



STATE OF ISRAEL

THE OMBUDSMAN
ANNUAL REPORT 32
for the year
2005

Selected Chapters



**OFFICE OF THE STATE COMPTROLLER
AND OMBUDSMAN**

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The Thirty-Second Report of the Ombudsman is hereby submitted to the Knesset.

The Basic Law: The State Comptroller determines that in addition to his authority in State Audit, the State Comptroller shall also investigate complaints from the public against bodies and persons, as laid down by law or in accordance with it. The State Comptroller shall carry out this function under the title of "Ombudsman".

The Ombudsman fulfills this function by means of a special unit in the Office of the State Comptroller – the "Office of the Ombudsman". The combination of the Office of the State Comptroller and the Office of the Ombudsman into one office is unique to the State of Israel and does not occur in any other state.

It should be mentioned here that any person is entitled to file a complaint with the Ombudsman and the subject of the complaint can be an act that is directly injurious to the complainant himself or directly withholds a benefit from him. In addition, the act must be in violation of the law or contrary to proper administration, or it constitutes a too inflexible attitude or flagrant injustice. The State Comptroller Law, 5718-1958 [Consolidated Version], confers special authority on Members of the Knesset to file complaints concerning acts that are directly injurious to others or directly withhold benefits from them. This is also the place to point out the protection given

by the Ombudsman to persons who have exposed acts of corruption or for internal auditors against their dismissal.

The success of the Ombudsman institution is measured, inter alia, by the number of complaints received in the Office: 7,825 complaints were received in the Office in 2005 – an increase of 14.4% compared with 2004. The seven main bodies against which the public frequently complains to the Ombudsman are the National Insurance Institute, the Israel Police Force, the Ministry of Finance, the Ministry of the Interior, the Ministry of Justice, the Courts System and the Ministry of Education, Culture and Sport.

In 2005 the investigation of 6,649 complaints was completed. Whilst this is a very impressive figure, indicating the exertive and responsible work of the Office's employees, there regrettably remains a no small number of files which are still in the process of being investigated and the citizen expects to receive the results of the investigation promptly. The rule is that a swift decision which is as concise as possible and is reached within a reasonable length of time is preferable to a well-explained decision which provides a highly documented and detailed enumeration of the findings of professional investigations but is prolonged and belated.

The task imposed today on the Office of the Ombudsman, to withstand the pressure of the ever-increasing flow of complaints, is indeed difficult and requires an increase in professional and administrative manpower. It should be noted that branches of the Office have been opened in Nazareth and Beer-Sheba, facilitating the citizen's access to the Office and assisting in the difficulty of completing the investigation of public complaints in the Offices of the Ombudsman.

Whilst the Office of the Ombudsman already holds a central place in the field of the relations between the citizen and the local and central government, it must widen the circle people turning to it. Information about

the possibility of applying to the Ombudsman is still lacking and it is necessary to carry out suitable and effective publicity activities in order to enlarge the orbit of citizens who are aware of the advantages of this institution, which as known provides its services free of charge. Indeed, information pamphlets in different languages are currently being distributed, giving information about the Office of the Ombudsman and ways of applying to it. I am assured that with the increase in the scope of the complaints to the Office, a solution to the problem of manpower will also be found.

We live in a period in which central and local government tend to act with a too inflexible attitude towards the citizen, injuring him and frequently even withholding from him benefits to which he is entitled. The Office of the Ombudsman is the shelter and shield for the citizen who stands exposed to the authorities. This significant body which was given by the legislature to the state and the society of Israel must be fortified.



Micha Lindenstrauss

State Comptroller
and Ombudsman

Jerusalem, May 2006

The annual report of the Ombudsman is hereby submitted to the Knesset in accordance with section 46(a) of the State Comptroller Law, 5718-1958 [Consolidated Version].

This report summarizes the activities of the Ombudsman from 1st January 2004 until 31st December 2004.

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BASIC LAW: THE STATE COMPTROLLER

STATE COMPTROLLER LAW, 5718-1958
[Consolidated Version]

GENERAL SUMMARY

POWERS AND AREAS OF ACTIVITY OF THE OMBUDSMAN

The State Comptroller performs his function as Ombudsman by means of the Office of the Ombudsman, which investigates complaints against bodies that are statutorily subject to audit by the State Comptroller: government ministries, local authorities, state enterprises and institutions and government companies, as well as their employees.

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 the rules of proper administration, or it involves a too inflexible attitude, or gives rise to flagrant injustice. Members of the Knesset may also complain about 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 the Office of the Ombudsman 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 enquiries addressed to him.

The Ombudsman may investigate a complaint in any manner he sees fit and is not subject to the rules of procedure or 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, 5718-1958 [Consolidated Version] (hereafter – the Law or the State Comptroller Law), enumerates the subjects that are not to be investigated and the bodies and officials against which complaints shall not be investigated. According to the Law, complaints against the President of the State, against the Knesset or one of its committees or against a Member of the Knesset shall not be investigated; nor shall there be an investigation of complaints against the Government and its committees or 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, or 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 tribunal, or in which a court or tribunal has made a substantial decision.

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.

The Ombudsman shall 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.

If upon completion of the investigation the Ombudsman finds that the complaint was justified, he shall notify the complainant and the body against which the complaint was filed and shall give the reasons for his decision. The Ombudsman may point out to the body complained against the need to rectify the defect revealed by the investigation and the manner and time of its rectification. The body must notify the Ombudsman of the measures it has taken to rectify the defect following the Ombudsman's ruling.

If the Ombudsman finds that a complaint was not justified, he shall notify the complainant and the body against which the complaint was filed and shall give the reasons for his decision.

SUBMITTING A COMPLAINT

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

A person may file 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-Sheba and Nazareth.

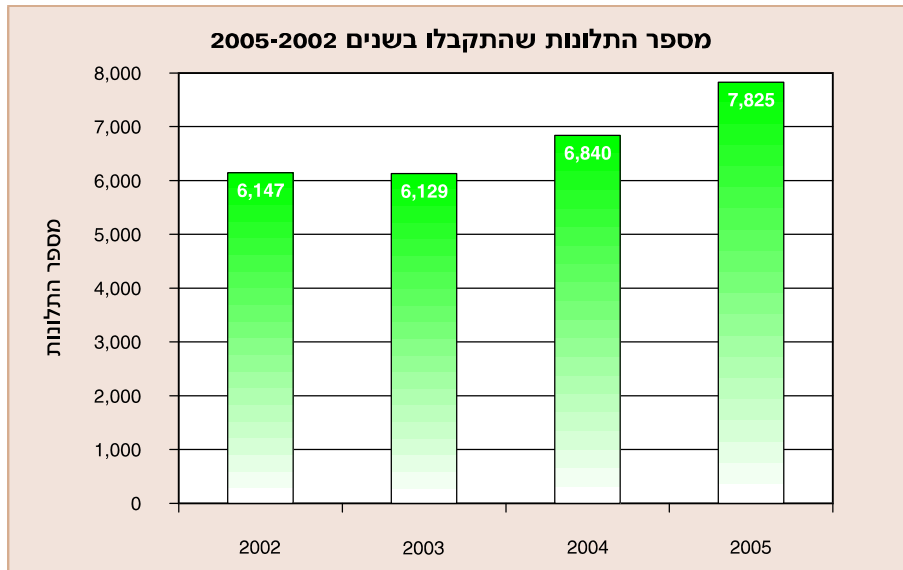
In the Appendices on p. ? it is possible to find the addresses of the Offices of the Ombudsman and the reception hours of the branch offices receiving oral complaints, as well as the facsimile numbers and the email address via which complaints may be filed.

DATA ON THE NUMBER OF COMPLAINTS AND THEIR OUTCOME

Number of complaints received

In 2005, the Ombudsman received 7,825 complaints which included 8,106 subjects¹

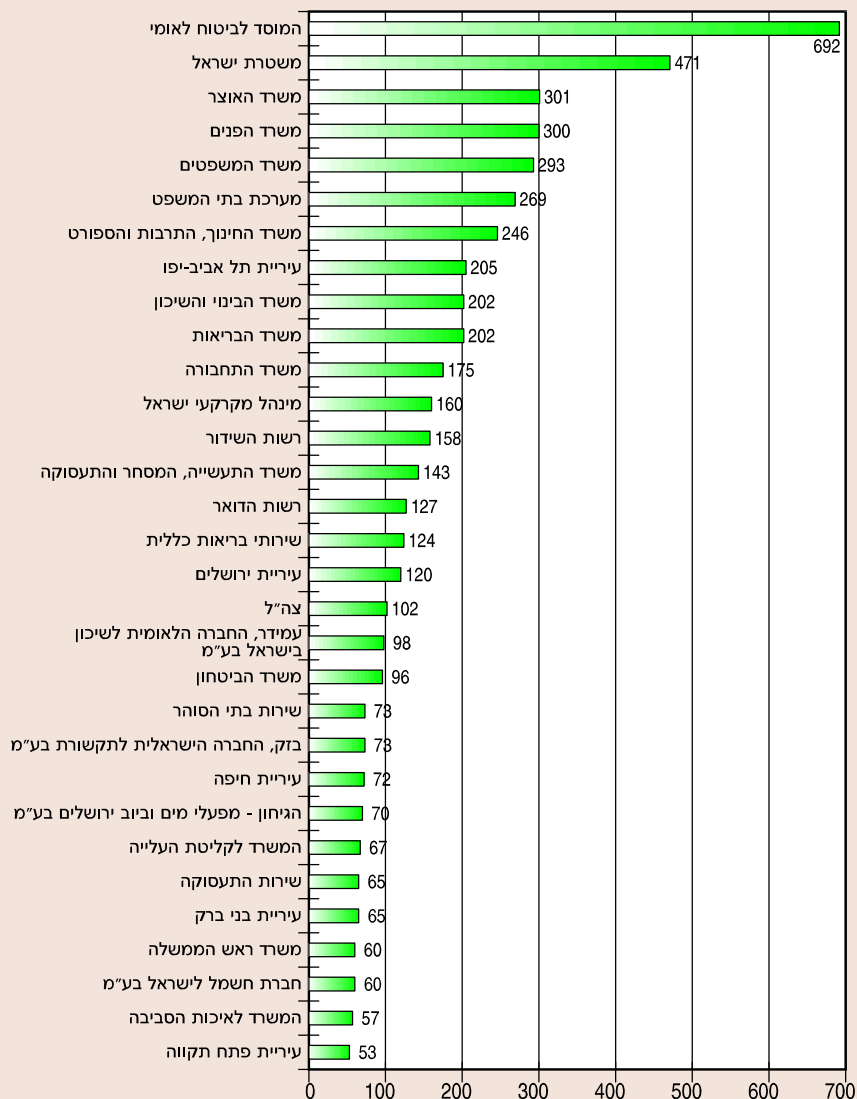
¹ The basic datum in the data system of the Office of the Ombudsman is "Subject of Complaint". The total number of subjects of complaints is greater than the number of complaints because some of the complaints refer to more than one subject. The number of subjects is greater than the number of complaints by about 4%.



The graph indicates that there was no major difference in the number of complaints received by the Ombudsman in the years 2002 and 2003, but in 2004 their number increased by 11.6% in comparison to 2003 and in 2005 their number increased by 14.4% in comparison to the previous year. In total, there was a 27.7% increase in the number of complaints received by the Ombudsman in the years 2003-2005.

The following graph lists the bodies against which more than 50 complaints were received by the Ombudsman in 2005:

גופים שעליהם נתקבלו יותר מ-50 תלונות בשנת 2005



Number of Complaints Investigated

In 2005 the Ombudsman handled 10,267 complaints, of which 2,442 were complaints remaining for investigation from 2004. The investigation of 6,649 complaints (64.8%) was completed.

Breakdown of Investigation of Complaints in 2002-2005

	Number of complaints handled during the year	Number of complaints in which investigation was completed	Percentage	Number of complaints in which investigation was not completed	Percentage
2002	7,711	5,891	76.4	1,820	23.6
2003	7,949	6,378	80.2	1,571	19.8
2004	8,411	5,969	71.0	2,442	29.0
2005	10,267	6,649	64.8	3,618	35.2

The table shows two trends: firstly, a 33% increase in the number of complaints handled per year, during the years 2002 to 2005; secondly, an increase in the number of complaints in which the investigation was not completed by the end of the year.

One of the reasons for the significant increase in the number of complaints in which the investigation was not completed in 2005 is the large number of complaints received in the last third of the year; in the months September-December 2005 the Ombudsman received 2,938 new subjects of complaints (an increase of approximately 27% in the number of subjects received during these months compared with 2004 and of approximately 44% compared with 2003). About 58% of the total number of complaints in which the investigation was not completed by the end of 2005 were complaints received in the last

third of the same year; about 40% of the complaints in which the investigation was not completed were received in the last two months of the year.

Outcome of Investigation Of Complaints

The 6,649 complaints in which the investigation was completed in 2005 comprised 6,912 subjects. Following is a table of the outcome of the investigation of these subjects:

Outcome of investigation	Subjects handled in 2005	
	Number	Percentage
Substantive decision reached*	3,451	49.9
Investigation discontinued**	1,888	27.3
Summarily rejected***	1,573	22.8
Total number of subjects of which investigation completed	6,912	100.0

* And determined whether the complaint was justified or not.

* The investigation was discontinued at different stages either because the matter complained about was rectified or because the complainant withdrew his complaint or failed to respond to enquiries of the Ombudsman, or because the Ombudsman felt that the Office of the Ombudsman was not the proper investigative body.

*** The subject of the complaint was rejected summarily since it was found that it did not satisfy the criteria of sections 36 and 37 of the Law, which determine against whom a complaint may be filed to the Ombudsman and in which matters, or

because it comprised matters not subject to investigation, as enumerated in sections 38, 39 and 40 of the Law.

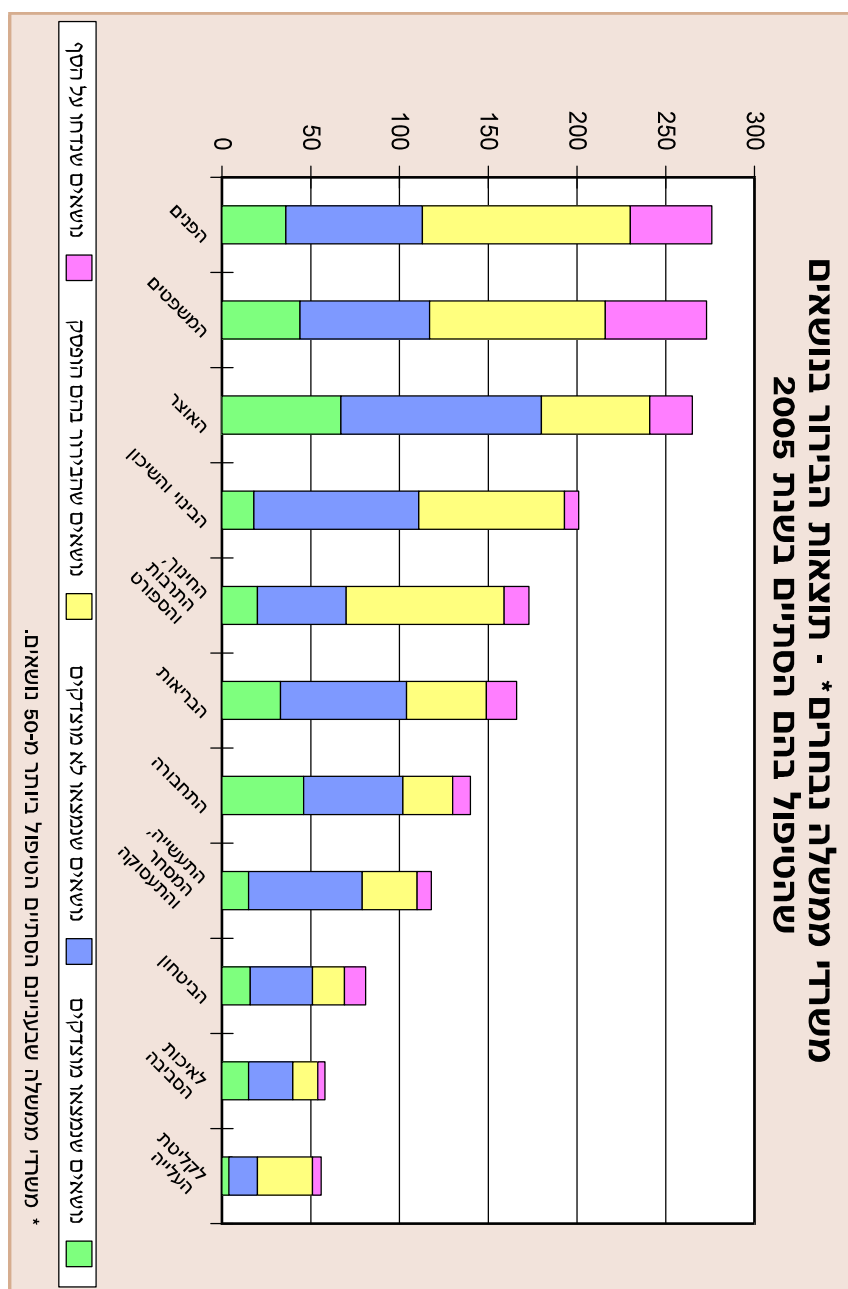
Justified Complaints

Out of the 3,451 subjects resolved substantively, 1,129 (32.7%) were found to constitute justified complaints.

