



**STATE OF ISRAEL**

**THE OMBUDSMAN**  
**ANNUAL REPORT 31**  
for the year  
**2004**

**Selected Chapters**



**OFFICE OF THE STATE COMPTROLLER  
AND OMBUDSMAN**

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**The Thirty-First Report** of the Ombudsman, selected parts of which appear in this report, deals with decisions reached by my predecessor, Justice Eliezer Goldberg. This report was placed on the table of the Knesset in March 2005 and I was appointed State Comptroller and Ombudsman in June 2005.

The Office of the Ombudsman investigates annually some 7,000 complaints received from every stratum of society. This phenomenon attests to the confidence placed in the Ombudsman by the general public. My aim as Ombudsman is to increase awareness in the existence of the Ombudsman institution, particularly among the weaker classes of society – new immigrants, distressed classes, minorities and the elderly.

The Ombudsman is very accessible. Any person can file a complaint with the Ombudsman; a complaint may be written in any language, not necessarily in Hebrew. It is also possible to file a complaint via the internet or through one of the branch offices in Jerusalem, Tel Aviv and Haifa, and in the future also in Nazareth and Beer Sheva. The service provided by the Ombudsman is free of charge.

The independence of the Ombudsman institution and its meticulousness in treating the individual's matter as its foremost concern are designed to rectify injustices caused to the complainant and to improve the functioning of public administration in its relations with those requiring its services. The expansion of the public apparatus creates a dependency of the

individual on this apparatus in a large number of areas and the Ombudsman provides the "small citizen" with an address to which he can turn and seek a remedy in cases where he encounters improper activities of the administration.

Some of the cases in which the Ombudsman brought about a rectification of defects are detailed in this report.

*Micha Lindenstrauss*

**Micha Lindenstrauss**

State Comptroller  
and Ombudsman

Jerusalem, 2005

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

As with previous reports, the Thirty-First Report reflects, inter alia, the problems resulting from the existence of large amounts of information concerning citizens in the data bases of government authorities.

The information held by government authorities concerns almost every area of the citizen's life and is intended to assist the authorities in properly fulfilling their functions and acting in the best interests of the citizens, as members of the public and as individuals.

However, inappropriate use of this information, or reliance on incomplete, mistaken or outdated information, is likely to cause harm to the citizen. Therefore, it is incumbent on the authorities to use the information held by them with great care, stringently upholding the rules of proper administration and ensuring that the information is complete, reliable and updated.

The investigation of several of the complaints described in this report revealed that the authorities did not ensure fulfillment of these obligations.


According to one of the complaints described in this report, in the year 2002 the complainant was required to pay a debt in Property Tax owing from the year 1985 on a piece of land which her deceased husband had sold in 1982. The investigation of the complaint revealed that the demand for

payment of the debt was based on incorrect information which had been registered in the computer of the Land Taxation Authority. According to another complaint, a driver was required to pay a fine for a previous driving offence, despite his repeated claim that he had already paid the fine. The investigation revealed that the unjustified demand for payment resulted from a mistake in the number of the fine notification which was registered in the Police computer. A further complaint against the VAT Authority revealed negligent use of information. This authority placed an attachment on the complainant's vehicle after a hasty examination of the data base of the Vehicle Licensing Authority and the Company Registrar, to which it had access, revealed that in the distant past the complainant was connected with a company which owed VAT.

In several of the complaints described in this report, the complainants complained about the National Insurance Institute's (NII's) demand that they reimburse payments that had unwittingly been paid to them in excess over a long period of time. The Ombudsman's investigation found that the payments had been made in excess because the NII had not carried out appropriate follow-up procedures in order to update the information at its disposal and had relied on outdated information concerning the complainants.

Taking into consideration the circumstances in which the excess payments had been made and the fact that in managing their finances the complainants had relied in good faith on the benefits that they had received for their living expenses, I determined that the NII's demand that the complainants reimburse the excess payments was unjustified. Regular updating of the information held by the NII would have prevented these payments and saved the NII large sums of money.

In order to improve the efficiency of the public service, in the last few years the Government has provided the citizen with information centers on the internet. The efficiency of this service is dependent on the reliability of the information and its regular update. This report describes the complaint of a citizen who was injured after relying on outdated information published on a website site.

A handwritten signature in black ink, appearing to read "E. Goldberg", with a long, sweeping underline that extends to the right.

**Eliezer Goldberg**

State Comptroller  
and Ombudsman

March, 2005



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 1<sup>st</sup> January 2004 until 31<sup>st</sup> December 2004.



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# GENERAL SUMMARY

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

The State Comptroller also serves by law as Ombudsman. He discharges this function by way of a special unit in the Office of the State Comptroller, known as the Office of the Ombudsman.

The Ombudsman investigates complaints against bodies that are statutorily subject to audit by the State Comptroller, including government ministries, local authorities, state enterprises and institutions and government companies, as well as their employees.

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

The Ombudsman may investigate a complaint if it concerns an act – including an omission or delayed action – that is directly injurious to, or directly withholds a benefit from the complainant. In addition, the act must be contrary to law or without lawful authority, or contrary to proper administration, or it involves a too inflexible attitude, or gives rise to flagrant injustice. Members of 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 he is not the proper body to investigate the complaint.

The Ombudsman may discontinue the investigation of a complaint if he is satisfied that one of the causes justifying the non-opening of an investigation exists, or that the matter to which the complaint relates has been rectified, or that the complainant has withdrawn the complaint or has not responded to the Ombudsman's requests addressed to him.

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

The State Comptroller Law, 5718-1958 [Consolidated Version] (hereafter – the State Comptroller Law), enumerates the subjects that are not to be investigated, and the bodies and officials against whom complaints will not be investigated: complaints against the President of the State, against the Knesset, a Knesset committee or a Member of the Knesset; against the Government and its committees and against a minister in his capacity as a member of government as opposed to his capacity as the head of a ministry or sphere of activity, and also against the Governor of the Bank of Israel, except with respect to his activities as Head of the Bank. Furthermore, the Ombudsman cannot investigate complaints against judicial or quasi-judicial acts, or concerning matters pending in a court or tribunal, or in which a court or tribunal has given a 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 will not investigate a complaint regarding a matter in which a decision has been given, against which a contestation, objection or appeal can or could have been filed under any law, or a complaint filed after a year has elapsed from the date of the act to which it relates or the date on which such act became known to the complainant, unless the Ombudsman finds a special reason justifying the investigation.

## **2. 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 and Haifa.

The addresses of the Ombudsman's offices and of the offices for filing oral complaints, their reception hours and the fax numbers and email addresses for the submission of complaints are listed in the appendices, on page 117.

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

Below are details of the number of complaints received in 2004 (hereafter – the year reviewed) and the outcome of the investigations of complaints completed during that period.

