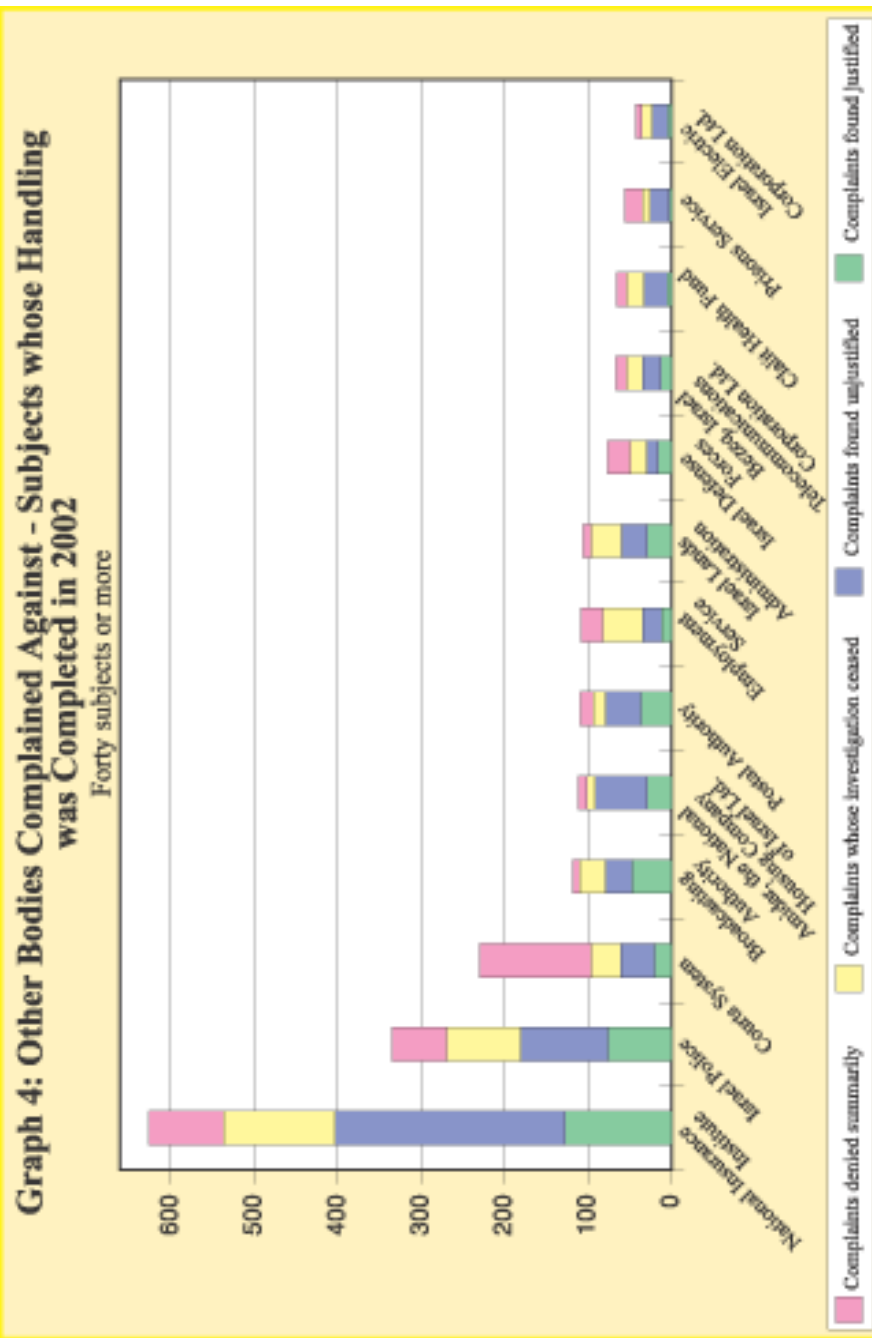
- 2 The overall number of subjects of complaints appearing in this table is larger than the number of complaints received, because many complaints relate to two or more subjects.