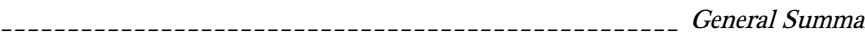
Since 2002, there has been a constant decrease in the amount of subjects constituting justified complaints, as represented in the following table:

	Percentage of subjects constituting justified complaints
2002	36.5%
2003	35.7%
2004	33.9%
2005	32.7%

The following graph shows data on the breakdown of subjects according to the bodies investigated and the outcome of the investigation:



23



DATA ON BODIES AGAINST WHICH MORE THAN 100 COMPLAINTS WERE RECEIVED

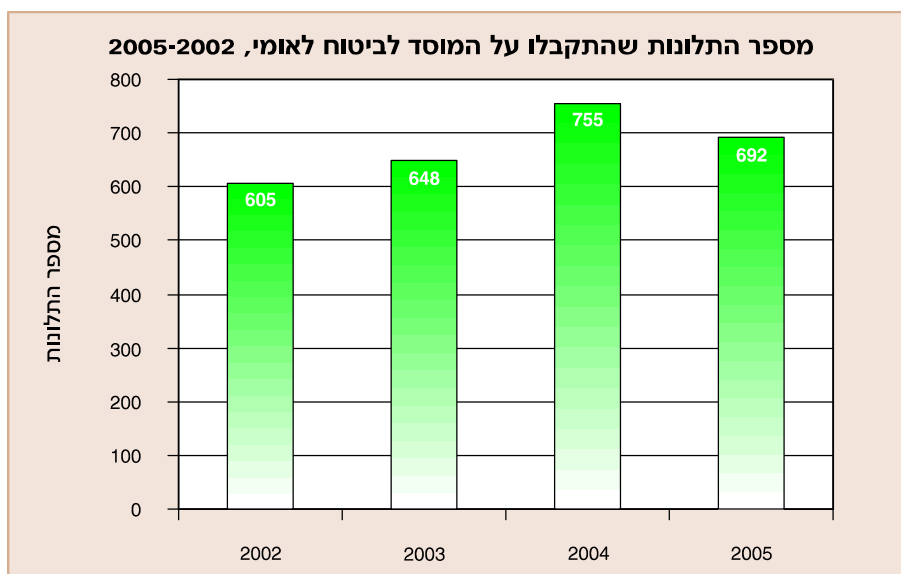
This chapter contains information about the bodies against which the largest number of complaints were received in 2005. The chapter does not contain information about local authorities, which shall be dealt with in a separate report.

The information includes a comparison of the number of complaints received against each body from 2002 to 2005 and details of the principal subjects of the complaints in 2005. In addition, there is a chart showing the total number of subjects complained about concerning a particular body which were investigated in the same year and the outcome of the investigation of these subjects.

The findings of the investigation of a complaint can be one of the following: (1) A ruling as to whether a complaint is justified or not. If the complaint is found justified, the Ombudsman may point out to the body complained against the need to rectify the defect disclosed by the investigation and the manner and time of its rectification; (2) Discontinuation of the investigation for one of the following reasons: the matter of the complaint has been rectified, the complainant has withdrawn his complaint or has failed to respond to an enquiry of the Ombudsman thus rendering it impossible to exhaust the investigation, the Ombudsman believes that the Office of the Ombudsman is not the proper investigative body; (3) Summary rejection of the complaint since it concerns a body or matter which may not be investigated according to the State Comptroller Law, 5718-1958 [Consolidated Version].

The bodies are presented in decreasing order according to the number of complaints received against them. Due to the large difference between the number of complaints filed against each body, the scales of the charts are not uniform.

National Insurance Institute



Principal subjects of complaints in 2005:

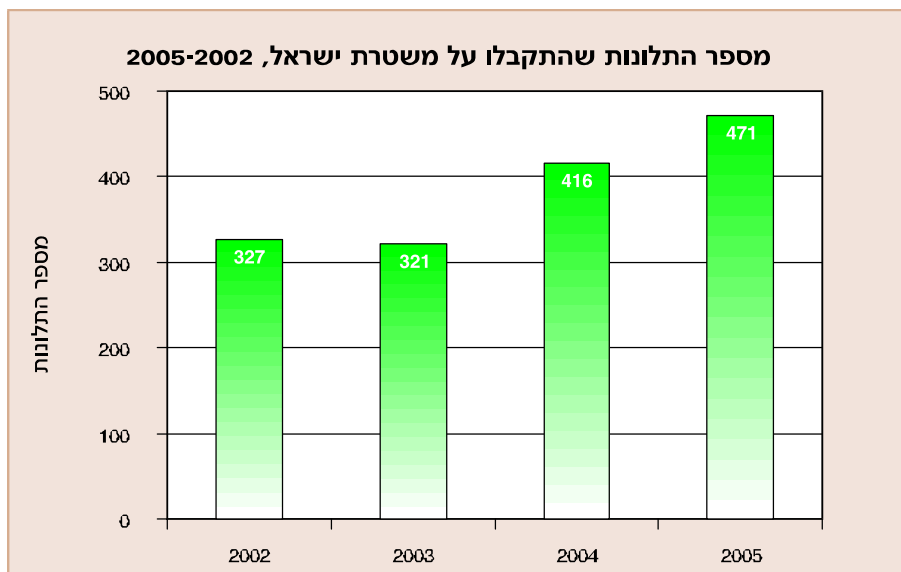
- Pensions and benefits – entitlement to benefit, rates of benefit, setting-off debts from benefits and claims for the reimbursement of excess payments of benefits;
- Insurance contributions – collection proceedings, demands for payment and reimbursement of contributions;
- Working procedures of the medical committees;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 991		
↓		
Complaints in which investigation completed 736		Complaints remaining for investigation at the end of the year 255
↓		
Complaints determined substantively 520	Complaints in which investigation terminated 157	Complaints rejected summarily 59
↓		
Justified Complaints 142 27.3%	Unjustified Complaints 378 72.7%	

See pages ?? for selected complaints handled by the Ombudsman against the National Insurance Institute

Israel Police Force



Principal subjects of complaints in 2005:

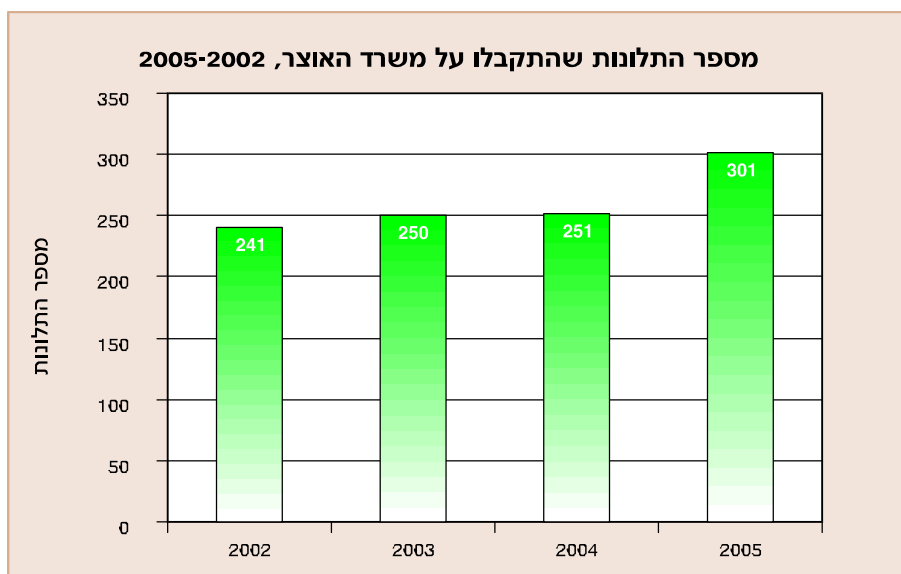
- Police handling of complaints about nuisances, acts of hooliganism, trespassing, family conflicts and disputes between neighbors;
- Conduct of police inquiries and unjustified closure of inquiry files;
- Objections to traffic reports and the proceedings for collecting arrear fines;
- Unlawful arrests;
- Police behavior;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 628		
↓		
Complaints in which investigation completed 408		Complaints remaining for investigation at the end of the year 220
↓		
Complaints determined substantively 246	Complaints in which investigation terminated 102	Complaints rejected summarily 60
↓		
Justified Complaints 91 37.0%	Unjustified Complaints 155 63.0%	

See pages ?? for selected complaints handled by the Ombudsman against the Israel Police Force.

Ministry of Finance



Principal subjects of complaints in 2005:

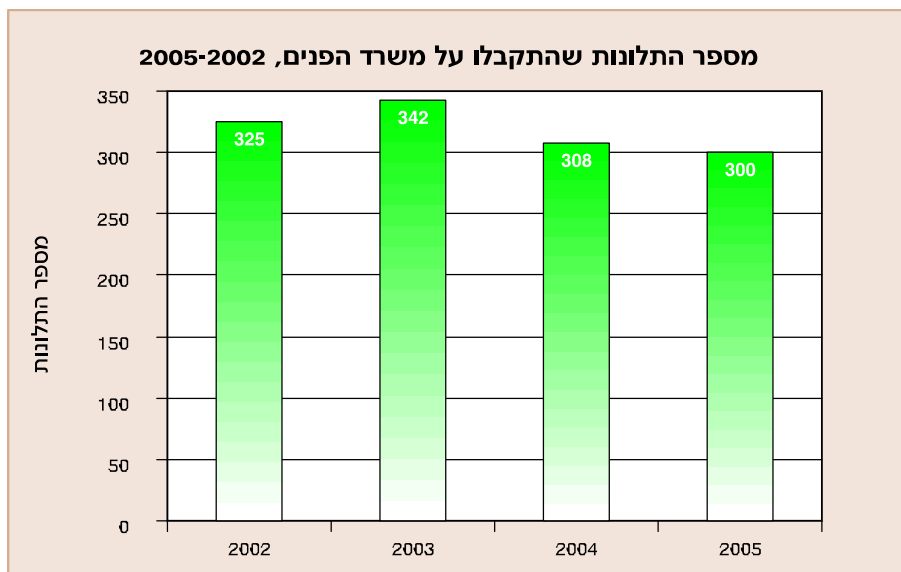
- Complaints about the Tax Authority concerning – provision of defective service to the citizen, requests for the cancellation of debts and fines and tax reimbursements, irregularities in tax collection and objections to tax assessments;
- Complaints about the Capital, Insurance and Savings Department concerning the Department's handling of complaints against insurance companies or insurance agents and about provident funds, including savings funds;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 387		
↓		
Complaints in which investigation completed 265	Complaints remaining for investigation at the end of the year 122	
↓		
Complaints determined substantively 180	Complaints in which investigation terminated 61	Complaints rejected summarily 24
↓		
Justified Complaints 67 37.2%	Unjustified Complaints 113 62.8%	

See pages ?? for selected complaints handled by the Ombudsman against the Ministry of Finance.

Ministry of the Interior



Principal subjects of complaints in 2005:

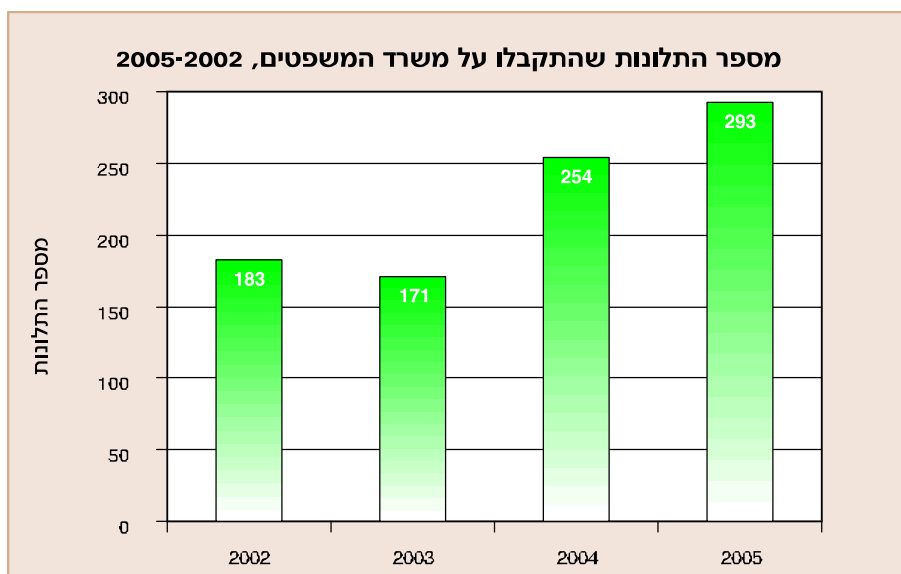
- Issues of Population Administration – issue of documents and visas, changes in registration, objections to the Ministry's handling of matters concerning unification of families, granting of citizenship and foreign workers;
- Complaints about the district councils for planning and building concerning objection to outline plans or changes in designation and concerning the approval of building plans;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 425		
↓		
Complaints in which investigation completed 276		Complaints remaining for investigation at the end of the year 149
↓		
Complaints determined substantively 113	Complaints in which investigation terminated 117	Complaints rejected summarily 46
↓		
Justified Complaints 36 31.9%	Unjustified Complaints 77 68.1%	

See pages ?? for selected complaints handled by the Ombudsman against the Ministry of the Interior.