(a) During the year reviewed, 6,840 complaints were filed directly with the Ombudsman (in 2003, 6,129 complaints were filed). The Ombudsman also received copies of hundreds of complaints that were originally submitted directly to audited bodies. As a rule, the Ombudsman does not investigate these latter cases, on the assumption that the bodies concerned will investigate them. In such circumstances, the Ombudsman notifies the complainant that if the body to which he applied does not reply, or if the reply does not satisfy him, he may complain directly to the Ombudsman, who will determine whether the law provides for an investigation of the matter.

(b) Of the 8,411 complaints processed during the year reviewed, (including 1,571 complaints that remained for investigation from 2003) the investigation of 5,969 complaints was completed, comprising 71.0% of all the complaints (in 2003 - 80.2% of the complaints). These complaints included 6,132 subjects for investigation<sup>1</sup>. The following table shows the outcome of the investigations:

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<sup>1</sup> The total number of subjects of complaints is greater than the number of complaints because some of the complaints refer to more than one subject.

Outcome of Investigation	Subjects Investigated in the Year Reviewed	
	Number	Percentage
Subjects resolved substantively <sup>(1)</sup>	3,077	50.2%
Subjects in which investigation was discontinued <sup>(2)</sup>	1,562	25.5%
Subjects summarily rejected <sup>(3)</sup>	1,493	24.3%
<b>Total Subjects in which Investigation was Completed</b>	<b>6,132</b>	<b>100%</b>

(1) Of which 1,044 subjects of complaints were found to be justified (33.9% compared to 35.7% in the year 2003).

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

(3) With respect to these subjects it was found that they could not be investigated because they did not satisfy the criteria of sections 36 and 37 of the Law, which determine against whom a complaint may be filed to the Ombudsman and which matters may be the subject of complaint, or because they involved matters not subject to investigation, as enumerated in sections 38, 39 and 40 of the Law.

At the end of the year reviewed, the handling of 2,442 complaints had not been completed.

3. (a) Data on the breakdown of the complaints according to bodies complained against and the outcome of their investigation, are presented in Table 1 (p. 101) and Graphs 1-7 (pp. 109-115).

(b) Table 2 (p. 105) indicates the breakdown of complaints according to principal subjects: welfare services, municipal services, services to the public and others.

#### **4. CORRECTION OF GENERAL DEFECTS FOLLOWING INVESTIGATION OF COMPLAINTS**

The investigation of complaints may disclose defects that affect not only the individual complainant. In these circumstances, the Ombudsman points out the need to rectify the general defects in order to prevent a recurrence of the defects in the same matter. The work of the Ombudsman over the years has led to the rectification of many such defects.

This report also describes cases where the investigation prompted the Ombudsman to express the need for a general rectification of the defect exposed by the investigation:

Following the investigation of a complaint concerning the improper summons of the complainant to an investigation at the VAT Office, which constituted a breach of her privacy and self-respect, the management of the Department of Customs and VAT in the Ministry of Finance instructed the district offices of investigations of VAT to send summonses to investigations in sealed envelopes. It was also pointed out to them that a distinction should be made between a summons to an investigation and a summons for purposes of clarification; a summons to an investigation should not be used as a summons for clarification. In addition, notifications of cancellation should be sent to people whose summonses to an investigation or clarification have been cancelled (complaint 2, p. 30).

A complainant filed a complaint with the Ombudsman against the Municipality of Jerusalem concerning the failure of the Municipality to make a financial contribution for the employment of assistants for disabled

pupils learning in educational institutions classified as “a recognized institution which is not official”, despite the Municipality’s written obligation to do so. Following the investigation of the complaint, the Municipality changed its policy and today contributes to the employment of assistants in these educational institutions (complaint 12, p. 87).

## **5. COMPLAINTS DEALING WITH 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.

During the year reviewed, the Authority forwarded one complaint to the Ombudsman. In this complaint, a teacher complained that the Ministry of Education, Culture and Sport (hereafter – the Ministry) had started dismissal proceedings against her, *inter alia*, in the light of an affair of sexual harassment from which she had suffered in the past. According to the complainant, the principal of the school in which she worked had victimized her following her complaint against an inspector of the Ministry who had sexually harassed her in the past. The sexual harassment she had suffered and the victimization of the school principal had affected her

health and mental state and her ability to work properly and for this reason the Ministry wished to dismiss her.

The Ombudsman's investigation revealed that the Investigations Department of the Civil Service Commission was investigating the matter and that the Civil Service Commission (hereafter – the Commission) had instructed the Ministry not to initiate proceedings which would bring about a change in the complainant's status. The investigation also revealed that the Ministry had not informed the complainant that the Commission was conducting an investigation in her matter.

Since the complainant's matter was being investigated by the Commission, the Ombudsman ceased the investigation of the complaint, as required by law and by the provisions of the Civil Service Regulations. However, the Ombudsman pointed out to the Ministry that it should have notified the complainant that the Commission was investigating her complaint.

## **6. INTERNATIONAL RELATIONS**

In May 2004 the Eighth Conference of the International Ombudsman Institute (IOI) took place in Quebec City, in Canada. About 400 representatives of more than 70 countries, which have a national Ombudsman institution or similar institution, participated in the conference.

Israel was represented at the conference by 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.

The conference dealt with the role of the Ombudsman with regards to the balance between civil obligations and the rights of the individual. The following subjects were discussed, amongst others: the challenges facing

the institution of the Ombudsman in the age of globalization, the privatization of public functions and the institution of the Ombudsman and the place and function of the Ombudsman in the conflict between the need of governments to protect the public from terrorist activities and violence and the need to protect the rights of the individual.



# **SUMMARY OF SELECTED CASES**



# MINISTRY OF FINANCE – ISRAEL TAX AUTHORITY

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## **1. MISTAKEN DEMAND FOR PAYMENT OF PROPERTY TAX**

In August 2003 the complainant, a resident of Tel Aviv, filed a complaint with the Ombudsman against the Department of Income Tax and Land Taxation in the Ministry of Finance (hereafter – the Department). Following are the details of the complaint:

1. (a) In October 2002 the complainant's mother received from the Deputy Income Tax Commissioner a notification addressed to her late husband, the complainant's father (hereafter – the father). According to the notification, the father owed a debt in Property Tax to the sum of NIS 29,329, including linkage differentials, interest and fines (hereafter – the debt). The notification did not specify the nature of the debt or its source.

(b) The complainant and her mother went to the offices of the central district of the Department of Land Taxation (hereafter – Central Taxation) in order to clarify the matter of the debt. In Central Taxation they were informed that the debt resulted from a failure to pay Property Tax in 1985, apparently for a plot of land situated in a certain block in Rechovot (hereafter – the plot). The staff of Central Taxation was unable to tell the complainant and her mother exactly where the plot was situated and

referred them to the offices of the Department of Land Taxation in Rechovot (hereafter – Rechovot Taxation).

A clerk in Rechovot Taxation located the address of the plot and notified them that in the Department there was no record of a debt concerning the plot. The clerk suggested that they return to Central Taxation to clarify the matter, since in 1986 the plot was under Central Taxation's jurisdiction. When the complainant and her mother returned to Central Taxation, the staff insisted that the debt existed and suggested that they clear the debt by paying just the principal of the debt, to the sum of NIS 2,053.