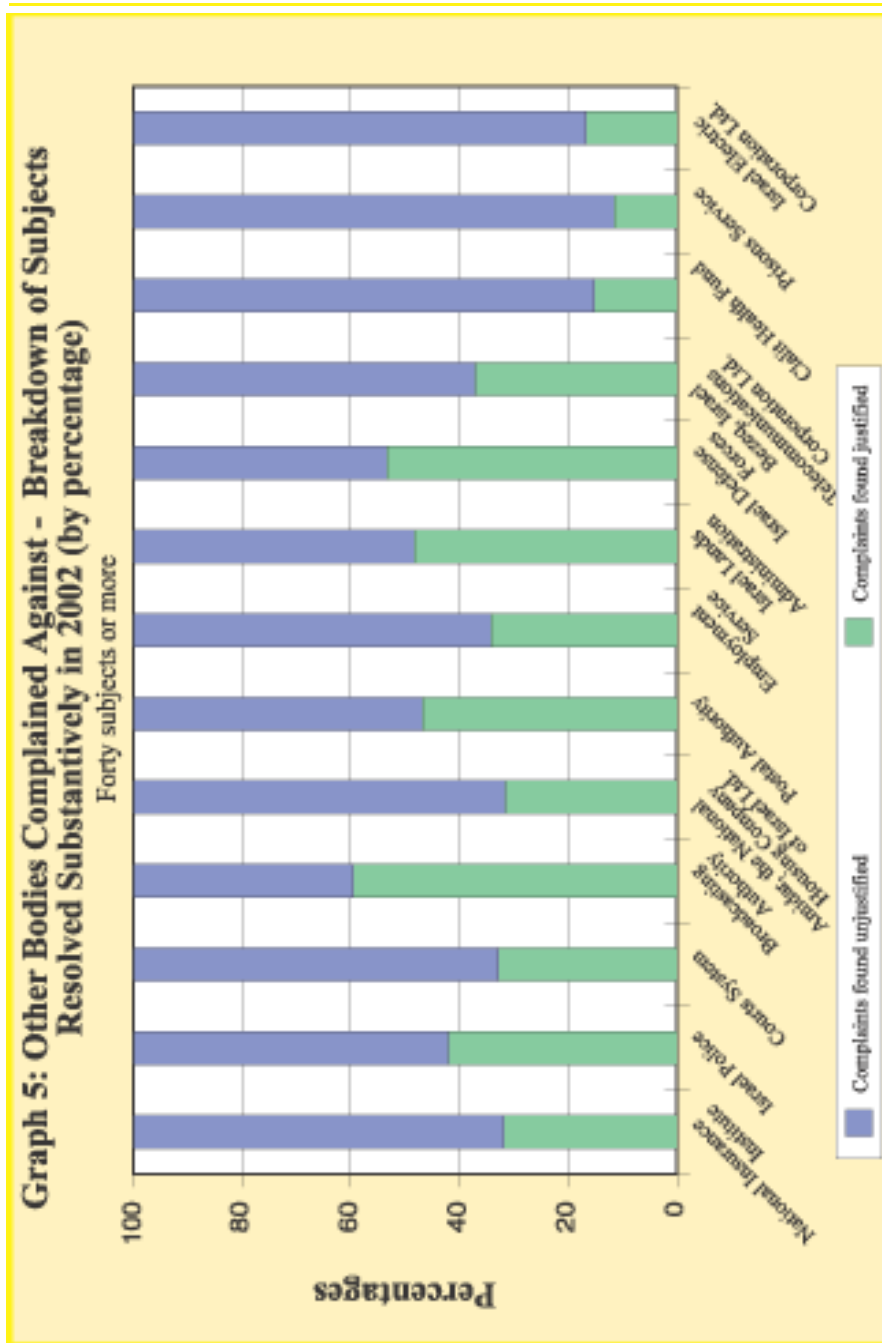


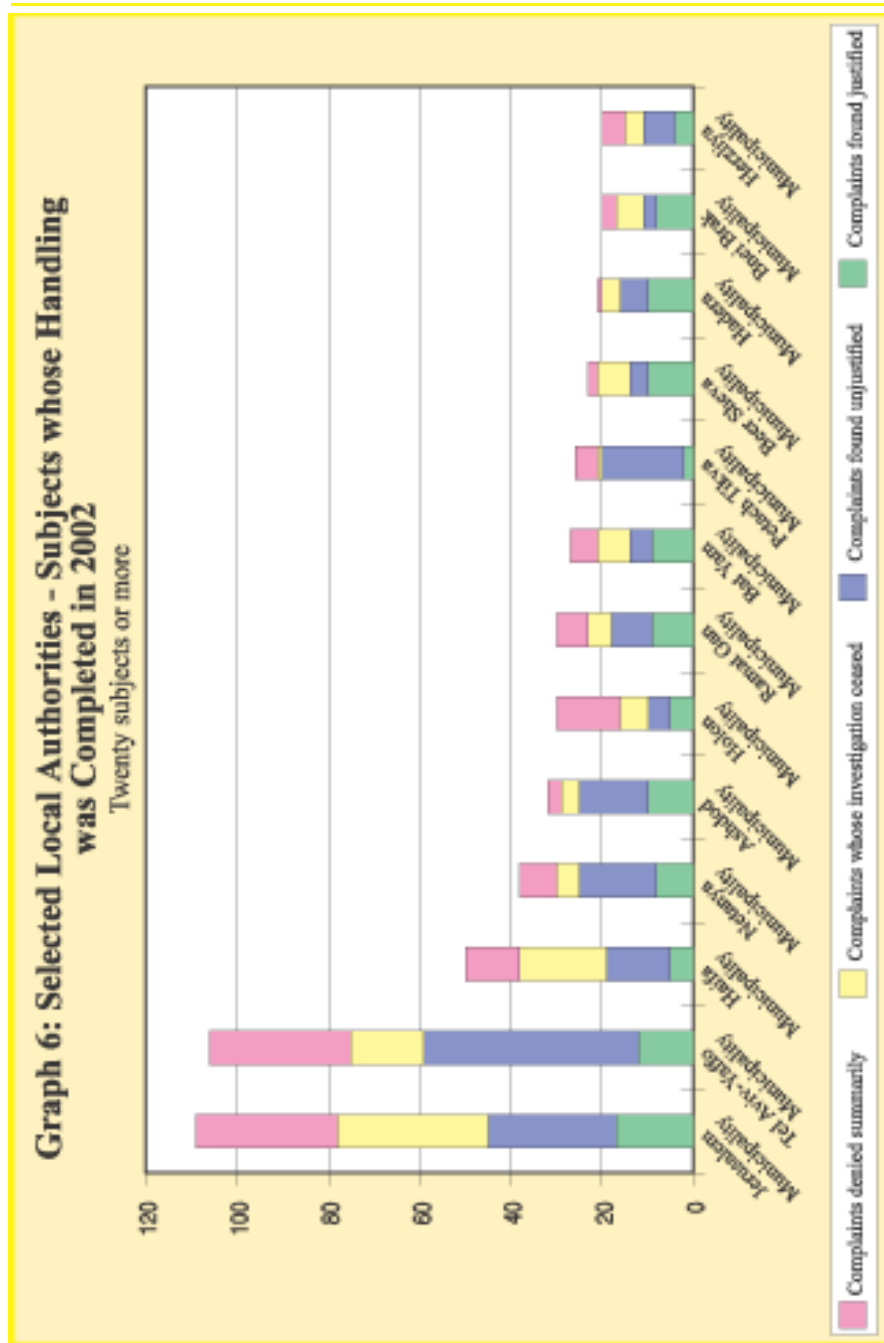


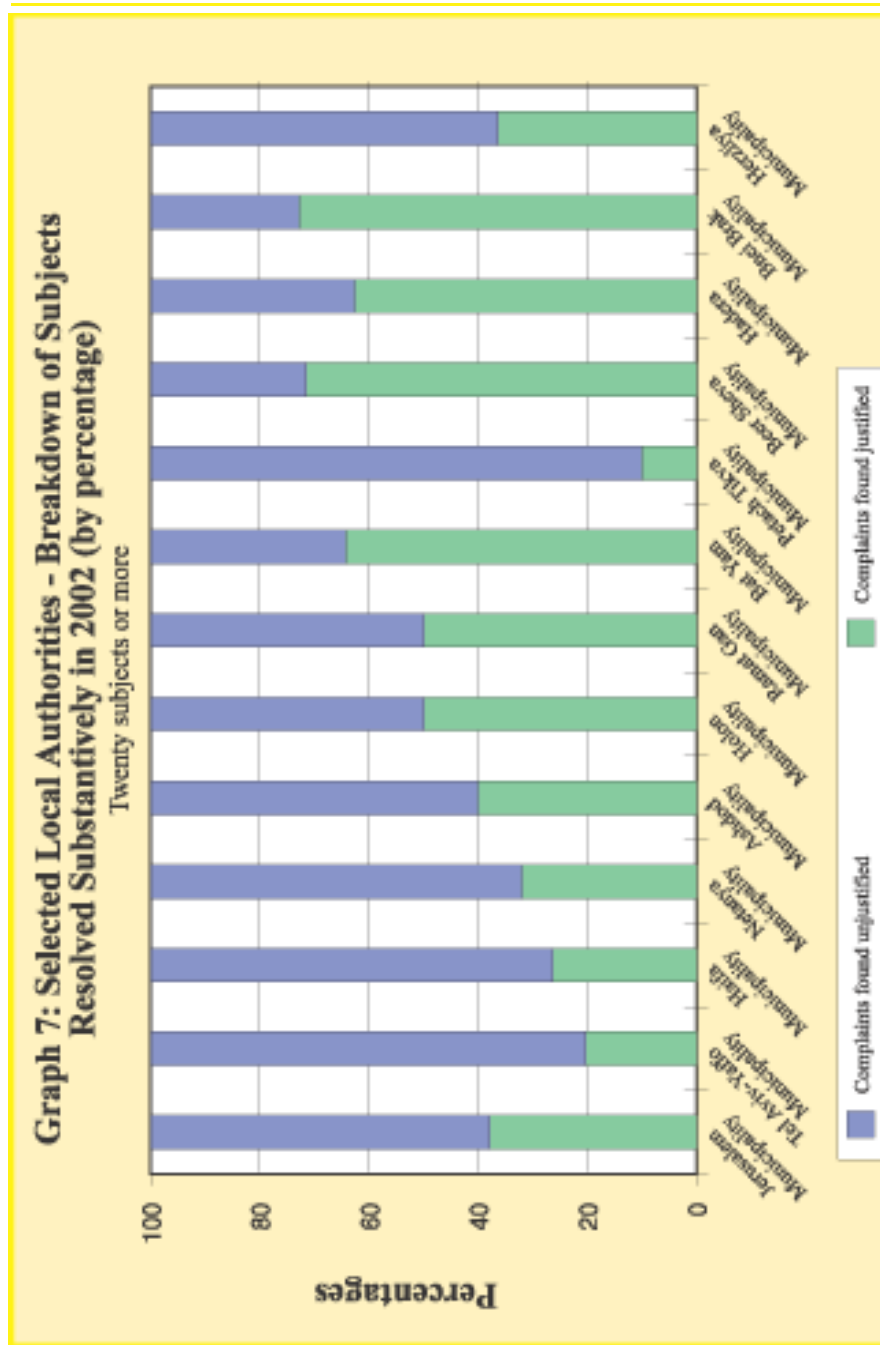












## **Offices of the Ombudsman and Branch Offices Accepting Oral Complaints: Addresses and Reception Hours**

### **Main Office, Jerusalem**

12 Beit Hadfus Street, Givat Shaul, PO Box 669, Jerusalem 91006

Telephone 02-6665000, Fax 02-6665204

### **Tel Aviv Office**

99 Hashmonaim Street, Hakirya, PO Box 7024, Tel Aviv-Yaffo 61070

Telephone 03-6241916, Fax 03-6241632

### **Haifa Office**

22 Omar al-Kayyam Street, Hadar Hacarmel, PO Box 4394, Haifa 31043

Telephone 04-8673291, Fax 04-8642588

### **Beer Sheva Office for Receiving Oral Complaints**

Ministry of the Interior Building, 4 Hatikva Street, Beer Sheva

Telephone 08-6263802

### **Nazareth Office for Receiving Oral Complaints**

Employment Service Building, Industrial Zone

Telephone 04-6555429



## **RECEPTION HOURS**

### **Offices in Jerusalem, Tel Aviv and Haifa**

Sundays – Thursdays, 8:30 A.M.-12:30 P.M.