Ministry of Justice



Principal subjects of complaints in 2005:

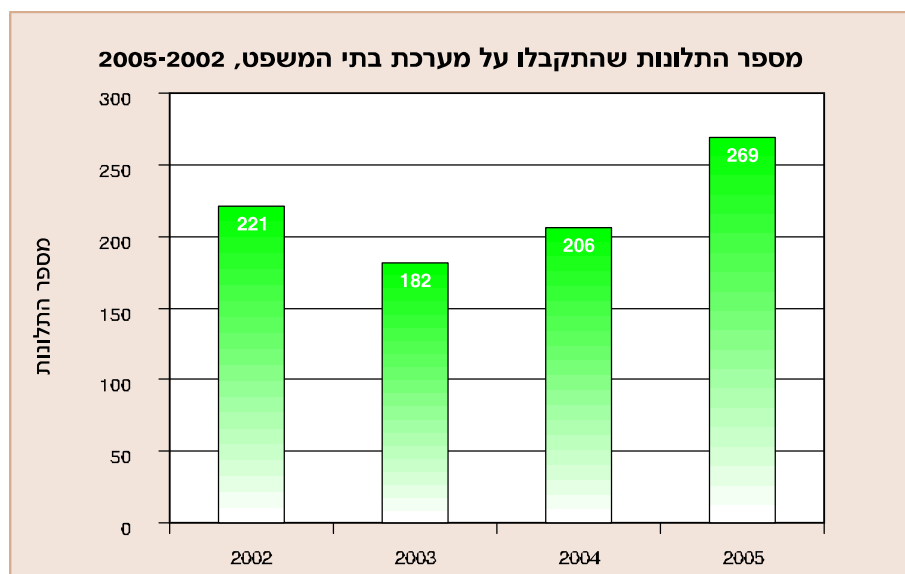
- Objections to the activities of the various registrars (Companies Registrar, Estate and Inheritance Registrar, Societies Registrar);
- Objections to the decisions of the District Attorney, the Department for the Investigation of Police and the State Attorney;
- Failure to receive assistance from the Legal Aid Bureau or objections to the handling of the lawyer appointed by the Bureau;
- Objections to the hearing procedures of the rabbinical courts and the decisions of the judges;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 338		
↓		
Complaints in which investigation completed 273		Complaints remaining for investigation at the end of the year 115
↓		
Complaints determined substantively 117	Complaints in which investigation terminated 99	Complaints rejected summarily 57
↓		
Justified Complaints 44 37.6%	Unjustified Complaints 73 62.4%	

See pages ?? for a complaint handled by the Ombudsman against the Ministry of Justice.

Courts System



Principal subjects of complaints in 2005:

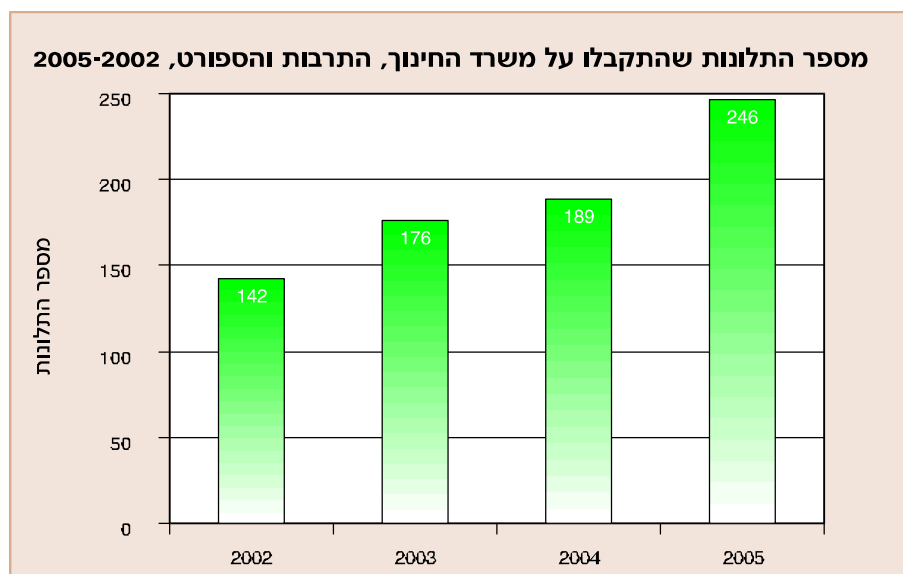
- Defects in the work of the courts' secretariat;
- Requests to accelerate proceedings and fix times for hearings;
- Objections to hearing procedures, judicial decisions and judgements;
- Objections to the implementation of execution proceedings;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 320 ↓		
Complaints in which investigation completed 243	Complaints remaining for investigation at the end of the year 77	
↓		
Complaints determined substantively 62	Complaints in which investigation terminated 63	Complaints rejected summarily 118
↓		
Justified Complaints 17 27.4%	Unjustified Complaints 45 72.6%	

See pages ?? for a complaint handled by the Ombudsman against the Courts System.

Ministry of Education, Culture and Sport



Principal subjects of complaints in 2005:

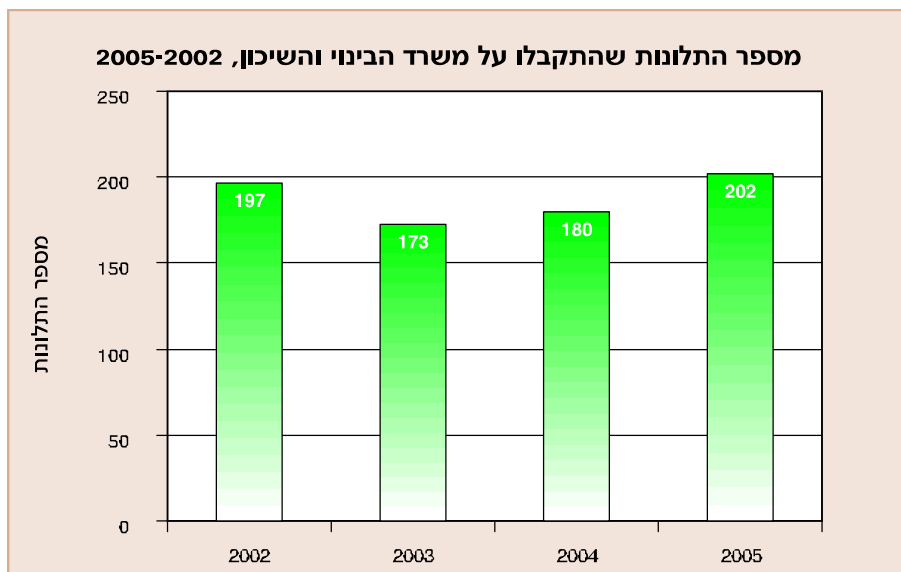
- Complaints of pupils and parents about the behavior of teachers and headmasters, transportation arrangements, suspension from school and failure to receive results of matriculation examinations;
- Complaints of educators about their work conditions, the failure to receive rights and dismissals;
- Complaints about the assessment of academic degrees from abroad;
- Complaints about the failure to receive income support benefit;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 330		
↓		
Complaints in which investigation completed 173	Complaints remaining for investigation at the end of the year 157	
↓		
Complaints determined substantively 70	Complaints in which investigation terminated 89	Complaints rejected summarily 14
↓		
Justified Complaints 20 28.6%	Unjustified Complaints 50 71.4%	

See pages ?? for a selection of complaints handled by the Ombudsman against the Ministry of Education, Culture and Sport.

Ministry of Construction and Housing



Principal subjects of complaints in 2005:

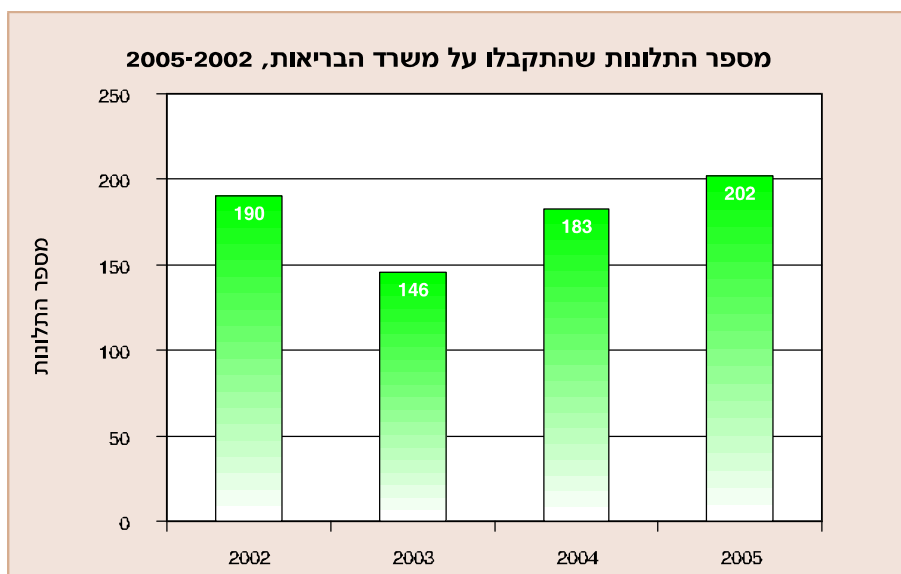
- Complaints of new immigrants, one-parent families or the needy concerning entitlement to housing assistance, the payment of rent or improvement in housing conditions;
- Complaints about mortgages or grants of the Ministry;
- Defects in the handling of the Association for Better Housing concerning cooperative housing;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 307 ↓		
Complaints in which investigation completed 201	Complaints remaining for investigation at the end of the year 106	
↓		
Complaints determined substantively 111	Complaints in which investigation terminated 82	Complaints rejected summarily 8
↓		
Justified Complaints 18 16.2%	Unjustified Complaints 93 83.8%	

See pages ?? for two complaints handled by the Ombudsman against the Ministry of Construction and Housing.

Ministry of Health



Principal subjects of complaints in 2005:

- Complaints of patients about the quality of medical treatment and behavior of doctors;
- Failure to receive assistance in purchasing equipment and medical appliances;
- Failure to receive assistance in the treatment of mental patients;
- Objections to the handling of complaints about the Health Services by the Commissioner for Public Complaints Under The State Health Insurance Law;
- Complaints of Ministry employees about the offensive behavior of a superior and requests for protection for employees who have exposed acts of corruption;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 288
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Complaints in which investigation completed 166	Complaints remaining for investigation at the end of the year 122
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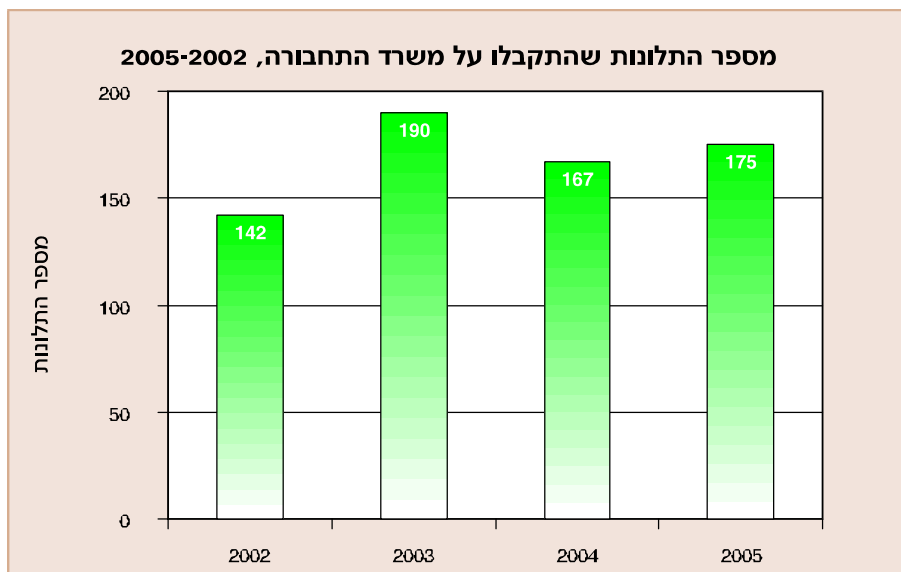


Complaints determined substantively 104	Complaints in which investigation terminated 45	Complaints rejected summarily 17
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Justified Complaints 33 31.7%	Unjustified Complaints 71 68.3%
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Ministry of Transportation



Principal subjects of complaints in 2005:

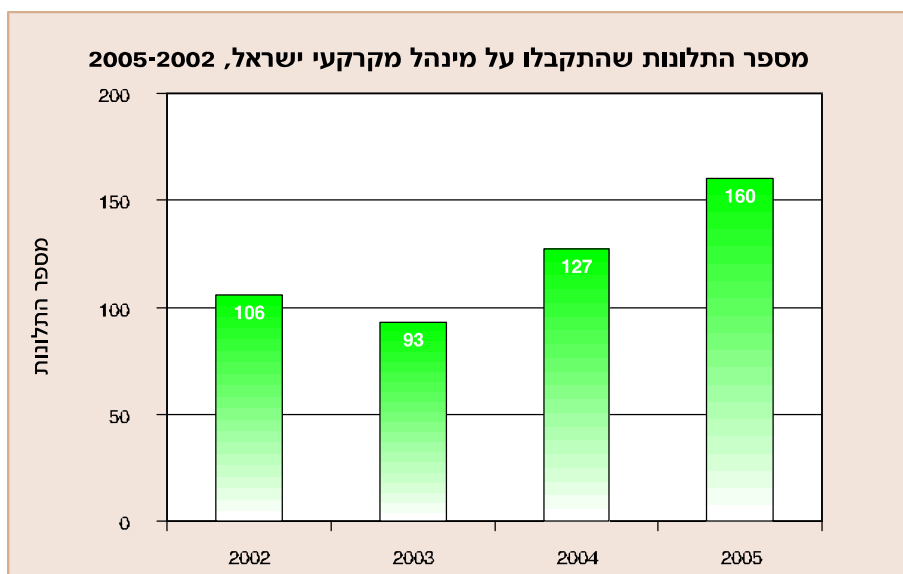
- Complaints about the Licensing Department concerning the issue of driving licenses and the refusal to grant or renew a driving license for health reasons;
- Collection and reimbursement of vehicle licensing fees;
- Objections to traffic arrangements;
- Defects in the handling of complaints about public transportation;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 230		
↓		
Complaints in which investigation completed 140	Complaints remaining for investigation at the end of the year 90	
↓		
Complaints determined substantively 102	Complaints in which investigation terminated 28	Complaints rejected summarily 10
↓		
Justified Complaints 46 41.5%	Unjustified Complaints 56 54.9%	

See pages ?? for a selection of complaints handled by the Ombudsman against the Ministry of Transportation.

Israel Lands Administration



Principal subjects of complaints in 2005:

- Defective handling of the renewal of (long-term) lease contracts;
- Annual rental fees – rental rates, collection procedure and capitalization of rental fees;
- Delays in the registration of property rights;
- Disorder in tenders for the selling of land;
- Defective service to the public.