(c) The complainant turned down this suggestion and wrote to the Center for the Collection of Land Taxation in the Income Tax Commission (hereafter – the Center). In her letter, the complainant contended that to her knowledge her father, who had died 13 years previously, had sold the plot. She asked how it was possible that a notification concerning a debt from 1985 was sent only in 2002 and how the Department's claim concerning the debt could be reconciled with the registration of the transfer of rights in the plot from her father to the purchaser. The complainant pointed out that registration in the Land Registry was conditional on there being no debt in Property Tax on the plot. In reply to the complainant's letter, after several reminders, the Center again suggested that only the principal of the debt be paid.

(d) The complainant continued in her efforts to clarify the matter and amongst other things, received from the Land Registry a historical registration extract of the plot. As a result of her investigations, the complainant discovered the identity of the purchaser of the plot and the time of its sale, which was prior to 1985 – the year for which the debt was demanded. The complainant returned with this information to Central

Taxation and demanded that the debt be cancelled. Some three months later, Central Taxation notified her that “the debt had been cancelled following sale”.

(e) The complainant contended before the Ombudsman that the notification concerning the debt, the investigation she had been forced to carry out following the demand and her repeated applications to the Land Taxation offices, which had been to no avail, had caused her and her mother extreme anguish and expenses. She demanded compensation from the Department.

2. (a) In reply to the Ombudsman’s inquiry, the Auditor of the Department confirmed that a notification concerning a debt in Property Tax for the year 1985 had been sent to the complainant despite the fact that the father had sold the plot in 1982, but she was unable to explain the reason for this. The Auditor pointed out that until 1986, the records of Property Tax payments had been handwritten. After the records had been fed into the computer, notifications were sent out to all debtors, including the notification concerning the complaint.

(b) The Auditor admitted that the matter could have been checked out and the mistake discovered upon the complainant’s first visit to Central Taxation, thus preventing the inconvenience caused to the complainant. The Auditor explained that in the office there were microfilm films containing details of old Property Tax debts. The Auditor informed the Ombudsman that in light of the defects found in the Department’s demand for the mistaken debt, she had forwarded the complainant’s request for compensation to the Legal Department of the Income Tax Commission.

(c) The Legal Department of the Income Tax Commission notified the Accountant of the Department that it was of the opinion that in light of the results of the Department Auditor’s investigation, it was not enough to

apologize to the complainant but it was necessary to compensate her to the amount of NIS 500.

(d) The Accountant of the Department rejected the recommendation of the Legal Department on the grounds that it was not possible to pay the complainant compensation since there was no clause in the budget for this purpose. He pointed out that payment of compensation would be possible only if he had suitable substantiation for the payment.

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

The notification concerning the debt of the father, which was sent to the complainant, was mistaken and referred to a year in which the property was no longer in his possession. Instead of checking the complainant's claims at the time of her first visit to Central Taxation, she was sent from one office of the Department to another and it was she who finally discovered the information which led to the cancellation of the debt.

4. In light of the above, the Ombudsman indicated to the Department of Income Tax and Land Taxation that it must pay the complainant compensation to the amount of NIS 1,500.

5. The Department notified the Ombudsman that it had acted in accordance with the Ombudsman's ruling.

## **2. IMPROPER SUMMONS TO INQUIRY AT VAT OFFICE**

1. In August 2003 the complainant filed a complaint with the Ombudsman against the Department of Customs and VAT in the Ministry of Finance (hereafter – the Department). Following are the details of the complaint:

(a) Upon her return home late at night on 6.8.03, the complainant found on the door of her apartment a summons to attend an inquiry in the morning of the following day at the District Office of Investigations of VAT in her area (hereafter – VAT Office).

(b) The following day, the complainant phoned the VAT Office and asked the investigator who had signed the summons the reason for the summons. The investigator explained to the complainant that an investigation was being carried out against her former husband (hereafter – the husband) for tax offences and it had been decided to summon her in order to obtain from her information concerning the husband. The complainant told the investigator that she had been divorced from her husband for many years and that since the divorce she had had no contact with him. Following the complainant's claim, the investigator informed her, in the same telephone conversation, that the summons was cancelled.

(c) In her complaint to the Ombudsman, the complainant contended that her self-respect and privacy had been injured since the summons had been worded in an aggressive and severe manner, including threats as to the measures which would be taken against her if she failed to appear for the inquiry. She also objected to the fact that the summons had been attached conspicuously to the door of her apartment for the perusal of all who passed by her door.

(d) In response to the Ombudsman, the Department explained that the complainant was summoned since a company owned by the husband had accumulated tax debts. The husband had severed contact with the VAT Office and the Office had not been able to find him – not at his home address and not in any other place. After checking the Population Registry, the Office had discovered that the son of the complainant and the husband was living with the complainant and thus assumed that the complainant was

still in touch with the husband and possibly had information as to his whereabouts.

VAT investigators who arrived at the home of the complainant on 6.8.03 found the apartment empty and thus attached the summons to the inquiry to the door of the apartment. The following day, after the complainant phoned the VAT Office and informed them that she had no contact with the husband, the summons was cancelled as mentioned above.

3. The investigation revealed that the summons had been delivered to the complainant on a form used to summon people suspected of committing tax offences. On the form, which has standard wording, it is written that the suspect is requested to appear at an inquiry following suspicions of his having perpetrated tax offences. The form also includes a warning that failure to appear at the inquiry is an offence by law.

4. The Ombudsman pointed out to the Department that it should not have used the abovementioned form to summon the complainant to give details on a matter not directly concerning her. According to the Ombudsman, the Department should have approached the complainant in an appropriate and moderate manner, not by means of a summons which associated her ostensibly with a tax offence.

The Ombudsman also stressed that in the circumstances of the case and since there had been no urgency in the complainant's appearance, it had been improper to request the complainant to appear at the inquiry the day immediately following the delivery of the summons. In the absence of any urgency, it is appropriate to give reasonable notice to a person summoned to give evidence in order to enable him to make necessary arrangements.

The Ombudsman also pointed out to the Department that once it had been decided to cancel the summons of the complainant to the inquiry, the Department should have given her written notification of the cancellation

and not just notified her orally, thus providing the complainant with a written affirmation of the cancellation should she be accused of ignoring the summons.

5. The Department management accepted the Ombudsman's position and sent written directives to the regional tax offices of the Office of Inquiries according to which, summonses to inquiries must be sent in sealed envelopes, whether the envelopes are to be placed in the mail box of the addressee or attached to his door. The directives also lay down that a distinction should be made between a summons form to an inquiry and a summons form for purposes of clarification, so that a summons form to an inquiry should not be used as a summons form for clarification. The directives further lay down that notifications of cancellation should be sent to people whose summonses to an inquiry or a clarification have been cancelled.