Wednesdays, also from 3:00 P.M.-5:00 P.M.

### **Offices in Beer Sheva and Nazareth**

Every other Wednesday, 3:00 P.M.-5:00 P.M.

**E-Mail**     ombudsman@mevaker.gov.il

**BASIC LAW:  
THE STATE COMPTROLLER**

## BASIC LAW: THE STATE COMPTROLLER<sup>\*</sup>

- |  |                               |
|--|-------------------------------|
| 1. State audit is vested in the State Comptroller.   | Substance                     |
| 2. (a) The State Comptroller shall audit 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 audit of the State Comptroller. | State Audit                   |
| (b) The State Comptroller shall examine the legality, moral integrity, orderly management, efficiency and economy of the audited bodies, and any other matter which he deems necessary.  |                               |
| 3. A body subject to the audit 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 audit.   | 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 "Ombudsman".  | 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 accountable only to the Knesset and shall not be dependent upon the Government.   | Accountability to the Knesset |

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<sup>\*</sup> Passed by the Knesset on February 15, 1988.

Election and term of office	7. (a) The State Comptroller shall be elected by the Knesset in a secret ballot; the election procedures shall be prescribed by law.  (b) The term of office of the State Comptroller shall be seven years.  (c) The State Comptroller shall serve only one term of office.
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.
Declaration of allegiance	9. The State Comptroller-elect shall make and sign before the Knesset the following declaration of allegiance:  "I pledge to bear allegiance to the State of Israel and its laws, and to carry out faithfully 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.

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.

Removal from  
office

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.

Acting  
Comptroller

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

# STATE COMPTROLLER LAW, 5718-1958

## [CONSOLIDATED VERSION]\*

### CHAPTER ONE: THE COMPTROLLER

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

(b) Should there be two or more candidates, the candidate for whom a majority of Members of the Knesset vote is elected; if no candidate receives such 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.

(c) Should there be only one candidate, the ballot shall be either for or against him and he shall be elected if the number of votes for him exceeds the number of votes against him; should the number of votes for him be equal to the number of votes against him, the ballot shall be repeated.

(d) Should the Comptroller not be elected in accordance with subsection (c), the ballot shall be repeated within thirty days of the date of the election under the provisions of this section and sections 2(b) and (c) and 3; however the nomination of a candidate in accordance with section 3(a) shall be filed not later than seven days before the date of the election.

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 Speaker 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 Speaker 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 Speaker 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 Speaker 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.

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 Speaker of the Knesset, address the Knesset.

Comptroller's  
address in 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 Civil 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 audit of the Comptroller, and shall not benefit, either directly or indirectly, from the income thereof;
- (5) buy, lease, 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 audited body within the meaning of section 9(3), (5), (6), (7), (8) and (9).

8. The Comptroller's tenure of office terminates -

Termination of  
tenure of office

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

Removal of the  
Comptroller  
from office

(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 Speaker 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 Speaker shall convene the Knesset to hold the proceedings.

## **CHAPTER TWO: SCOPE OF AUDIT**

Audited bodies      9. The following bodies (hereafter referred to as "audited bodies") shall be subject to the audit 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 Government company within the meaning of the Government Companies Law, 5735-1975 (hereafter referred to as "the Government Companies Law) and 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 audit by law, by decision of the Knesset or by agreement between him or it and the Government;

(7) every Government subsidiary within the meaning of the Government Companies Law and 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 audit 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 audit 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 audit shall not be carried out on their activities as a trade union; but the audit 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 audit, the Comptroller shall have all the powers granted him in respect of an audited body, even in respect of the activities of such employees' organization, enterprise, institution, fund or body, as a trade union, provided that the Comptroller deems that necessary for the purposes of the audit 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 audited body.

