

ISRAEL'S OMBUDSMAN: THE COMMISSIONER FOR PUBLIC COMPLAINTS

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[Editor's Note: The Commissioner for Public Complaints (*Netziv Tluot HaTzibur*), Israel's "ombudsman," was established twenty years ago within the framework of the office of the State Comptroller. This is a report on the effectiveness of Israel's ombudsman by the Deputy Commissioner for Public Complaints, who also is an Associate of the Jerusalem Center for Public Affairs.]

The expansion of government bureaucracy and the increase of the citizen's dependence on its variegated services promoted the spread of ombudsman institutions in Western democracies. Historically, the office of ombudsman originated in Sweden in 1809. It was more than a century later that the second ombudsman's office was established in Finland. With the progress of the welfare state, primarily in the second half of the twentieth century, more and more such institutions — national, provincial and municipal — were established as independent organs of the executive branch of government in order to assist the citizen in securing his or her rights.

In Israel, the first ombudsman office was established by the City Council of Jerusalem in 1966.

That same year the Knesset appointed a special parliamentary commission to ascertain if and how a state ombudsman should operate in Israel. At that time there were only a few ombudsmen in existence in other countries, mainly in Europe. Based on the commission's recommendations, the Knesset passed an amendment to the State Comptroller Law in March 1971, whereby the State Comptroller was endowed with the powers of ombudsman. The amendment also called for a special department within the State Comptroller's office to take charge of investigating the complaints. On September 22, 1971, with the commencement of the Hebrew year 5732, State Comptroller Dr. Itzhak Nebenzahl began to function as the Israeli ombudsman.

Under Israel military law, a military ombudsman began to operate on November 1, 1972. General (Res.) Haim Laskov, ex-chief of the General Staff of the Israel Defense Forces, was appointed by the Minister of Defense as the first military ombudsman. These two (the civil and the military) are the only statutory ombudsmen in Israel. However, over the following years many non-statutory and quasi-ombudsman offices were established in numerous

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government ministries and municipalities.

In comparison to other countries, Israel has more complaints per capita than almost anywhere else. The complaints of individuals and groups against public officials has a long tradition which may have started with the Jewish people's exodus from Egypt. This also means that the Israeli public is aware of its right to recourse through the Commissioner for Public Complaints.

Established Twenty Years Ago in the State Comptroller's Office

In establishing an ombudsman's office in Israel, the first question involved where to put it. One school of thought held that it should be outside the State Comptroller's office because the State Comptroller deals with billions of dollars and the big issues. It was feared that individual complainants, asking for compensation involving only small sums, would not be given the proper attention.

The other school of thought claimed that the ombudsman should be within the State Comptroller's office since the first State Comptroller, Dr. Siegfried Moses, from the beginning accepted complaints from the public, even though the State Comptroller Law did not specify anything about dealing with complaints. Whenever people wrote to him he replied after investigating their complaints. So, in fact, the State Comptroller's office dealt with citizens' complaints without any explicit authority even before it included the ombudsman's office.

In addition, considerations of efficiency indicated the unification of the two functions because both offices investigate the same ministries, municipalities, government companies, etc. Establishing a totally separate office would not only be costly but might also enhance the danger of politicization of both non-political offices, i.e., the ruling coalition might insist on appointing the head of one of the offices, while the opposition would claim rights over the other. In the end, the new office of Public Complaints was established within the State Comptroller's office but under a separate directorship, parallel to the director general of the State Comptroller's office, the State Comptroller himself being the state ombudsman.

The Office Today

The State Comptroller's office today comprises about 550 employees, about 420 of whom are professionals, university graduates in law, accounting, economics or public administration, although there are some with backgrounds in sociology and education as well.

The ombudsman's office has about 85 employees including 45 professionals, 40 of whom are lawyers and the rest from the social sciences. A professional deals

with about 150 files a year, which is among the higher rates of efficiency in the world among ombudsman offices.

The office is divided into units, each of which is in charge of certain areas, e.g., local authorities, housing, education, health. Before a decision is given by the ombudsman, the file is reviewed by the director of the ombudsman office.

The main office is situated in Jerusalem. The Tel Aviv branch contains about 20 percent of the personnel. In addition, the ombudsman maintains five bureaus for oral complaints in Jerusalem, Tel Aviv, Haifa, Nazareth, and Beersheva. Offices in these bureaus serve those who turn to them for assistance in presenting the complaints in writing (since there are many newcomers and others in Israel who are unable to present their case in written Hebrew), counseling them about how to act before lodging a complaint, supplying information on how to go about solving problems which are not under the ombudsman's jurisdiction, etc. Sometimes the bureaus serve as "first-aid" stations, especially when the issue does not require an investigation but rather a clarification or putting the complainant in contact with the relevant office.