### **3. UNLAWFUL ATTACHMENT OF VEHICLE FOR VAT DEBT**

1. The complainant, a resident of Kiryat Shmuel near Haifa, filed a complaint with the Ombudsman against the Department of Customs and VAT in the Ministry of Finance (hereafter – the Department). Following are the details of the complaint:

(a) The complainant is a partner in a business which is situated in the area of Haifa Bay. On 29.6.04 he parked his vehicle in the vicinity of his business and some time later discovered to his astonishment that the vehicle was missing. The complainant called the Police who told him that the VAT office of Akko had attached his vehicle and that the vehicle had been towed to the lot where attached vehicles are held.

The complainant left his work and hurried to the VAT offices in order to find out the reason for the attachment. There he discovered that the vehicle

had been attached by mistake and a few hours later the vehicle was released and returned to him.

(b) In his complaint to the Ombudsman, the complainant requested compensation for the unjustified attachment, claiming that he had been forced to devote several working hours to dealing with the release of the vehicle.

2. The Ombudsman's investigation revealed the following:

(a) In the past the complainant had served as director of a limited company which produced and marketed engineering equipment (hereafter – the company). In December 1992 the complainant left the company and ceased to serve as its director.

(b) Since 1990 the company had accumulated debts in VAT. In January 2000 the company ceased its business activities and the VAT file of the company was closed with an outstanding debt registered in it.

(c) Throughout the years several measures had been taken to collect the debt but they had not yielded significant results. The last measure had been taken in the year 2000 and since then no further actions had been taken to collect the debt from the company.

(d) On 29.6.04 the Department carried out a debt-collection campaign in the North, in the course of which patrol units from the VAT offices patrolled shopping malls in Haifa as well as other places in the city in order to locate parked vehicles belonging to tax debtors and thus collect their debts through enforcement measures under the Tax Ordinance (Collection).

(e) The Department explained to the Ombudsman that when, in the course of such a collection campaign, a patrol unit spots a commercial vehicle parked in a public area, the members of the unit phone the Tax Office in order to check to whom the vehicle belongs, according to its

registration number. The check is carried out in the Office through the computerized system of the Department, which is linked to the computer of the Licensing Office as well as to the computers of other government offices. If the check reveals that the owner of the vehicle has a tax debt, authorization is given to seize the vehicle and tow it away.

(f) In the aforementioned campaign, the patrol unit members of the Haifa VAT Office saw the complainant's vehicle parked in one of the streets of Haifa. When they contacted the regional VAT Office to check the details of the vehicle's owner, as customary, they discovered that the vehicle belonged to the complainant, who, according to the data of the Company Registry, had served in the past as director of the company. The Regional Supervisor of the Akko VAT Office (hereafter – the Supervisor), who was authorized to sanction seizure of the vehicle, was at the time on his way to the Office. A clerk of the Haifa VAT Office called his cell-phone and he authorized the seizure of the vehicle on the spot.

(g) The vehicle was towed away on the basis of the Supervisor's authorization and the Police was notified of the seizure of the vehicle.

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

(a) Whilst serving as director of the company, the complainant did not sign any personal liability for the company's debts. Therefore he was not personally liable for these debts, even if some of them were generated during the time of his directorship. Like all limited companies, the company was a legal entity in itself and a distinction should be made between its assets and the personal assets of its directors. Furthermore, the complainant had ceased to serve as director of the company some 12 years earlier and was no longer connected with it and moreover, there was no connection between the company and the business in which the complainant was presently a partner.

(b) The attached vehicle was manufactured in the year 2000 and the complainant purchased it several years after leaving the company. The vehicle was registered in his name in the Licensing Office. These facts eliminated the possibility that the company had purchased the vehicle for the complainant.

(c) It was not clear why the VAT clerks had found cause to take measures personally against the complainant when for years no action had been taken to collect the debt from the company itself.

(d) The decision to seize the vehicle had been made impetuously, without sufficiently checking the facts of the case, this being contrary to the rules of caution incumbent on tax authorities when exercising the powers of enforcement vested in them by law.

4. The management of the Department recognized the justice of the complaint and notified the Ombudsman that it would be prepared to compensate the complainant for the expenses incurred by him as a result of the attachment, if the complainant submitted receipts and documents showing these expenses.

5. The complainant pointed out to the Ombudsman that he had incurred no actual expenses because of the attachment and was thus unable to submit documents proving these expenses. However, he repeated his request to receive compensation.

6. The Ombudsman indicated before the management of the Department that since the attachment had been made unlawfully and since the complainant had been forced to take time out from work and devote several working hours to dealing with the release of his vehicle, the Department should compensate him to the amount of NIS 1,000, without stipulating the submission of any documentation.

7. The Department notified the Ombudsman that it had acted in accordance with the Ombudsman's ruling.



# MINISTRY OF HEALTH

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## **4. WOLFSON MEDICAL CENTER – DISMISSAL CONTRARY TO PROVISIONS OF CIVIL SERVICE REGULATIONS**

1. In April 2004 the complainant filed a complaint with the Ombudsman against the Wolfson Medical Center (hereafter – the Medical Center). Following are the details of the complaint:

(a) The complainant was chosen in a public tender for the position of Deputy Treasurer of the Medical Center, after a filtering and classificatory process which lasted several months. She began to work there on 9.11.03 and was dismissed on 20.11.03, after only ten work days.

(b) According to the complainant, she had treated her work seriously and responsibly and had made great efforts to begin the job properly and learn the tasks involved. Amongst other things, during the first days of her work she had initiated applications to her supervisor, the Treasurer of the Medical Center (hereafter – the Treasurer), and asked her to clarify the tasks required of her in the framework of her position, and what her expectations of her were, but the Treasurer had showed unwillingness to talk with her and had not given her any work.

(c) After ten work days, the Treasurer gave the complainant notice of termination of her employment commencing that same day. The notice, which was signed by the acting Administrative Director, gave no reason for the termination of the complainant's employment.

The complainant asked the Treasurer and afterwards the Administrative Director to explain the reason for her dismissal, but the only answer she received was that she was unsuitable for the job.

(d) The complainant contended that she was dismissed unjustifiably, having been given no explanation for her dismissal and having been given no opportunity to put forward her case against the dismissal. The complainant requested the Ombudsman to determine that her dismissal was unjustified.

2. The Ombudsman's investigation revealed the following:

(a) The Medical Center claimed before the Ombudsman that already after a few work days the Treasurer had received the impression that the complainant was unsuitable for the job and therefore the Administrative Director had notified the complainant of her dismissal.

(b) Despite the Ombudsman's requests, the Medical Center failed to provide any documentation attesting to the complainant's having been given the reason for her dismissal or to her having been given an opportunity to put forward her case against the dismissal.

(c) On 1.12.03, after the complainant had been dismissed and after her lawyer had written on her behalf to the Medical Center, the Treasurer wrote a memorandum in which she gave reasons for the complainant's dismissal. In the memorandum the Treasurer wrote that she had received the impression that the complainant was not suitable for the job since she had asked the same questions several times, she had left the office open and without supervision at the end of the work day and had tried to obtain the signatures of the workers of the treasury on a letter about the noise and pollution problem in the area of the office.