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

(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 scope of his audit 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 audited 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 audited under section 9(7), (8) and (9) if and to the extent that their audit 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 audited body or an item of its budget, special or limited forms of audit.

### **CHAPTER THREE: AUDIT PROCEDURE**

Audited body to submit report, balance sheet, survey and information

11. (a) An audited 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.



(b) The Comptroller may require of an audited 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 audited body within the meaning of section 9(7), (8) or (9) even though the audit 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<br>Finance to<br>submit<br>comprehensive<br>report and<br>balance sheet of<br>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.              |
| Audit of<br>associations  | <p>13. The following provisions shall apply to audited 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;</p> <p>(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;</p> <p>(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 directly to the Comptroller;</p> |

(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 audit has revealed defects which have not been explained, or infringements of any law, of the principles of economy and efficiency or of moral integrity, the Comptroller shall communicate to the audited body the results of the audit 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 Prime Minister.

Modes of  
dealing with  
results of audit

(b) Where an audit has revealed defects or infringements which the Comptroller, in view of their bearing upon a fundamental problem or in the interests of upholding moral integrity 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 audit has revealed a 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, of the manner in which he has dealt with the subject.

## **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 Prime Minister and of the Chairman of the State Audit Affairs Committee of the Knesset on the results of the audit of the audited bodies, within the meaning of section 9(1) and (2), carried out during the course of the past financial year. The Comptroller may present the report in parts, provided that the entire report is presented within the aforesaid time.

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

- (1) specify any infringement of moral integrity;
- (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.

16. (a) (1) The Prime Minister shall provide to the Comptroller, within ten weeks from the day on which he received the report, in whole or in part, all the following:

Observations by Prime Minister and laying on the table of the Knesset

[a] his observations on the report relating to matters that he deems appropriate;

[b] responses of the audited bodies to the report, as submitted to him;

[c] his detailed observations to previous reports on matters that he had not yet made observations; observations pursuant to this subparagraph shall include, inter alia, the details referred to in section 21B(a) and (b), and a report on decisions that the Government made as a result of the reports, and on execution of those decisions.

(2) Upon the expiration of the period as aforesaid in paragraph (1), the report, and the responses and observations, 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 Prime Minister not later than the day on which the report is submitted, in whole or in part, as aforesaid in section 15(a).

Safeguarding  
security and  
foreign relations  
of the State

17. (a) The Committee may, upon consultation with the Comptroller, decide that the report or opinion of the Comptroller, or parts thereof, shall not be laid on the table of the Knesset and shall not be published 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) (Repealed).

(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 audited by him; the Comptroller shall inform the Committee, orally and in such form as he may think fit, on what unit or branch audited 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, or a report or opinion has been published, the Committee shall consider them 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 15(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), 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.

18A. (a) For the purpose of preparing the conclusions and proposals of the Committee in accordance with section 18, the Chairman of the Committee may invite any person, who held office or fulfilled a function in the audited 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 audited body includes the exercise of a power with respect to it by law, or by virtue of being a member of its management or an employee.

Appearance  
before the  
Committee

(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 Speaker of the Knesset;
- (2) in a matter under judicial consideration a person holding judicial office.

Comptroller's  
report on  
balance sheet of  
the State

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 as specified in section 12, and shall lay it on the table of the Knesset at the same time as the report under section 15.



20. (a) Upon completion of the audit of the audited 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 his audit. In his aforesaid report, the Comptroller shall include a summary, details, and recommendations as aforesaid in section 15(b).

Comptroller's  
report on other  
audited bodies

(b) The Comptroller shall submit each report on the audit of an audited body within the meaning of section 9(4) to the head of the local authority audited, 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 Prime Minister and to the Minister of the Interior.

(c) Each report on the audit of an audited 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 Prime Minister, to the Minister concerned and to the audited body; but a copy of such a report on an audited body within the meaning of section 9(9) shall only be submitted by the Comptroller to the audited body itself.

(d) A report pursuant to this section shall be published at a time specified by the Comptroller.

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. The said opinion shall be published at a time specified by the Comptroller.