Breakdown of outcome of investigation

**Total number of complaints handled in 2005
(including complaints remaining for investigation from 2004)**

236



**Complaints in which
investigation completed**

138

**Complaints remaining
for investigation
at the end of the year**

98



**Complaints
determined
substantively**

58

**Complaints
in which
investigation
terminated**

68

**Complaints
rejected
summarily**

12



**Justified
Complaints**

35

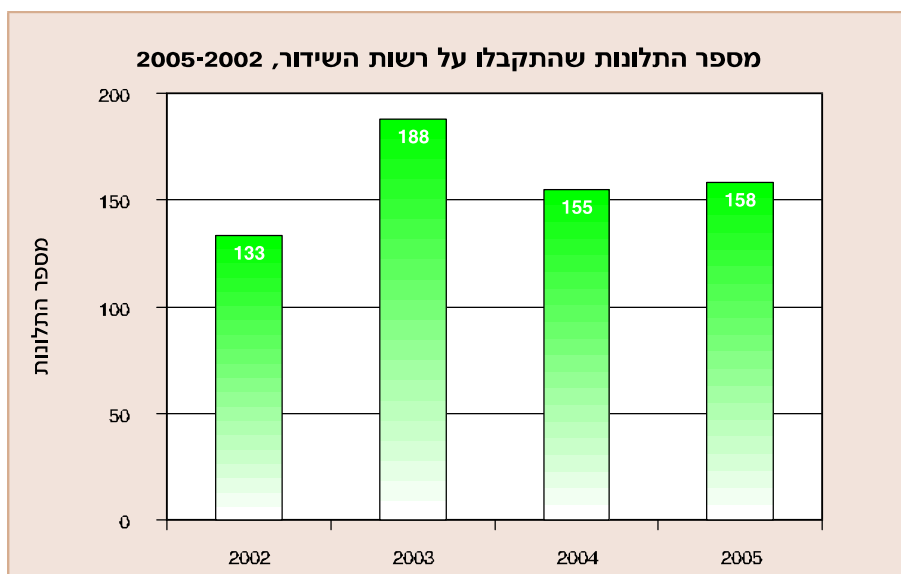
60.3%

**Unjustified
Complaints**

23

39.7%

Broadcasting Authority



Principal subjects of complaints in 2005:

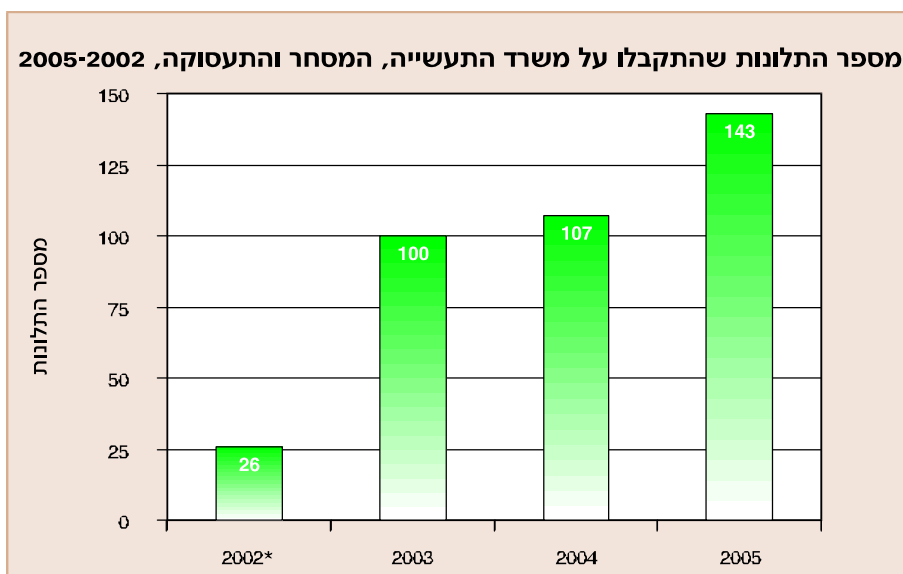
- Complaints about unjustified demands for the payment of radio and television fees and the procedure for collecting fee debts;
- Complaints about the granting of fee-reductions or fee-exemptions to people entitled to a benefit from the National Insurance Institute, to senior citizens, disabled persons or to people residing abroad;
- Objections of citizens to the content of programs;
- The handling of complaints about disturbances in the reception of broadcasts;
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 201 ↓		
Complaints in which investigation completed 106	Complaints remaining for investigation at the end of the year 95	
↓		
Complaints determined substantively 71	Complaints in which investigation terminated 28	Complaints rejected summarily 7
↓		
Justified Complaints 24 33.8%	Unjustified Complaints 47 66.2%	

See pages ?? for a complaint handled by the Ombudsman against the Broadcasting Authority.

Ministry of Industry, Trade and Employment



* The number of complaints in 2002 does not include complaints against bodies which were transferred in 2003 to the Ministry of Industry, Trade and Employment from the Ministry of Employment and Welfare.

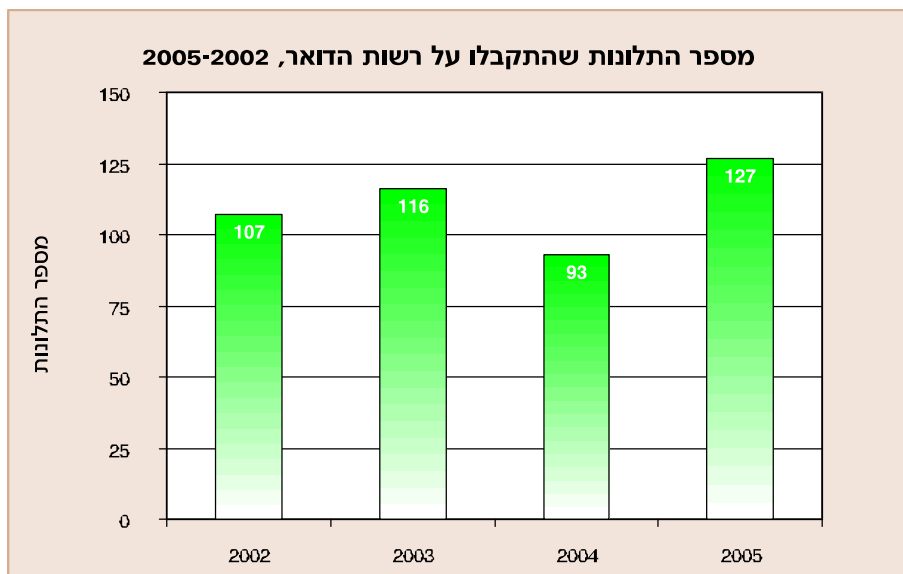
- Objections to procedures for investigating complaints;
- Failure to receive professional classification;
- Granting of work permits to foreign residents;
- Objections to the filing of a legal claim for employing a worker without receiving a permit from the Employment Service.
- The manner in which the Registrar of Cooperative Societies handled complaints about cooperative societies;
- The manner in which the Israeli Consumers Council handled consumers' complaints.
- Defective service to the public.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 180		
↓		
Complaints in which investigation completed 118		Complaints remaining for investigation at the end of the year 62
↓		
Complaints determined substantively 79	Complaints in which investigation terminated 31	Complaints rejected summarily 8
↓		
Justified Complaints 15 19.0%	Unjustified Complaints 64 81.0%	

See pages ?? for a complaint handled by the Ombudsman against the Ministry of Industry, Trade and Employment.

Postal Authority



Principal subjects of complaints in 2005:

- Irregularities in distribution of mail;
- Procedures for sending registered mail;
- Defective service to the public.

Breakdown of outcome of investigation

**Total number of complaints handled in 2005
(including complaints remaining for investigation from 2004)**

157



**Complaints in which
investigation completed**

92

**Complaints remaining
for investigation
at the end of the year**

65



**Complaints
determined
substantively**

70

**Complaints
in which
investigation
terminated**

19

**Complaints
rejected
summarily**

3



**Justified
Complaints**

28

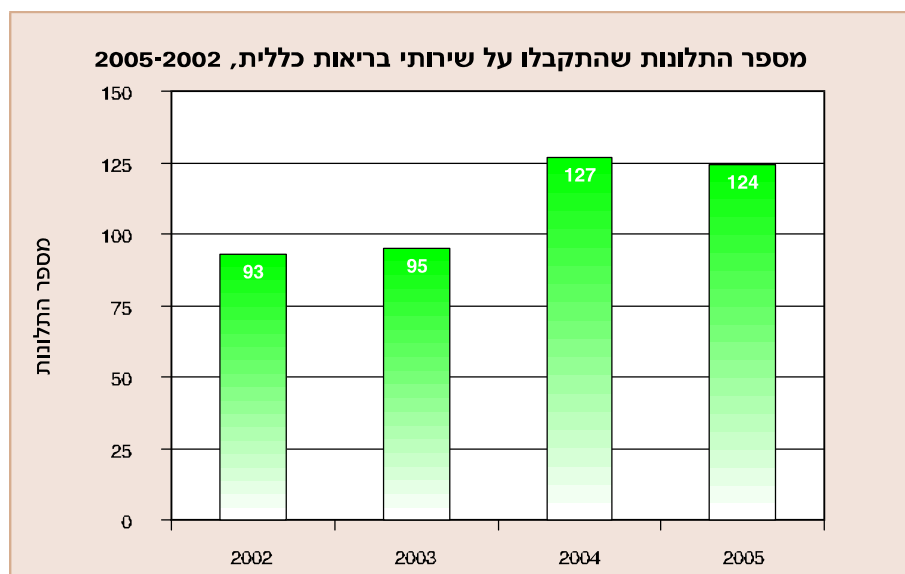
40.0%

**Unjustified
Complaints**

42

60.0%

Clalit Health Services



Principal subjects of complaints in 2005:

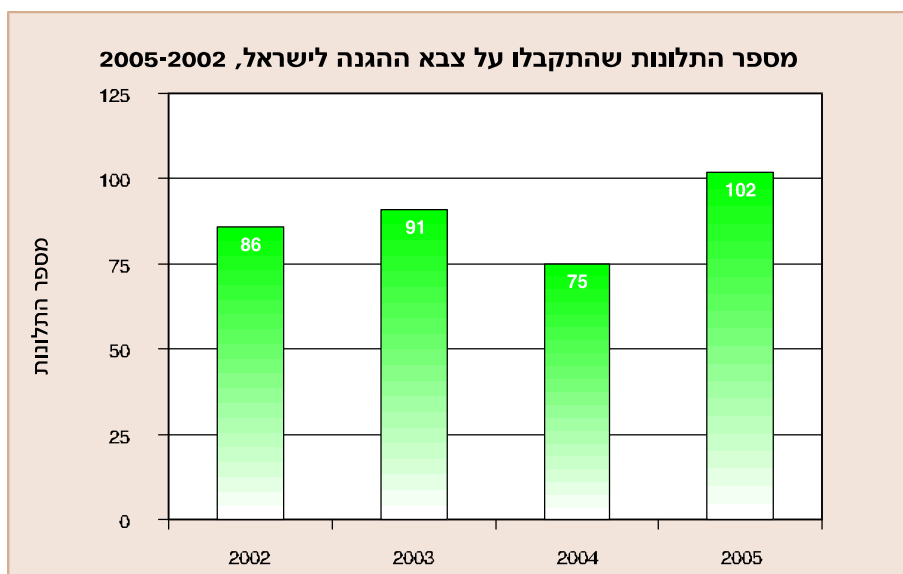
- Behavior of doctors and quality of medical treatment;
- Defective service in the clinics and failure to receive response to enquiry;
- Provision of medicines and failure to receive reimbursement of expenses for medicines not provided by the health services;
- Defects in granting written approval for medical treatment.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 217		
↓		
Complaints in which investigation completed 120		Complaints remaining for investigation at the end of the year 97
↓		
Complaints determined substantively 81	Complaints in which investigation terminated 30	Complaints rejected summarily 9
↓		
Justified Complaints 30 37.0%	Unjustified Complaints 51 63.0%	

See pages ?? for a complaint handled by the Ombudsman against Clalit Health Services.

Israel Defense Forces



Principal subjects of complaints in 2005:

- Procedures for enlistment to compulsory service and reserve service;
- Handling of requests for exemption or cancellation of exemption from military service;
- Handling of requests to postpone service for students of Talmudical colleges;
- Failure to reply to inquiry.

Breakdown of outcome of investigation

Total number of complaints handled in 2005 (including complaints remaining for investigation from 2004) 135		
↓		
Complaints in which investigation completed 104		Complaints remaining for investigation at the end of the year 31
↓		
Complaints determined substantively 43	Complaints in which investigation terminated 31	Complaints rejected summarily 30
↓		
Justified Complaints 18 41.9%	Unjustified Complaints 25 58.1%	

See pages ?? for a selection of complaints handled by the Ombudsman against the IDF.



Data on the breakdown of complaints according to the bodies complained against and the outcome of the investigation are presented in Table 1 (p.?).

Table 2 (p.?) shows a breakdown of the complaints according to principal subjects: Welfare Services, Services by Local Authorities, Provision of Public Services and so forth.

RECTIFICATION OF GENERAL DEFECTS FOLLOWING INVESTIGATION OF COMPLAINTS

The investigation of complaints may disclose general defects which are injurious not only to the complainant. Upon the disclosure of these defects, the Ombudsman points out the need for their rectification in order to prevent injury to others. The work of the Ombudsman over the years has led to the rectification of many defects.

This report also includes complaints the investigation of which revealed general defects. Following the Ombudsman's ruling on the need to correct the defects, the bodies complained against decided to make the rectifications. Following are a few examples:

Ministry of Finance

The Tax Authority Administration decided to increase its control over and follow-up of the manner in which the regional VAT Offices handle the cancellation of liens imposed on vehicles of tax defaulters after the latter have settled their debts.

Ministry of the Environment

The members of the Tenders Committees of the Ministry were directed to notify those who had filed tenders of the summary disqualification of their offers straight after the decision to disqualify was reached and to return to them the bank guarantee which had been filed with their offers, even if there was a delay in determining the winner of the tender.

The Ministry decided that its publications would deal only with the activities of the Ministry and would provide only information needed by the public for the purpose of obtaining services from the Ministry and receiving rights (Complaint no.5, p.?).

Ministry of Construction and Housing

The joint interministerial committee of the Finance Ministry, the Ministry of Construction and Housing and the Mortgage Banks discussed the requests of borrowers for alleviations in loan payments, this being a matter requiring an investigation as to the financial situation of the borrower before a decision can be reached. Following the investigation of a complaint, the committee decided that for every request for alleviation which was filed by couples who had separated, the investigation would be carried out on the couple jointly and a fee would be requested from them for one investigation only.

Ministry of Education, Culture and Sport

The Ministry decided that payments received from a Professional Study Savings Fund would be considered income negating entitlement to a stipend, but it did not publish a notification of its decision on time. Thus, despite its decision, it will examine whether students of Talmudical colleges, whose wives, being teachers, took a year's sabbatical in the school year 2004/2005 and received payments from their Professional Study Savings Fund, are entitled to income support grants.

Courts System

The clerks of the Tel-Aviv Magistrate Court's secretariat were directed as follows:

Where a defendant has filed a statement of defense in a claim against him after the time allotted by law for filing a statement of defense and after the secretariat has forwarded to the judge the plaintiff's request for a judgement in the absence of a defense statement, the secretariat must forward the defense statement to the judge with a side note that it was filed in arrears (Complaint no. 13, p.105).

Ministry of The Interior

The Head of the Department for the Licensing and Supervision of Firearms in the Ministry of the Interior re-clarified for the managers of shooting ranges and authorized dealers the provisions of the Firearms Order (Rates of Payments for Checking Firearms), 5759-1998, concerning the payment which can be requested for checking firearms.

Ministry of Transportation – Licensing Authority

The Ministry decided to notify all the candidates who had failed the assessment examinations for the Driving Instructors Training Course of the possibility of holding a discussion to give feed-back on the examinations.

The Ministry also decided to hold a tender for choosing a body to carry out the assessment examinations for candidates for the Driving Instructors Course.

The Ministry decided to initiate legislative amendment and the appropriation of resources enabling it to summons to a hearing the owners of driving licenses concerning whom the Medical Institute for

Road Safety has recommended not to renew their driving licenses for health reasons, prior to the Ministry's decision whether or not to renew their licenses.

Ministry of Industry, Trade and Employment

The Registrar of Engineers and Architects has started sending to people registered in the Register of Engineers and Architects a copy of the procedures determining in which fields a person requesting an Architect's License must gain experience in order to be eligible for a license. In addition, the procedures have been published on the website of the Ministry.

National Insurance Institute

The NII issued a reminder according to which an employee who worked full or part time and earned less than the minimum wage is entitled to receive from the NII a benefit in lieu of income (maternity pay, reserve service pay, etc.) according to the minimum wage and taking into consideration the scope of his employment (Complaint no. 21, p.127).