3. (a) The provisions of the Civil Service Regulations (hereafter – the Regulations) regarding the reception of new workers and the evaluation of their work provide as follows:

“13.811 The initial work period of a candidate chosen for a vacant position from within the Service or from without is a trial period.

...

13.831 (a) The trial period of an new employee recruited from without the Service at all grades and at all ranks is two years and may not be extended.

...

13.834 The Supervisor in Charge and Head of Department must inspect the work of the new employee... throughout the entire trial period. Should it become apparent that the employee is not suitable for the position, they must suggest the immediate termination of his service. They must not wait until the termination of the trial period, nor extend it. Throughout the entire trial period the immediate supervisor of the employee must give the Head of Department or the Supervisor in Charge successive reports regarding the quality of the employee’s work, his suitability for the job, his relationship with his work colleagues and his general behaviour.

13.835 Should it become apparent in the course of the trial period that the employee is not suitable for the position, he must be dismissed immediately without waiting for the termination of the trial period. The employee shall be dismissed by the Minister or General-Director of the office or by whoever has been authorized by one of them to do so” (the emphases do not appear in the original).

(b) Despite the Ombudsman's inquiries to the Medical Center, to the Ministry of Health and to the Civil Service Commission (hereafter – the Commission), the Ombudsman received no documentation proving that the Minister of Health or the General-Director of the Ministry of Health had authorized the Director of the Medical Center to dismiss an employee during the trial period, as required in clause 13.835 of the Regulations.

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

(a) Indeed, according to the provisions of the Regulations, should it become apparent during the trial period that an employee is unsuitable for the position, he must be dismissed immediately without waiting for the termination of the trial period. However, even within the trial period an employee is entitled to be given a reasonable opportunity to prove his suitability for the job, and it is incumbent on the employer to decide to dismiss him in good faith and upon relevant considerations.

In light of the findings of the investigation, the Ombudsman determined that ten days was not a sufficient period to assess the work of the complainant as required by the Regulations. The Ombudsman also determined that the reasons given for the dismissal, which were enumerated retroactively in the memorandum of the Treasurer of the Medical Center, did not justify the impetuous dismissal.

Furthermore, the Medical Center did not explain to the complainant the reasons for her dismissal nor give her an opportunity to put forward her case against the dismissal.

The Ombudsman therefore indicated before the Medical Center that the dismissal proceedings of the complainant were improper.

(b) The Ombudsman also brought it to the attention of the Commission that no documentation was found proving that the Minister of Health or the

General-Director of the Ministry of Health had authorized the Director of the Medical Center to dismiss an employee during the trial period. The Ombudsman pointed out that if the Commission was of the opinion that such authority should be vested in supervisors of government offices, a clear delegation of authority should be laid down in the Regulations.

The Commission notified the Ombudsman that the subject of the authority to dismiss employees during the trial period was being examined by the Legal Department. The Ombudsman will pursue the decisions reached by the Commission in this matter.



# MINISTRY OF THE INTERIOR

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## **5. UNJUSTIFIED REFUSAL TO PERMIT ENTRY INTO ISRAEL**

1. In July 2003, the complainant filed a complaint with the Ombudsman against the Ministry of the Interior. Following are the details of the complaint:

(a) The complainant is an Israeli citizen and his wife holds a temporary resident permit and Israeli identity card.

On 7.7.03, the complainant's sister-in-law, his wife's sister (hereafter – the guest) flew from Uzbekistan to visit Israel, after receiving a visa from the Consular Department of the Israeli Embassy in Tashkent (hereafter – the Embassy). Despite this, the Ministry of the Interior refused to permit the entry of the guest into Israel and revoked her visa. The guest flew back to Uzbekistan on the same day.

(b) The complainant contended that the refusal to permit the entry of the guest into Israel (hereafter – the refusal of entry) was unjustified and that there had been no prior thorough examination of the matter. He requested that the Ombudsman order the Ministry of the Interior to permit the entry of the guest into Israel and compensate the complainant's family for the financial damage caused it as a result of the refusal of entry.

2. The Ombudsman's investigation revealed the following:

(a) In March 2001 the guest applied to the Embassy for a visa to Israel. After checking the application and due to the young age of the guest, the

Embassy clerks were not convinced that the guest had no intentions of coming to Israel and staying here illegally. Therefore her application was rejected by the Embassy. However, she was told that if she provided a copy of her sister's identity card, in order to check that her sister's residence permit was valid, her application would be reconsidered.

(b) On 28.11.01 the complainant's wife filed a second application for a visa to Israel for her sister, the guest, at the Population Administration Office in Haifa (hereafter – the Haifa Branch). In February 2002 her application was authorized, for the period of a month, on condition of her presenting a return ticket. Authorization to issue a visa was sent from the Population Administration to the Embassy.

(c) In February 2002 the guest went to the Embassy but did not bring a copy of her sister's identity card, as she had been requested to do. She requested a visa to Israel on the basis of the authorization of the Population Administration in Israel. The Head of the Consular Department of the Embassy refused to issue the guest a visa since she had not brought the requested copy.

(d) The Head of the Consular Department notified the Ministry of the Interior by telegram of his refusal to issue the guest a visa and his reasons for doing so. Upon receiving the telegram, on 10.3.02 the Haifa Branch registered in the computerized system a notice concerning the refusal to issue the guest a visa. The computerized registration did not specify that the refusal was from the Embassy and the Ministry of the Interior, nor did it specify the reason for the refusal as detailed in the telegram from the Embassy, this being the failure to provide a copy of the sister's identity card.

(e) In May 2003 the guest made a further application to the Embassy for a visa. Since in the interview with her she did not give the impression that

she would violate the terms of the visa, the Embassy this time granted her a visa to Israel which was valid from 14.5.03 to 13.8.03. On the basis of this visa, the guest arrived in Israel on 7.7.03 but her entry was not authorized, her visa was revoked and she was sent back to Uzbekistan on the same day.

3. Section 11(a)(1) of the Entry into Israel Law, 5712-1952 (hereafter – the Law) states:

“(a) The Minister of the Interior may at his discretion –

(1) revoke any visa granted under this Law, either before or on the arrival of the visa holder in Israel;”

4. (a) In the inquiry report prepared by the branch of the Population Administration in Ben-Gurion Airport, upon the arrival of the guest in Israel, the reason given for the refusal of entry was “without a suitable visa”. The Supervisor of Border and Transit Control in the Ministry of the Interior in Jerusalem (hereafter – the Supervisor) affirmed the refusal according to the authority delegated to her by the Minister of the Interior.

(b) In response to the Ombudsman, the Supervisor notified the Ombudsman that she had authorized the refusal of entry since the application of the guest to receive a visa to Israel had been rejected in the past by the Ministry of the Interior (the Haifa Branch). According to the Supervisor, she had pointed this out to the complainant in a conversation with him and had asked him why he had concealed this information, but he had given no answer. In reply to the Ombudsman, the Head of the branch of the Population Administration in Ben-Gurion Airport also explained that the reason for the refusal of entry was the previous refusal of the Ministry of the Interior to grant the guest a visa. According to him, after her application had been rejected by the Ministry of the Interior, the guest had applied to the Embassy and received a visa, even though she knew about the previous refusal of the Ministry of the Interior.