A Widely Respected Authority

The authority of the ombudsman is recognized and respected throughout the country. For example, if the ombudsman finds that a citizen's complaint about being overcharged on municipal taxes was justified, no municipality will dare refuse to refund the complainant. Although the ombudsman has no legal power to enforce his decisions, his recommendations are always accepted.

One fundamental element of any ombudsman institution is that, beyond legality or good administration, the ombudsman has the right to define justice and to expect its implementation. In other words, unlike the courts, whose decisions must remain within the boundaries designated by the law, the ombudsman can pass judgement or can make a recommendation even though it might be beyond the formal definitions of legality. This facet is indeed the most interesting part of ombudsmanism.

It is interesting to note to what extent the inspected bodies follow the recommendation of the ombudsman to rectify some injustice beyond the official requirement.

The ombudsman's *Annual Report No. 18* tells the story of a high school student who received a diploma which listed his grade in mathematics incorrectly. He asked the Ministry of Education for a new diploma with the correct mark, and the Ministry responded with a letter confirming his proper mark but no new diploma. The ombudsman held that the pupil deserved a new diploma with the correct mark to rectify the mistake committed

by the school, and so the Ministry issued a new diploma.

Another such case involved a Jerusalemite who returned home one day and found to his dismay that there was no water in his taps. He called up the city Water Department and was told it was not responsible. The next day he called in a plumber who told him that his water meter had been removed. When he called the Water Department again, this time he was told that indeed they had removed the meter since he had not paid his water bill. He then went to the Department with the receipts proving that he had paid all his bills on time. Now the Department claimed that it had not been responsible, that he should report the theft of the meter to the police, and that the Department would install a new meter in his home for NIS100.

In the end, the Water Department admitted its mistake and installed a new meter. The complainant then asked for token compensation for the time he had wasted, the expenses paid to the plumber, etc. The municipality was ready to refund him only the NIS20 which he paid the plumber. It claimed that mistakes can happen and therefore it was not liable for more than reimbursing the direct expenses of the complainant. The ombudsman decided that it was incumbent upon the Water Department to have properly investigated why this man's water supply had been disconnected rather than claiming that the meter had been stolen and that the complainant should turn to the police. The municipality was told by the ombudsman to pay the complainant NIS100 as he had demanded and, indeed, it complied with the recommendation.

Rectification of wrongs is not limited to individual cases brought to the ombudsman by the complainants. The following is a typical example of correcting regulations beyond the individual case. A visitor to Tiberias parked his car in a prohibited area, according to the municipal traffic regulations. He was given the choice of standing trial or paying a fine. The instructions on the violation statement (the "ticket") specified that the fine could be paid at any bank except the Postal Bank. The complainant claimed that this exclusion causes inconvenience to the public and also entails an extra charge, a bank commission, while the Postal Bank does not charge any fee for paying bills. The municipality explained to the ombudsman that transactions in the Postal Bank take longer than in commercial banks and thus payments reach its pocket later. The ombudsman insisted on including the Postal Bank in the approved list for the sake of not adding punishment (the inconvenience) to the fine itself. The municipality complied and issued new forms stating that payments can be made through any bank including the Postal Bank.

Justice for Individuals vs. Institutional Corrections

The newspapers frequently comment that the annual reports of the State Comptroller seem to repeat themselves each year and nothing much is being done by the inspected bodies to correct the faults. (See "A Democratic Safeguard: Israel's State Comptroller," by David Clayman, VP:101, 1 June 1990.) The truth is that rectifications do take place, although not enough and not at the desirable pace. This brings up the question as to why every recommendation of the ombudsman is followed, but when it comes to fulfilling the recommendations of the State Comptroller — which in Israel is one and the same person — the outcome is totally different.

One explanation may have to do with the fact that it is much more possible to achieve justice on an individual scale, with a particular problem investigated to the end.

Experience shows that the administrative authorities are even ready to fulfill the recommendations of the ombudsman to the benefit of entire groups if doing so does not entail great expense. For example, one of the basic principles established by the Israeli ombudsman is that whenever the complainant interprets a certain legal phrase in a reasonably acceptable way, even though the authorities claim to explain it differently, the ombudsman will side with the interpretation of the complainant if it makes sense. In other words, if, when one reads the paragraph, one can understand it either way, the ombudsman will side with the complainant. This serves to tilt the scales of justice in favor of the complainant, even though the administration has acted legally.