The NII Administration decided to examine the eligibility of emissaries of the Jewish Agency for child allowance during the period of their service abroad.

Amendments have been made to the provisions for collecting debts resulting from the excess payment of benefits to insured persons through the fault of the NII. The new provisions determine that if a year has passed since the time the NII started paying the insured person by mistake the excess payments from which the debt resulted, the debt will be cancelled regardless of the financial situation of the

insured person; only if a year has not yet passed from the said time will cancellation of the debt be subject to an income criterion.

The NII has amended the text of a warning letter that it was accustomed to send to insured persons owing insurance contributions to the NII before deducting the debts from the insured person's child allowance. The amended text points out that a woman who has been living separately from her husband for at least six months or who has a judgement for maintenance, can request the NII not to deduct a debt owing to the NII from the child allowance paid to her, if the debt is her husband's and not hers.

The NII sent out to its workers who deal with the granting of benefits, eligibility to which is dependent also on the income of the insured person, a reminder according to which a debt to the NII which has resulted from the excess payment of a benefit shall be cancelled if it emanated from the payment of a benefit at the time that the income of the insured person exceeded the maximum income permitted solely due the routine update of his income.

In the framework of an examination and amendment of the work procedures of the NII's medical committees, it was laid down that the waiting time required for hearings in the medical committees for disabled persons in cases where the original committee to which they had been invited was cancelled, or for very sick people, should be made as short as possible (See Complaint no.27, p.?).

Israel Police Force

Following the investigation of complaints, the Police Force issued reminders in the following matters:

- (a) Prior to carrying out an external body search on a suspect, it is necessary to receive his explicit consent to the search and not rely on his failure to refuse the search (See complaint 30, p.?).
- (b) A prosecutor considering requests for the cancellation of fine notifications must give a reasoned explanation of his decision in his answer to the person who filed the request.

Airports Authority

The Authority has added both to the exit permit issued to every person travelling in a taxi from Ben Gurion Airport and to the information pamphlet for people using taxi services in the airport the provision of the Supervision of Prices (Price of Taxi Journeys) Order, according to which 5 NIS must be added to the meter price of a journey from the Airport.

Clalit Health Services

Following the investigation of the complaint of a complainant who was not received by a doctor because her name was mistakenly not included in the list of appointments, Clalit Health Services notified the Ombudsman that in order to avoid similar mistakes in the future, it had directed its secretariat to ensure that updated lists of patients be given to the doctors and to allocate in every list a few appointments for patients in urgent need of a doctor.

COMPLAINTS OF KNESSET MEMBERS

Section 37(2) of the State Comptroller Law, 5718-1958 [Consolidated Version] grants the Members of Knesset special status regarding the filing of complaints: as a rule, a person may only file with the Ombudsman a complaint about an act which has directly injured him or withheld a benefit from him, whereas a Member of Knesset may also file a complaint about an injurious act done to another.

COMPLAINTS CONCERNING DISCRIMINATION AGAINST WOMEN

Section 6(c) of the Authority for Promotion of Women's Status Law, 5758-1998 (hereafter – “the Law”), prescribes the following:

“The Ombudsman shall submit an annual report to the Knesset regarding all 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 Promotion of Women's Status (hereafter – the Authority) may forward to the Ombudsman complaints regarding any act within its area of activity, if it considers that the Ombudsman should investigate the complaint and if the complainant has given her consent.

The Authority did not forward any complaints to the Ombudsman in this matter in 2005.

INTERNATIONAL RELATIONS

In April 2005 the Annual Conference of the National European Ombudsmen, which was organized by the Commissioner for Human Rights in the European Council and the Ombudsman of Denmark, took place in Copenhagen, Denmark. The conference marked the 50th anniversary of the Ombudsman institution in Denmark. The State Comptroller and Ombudsman, Justice (Ret.) Eliezer Goldberg, the Director of the Office of the Ombudsman, Mr. Dori Pinto, Adv. and Mr. Yehoshua Roth, Senior Assistant to the State Comptroller and International Liaison, participated in the conference.

The conference dealt with the following matters: The future role of the European Ombudsman, the treatment of problematic prisoners and protection of the right to privacy.

In September 2005 the State Comptroller and Ombudsman, Justice (Ret.) Micha Lindenstrauss participated in a conference organized by the Hellenic Fund for European and World Policy (ELIAMEP) which took place on Helki Island, in Greece. The Ombudsman gave a lecture to the participants of the seminar on the subject of "The Role of the Ombudsman in Situations of Security Tension".

In October 2005 the Spanish Ombudsman, Mr. Enrique Mugica Herzog visited Israel and in the framework of his visit he met the State Comptroller and Ombudsman, Justice (Ret.) Micha Lindenstrauss.

SUMMARY OF SELECTED CASES

MINISTRY OF THE ENVIRONMENT



OBJECTIONS TO PROGRAMS BROADCASTED ON BEHALF OF GOVERNMENT MINISTRY

The Complaint

In October 2004 the employees of a fish farm in Eilat (hereafter - the complainants) submitted a complaint to the Ombudsman against the Ministry of the Environment (hereafter - the Ministry). Following are the details of the complaint:

1. In 2004 the Ministry broadcasted several announcements on the radio against the operation of the fish farms in the Eilat Bay. According to the announcements the fish enclosures are, in the opinion of experts, the main cause of the pollution of the Eilat Bay. For example, in the announcement broadcasted on the radio by the Ministry on 26.10.04 (hereafter - the announcement) it was stated: "Does the outpouring of sewage onto the beaches of Tel Aviv get to you? Then what do you say about the fish cages which pour out hundreds of tons of pollution into the Eilat Bay? The Ministry of the Environment, a long line of scientists and even the international report of experts have all determined that the fish cages are the main human cause of pollution in the Eilat Bay. The pollution shall be stopped, the fish cages shall be removed from the Eilat Bay."

2. The complainants complained about the comparison made by the Ministry in the program between fish breeding and the outpouring of

sewage onto the beach of Tel Aviv. They also contended that by broadcasting the announcements, the Ministry was using public monies in order to rouse public objection to the operation of the fish farms in Eilat. According to them, the Ministry's programs against the fish farms were tantamount to an incisive intervention and an attempt to influence a national matter pending in the Government and in the National Council for Planning and Building. The complainants pointed out that the viewpoint of the Ministry of Agriculture on the matter opposed that of the Ministry of the Environment and that top scientists were of the opinion that fish farms do not cause damage to the environment.

Investigation of the Complaint

1. The Ministry replied to the Ombudsman that it had broadcasted the announcements against the operation of the fish farms in Eilat because it had felt that in the framework of its activities to protect the environment, it was its duty to bring to public knowledge the issue of the pollution of the Eilat Bay by the fish farms, this being an environmental issue of the highest importance and significance on the public agenda in recent years. According to the Ministry, the announcement was based on excerpts from the international report of scientists which support the concern that fish farms constitute one of the main factors having detrimental influences on the state of the Eilat bay in general, and on the coral reefs in particular.

2. The Ministry also replied that the comparison between the refuse of the fish cages and the sewage which was poured out onto the beaches of Tel Aviv was a relevant comparison since both are major man-made pollutants. The Ministry pointed out that the refuse of fish cages contains pollutants which are characteristic of sewage, in

amounts comparable to those found in the sewage waste of a town comprising over 50,000 residents.

3. The Ministry added there was nothing inadmissible in its publicizing the issue prior to a decision being reached concerning the fish farms in Eilat and pointed out that the issue was presented to the National Council for Planning and Construction in the same manner that it was presented in the announcement.

4. The Ministry rejected the complainants' claim regarding the spending of public monies and contended that the issue dealt with in the said announcements was in the scope of its activity which included education, explanation and publicity, for which it was allocated a budget.

Outcome of the Investigation

1. The Ombudsman ruled that the complaint was justified.

The Ombudsman ruled that the announcements against the fish farms in Eilat should not have been broadcasted before a government decision concerning the future of the farms had been reached.

The Ombudsman also ruled that the wording of the announcement was incompatible with the provisions of the Monetary and Economy Regulations (hereafter - the Regulations) laid down by the Accountant General, according to which, inter alia, the publicity of a government ministry shall be of relevance, shall relate to the activities of the government ministry and shall enumerate "only what the public needs to know in order to receive services from the government ministry and to receive its rights".

The Ombudsman pointed out to the Ministry that even if the purpose of the announcement was to provide the public with information

concerning the similarity between pollutants found in the refuse of fish cages and those found in sewage, the wording of the announcement, according to which the pollution from the fish cages was supposed to "get to" the public at least to the extent that the outpouring of sewage onto the beaches of Tel Aviv "got to" it, was incompatible with the provisions of the Monetary and Economy Regulations relating to the appropriate wording of publicity on behalf of the government ministry.

The Ombudsman also pointed out to the Ministry that the claim in the announcement that the international report of experts supported its viewpoint with regards to the pollution from fish farms was not accurate, since a perusal of the Proposal for Decision of the National Council for Planning and Construction regarding National Outline Plan 13 (published on the website of the Ministry) reveals that there is uncertainty regarding the relationship between the fish farms and the nitrification of the Bay and the deterioration in the state of the coral reefs.

The Ombudsman therefore indicated to the Ministry of the need to take extra precaution both with regard to the actual decision to publicise and to the content and wording of the publicity.

2. The Ministry notified the Ombudsman that in the light of his ruling on the matter and his interpretation of the said Regulations, it would in future implement the Regulations in accordance with the Ombudsman's ruling.

EXPLOITATION OF POSITION OF CIVIL SERVANT FOR PERSONAL INTERESTS

The Complaint

The complainant, a citizen of Israel residing in Buenos Aires in Argentina, submitted a complaint to the Ombudsman against the Ministry of Foreign Affairs. Following are the details of the complaint:

1. The complainant filed a request with the Israeli Embassy in Buenos Aires (hereafter - the Embassy) to receive documents from Israel via the Embassy. On 28.1.04 she was invited by telephone to come to the Embassy on Friday 30.1.04, at 1:00 PM, in order to collect the documents she had requested.

The complainant contended that the time of the appointment seemed to her strange since she knew that the reception hours in the Consular Department of the Embassy (hereafter - the Consular Department) on Fridays were until 11:00 AM.

The complainant nevertheless came to the Embassy at the appointed time. There she discovered that indeed there was no reception at that hour and she was asked to wait in the waiting room. According to the complainant, an Embassy employee who was known to her personally (hereafter - the employee) suddenly entered the room, accompanied by

a security officer. The employee spoke to her rudely, wished her and her family "every evil" and even threw the documents that she had come to collect on the floor.

The complainant complained about the behavior of the employee and contended that he had exploited his position in order to insult her and humiliate her.

Investigation of the Complaint

1. (a) The employee, who served as acting Consul in the Embassy, claimed that he knew the complainant and her husband from Israel and that there was a monetary dispute between them and his father which had caused a deterioration in his father's health. According to the employee, his family had been trying for a long time to make contact with the complainant's family, to no avail. When he found out that the complaint was living in Argentina and had asked to receive documents from Israel via the Embassy, he asked the Consul if he could meet with the complainant when she came to collect the documents. He also consulted with the Security Officer of the Embassy (hereafter - the Security Officer) on the matter and with the Head of the Security Department (hereafter - Security Head), the latter agreeing to accompany him to the meeting.

(b) The Consul confirmed that the employee had informed him of his intention to meet with the complainant and give her the documents. According to the Consul, since the employee told him that he knew the complainant and wanted to speak to her, he had agreed to the meeting notwithstanding that the delivery of documents was not the function of the employee. The Consul also claimed that only later did he find out that the employee had fixed the meeting outside reception hours, without his approval. The Consul pointed out that following this irregular occurrence he had clarified to the employees

of the Consular Department that acts of this nature should be performed only upon his approval.

(c) According to the Security Head, the employee, who was also a personal friend, had consulted with him concerning his intention of meeting with the complainant when she visited the Embassy. The Security Head contended that he had advised the employee not to meet with the complainant alone so that it should not appear that he was exploiting his position to harm her and had suggested being present at the meeting as a friend.

(d) The employee claimed that at the meeting on 30.1.04 he gave the complainant the documents she had come to collect and in reply to her question, answered that he felt bad and hoped that she also felt bad following the financial, legal and medical harm she had caused his family.

2. An investigation carried out by the Ombudsman with the Head of Internal Audit in the Ministry of Foreign Affairs revealed that following the complaint, the employee had sent a written response to the Ambassador. The Ambassador had summoned the employee to his office and pointed out that there had been no cause to mix work issues with personal affairs. Apart from this conversation, the Ministry of Foreign Affairs had taken no measures concerning the employee or the other Embassy employees who were involved in the affair.

Outcome of the Investigation

1. The Ombudsman ruled that the complaint was justified.

In the "Rules of Behavior of Civil Servants Regulations" dated 28.6.87, the Civil Service Commissioner laid down that "it is forbidden for a civil servant to exploit his position [or] function in the

Civil Service for the promotion of his own interests or of another person's and for any purpose which is not connected with the fulfillment of his duties".

The Embassy employees and the Security Head had acted contrary to the rules of behavior required of civil servants:

(a) The employee had exploited his position as acting Consul to meet with the complainant in order to promote his own interests. He had met with her outside the reception hours of the Consular Department with the excuse of delivering the documents to her (this not being his function). The arranging and holding of the meeting were violations of the rules of behavior applicable to civil servants and of the rules of proper administration.

(b) The behavior of the Consul was also faulty. When the employee had asked to deliver the documents to the complainant, the Consul should have pointed out to the employee that his request was incompatible with the rules of behavior applying to civil servants and prevented the meeting from taking place. In addition, the Consul's response to the Ombudsman indicated that even in retrospect he found nothing inappropriate with the actual request of the employee to use his position as a Consulate employee in order to deal with personal matters, only with the fact that the meeting had taken place outside reception hours.

(c) The Security Officer and the Security Head, with whom the employee had consulted concerning his intention to meet with the complainant, had not taken measures to prevent the meeting from taking place and the Security Head had even accompanied the employee to the meeting.

2. The Ombudsman brought the findings of the investigation to the knowledge of the Director General of the Ministry of Foreign Affairs and inquired which measures he intended to take in the matter. The

Head of Internal Audit in the Ministry of Foreign Affairs notified the Ombudsman that the Deputy Director General of the Ministry had taken disciplinary measures against the Consul and the employee.

MINISTRY OF EDUCATION, CULTURE AND SPORT

3

NON-PAYMENT OF SENIORITY INCREMENT FOR ENTIRE ELIGIBILITY PERIOD

The Complaint

In March 2005 the complainant submitted a complaint to the Ombudsman against the Ministry of Education, Culture and Sport (hereafter - Ministry of Education). Following are the details of the complaint:

1. The complainant was employed for 36 years by the Ministry of Education as a pre-school teacher and on 31.8.04 she retired. Shortly before her retirement she discovered that she had not been paid seniority increment for the school year September 1983 - August 1984, during which she had taken a professional studies course (hereafter - study year). The reason for this non-payment was that at the end of the study year she had not provided the Ministry of Education with certification of her studies in the same year.
2. After the complainant had provided the Ministry of Education with the required certification, the Ministry paid her the seniority increment owing her for the study year, but only for the seven years preceding the time of her retirement and rejected her request to receive payment of the increment for the remaining years that had

passed since the study year (hereafter - the remaining years) on grounds of prescription.