(c) According to the Supervisor, in order to decide whether to revoke the guest's visa and affirm the refusal of entry, she had spoken to a clerk of the Haifa Branch and on the basis of the information given her by the clerk from the file, which the Supervisor did not enumerate before the Ombudsman, she had decided to affirm the refusal of entry. The Supervisor was unable to explain why in the inquiry report which was prepared upon the guest's arrival in Israel it was written that she had arrived in Israel "without a suitable visa".

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

(a) A person who does not have Israeli citizenship and an Israeli passport indeed has no right to enter Israel without a visa and the Minister of the Interior has extremely broad discretion as to whether or not to grant a visa.<sup>1</sup> Even if a person is granted a visa in his native country, according to the Entry into Israel Law, the Minister of the Interior is entitled to revoke the visa and prevent that person's entry into Israel. However, despite the broad authority vested in the Minister of the Interior by the legislator, his authority is not unrestricted and he must apply it with reasonableness, after examining the entire evidence before him.

(b) The investigation of the complaint revealed that the revocation of the visa granted to the guest and the refusal of the Ministry of the Interior to allow her entry into Israel were unjustified, and that there had been no proper examination of the facts:

The Supervisor had authorized the refusal of entry on the mistaken assumption that the Haifa Branch had in the past refused to permit the entry of the guest into Israel and that despite this refusal, the guest had applied to the Embassy and received the visa. This mistaken assumption was based on

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<sup>1</sup> See HC 482/71 *Clark v. Minister of the Interior*, P.D.27(1) and HC 431/89 *Kendell v. Minister of the Interior*, P.D.46(4) 505.

the registration in the computerized system of the Ministry of the Interior from 10.3.02 concerning the refusal to grant the guest a visa to Israel. This registration did not specify that the refusal was from the Embassy nor did it specify the reason for the refusal – the failure to provide a copy of the identity card of the guest's sister. The same Embassy which had in the past refused to grant the guest a visa issued her, on 14.5.03, the visa with which she arrived in Israel.

A further examination by the Supervisor in the Haifa Branch, where the relevant documents were held, and a check with the Embassy, the offices of which were at the time open, would have revealed the true facts.

Even after the Ombudsman applied to the Ministry of the Interior to investigate the complaint, the Ministry did not check the facts in order to affirm them but repeated its same mistaken viewpoint. Only through the Ombudsman's investigation did the true facts come to light.

6. In light of the above, the Ombudsman indicated to the Ministry of the Interior the need to compensate the complainant, who had bought the guest's airplane ticket to Israel, to the sum of NIS 3,000. The compensation was for the financial damage caused to the complainant as a result of the refusal to permit the entry of the guest into Israel.

The Ombudsman also indicated to the Ministry of the Interior the need to be more particular in its computerized registrations with regards to decisions concerning applications for visas to Israel, including specification of the body refusing to grant the visa.

## **6. DEFECTIVE HANDLING OF APPLICATION TO EXTEND VISAS**

1. In February 2004 the complainant, a lawyer (hereafter – the lawyer), filed a complaint with the Ombudsman on behalf of himself and his clients, a mother and daughter (hereafter – the complainants), against the Ministry of the Interior (hereafter – the Ministry). Following are the details of the complaint:

(a) The complainants reside in Israel by virtue of a temporary residence visa and permit known as A/5 (hereafter – the visas) and live in East Jerusalem. In July 2002 they applied to the Ministry for the extension of their visas in accordance with the Entry into Israel Law, 5712-1952, but the Ministry constantly put them off and their visas were not extended.

(b) According to the lawyer, he wrote to the Main Office of the Ministry and to the Director of the Population Administration concerning the complainants but his letters were not answered adequately.

(c) In his complaint to the Ombudsman, the lawyer complained about the Ministry's handling of the complainants' application for the extension of their visas and about the Ministry's disregard for his letters.

2. The Ombudsman's investigation revealed the following:

(a) The complainants' files were handled throughout the years by the West Jerusalem branch of the Population Administration (hereafter – the Generali Branch), despite the fact that they live in the east of the city and should therefore be handled by the East Jerusalem branch of the Population Administration (hereafter – the East Jerusalem Branch).

(b) The visa granted to each of the complainants had been extended throughout the years. On 23.7.02 the complainants filed an application for the extension of their visas in the Generali Branch. The complainants tried

several times to find out what had become of their applications but they were constantly put off.

(c) On 10.2.03, during one of their visits to the Generali Branch, the complainants were informed that their file had been transferred to the East Jerusalem Branch and that a meeting with them had been arranged for 17.2.03. The complainants went to the East Jerusalem Branch on the fixed day, as requested, but their file was not in the office and thus their matter was not dealt with.

(d) On 6.3.03 the lawyer applied to the Office of the Director of the Population Administration (hereafter – the Office of the Director) in order to find out what had become of the complainants' applications. On 31.3.03 the Office of the Director notified him that he must submit a power of attorney in order that his matter be dealt with. The lawyer submitted a power of attorney on 3.6.03.

On 31.8.03 the lawyer sent a reminder to the Office of the Director. Since he received no reply, he sent a further reminder on 3.2.04, and still received no reply. At this stage the lawyer filed his complaint with the Ombudsman. Only following the Ombudsman's repeated applications to the Ministry, did the Administration Director start to deal with the complainants' matter.

3. (a) On 18.2.04 the Office of the Director transferred the handling of the lawyer's application to the Generali Branch. In response, the Generali Branch gave notification that the complainants' file had already been transferred to the East Jerusalem Branch on 10.2.03 however, as already stated, the Ombudsman's investigation revealed that the complainant's file had not been in the East Jerusalem Branch when the complainants had visited the office on 17.2.03.

(b) Following the inquiry of the Office of the Director with the Head of the East Jerusalem Branch, on 3.6.04 the complainants were summoned to

the East Jerusalem Branch to submit all the documents which attested to their uninterrupted residence in Israel, in order to consider their application for the extension of their visas. The complainants submitted the required documents.

Only in May 2004 did the lawyer receive the first pertinent reply, requesting him to refer the complainants to the East Jerusalem Branch in order that their matter be dealt with.

(c) On 1.9.04 the Office of the Director informed the lawyer that the complainants' matter would be brought before the Inter-Office Committee for the Granting of Status for Humanitarian Reasons, which makes decisions in exceptional cases. The Committee reached its decision, which was signed by the Administration Director, on 17.10.04. According to the decision: "In light of their prolonged residence in Israel, we approve A/5 status".

(d) Neither the complainants nor the lawyer were notified of the Committee's decision, nor were they summoned to the Population Administration to receive their visas.