However, if the price of doing justice in this manner is too prohibitive, for example, requiring the reexamination of 20,000 files at a cost of millions of shekels, then even the ombudsman will stop short of such a recommendation, which will vary according to the specific situation. The options then become: (A) Let the administration's act stand but demand that from now on the phrasing should be clearer so that no other interpretation may mislead the public; (B) Option A plus also accepting the submission of complaints to be compensated according to the new interpretation; or (C) The new interpretation will be applied retroactively only to a certain defined group, i.e., based on date or other category.

Protecting the Whistle-Blowers

In 1981 the State Comptroller Law was amended to give the ombudsman the authority "to issue any order he deems right and just, including a provisional order, to protect the rights of the employee" who has exposed acts of corruption in the body in which he is employed.

In other words, if an employee complains that he is being fired or mistreated in any manner because he revealed acts of mismanagement or misbehavior in his office, he receives the ombudsman's protection. The ombudsman can issue an interim order to stop and even reverse the firing of a whistle-blower until the investigation of his complaint is concluded.

A decade has passed since this amendment came into force and the ombudsman office deals with about 20 complaints a year of this type, out of an annual load of 6,000. By any account this figure is rather low. Some might say that most employees are afraid to be whistle-blowers, while others would claim that the malaise is not as critical as popular impression suggests. Furthermore, the ombudsman found most of the complaints of this nature to be unjustified and the employee had filed his complaint only after he realized that some action was going to take place against him.

In one example, the ombudsman's *1991 Annual Report* cited the case of a senior official in the Poultry Council who claimed that he was fired because he had exposed corruption in the Council. The Council responded that, in the process of reorganization, two departments were merged and the complainant, who headed one of them, was relieved from his position to avoid inefficient duplication. The ombudsman noted that the complainant had never received a negative report about his overall performance, and had indeed been fired after exposing corrupt acts, as corroborated by the internal auditor of the Council. The ombudsman, therefore, ordered the cancellation of the decision to fire the complainant. Since his department was merged with another, the Council was ordered to reinstate the complainant in a different but equivalent position. The Council acted as told by the ombudsman, but the complainant was not satisfied; he insisted on being appointed to head the same field as he had before the reorganization. Yet since the ombudsman's role is not to dictate to the Council how to run its organization, no stand was taken on the issue of reorganization.

It seems from this and similar examples that there is an inverse correlation between the seniority of a whistle-blower and the ability to satisfy him, since the more senior one is, the more difficult it is to provide an "equivalent" solution which will satisfy the victim, especially when the law expects the ombudsman to have "regard for the proper functioning of the body in which he is employed" (Sec. 45C(a) in the State Comptroller Law).

Recent Trends in Public Complaints

The rate of complaints has been on the rise in the last three or four years. This is believed to be the result of

the public response to State Comptroller Miriam Ben-Porat's influence on public issues. This is somewhat reminiscent of the mid-1980s when the Commissioner for Public Complaints sponsored public service ads on television to bring its work to greater public awareness, and following these ads the number of complaints rose very fast.

Interestingly, however, in the last year the number of justified complaints fell to 37 percent. Over the past two decades this figure has oscillated between 41 and 45 percent, a percentage similar to other ombudsman overseas such as in France. Perhaps this is due to our strict definition of a justified complaint. Complaints that are resolved between the complainant and the authority before the ombudsman completes his investigation or complaints conciliated by the complainants are not included in the calculation. In other words, out of the 6,000 complaints annually, only about 4,000 are investigated to the end.

In the twenty years since the ombudsman was first established in Israel, nearly every major administrative authority has created some sort of internal ombudsman. Often these internal ombudsmen can act very quickly because they are within the system and can resolve many problems within a few weeks. Their existence has undoubtedly reduced the pressure on the state ombudsman. However, these internal ombudsmen are not as independent and cannot go beyond existing regulations as can the state ombudsman.

Every bureaucracy by nature produces certain kinds of problems for its citizenry. Indeed, the whole flowering of ombudsmanship started after World War II when the Western democracies became welfare states and provided more and more services to the public, some of whom inevitably felt that they were mistreated or did not receive their full rights. An ombudsman appears to be needed wherever there is a welfare state. But an ombudsman is not supposed to change the system. It is supposed to alleviate the pains of the public. If it serves that purpose, it is doing its job.

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