Investigation of the complaint

1. Following the Ombudsman's inquiry to the Ministry of Education, on 23.5.05 the Upper Committee for Retroactive Payments of the Ministry of Education reconsidered the complainant's request for seniority increment for the remaining years and decided to reject her request. The Committee's decision was based on a directive of the State Attorney from 7.6.04 (hereafter - the directive) which determined that in general a claim of prescription should be made where an evidential disadvantage has been caused to the State because of the time lapse or where the State has additional pleas in its defense. The Committee pointed out that the Ministry had acted upon this directive with regard to the seniority increment since the complainant had filed her request on the matter with the Ministry for the first time, and had provided it with the required study certification, after the directive had been published.

2. The Ombudsman brought to the Ministry's attention that whilst Section 1.129.3.2 (38) of the Educators Service Regulations of the Ministry of Education determines that "a study year on behalf of the Professional Study Funds for Teachers and Nursery School Teachers" entitles the students to full seniority rights "upon the provision of a certificate or document concerning their annual studies", the certificate is of evidential significance only and does not create the actual right to receive seniority increment for the study year. As such, the time that the certificate was provided should not be considered the time for recognizing this right.

The Ombudsman pointed out that according to a decision of the National Labor Court in a similar case¹, it was determined that "there are no grounds for 'punishing' the appellant by negating her rights which emanate from her **correct seniority** only because she filed the certificate late" (emphasis in the original).

3. The Ombudsman also stressed to the Ministry that the directive dealt with raising a claim of prescription in civil proceedings in the framework of a court action, preventing pleas for effectuating a right in the framework of the action. However, the prescription in itself does not cancel the actual right and in any case, the directive was irrelevant in the case of the complainant.

4. The Ombudsman drew the Ministry's attention to the circular of the Accountant General of the Ministry of Finance which lays down regulations for the payment of compensation for arrears in payments to civil servants and pensioners². The circular determines that if the entitlement of an employee to a particular payment is dependent on his providing the ministry with a document proving his eligibility, and at the time that the employee requested that the ministry effectuate his eligibility his personal file contained no information concerning this eligibility, the eligibility shall only be from the time that the request was made and not retroactively. However, if at the time that the request was made the information was in the ministry's possession, the ministry must pay him retroactively from the date of his eligibility with the addition of compensation for the delay in payment.

5. The Ombudsman's examination of the personal files of the complainant in the Ministry of Education revealed that all the

1 Labor Court Hearing 54/3-57, **Miriam Abramova v. Jerusalem Municipality**, from "Avoda Veod".

2 Salary Circular 98/9 from 18.5.98.

information concerning the complainant, including information about her having been on study year in the school year 1983/1984, had all the time been in the Ministry's possession.

Outcome of the Investigation

1. The Ombudsman ruled that the complaint was justified.

The Ombudsman ruled that the Ministry of Education had handled the complainant's matter with excessive inflexibility and indicated to the Ministry that it must pay the complainant the seniority increment for the study year not only for the seven years preceding her retirement but also for all the years in which she had been eligible for this increment.

2. The Ministry of Education informed the Ombudsman that in the light of his ruling it would pay the complainant the seniority increment for the remaining years as well.

FAULTY HANDLING OF DEFENSE STATEMENT FILED IN ARREARS

The Complaint

1. In December 2004 and April 2005 two complaints were submitted to the Ombudsman against the secretariat of the Tel Aviv Magistrate's Court (hereafter - the secretariat). Following are the details of the complaint:

(a) Separate claims were filed against each of the complainants in the Tel Aviv Magistrate's Court. Both complainants filed statements of defense in response to the claims against them and the statements were stamped in the secretariat with the "received" stamp. The statements of defense were filed in arrears, but before judgements had been made in the claims.

(b) When the statements of defense were filed in the secretariat the claim files were no longer there, having been forwarded to the judges' chambers after the claimants had requested judgement in the absence of defense. The secretariat did not notify the judges to whom the files had been forwarded that defense statements had been filed, but waited for the return of the files from the judges' chambers. For this reason, when the judges considered the requests of the claimants they were unaware that in the meantime defense statements had been filed in the court and thus gave judgements in absence of defense.

(c) Even after the files had been returned to the secretariat with the judgements, the judges who had considered the files were not informed that the defendants had filed statements of defense. The defense statements were filed in the files which were closed and forwarded to the archives of closed files.

(d) The complainants filed with the court requests to cancel the judgements given in their matter. The court considered their requests and decided that notwithstanding that the defense statements had been filed in arrears, the judgements would be cancelled since they had been made after the filing of defense statements. One of the complainants was charged with court expenses for filing a request for the cancellation of judgement.

2. The complainants contended in their complaint to the Ombudsman that because of the way the secretariat had handled their affairs they were forced to file requests for the cancellation of judgement which caused them additional inconvenience and unnecessary expenses.

Investigation of the Complaint

1. (a) The Ombudsman inquired of the Head Clerk of the Tel Aviv Magistrate's Court (hereafter - the Head Clerk) as to the procedure laid down for the secretariat's handling of cases where the defendant files a defense statement after the plaintiff has filed a request for judgement in the absence of defense but a judgement has not yet been given.

(b) The Head Clerk informed the Ombudsman that according to the directive of the Vice President of the Court, if the plaintiff has filed a request for judgement in absence of defense, and after the claim file has been forwarded to the judge's chambers for a decision the defendant files a statement of defense or a petition for leave to defend

in summary procedure, a judgement is considered to have been given in the file at the time it was forwarded to the judge's chambers.

2. The Ombudsman pointed out to the Head Clerk that the said directive contradicted the case law according to which the court will not make a judgement in the absence of defense if a defense statement has already been filed, even if filed in arrears.¹

Outcome of the Investigation

The Head Clerk notified the Ombudsman that in light of the above, a new directive had been issued to the employees of the secretariat, according to which a defense statement which has been filed in the court after the filing of a request for judgement in absence of defense but before judgement has been given, shall be forwarded to the judge together with a note stating that it was filed in arrears, even if the time allocated by law for filing the statement has lapsed and even if it is discovered that a judgement in absence of defense was made after it was filed.

1 CA 392/89 **Inchi v. The Jewish Agency**, PD 44(4)4.

MINISTRY OF TRANSPORTATION - LICENSING DEPARTMENT

5

DENIAL OF SUITABLE DRIVING LICENSE FOR DISABLED PERSON

The Complaint

In October 2004 the complainant submitted a complaint to the Ombudsman against the Licensing Department of the Ministry of Transportation (hereafter - Licensing Department). Following are the details of the complaint:

On 17.12.03 the complainant underwent surgery because of his diabetes and his right leg was amputated. In accordance with the provisions of Section 12b(a) of the Traffic Ordinance [New Version], 5721-1961, on 11.1.04 the hospital in which the complainant had had the surgery notified the Medical Institute for Road Safety (hereafter - the Institute) of the operation performed on the complainant. As a result, the Institute demanded that the complainant undergo a medical examination in the Institute. Some time after he was examined in the Institute, the complainant was notified by the Licensing Department that he had to take a practical driving test.

The complainant was tested on 15.6.04 and passed the test, but the license which he received from the Licensing Department was not suitable since it did not specify that he was limited to a vehicle

adapted for a person driving with a left leg only (hereafter - the limitation). Thus according to law, the complainant was not entitled to drive the vehicle. The complainant contended that the Licensing Department had demanded that he take another practical driving test as a condition for specifying the limitation in his driving license.

Investigation of the Complaint

1. The Ombudsman's investigation revealed that the limitation had not been specified in the driving license for the following reasons:

(a) The Institute's notification to the Licensing Department following the complainant's examination did not specify that the complainant had been examined for the amputation of his leg, only that he suffered from diabetes.

(b) Notwithstanding that the complainant had deliberately not used a prosthesis during the driving test and had been tested in a special vehicle for disabled persons, the test report did not specify that he had an amputated leg and had been tested for driving with his left leg only.

(c) The complainant presented the Licensing Department with an amendment letter from the Institute in which it was written that he was tested by the Institute following the amputation of his leg. He requested that the limitation demanded of his disability be specified in his driving license. However, the Licensing Department rejected the complainant's request on the grounds that the letter was written after the driving test and demanded that he be re-tested as a condition for specifying the limitation in his driving license.

2. (a) In response to the Ombudsman's inquiry, the Licensing Department claimed that the notification that it had received from the Institute did not state that the complainant had an amputated leg; furthermore, since the test taken by the complainant did not take this

fact into account, the complainant had to retake a practical driving test and in the meantime was disqualified from holding a driving license.

(b) The Ombudsman pointed out to the Licensing Department that it stood to reason that the driving examiner knew at the time of the test that the complainant had an amputated leg and had tested him accordingly, taking his disability into consideration. Thus, before reaching a decision in the complainant's matter, the examiner should be asked if he remembered the complainant and his disability.

Outcome of the Investigation

1. The Licensing Department notified the Ombudsman that the examiner confirmed that he had discerned the complainant's disability and had taken it into consideration during the test. Therefore it was decided not to compel the complainant to take an additional test and to issue him a new license which specified all the limitations demanded of his medical condition.

2. The Ombudsman criticized the Licensing Department for its rejection of the complainant's request for a suitable driving license without checking his claims. The Ombudsman also commented that the Department should instruct the driving examiners to write in the test report immediately after the test any irregularity concerning the person tested.

UNDERPAYMENT OF MATERNITY ALLOWANCE TO FOREIGN WORKERS

The Complaint

A lawyer from the Workers' Hotline (hereafter - the Hotline) filed a complaint with the Ombudsman on behalf of two female foreign workers from the Philippines against the National Insurance Institute (hereafter - the NII). Following are the details of the complaint:

1. The two workers received from the NII maternity allowance based on the wage actually paid to them as claimed by their employers. One of the workers received maternity allowance on the basis of a monthly wage of 3,055 NIS and the other on the basis of a monthly wage of 2,700 NIS.
2. It was contended in the complaint that according to the National Insurance [Consolidated Version] Law, 5755-1995 (hereafter - the Law), the NII should have calculated the maternity allowance according to the minimum wage by law, which was at the time 3,335 NIS and not on the basis of the actual wage paid to the workers, which was lower than the minimum wage. However, the NII rejected the Society's request to pay the difference in maternity allowance to the workers.

Investigation of the Complaint

1. (a) Section 50(a) of the Law provides:

"A female beneficiary for whom insurance contributions have been paid from her salary as an employee or who paid insurance contributions from her income as a self-employed person shall be entitled to maternity allowance".

- (b) Sections 53 and 54 of the Law provide that a female employee is entitled to maternity allowance according to the income from which insurance contributions were paid for her in the three months preceding the day she stopped working due to having given birth.

- (c) Section 348(b) of the Law provides as follows:

"Insurance contributions shall be paid for an insured person who has no income or whose income does not reach the minimal sum stated in Table 11, as if his income was the said minimal sum".

The Law (Amendment No. 30), 5759-1998 provides that the said "minimal sum" in Table 11 is "the sum equivalent to the minimum wage".

- (d) If the employee works less than full time, the employer must pay the NII insurance contributions at the relative rate of the minimum wage according to the part-time scope of his employment, and the NII shall pay the employee a benefit accordingly.

- (e) Section 365 of the Law provides:

"Were a person obligated by this law to pay insurance contributions for another person and did not pay them, they shall be considered as having been paid for the purposes of eligibility for a benefit".

The significance of this provision is that if the employer did not fulfill his obligations and did not pay insurance contributions for his employee, the employee's right to a benefit shall not be impaired in consequence.

2. Since one of the workers whom the complaint concerned left the country and could not be located, the investigation concentrated on the issue of the other worker only.

3. The investigation revealed that the NII had paid the worker maternity allowance on the basis of a monthly wage of 2,700 NIS since her employer had paid insurance contributions for her on the basis of this wage. The NII claimed that notwithstanding the provisions of the Law as stated above, it was not possible to increase the basis for the payment of the worker's maternity allowance and set it at the minimum wage, since the employer had passed away and it was impossible to collect the differentials in insurance contributions from her relatives.

4. The Ombudsman pointed out to the NII that according to Section 365 of the Law and the decisions of the Labor Courts, an insured person who is an employee need not be harmed as a result of the violation of obligations imposed on his employer. However the NII replied that only if the benefit officer is convinced that the employee worked full time and despite this was not paid at least a minimum wage by his employer, will the benefit be approved on the basis of the minimum wage. With regards to the worker whom the complaint concerned, since her employer had passed away it was impossible to receive details about the scope of her employment and to prove that she had indeed worked full time. Therefore, there was no legal possibility of paying her maternity allowance according to the minimum wage.

5. The Ombudsman stressed to the NII that in the worker's claim form for maternity allowance, the employer had written explicitly that the worker worked full time. In addition, in the table detailing the terms of employment and wages, the employer had written that the worker worked full time in August 2004 (the first month written in the table) and was paid 2,700 NIS. In the remaining nine months enumerated in the table (November 2003 - July 2004), the employer had written that the worker earned 2,700 NIS per month, but she had not filled in the box dealing with the scope of employment.

6. The NII claimed again that since the employer had written down the scope of employment for one month only, it was impossible to know what the scope of the worker's employment had been in the months which were taken into account for calculating her eligibility for maternity allowance.

Outcome of the Investigation

1. Following the Ombudsman's repeated inquiries, the Head of the Department for Legislation and Regulations in the NII was instructed to try and question the employer's son (hereafter - the son) and receive from him details concerning the worker's scope of employment. The son indeed declared that the worker had worked full time for his mother.

In light of the above, the NII decided to increase the basis for calculating the worker's maternity allowance and to set it at the minimum wage. As a result, on 21.6.05 the worker was paid differentials in maternity allowance to the sum of 1,682 NIS.

2. The Ombudsman ruled that the complaint was justified and indicated to the NII the following defects:

(a) The staff of the Maternity Department in the Ramat Gan and Netanya branches of the NII (where the claims for maternity allowance for the workers whom the complaint concerned had been filed) were unaware that they must pay an insured person maternity allowance according to the minimum wage, even if her employer had paid her a wage which was lower than the minimum wage. The staff believed that maternity allowance was always paid on the basis of the actual wage payment.

(b) The NII relied on the assumption that an employer who reported paying a lower wage than the minimum wage had employed the employee part time and did not examine the worker's claim that she had worked full time for a wage which was less than the minimum wage. Whilst the defect in the matter of one of the workers whom the complaint concerned was rectified following the Ombudsman's intervention, there were grounds for assuming that the NII denied paying maternity allowance according to the minimum wage to additional workers whose employers had violated the law and had paid them a wage that was lower than the minimum wage. The Ombudsman therefore indicated to the NII that it must make sure that this did not reoccur.

3. Following the Ombudsman's ruling, the Benefits Administration in the NII issued a reminder according to which, if a worker worked full time or part time and earned less than the minimum wage, the NII was obligated to pay him the benefits according to the minimum wage, taking into consideration the scope of his employment.

DELAYS IN SUMMONS TO MEDICAL COMMITTEES

The Complaint

Every year the Ombudsman receives many complaints concerning the handling of summonses to the medical committees of the National Insurance Institute (hereafter - the NII), including medical committees for receiving an exemption from Income Tax. The following is a description of two complaints dealing with delays in summonses to these committees:

Complaint A

1. (a) According to Section 9(5) of the Income Tax Ordinance [New Version] (hereafter - the Ordinance), a disabled person with a 100% disability (or 90% synthesized disability) is entitled to an exemption from Income Tax. According to the Income Tax (Determination of Disability) Regulations, 5740-1979, where the degree of disability of a disabled person has not been determined under one of the laws enumerated in Section 9(5)(a)(a) of the Ordinance, a medical committee of the NII shall determine his disability for the purpose of eligibility for an exemption from Income Tax. It is possible to appeal to a Medical Appeals Committee (hereafter - Appeal Committee) against the decision of the medical committee.