4. (a) On 17.11.04 the complainants were detained by the Police for several hours in order to ascertain their status. The police officer who dealt with them spoke to the Office of the Director. Following this conversation, the complainants were summoned the following day to the Generali Branch where they met the deputy head of the office. She notified them that their documents were not in the Generali Branch and would only be transferred to that office on the following day. Therefore a meeting was arranged for 25.11.04.

(b) On 25.11.04 the complainants went to the Generali Branch where they were informed that they would have to return to the office in five weeks time in order to receive their visas. Eventually the complainants

were summoned to receive their visas on 29.12.04, and they received them on the same day, that is to say, more than two years after they had applied for the extension of their visas.

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

The investigation of the complaint revealed serious defects in the Ministry's handling of the complainants' applications:

- (a) For more than two years, from 23.7.02 to 17.10.04, no decision was made concerning the applications.
- (b) The complainants were summoned to the East Jerusalem Branch on 17.2.03 but their matter was not dealt with since their file had not been transferred to this branch. According to the East Jerusalem Branch, the complainants' file was only transferred to it in 2004.
- (c) After the complainants' matter was eventually brought before the Inter-Office Committee, which authorized the extension of their visas, neither the complainants nor the lawyer were informed of the decision and they did not receive the visas. Only on 25.11.04 were the complainants summoned to the Generali Branch, after being detained by the Police in order to ascertain their status.
- (d) For almost a year, from June 2003 to May 2004, the lawyer received no reply. After this time, he was requested to refer the complainants to the East Jerusalem Branch, despite the fact that their file was not there.
- (e) The long delay in the Ministry of the Interior's handling of the complainants' matter and the Ministry's disregard for the lawyer's applications caused the detention of the complainants by the Police on 17.11.04, with its attendant anguish.

6. The Ombudsman informed the Ministry of the Interior of the serious defects found in its actions and of its obligation to prevent future defects of this kind.

# NATIONAL INSURANCE INSTITUTE

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## **7. COLLECTION OF DEBTS DERIVING FROM EXCESS PAYMENT OF BENEFITS**

1. (a) Section 315(1) of the National Insurance [Consolidated Version] Law, 5755-1995 (hereafter – the Law) provides as follows:

“Where the [National Insurance] Institute has paid, by mistake or illegally, a monetary benefit or other payment under this law or under any other law, the following provisions shall apply:

The Institute is entitled to deduct the sums paid as above from any payment owing from it, whether in one payment or in several payments, as determined by the Institute, taking into account the situation of the recipient of the payment and the circumstances of the matter;

The Institute may claim the repayment of the entire sum that it paid, by mistake or illegally, if the recipient of the payment did not receive the money in good faith.”

(b) The guidelines issued by the Benefits Administration of the National Insurance Institute (hereafter – the NII) lay down provisions concerning the application of the NII’s authority under Section 315 of the Law to collect a debt resulting from excess payment of benefits (hereafter – the Benefit Provisions). These provisions stipulate that a debt deriving from an act or omission of the NII shall be cancelled or reduced, according to the income

of the debtor's family at the time the decision to cancel the debt is made. Accordingly: if the debtor is single and his income does not exceed 50% of the monthly average wage, or he has a spouse and their joint income does not exceed 75% of the monthly average wage, the debt shall be cancelled in its entirety; if the debtor's income exceeds the above percentages but is less than twice the monthly average wage, the debt shall be cancelled in part; if the debtor's income exceeds twice the monthly average wage, the debt shall not be cancelled at all even if it was caused solely through the fault of the NII.

(c) Over the years the Ombudsman has received a significant number of complaints in which the complainants complained about the NII's deducting from their benefits debts deriving from excess payments mistakenly paid to them by the NII, without their having contributed to the mistake or having been aware of it<sup>1</sup>.

Following the investigation of these complaints, the Ombudsman determined that the right of the NII to collect a debt under Section 315(1) of the Law is not unrestricted and that the NII must apply its discretion according to the criteria laid down in the case law concerning the reimbursement of excess payments<sup>2</sup>. The Ombudsman also ruled that in this matter the general principle laid down in Section 2 of the Unjust Enrichment Law 5739-1979 (hereafter – the Enrichment Law) applied, according to which reimbursement should be waived where the circumstances render reimbursement unjust.

The Ombudsman ruled that according to the widespread interpretation of Section 2 of the Enrichment Law, and of Section 315(1) of the Law in

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1 See *Ombudsman Annual Report 6* (1977), p.55; *Annual Report 8* (1979), p.82; *Annual Report 25* (1998), p.90; *Annual Report 26* (1999), p.23; *Annual Report 29* (2003), p.62.

2 See CA 780/70 *Tel Aviv Municipality v. Sapir*, P.D.25(2) 486; CA 588/87 *Cohen v. Shemesh*, P.D. 45(5) 297,328; LA 39/99 *Assraf v. State of Israel*, taken from Takdin.

particular, reimbursement of monies paid in excess through the fault of the paying body should not be demanded in the following circumstances:

- (1) The debtor did not contribute in any way to the excess payment, nor did he know that he had been paid in excess or the reason for the payment.
- (2) The debtor changed his circumstances for the worse upon receiving the payment. A change for the worse can include the accrual of the debt without his knowledge.
- (3) A long time passed from the time of the crystallization of the circumstances that led to the excess payment until its discovery.

2. In 2004, too, the Ombudsman investigated complaints against the NII concerning the application of Section 315 of the Law and of the Benefit Provisions. Following are descriptions of two such complaints:

**Complaint A – Demand for reimbursement of mobility benefit paid by mistake**

1. The complainant is the father of a disabled child (hereafter – the daughter) who lives in a home for disabled children (hereafter – the Home). In November 2003 he filed a complaint with the Ombudsman against the decision of the NII to cancel retroactively, in 2002, the daughter's eligibility for a mobility benefit and deduct from his child allowance substantial sums which had been paid in the past in the framework of the mobility benefit.

2. (a) According to Section 15(c) of the Mobility Benefit Agreement, which was signed between the Government of Israel and the NII (hereafter – the Mobility Agreement), a disabled child who resides in an institution for the disabled is entitled to a mobility benefit only if he leaves the

grounds of the institute in which he resides in a vehicle at least six times a month.

(b) According to Regulation 4(a)(2) of the National Insurance (Payment for Subsistence, Assistance in Studies and Arrangements for the Disabled Child) Regulations, 5758-1998, a disabled child residing in an institute for the disabled is not as a rule entitled to a disabled-child benefit.

3. The Ombudsman's investigation revealed the following:

(a) (1) For a number of years the NII had paid the complainant a mobility benefit and a disabled-child benefit for the daughter. In August 2000 the complainant submitted at the Reception Desk of the NII in his hometown certification that the daughter had started to reside in the Home. The certification was sent to the Disability Department of the NII and the Department ordered the cancellation of the daughter's eligibility for the disabled-child benefit, since she was residing in the Home. However, the certification was not forwarded to the Mobility Department and thus the complainant continued to receive mobility benefit for the daughter from September 2000 until November 2002, without the NII checking the daughter's continued eligibility following her residence in the Home.