Opinion

21A. (a) In this section, head of an audited body" means each of the following:

- (1) in an audited body as referred to in section 9(1) or (2) – the minister in charge of that body;
- (2) in an audited body referred to in section 9(4) – the head of the local authority;
- (3) in another audited body – the directorate or comparable body in the audited body;

(b) In each audited body, the head of the audited body shall appoint a team to rectify the defects, to be headed by the director general in that body, and, where the position of director general does not exist, by the comparable office holder in that body (hereafter referred to as "the team").

(c) Where the audit revealed defects in the activity of the audited body, the team shall discuss the ways to rectify the defects, make decisions relating to rectifying them, and report on their discussions and decisions to the head of the audited body shortly after making the decisions.

(d) The team may, upon approval of the head of the audited body, delay rectifying a particular defect.

21B. (a) The head of the audited body as aforesaid in section 21A(a) shall report to the Comptroller regarding the decisions made pursuant to section 21A(c) and (d) shortly after they are made. If the audited body is referred to in section 9(1) or (2), the head of the said audited body shall also report to the Prime Minister. The head of the audited body shall report, inter alia, on the ways and the time to rectify the defects, on defects as to which it was decided to delay rectifying, and the reasons therefor.

(b) The Prime Minister shall inform the Comptroller, within eight months from the time a report is presented to him in which it was determined that defects were found in the activity of an audited body as referred to in section 9(1) or (2), of the results of the handling of the said defects.

(c) The Comptroller may at any time demand reporting in addition to those enumerated in this section.

## **CHAPTER FIVE: 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.

Staff of the  
Comptroller's  
Office

(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 audit 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 referred to as "the activity"), if in his opinion the activity does not infringe upon the audit 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 audited 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.

Person in charge  
of security

22A. (a) The Comptroller shall appoint a person in charge of security, who shall be responsible for organizing security actions within the meaning of the Security in Public Places Arrangements Law, 5758-1998 (in this section - the Law), in the Comptroller's Office, and for supervising these actions.

(b) A person shall not be appointed the person in charge of security pursuant to subsection (a) unless he met the conditions stated in section 4(b) of the Law, and met the conditions for qualification stated in section 5 of the Law.

(c) The person in charge of security shall have the powers provided in section 3 of the Law, and the provisions of section 13 of the Law shall apply to the person appointed by the person in charge of security to serve as a guard in the Comptroller's Office.

(d) The provisions of section 14 of the Law shall apply to the person in charge of security and to a guard in the Comptroller's Office, however the certificate of appointment shall be issued by the Comptroller or by a person empowered by him for this purpose.

(e) The Comptroller shall establish the procedures for auditing and supervising the exercise of powers by the person in charge of security and by a guard appointed pursuant to this section.

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. Duty of secrecy

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. Budget of the Office

25. After the expiration of the financial year, the Comptroller shall submit the financial report of his Office for the approval of the Committee. Financial report to 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. (Repealed)

Penalties            28. (a)     The following are liable to imprisonment for a term of one year or to a fine as prescribed in section 61(a)(2) of the Penal Law, 5737-1977:

(1)     a person who publishes a report that the Comptroller must submit in accordance with the provisions of section 15 or 20, or in accordance with the provisions of any other law, or an opinion that the Comptroller prepared pursuant to the provisions of section 21, or a person who publishes a part of such report or opinion, or of the contents thereof, before the prescribed time; in this section, "the prescribed time" means -

[a]     in the matter of a report that must be submitted in accordance with the provisions of section 15, the time it must be laid on the table of the Knesset as provided in section 16;

[b]     in the matter of a report that must be submitted in accordance with the provisions of section 20, or an opinion referred to in the provisions of section 21, the time of their publication as specified by the Comptroller in accordance with the provisions of those sections;

[c]     in the matter of a report that must be submitted in accordance with the provisions of any other law, the time for submitting the report, and where a time is specified for its publication, the time of its publication;

(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 17;

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

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

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.

Acting  
Comptroller

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.