(b) The complainant, a resident of Herzliya, became ill with cancer in 2004. A medical committee of the NII that examined him in July of

the same year determined that his degree of disability did not entitle him to an exemption from Income Tax.

(c) On 1.9.04 the complainant filed an appeal against the decision of the medical committee with the Appeal Committee in the Tel Aviv branch of the NII. He was summoned to an examination of the Appeal Committee on 22.12.04 but the committee did not discuss his matter since the oncologist who was supposed to participate in the hearing disqualified himself on the grounds of knowing the complainant.

(d) At the end of January 2005, some five months after the complainant had filed the appeal, the Tel Aviv branch of the NII notified him that the appeal had been transferred to the Haifa branch of the NII since in the Tel Aviv medical committees there was no oncologist who could participate in the hearing of the appeal that he had filed.

2. In his complaint to the Ombudsman from January 2005, the complainant complained about the prolonged handling of the appeal and about the transfer of the appeal to the Appeal Committee in the Haifa branch of the NII.

Investigation of the Complaint

1. The Head of the Medical Committees in the Haifa branch of the NII (hereafter - the Head) notified the Ombudsman that notwithstanding that the complainant's file had reached the Haifa branch of the NII at the beginning of January 2005, she could fit him into a hearing of the Appeal Committee only in the second half of May of the same year since the oncologist who was a member of the committee was abroad and would return to Israel only at that time. Upon the Ombudsman's request, the Head spoke to the complainant and summoned him to a hearing of the committee on 2.6.05.

2. On 2.6.05 the complainant phoned the Office of the Ombudsman and claimed that the security officers in the Haifa branch of the NII would not let him enter the branch on the grounds that his name was not included in the list of people summoned to the medical committees. An Ombudsman employee phoned the Branch Manager and the Manager of Benefits in the branch and they told him that they had spoken to the Head who had informed them that the hearing of the committee to which the complainant had been summoned had been cancelled and that the complainant had been notified. The complainant denied vehemently that he had received a written notification of the cancellation of the hearing in his matter or that a message to that effect had been left on his answering machine at home. The complainant stressed that if he had received such notification he would not have bothered to travel in vain to Haifa.

3. The Head explained to the Ombudsman that the hearing of the Appeal Committee in Haifa had been cancelled since one of the member doctors of the committee had cancelled her participation. The Head claimed that since a written summons to the hearing of the committee had not been sent to the complainant, he "should have known" that it had been cancelled. Upon the request of the Ombudsman, the Head spoke to the complainant, apologized to him and arranged with him another time to appear at a hearing of the Appeal Committee.

4. On 14.6.05 the Appeal Committee in Haifa discussed the appeal and decided to send the complainant for an examination by a cardiologist in the Tel Aviv branch. On 10.8.05 the committee decided to accept the complainant's appeal and determined that he had a temporary disability of 100% from 4.4.04 to 30.4.05 and a permanent disability of 74% from 1.5.05.

Outcome of the Investigation

1. The Ombudsman's investigation revealed the following defects:
 - (a) Notwithstanding that the complainant had filed the appeal on 1.9.04, the Appeal Committee discussed the appeal for the first time only on 14.6.05, after many delays and cancellations.
 - (b) Despite the fact that the complainant had been forced to wait four months for nothing for an assembly of the Appeal Committee in the Tel Aviv branch of the NII, even after his file had been transferred to the Haifa branch the Appeal Committee did not give preferential treatment to his matter. Moreover, it discussed his file only five months after receiving the file and after the Ombudsman had intervened.
 - (c) The complainant's contention that he had not received notification of the cancellation of the Appeal Committee's hearing seems feasible since it stands to reason that he would not have travelled to the Haifa branch of the NII if he had been notified of the cancellation. The investigation in the Haifa branch of the NII revealed no evidence either way as to whether the complainant had been notified of the cancellation of the committee's hearing by telephone.
2. In light of the defects found in the NII's handling of the complainant's matter, the Ombudsman pointed out to the NII that it should consider compensating the complainant for the unnecessary travel expenses to Haifa and for the anguish caused him following the defective handling of his matter. The Ombudsman also pointed out that the medical committees should accelerate their handling of sick people like the complainant where the hearing of their matter has been delayed because of difficulties in assembling the committees.
3. The Vice Director General for Benefits in the NII (hereafter - the Vice Director) argued before the Ombudsman that the case concerning

the complaint was exceptional and did not reflect the activities of the committees that determined the degree of disability for the purpose of receiving an exemption from Income Tax. She also claimed that this was a one-off failing that should not have happened. According to her, in the case of the cancellation of a committee hearing and in the case of a very sick person, the branch must do its best to summon the applicant to a committee as soon as possible and ensure that the matter be handled appropriately. The Vice Director stressed that she intended to entrench clear regulations in this matter in the framework of the changes being made by the NII to the work procedures of the medical committees in order to prevent the reoccurrence of similar defects. The Vice Director also gave instructions to reimburse the complainant for his travel expenses to the Haifa branch of the NII.

Complaint B

1. In July 2004 the complaint, who suffered from cancer, filed a request with the Tel Aviv branch of the NII to be examined by a medical committee in order to determine his disability for the purpose of receiving an exemption from Income Tax. He paid a fee to the sum of 500 NIS. According to him, at the beginning of August of the same year he received notification that he would be summoned to an examination by a committee but up to the time of filing the complaint, in October 2004, he had not been summoned to a hearing of the committee.
2. The complainant contended that he urgently needed authorization of his degree of disability since his illness was causing him and his family heavy expenses.

Investigation of the Complaint

1. Immediately after receiving the complaint, an Ombudsman employee phoned the complainant's home in order to receive a few details, but the complainant's wife informed him that her husband had died shortly after sending the complaint. Despite the complainant's decease, the Ombudsman continued to investigate the complaint and asked the NII to examine the degree of the complainant's disability according to the medical documents, in order to determine if he was entitled to an Income Tax exemption retroactively.
2. In January 2005 the Tel Aviv branch of the NII informed the Ombudsman that on 26.12.04 the medical committee had discussed the complainant's request and had accorded him 100% medical disability retroactively for the period before his death.
3. A senior coordinator of the medical committees in the field of disability in the NII Administration in Jerusalem notified the Ombudsman that in general, preferential treatment is given to the requests of cancer sufferers to appear before medical committees for the purpose of receiving an Income Tax exemption. According to her, these people are brought before medical committees within a very short time. However, by mistake the complainant's file was not marked as "urgent" and in consequence his matter was not given preferential treatment. The coordinator also informed the Ombudsman that one of the reasons for the long delay in the examination of the Tel Aviv committee was the heavy work load in that branch of the NII.

Outcome of the Investigation

The Ombudsman brought the findings of the investigation to the attention of the Vice Director General of the NII and asked her to check the possibility of shortening further the waiting time for very

sick persons to appear before medical committees. The Vice Director General notified the Ombudsman that the Tel Aviv branch of the NII would improve the work procedures in the Medical Committees Department and the waiting time for hearings of the committees would be made considerably shorter.



ELIGIBILITY FOR HEALTH SERVICES ACCORDING TO STATE HEALTH INSURANCE LAW

The Complaint

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

1. In December 2003 the complainant and his wife returned to Israel after residing abroad for 14 years. Upon their return, the NII recognized them as returning citizens.

According to the complainant, when he and his wife inquired in the NII if they were entitled to health services, they were informed that according to the State Health Insurance Law, 5754-1994 (hereafter - Health Insurance Law), because of the length of time that they had been absent from Israel they would not be entitled to health services for six months after their return (hereafter - waiting period).

2. In June 2004 the complainant went to the Health Services Clinic in order to arrange his and his wife's eligibility for health services. However, he was informed that according to the Health Insurance Law, in order to accumulate the waiting period he had to reside in Israel at least 25 consecutive days in every month of the waiting period and because of his frequent trips abroad since his return to Israel he did not fulfill this condition.

3. (a) In his complaint to the Ombudsman, the complainant contended that he is employed as a member of a flight crew for El Al and that his work requires him to leave the boundaries of Israel several

times a month. Therefore he is unable to fulfill the conditions of the waiting period. When he queried this matter with the NII, he was informed that the NII was not entitled to depart from the provisions of the Health Insurance Law even in special circumstances.

(b) According to the complainant, notwithstanding the NII's decision that he was not entitled to health insurance and health services, Health Insurance Contributions were deducted monthly from his salary while at the same time he was forced to insure himself with private health insurance.

Investigation of the Complaint

1. (a) According to the provisions of Section 14 of the Health Insurance Law, every insured resident is obligated to pay Health Insurance contributions, whether or not he is entitled to health services.

(b) Section 58 of the Health Insurance Law lays down the conditions of eligibility for health services for a resident of Israel who has been absent from Israel for a period of at least two consecutive years. At the time that the complaint was filed, the section provided that a resident who has been absent from Israel for the said period shall not be entitled to health services from the Health Services Clinic in which he was registered for two months from the date of his arrival in Israel for every year of his absence¹. According the section, a "month" is "a period of 25 consecutive days of residence in Israel, during a year which is not the year of absence of that person".

1 "Year of absence" is defined as "A period of 12 consecutive months during which a person resided 182 days outside of Israel".

(c) Section 58(a) of the Health Insurance Law provides that a period preceding 1.3.01 shall not be included in calculating the years of absence. Since the complainant had resided abroad with his family from 1989 to the end of 2003, and the NII recognized him as a resident of Israel from 19.12.03, the complainant was subject to a waiting period of six months (two months for every year of absence, from March 2001 to December 2003).

2. Due to his circumstances of his employment, the complainant had not managed to accumulate even one waiting month since he had returned to live in Israel and been recognized as a returning citizen.

3. In its reply to the Ombudsman, the NII claimed that even in special circumstances such as the complainant's, where insured persons are prevented from fulfilling the conditions of the waiting period, it is not possible to depart from the provisions of the Health Insurance Law.

The NII explained that the stipulation concerning the waiting period was designed to prevent the conferring of social benefits on persons who had no intention of staying in Israel permanently. Thus it had been determined that a stay of several days a month in Israel was not sufficient to fulfill the "waiting" conditions and the insured person had to reside within the boundaries of Israel for most of the waiting period.

4. (a) The NII also informed the Ombudsman that according to Section 58(d) of the Health Insurance Law, the complainant was entitled to substitute the waiting period to which he was subject with a "special payment", to the amount of 60,000 NIS. This payment would substitute the "waiting period" so long as the complainant continued to pay the Health Insurance contributions regularly.

(b) The Ombudsman stressed to the NII that the suggested solution did not concur with the aim of the law. The special payment was

intended to provide a substitute for someone who was prepared to exchange the waiting period with the payment of a fine in order to be eligible for health services immediately upon his return to Israel; it was not intended for someone who was prepared "to wait" till the end of the required period but was prevented from fulfilling the conditions of the law because of his special circumstances.

5. (a) In the course of the investigation the Ombudsman was informed that in light of additional cases similar to the complainant's, in which insured persons were prevented from fulfilling the conditions of the waiting period, several government ministries and the NII had initiated an amendment to the provisions of Section 58 of the Health Insurance Law, inter alia regarding the demand for successive residence in Israel during the waiting period.

(b) On 30.5.05 an amendment to Section 58 of the Health Insurance Law was passed by the Knesset. The amendment prescribed that for the purposes of the waiting period, a "month" is "a period of 25 days of consecutive residence of a person in Israel in a year which is not that person's year of absence; or a shorter period of said days of residence, which the NII has determined for a particular person, if that person has proved to the NII that because of his employment there exist special circumstances justifying a curtailment of the period".

Outcome of the Investigation

In light of the amendment to the Law, the NII notified the Ombudsman that the complainant must provide the Department for Insurance and Health with proof and documents as to the circumstances justifying a shortening of the period of days of residence in Israel. The NII also notified the Ombudsman that since the amendment had come into force on 1.7.05, it would be possible to recognize the days of residence of the complainant in Israel for the

purposes of accumulating "waiting" months only from that time onwards.

After receiving affirmation of the complainant's employment abroad, the NII decided that his days of absence from Israel in the waiting period would be considered days of residence in Israel. Furthermore, at the end of November 2005 he would be considered as having completed the waiting period and from then onwards would be entitled to health services.



TAKING OF FINGERPRINTS WITHOUT EXPLICIT CONSENT OF SUSPECT

The Complaint

In December 2004 the complainant filed a complaint with the Ombudsman against the Israel Police Force. Following are the details of the complaint:

Following a near accident between the complainant's car and another car on the road, an argument broke out between the complainant and the driver of the other car. According to the complainant, after the driver ignored his claims, he hit the wing mirror of her car and the mirror was dislocated.

Although the driver said she would call the police, she did not do so and left the place without exchanging personal details with the complainant.

Several months later the complainant was summoned to an investigation at the "Moriah" police station in Jerusalem (hereafter - the Station) where he discovered that the driver had filed a complaint against him for intentional sabotage.

In his complaint to the Ombudsman, the complainant contended that when he arrived at the Station for the investigation his fingerprints were taken without his being informed that he did not have to give

them. The complainant requested that the fingerprints be removed from the police identification data bank.

Investigation of the Complaint

The Criminal Procedure (Powers of Enforcement - Body Search and Taking Identification Measures) Law, 5756-1996 (hereafter - the Law) provides that if a policeman has reasonable grounds to suspect that on the body of the suspect there is evidence to prove the perpetration of an offence or to prove a relationship between the suspect and the perpetration of an offence, he may carry out an external body search on the suspect (including taking prints of every part of the body), if the suspect gives his consent. The Law also provides that if the suspect does not consent to the external body search, he shall be brought before a police officer in order to authorize the search in writing, including the use of reasonable force necessary for this purpose. Before authorizing the search, the police officer must give the suspect an opportunity to state his reasons for refusal, explain to him that it is permissible to use reasonable force in order to carry out the search and that the refusal is likely to strengthen the weight of evidence of the prosecution.

The National Police Headquarters Ordinance no. 14.05.02, which deals with the police handling of external body searches on suspects, stipulates receiving the explicit consent of a suspect to an external body search, on a special form, as a condition for carrying out the search.

2. (a) In response to the Ombudsman's inquiry, the Station claimed that the complaint's fingerprints were required for the investigation, in order to compare them with the fingerprints taken from the other driver's car. According to the Station, the fingerprints were taken lawfully since if the complainant had refused to give them it would

have been possible to bring him before an investigation officer and then the Police would in any case have been permitted to use reasonable force to take his fingerprints.

The Station claimed that according to the provisions of the Law, there was no point in specifically asking the suspect for his consent to give fingerprints since even if he refused, it was possible to take them by force. In the opinion of the Station, the suspect's failure to refuse was tantamount to his agreeing to give fingerprints. Therefore, until the suspect refuses to give his fingerprints and is brought before an investigation officer, there is no obligation to explain to him the significance of his refusal. The Station further claimed that the existence of fingerprints in the Police identification data bank did not necessarily indicate the existence of a criminal registration in the Police Force.

(b) The Ombudsman brought the Station's standpoint to the attention of the Legal Department of the Police Force and pointed out the apparent contradiction between the Station's interpretation of the provisions of the Law and the express provisions of the National Police Headquarters Ordinance. The Legal Department's response to the Ombudsman was that in its opinion, according to the Law and the Ordinance, the suspect's consent to giving fingerprints should be asked in advance and it was not enough to rely on absence of refusal.

Outcome of the Investigation

1. The Deputy Legal Advisor of the Police Force notified the investigation officers in the Station that they had to receive the express consent of the suspect to an external body search and it was not enough to rely on lack of refusal. In addition, she advised the Investigations Department of the Police to issue a reminder on the subject.