Material not to  
serve as  
evidence

(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 Ombudsman 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 Ombudsman. The Director of the Office of the Ombudsman shall be appointed by the Committee upon the proposal of the Ombudsman and shall be directly responsible to him. The duty of announcing the vacancy under section 19 of the Civil Service (Appointments) Law, 5719-1959, shall not apply to the appointment of the Director of the Office of the Ombudsman.

(b) If the post of Director of the Office of the Ombudsman falls vacant or if the Director is for any reason unable to carry out his functions, the Ombudsman may entrust the carrying out of such functions to another person for a period not exceeding three months.

Complaint by  
whom

33. Any person may submit a complaint to the Ombudsman.

Modes of  
submitting a  
complaint

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.

Complaint by  
prisoner

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 Ombudsman.



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

(1) an audited 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 Ombudsman 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.

38. The following complaints shall not be investigated: Complaints not to 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;
- (3A) a complaint against the Governor of the Bank of Israel, except as to his activity as the person in charge of the bank;
- (4) a complaint against a judicial or quasi-judicial act;
- (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 Civil Service Regulations, a collective agreement or general arrangements prescribed on behalf of the Civil 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 Ombudsman finds that there is a special reason justifying their investigation:

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.

Opening of investigation      40. (a) When a complaint has been filed, the Ombudsman 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 sections 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, or if he is of the opinion that the Ombudsman is not the proper body to investigate the matter.

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

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

(b) The Ombudsman 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 Ombudsman may require the person or body complained against to answer the complaint within the period specified in his request.

(c) The Ombudsman 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 Ombudsman 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.

42. The Ombudsman 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.

Discontinuance  
of investigation

43. (a) Where the Ombudsman 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.

Consequences  
of investigation

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

(c) Where the Ombudsman 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 Ombudsman 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. The Attorney General shall inform the Ombudsman and the Committee, within six months from the day that the matter was submitted to him, of the manner in which he has dealt with the subject.

Restrictions on  
notification

44. (a) A notification by the Ombudsman 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.

(b) Where it appears to the Ombudsman that his notification is likely to contain or disclose any material or information as referred to in subsection (a) and the ministers did not express their opinion as specified in that subsection, the Ombudsman 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 Ombudsman 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 Ombudsman Rights and relief as to a complaint -

- (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 Ombudsman 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 Civil Service Regulations, a collective agreement, or general arrangements prescribed on behalf of the Civil 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.

45B. Where the Ombudsman 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.

Complaint only to be investigated for special reason

45C. (a) The Ombudsman 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.

Relief

(b) Where the complaint relates to the dismissal of the employee, the Ombudsman may order revocation of the dismissal or the award of special compensation to the employee, in money or in rights.

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

	<p>(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.</p>
Reconsideration	<p>45D. The Attorney General may request the Ombudsman to reconsider a decision given under section 45C. The Civil 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 audited body may also so request.</p>
Submission of complaint otherwise than in good faith	<p>45E. The submission of a complaint under section 45A or 45B otherwise than in good faith, or vexatiously, shall be a disciplinary offence.</p>
Publication of provisions	<p>45F. A body referred to in section 36(1) or (2), except for the Israel Police Force, the Prison Service, and the Israel Defense Force, shall publish, in a conspicuous place at the work site, the primary provisions of sections 45A to 45E, in a form that the Ombudsman shall determine.</p>
Report	<p>46. (a) The Ombudsman shall, at the beginning of each year, submit to the Knesset a report on his activities, containing a general survey and an account of the handling of selected complaints.</p> <p>(b) The Ombudsman may, prior to the submission of the annual report, submit to the Knesset a special report.</p>

State Comptroller Law , 5718-1958 [Consolidated Version]

(c) When a report has been laid on the table of the Knesset, the Committee shall consider it and shall submit to the Knesset its conclusions and proposals for approval. In regard thereto, the provisions of section 18A shall apply, mutatis mutandis.

(d) A report under this section shall not be published before being laid on the table of 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.

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

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The original State Comptroller Law, 5709-1949, was passed by the Knesset on May 18, 1949. It was amended in 1952, 1954, and 1958. The original law and the aforesaid amendments were consolidated in the State Comptroller Law [Consolidated Version], 5718-1958.

Since 5718-1958, there have been 34 amendments to this law.