2. The Ombudsman further inquired of the Police Force if, in light of the above, there were not grounds for removing the complainant's fingerprints from the Police identification data bank. In reply, the Investigations Department of the Police Force informed the Ombudsman that it had decided to remove the complainant's fingerprints from the bank.

DENIAL OF PRISONER'S RIGHTS

The Complaint

In February 2005 the complainant, a security prisoner incarcerated in the Shatah Prison, filed a complaint against the Prisons Service. The complainant contended that the Prison Director, who had been appointed a short time before the filing of the complaint, did not allow the Muslim prisoners to hold communal prayers on Fridays in the clubhouse of the prison and on the Festival of the Sacrifice he did not permit the prisoners' families to visit their imprisoned relatives, as had been customary in the past.

Investigation of the Complaint

According to the Prisons Commission Orders (hereafter - the Orders), security prisoners are permitted to hold communal prayers in the courtyard of the wing, including the giving of a sermon, on Fridays and on several festivals.

Regarding visits to the prison, the Orders lay down that in general a security prisoner is entitled to a visit once every two months. More frequent visits are a bonus granted at the discretion of the authorized prison functionaries.

In addition, a prison officer may approve a family visit with a prisoner before a festival, in addition to his regular visiting quota, if the prisoner filed a request for the approval of the visit.

Outcome of the Investigation

The Public Complaints Officer in the Prisons Service notified the Ombudsman that the right to communal prayers was indeed denied the prisoners of the wing in which the complainant was incarcerated, apparently because the officer of the wing did not know of this right. After he had been informed of the provisions of the Orders, the matter had been sorted out.

The Prisoners Officer in the Shatah Prison informed the Ombudsman that following the investigation of the complaint, the complainant had been brought before her for an interview and had been notified that the matter of the prayers had been sorted out. He was also informed of the regulations concerning family visits on festivals.

ISRAEL DEFENSE FORCES

II

USE OF PRIVATE HOME FOR ARMY TRAINING WITHOUT REQUIRED COORDINATION

The Complaint

In May 2005 a resident of the Gush Chalav village in the North (hereafter - the complainant) filed a complaint with the Ombudsman against the Israel Defense Forces (hereafter - the IDF). Following are the details of the complaint:

According to the complainant, at 2:30 AM he heard noises at the front of his house in the village. When he went out to investigate the noises, he discovered that they came from a group of soldiers who had "conquered" his home in the course of an army exercise in which the soldiers had gone onto the roof of his house and descended by ropes.

According to him, the said activity of the soldiers had caused him and his family extreme anxiety and could have ended in a disaster.

Outcome of the Investigation

In response to the Ombudsman's inquiry, the Northern Command of the IDF (hereafter - the Command) pointed out that it regarded the matter concerning the complaint with severity and on receiving the complaint had carried out several interrogations regarding the case, both at the level of the unit and at the level of the Command. The

Command also notified the Ombudsman that in order to prevent a reoccurrence of similar cases, it had tightened the regulations concerning the performance of training exercises in residential areas; in addition, the commander of the squadron who was responsible for the said training exercise had received a critical comment from the unit commander.

UNLAWFUL DEMAND FOR PAYMENT OF FEES

The Complaint

In May 2004 the complainant filed a complaint with the Ombudsman against the Collection Department of the Broadcasting Authority (hereafter - Collection Department). Following are the details of the complaint:

On 11.3.04, whilst the complainant was driving her car, the car was detained near a barrier of the IDF and she was requested to present her driving license. In addition to the soldiers, people who represented themselves as collectors on behalf of the Collection Department were also present at the barrier and they notified the complainant that she and her husband owed television fees (hereafter - the fees) for the years 1998 to 2003. The complainant contended vehemently that since their immigration to Israel in 1991 they had not owned a television set and thus did not owe the fees. However, the collectors did not accept her claim and informed her that if she did not pay the fees, collection proceedings would be taken against her and her husband, including attachments. The complainant was thus forced to pay on the spot 4,965 NIS.

The complainant requested that the Ombudsman instruct the Broadcasting Authority to reimburse her the said amount, which she claimed was collected from her unlawfully.

Investigation of the Complaint¹

1. Section 28A of the Broadcasting Authority Law, 5725-1965 provides that the holder of a television set shall pay an annual fee, the amount of which is determined in the Law and is updated annually.

The Broadcasting Authority (Fee for Holding a Television Set) Regulations 5741-1981 (hereafter - the Regulations) provide that a person who purchases a television set must give written notification of this to the Collection Department within thirty days of receiving the set. If such notification is not given, the Collection Department considers the set as having been purchased in the year of its manufacture and charges the holder of the set with payment of fees from the same year, unless he proves that the set was purchased at a later date.

The Regulations also provide that a person who sells a television set or transfers it in any other way to another person must give written notification of this to the Collection Department and specify in the notification details of the buyer or receiver; in addition, a dealer of television sets must give a monthly report to the Collection Department of the sale, loan and renting of television sets in the previous month.

2. (a) Up to the time that the complainant's vehicle was detained at the barrier, the Collection Department had no information to the effect that the complainant or her husband had purchased or held a television set; they had not notified the Collection Department that they had a television set, nor had they paid television fees (a fact that would have

¹ Since at the time the complaint was filed the Collection Department discontinued its practice of detaining cars at barriers in order to collect debts in television fees, the investigation did not deal with the legality of this practice.

attested to their holding a television set). Furthermore, in the Collection Department's computer system there was no report from a television dealer of the purchase of a set by the complainant or her husband, nor was there a report that a visit to their home had been made on behalf of the Collection Department.

(b) On 15.3.04 the Collection Department received notification from the complainant according to which she did not have a television set and thus did not owe television fees. Following this notification, an inspector on behalf of the Collection Department visited her home. During the visit a Toshiba television set was found in the complainant's home but the complainant and her husband claimed that the television set did not belong to them but to the complainant's father.

(c) On 29.5.04 the complainant submitted a declaration to the Collection Department, according to which an elderly man (who it transpired was her father) had taken rented accommodation in her house from 1.11.03 and had brought a television set with him. The declaration also stated that since the elderly man did not speak Hebrew, the complainant had, instead of him, notified the Collection Department by phone of his owning a television set and in accordance with the Collection Department's instructions, had even sent the Department a facsimile on the matter on his behalf.

(d) The complainant submitted to the Collection Department a copy of the Rental Agreement dated 1.11.03 which was signed between her husband and her father, as well as a declaration by her father's former partner, according to which on 1.11.03 the partner had transferred to the father a Toshiba television set.

(e) According to the records of the Collection Department, which were based on the Population Registry of the Ministry of the Interior and updated by it, the address of the complainant's father had been the

address of his former partner up until 11.1.04 and from this date onwards his address had been that of the complainant's.

The records of the Collection Department also showed that the father's former partner had in the past held a Toshiba television set and had paid the television fees for it.

(f) In addition to the abovementioned declarations, the complainant also provided the Collection Department with a contract she had signed with the YES Cable Company on 10.11.03 which she contended supported her claim that there had been no television set in her home before her father came to live with her.

(g) The complainant's father has been paying television fees since 2004.

3. Despite the above facts, the Collection Department insisted that since there was a television set in the complainant's house and she had not provided any documentation, such as a receipt of purchase or guarantee certificate which testified to the identity of the purchaser of the television and to the date of purchase, she had been charged lawfully with television fees and there was no cause to reimburse her the amount collected from her. The Collection Department's standpoint was based on the Regulation which provides that the purchaser of a television set must notify the Collection Department of the purchase and if he does not do so, the Department shall consider the television set as purchased in the year of its manufacture unless the purchaser proves that he purchased it at a later date.

Outcome of the Investigation

1. The Ombudsman presented the Collection Department with the findings of the investigation of the complaint which in its opinion supported the complainant's claim that the television set did not

belong to her. The Ombudsman pointed out that in light of these findings, there were no grounds for applying the provisions of the said Regulation on the complainant.

The Ombudsman requested that the Collection Department reconsider the complainant's request to reimburse her with the sums collected from her.

2. In consequence, the Collection Department notified the Ombudsman on 18.2.05 that after reconsidering the matter, it had decided to reimburse the complainant the sum of 4,965 NIS that had been collected from her in payment of the fees. The complainant confirmed that she had received the reimbursement.

INJURY TO EMPLOYEE WHO INFORMED ABOUT ACTS OF CORRUPTION

The Complaint

On 30.12.04 the complainant, who served as Director of Information Systems in the Egg and Poultry Board (hereafter - the Board), filed a complaint with the Ombudsman against the Council. The complainant contended that in consequence of his notifying the Office of the State Comptroller of his suspicions of acts of corruption in the Board, the Head of Reorganization in the Board (hereafter - the Head) had directly harmed him, had blocked his access to the computer network of the Board and had transferred his authority to others. Following are the details of the complaint:

The complainant began to work in the Board in April 2002, after winning the tender for the post of Director of Information Systems. According to the complainant, since July 2004 approximately the Head and his assistant had been trying to bring in outside workers to carry out assignments in the field of computers; amongst others, they had tried to come to an agreement with a relative of the Head's assistant for the purchase of consulting services, which costed hundreds of thousands of shekels and were superfluous, not to mention that their purchase required a tender. The Head also wished to employ two people who were not employees of the Board to build a

website for the Board - a service which in the opinion of the complainant was unnecessary and its purchase a needless expense since a program for establishing a website already existed.

2. According to the complainant, he expressed his reservations concerning the building of a website to his superiors, in writing and orally, but the Head gave notification that only the two said people would establish the site and that the computer budget of the Board had been frozen and every expense required the Head's authorization.

3. According to the complainant, simultaneously he began to send anonymous letters about his suspicions concerning acts of corruption perpetrated by the Head, such as his unlawfully receiving monies and benefits from the Board. At first the letters were sent to the Workers' Committee of the Board and from September 2004 they were also sent to the State Comptroller and to other bodies. The complainant added that at a certain stage the Head's associates were informed about the letters.

4. In November 2004 the complainant sent an open complaint to the State Comptroller. In consequence, the audit unit in the Office of the State Comptroller began to examine the suspicions of acts of corruption raised by the complainant and for the purposes of its examination, it requested and received from him all the data from the central computer of the Board.

5. On 19.12.04 the audit unit in the Office of the State Comptroller asked the Head's assistant to respond to the findings concerning her that had emerged from the computer data. On 27.12.04 and 28.12.04, shortly after the unit's inquiry had been received in the Board, the Head issued notices to the Board employees according to which the staff of the computer unit in the Board were no longer subordinate to the complainant but to the Head of the Computer System of the Plants Board (hereafter - Head of the Plants Board). In addition, on 28.12.04

the Director of the Computer Network in the Board, who was subordinate to the complainant, sent out notices to the Board's suppliers and computer services notifying them that the access permits of the complainant to the systems and programs of the Board had been revoked.

The Head of the Plants Board worked in the Board for a few days only, yet even after he left the Board the complainant's authority and access permits were not restored to him.

6. The complainant also complained that the Head had sent him letters unjustly reprimanding him about his frequent conversations with a particular employee, notwithstanding that the conversations were professional or of a social nature lasting just a few minutes. Copies of the letters had been distributed among the members of the Board, the heads of departments in the Board and others.

7. Originally the complainant had asked the Ombudsman to instruct the Head to restore the authority that had been withdrawn from him, but after some time he informed the Ombudsman that following the acts of victimization against him he wished to terminate his employment in the Board since it had been impossible for him to work for several months, his reputation had been damaged, he was subject to daily humiliation and the tension was having a detrimental effect on his health. According to him, he and his lawyer had held negotiations with the Board concerning his retirement but the negotiations had fallen through and on 13.4.05 the complainant had notified the Board of his resignation. The complainant therefore requested that the Ombudsman consider his resignation under these circumstances as dismissal and order the Board to pay him severance compensation accordingly.

Investigation of the Complaint

1. The complaint was investigated in accordance with Sections 45A-45E of the State Comptroller Law, 5718-1958 [Consolidated Version] (hereafter - the Law), which concern the complaint of an employee in an audited body whose superior has harmed him in response to his having informed about acts of corruption committed in the body in which he is employed.

2. The Head claimed before the Ombudsman that because of the trend to unify agricultural boards, on 21.12.04 the temporary Egg and Poultry Board administration decided to unify its computer system with that of the Plants Board and to vest the management of the unified system in the hands of the Head of the Plants Board. According to the Head, the decision was reached with no personal relation to the complainant and only in order to improve efficiency and reorganize the work of the Board. The Head added that several days after the Head of the Plants Board had entered the position, it became apparent that an orderly tender was required for the position of manager of the computer system and thus since the end of December 2004, the Head of the Plants Board had not been operating in the Board; furthermore, at this stage no action had been taken to unify the computer systems of the boards.

According to the Head, the complainant's authority had been withdrawn since he had imposed difficulties on the unification process and because the Head of the Plants Board had complained that the complainant was not cooperating with him. The Head further claimed that the complainant had made a large contribution to the establishment of the Board's computer system but that once the system had been established he had done little, and was often unavailable and difficult to reach by the Head.

3. The Ombudsman's investigation revealed as follows:

- (a) Indeed, as the complainant contended, his authority had been withdrawn shortly after the audit unit in the Office of the Ombudsman had sent its inquiry to the Head's assistant.
- (b) Contrary to the Head's claim, the Head of the Plants Board had been satisfied with the complainant's cooperation with him and had no complaints against him.
- (c) Notwithstanding that the Head of the Plants Board had been in the Board for a few days only and since then nothing had been done to unify the computer systems, the authority of the complainant had not been restored to him, the staff had been instructed not to update him and he had not been invited to staff meetings.
- (d) Despite the Head's claim that he had many times encountered difficulties in trying to locate the complainant, the Ombudsman's investigation revealed that the complainant had been available 24 hours a day and if he had not answered a call and a message had been left for him, he had made contact within a very short time.
- (e) The Ombudsman's investigation also refuted the Head's claims that for some time the complainant had not done anything significant in the framework of his position. It was found that prior to the revocation of the complainant's authority and the obstruction of his access to the Board's computer network, he had been very active in a variety of fields, including maintenance, purchases and supervision, and that the Board's employees had felt that the revocation of his authority and the inability to make use of his services had hindered them and impaired their work.
- (f) It was also found that it was not customary in the Board for employees to receive letters reprimanding them about holding social conversations. It should be stressed that notwithstanding that in the letters of rebuke the complainant was told that his conversations with the worker impaired the quality and output of work, the same employee had received no comments about defects in her work.

Outcome of the Investigation

1. The Ombudsman ruled that the complaint was justified.

The findings of the investigation revealed that there was no basis for the Head's claims about defects in the complainant's performance and behavior for which it had been necessary to revoke his authority. On the contrary, the Ombudsman's investigation led to the conclusion that the activities of the complainant to prevent acts of corruption and his notifications to the Office of the State Comptroller about these acts, which had been done in good faith and in accordance with proper procedures, had caused the revocation of his authority, the blocking of his access to the computer network of the Board, the revocation of his permits and the wide distribution of letters of rebuke. In addition, it was this victimization that had eventually brought about the complainant's resignation from his work in the Board, after he felt that it was impossible for him to continue working there.

2. The Ombudsman was satisfied that the withdrawal of the complainant's authority and work implements and the rest of the acts of victimization towards him were done in reaction to the complainant's informing about acts of corruption that had been committed, in his opinion, in his workplace. Therefore, after considering the entire circumstances of the matter and in the framework of his authority under Section 45C(b) of the Law, the Ombudsman decided on 5.5.05 that the complainant's resignation should be considered as dismissal and ordered the Board to pay the complainant increased compensation at the rate of 200% as well as eight-months adjustment pay.

3. The Board notified the Ombudsman that his decision had been implemented in its entirety.