(2) During the time in which the benefit was mistakenly paid, the computerized system of the Mobility Department in the NII signalled a warning that there was a problem in the payment of mobility benefit for the daughter but the clerk who handled the file did not understand the reason for the warning and the NII continued to pay the benefit.

(3) The excess payment was discovered only in November 2002, after the computerized system of the mobility department was transferred to the new system, which did not permit payment of the mobility benefit to anyone not entitled to a disabled-child benefit. An examination carried out by the Mobility Department revealed that the daughter was residing in the Home and was therefore not eligible for the mobility benefit.

(b) (1) The nominal value of the debt that had accumulated following the excess payment of the mobility benefit totalled NIS 43,602. The Committee for the Cancellation of Debts in the NII Administration (hereafter – the Committee) discussed the debt and decided on 31.7.03 to cancel only 75% of it on the grounds that “although the couple notified the NII that the daughter had moved into an institution, they continued to receive the mobility benefit without objection. Therefore, in light of the financial situation, cancellation of 75% of the remainder of the debt was approved.”

(2) The Ombudsman requested of the Chairman of the Committee additional clarifications concerning the Committee’s decision. The Chairman of the Committee again contended that the complainant should have notified the NII that he was continuing to receive the mobility benefit unlawfully; she also claimed that the Committee had acted in the complainant’s matter in accordance with the Benefit Provisions.

(c) (1) The sum total of the complainant’s debt (the principal together with linkage differentials) was about NIS 45,000 and the sum of the debt that was cancelled was NIS 27,000. The remainder of the debt was deducted by the NII from the child benefit which was paid to the complainant for his children and from surplus payments owing to the complainant in NII insurance payments.

(2) As stated, the Benefit Provisions provide that a debt which has accrued from an act or omission of the NII shall be cancelled in its entirety if the income of the debtor does not exceed 50% of the monthly average wage in the case of a single person or 75% of the monthly average wage in the case of a couple. According to the examination made prior to the submission of the file to the Cancellation of Debts Committee, the complainant’s income was 38% of the monthly average wage; therefore, according to the Benefit Provisions, if the debt had accumulated through the fault of the NII, it should be cancelled in its entirety.

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

(a) The mistake which brought about the excess payment of the mobility benefit and the accumulation of the debt was caused solely through the fault of the NII. The complainant had notified in due course that his daughter had moved into the Home and consequently her eligibility for disabled-child benefit had been cancelled.

(b) The contention of the Committee that the complainant had contributed to the mistake in his failing to report to the NII that he was continuing to receive mobility benefit was unacceptable. The complainant was not expected to know that since his daughter did not leave the grounds of the Home at least six times a month (as required under the Mobility Agreement), she was not entitled to mobility benefit. The burden of proof that the complainant knew about the mistake in the payment was on the NII and since the NII had not proved this, the complainant could not be considered to have contributed to the mistake.

(c) The complainant was entitled to assume that the NII had carried out the necessary checks to determine the daughter's eligibility for mobility benefit and that he was entitled by law to receive the benefit. It was to be expected that following this he had managed his expenses on the expectation of the benefit being paid.

(d) The NII had acted both contrary to the criteria laid down in the case law on the subject of restitution and to the Benefit Provisions, according to which the entire debt of the complainant should have been cancelled.

(e) The Ombudsman indicated to the NII the need to cancel the entire debt and to repay the complainant all the sums that had been deducted from him on account of the debt.

5. The General-Director of the NII informed the Ombudsman that following the Ombudsman's ruling, the Committee for the Cancellation of

Debts had decided to cancel the entire debt and repay the sums that had been deducted.

**Complaint B – Demand for reimbursement of excess payment of old-age pension**

1. The complainant filed his complaint with the Ombudsman in January 2004. Following are the details of the complaint:

(a) The complainant retired from his job in December 1994, at the age of 65. In January 1995 the NII began to pay him old-age pension.

(b) In March 2003 the complainant received a letter from the NII requiring him to repay a debt for the sum of NIS 7,624 deriving from excess payment of the old-age pension. In the letter the complainant was told that from that month 50% would be deducted from his monthly old-age pension in order to repay the debt.

(c) In reply to the complainant's inquiry, the NII explained that the debt originated in the amendment of his birth-date, which had caused the revocation of his eligibility for the "pension postponement increment" that had been paid to him since January 1995, for the preceding period of some nine months<sup>3</sup>.

(d) In his complaint to the Ombudsman, the complainant contended that at the time of filing his claim for old-age pension he had provided the NII

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<sup>3</sup> Section 249 of the National Insurance Law provided at the time relevant to the complaint: "(a) A beneficiary who has reached the age in which he would be entitled to an old-age pension if he did not have an income which exceeds the income which entitles him to a pension under Section 245 as stated [65 for a man and 60 for a woman], and this income derives from work, the pension to which he is entitled under the preceding sections shall be increased by 5% for every year in which he received the aforementioned income.

(b) A beneficiary who had the aforementioned income for at least nine months in a particular year will be considered, for the purpose of this section, to have received this income throughout the whole year."

with exact details of his date of birth. According to him, because the NII had erred as to the time of his reaching the age of 65, he had unwittingly been paid pension postponement increment for eight years. The complainant disputed the debt that had accrued and the deduction of the debt from his monthly old-age pension.

2. The Ombudsman's investigation revealed the following:

(a) When the complainant filed his claim for old-age pension in the NII, he stated in the claim form his full birth-date – 14.12.29. According to this date, he was not entitled to pension postponement increment. However, while examining the complainant's eligibility for the pension, the NII did not check the details provided by the complainant in his claim concerning his date of birth but relied on data from the Population Registry, in which only the complainant's year of birth was registered.

(b) Section 385(a) of the National Insurance Law provides as follows:

“(a) Where a person's date of birth has not been proved, it shall be presumed that he was born on the fifteenth of the month of his birth, and if the month of his birth has not been proved – it shall be presumed that he was born on the 1st of April of the year of his birth.”

In accordance with the above section, the NII determined that the date of birth of the complainant was 1.4.29 – this date preceding his real birth-date by nine months. In accordance with this date the NII determined the complainant's eligibility for pension. The complainant filed for the pension upon reaching the age of 65, some nine months after the time when, according to the NII, he was entitled to file for it. Therefore the NII decided that during this time the complainant had postponed his claim for pension following his income from work and paid him pension postponement increment at the rate of 5%.

(c) It cannot be disputed that the NII failed to inform the complainant that his eligibility had been examined on the basis of a different birth-date from the one he had declared in the claim form. Nor can it be disputed that for some eight years, from January 1995, the NII had paid the complainant pension postponement increment at the rate of 5% per annum.

(d) In January 2003, the NII received information that the complainant had updated his identity card in the Office of the Population Administration and had registered in it his full birth-date. It then became clear that the complainant was not entitled to the pension postponement increment. In March of the same year the NII notified the complainant of the debt to the sum of NIS 7,624 which had accrued as a result of excess payment of his pension and began to deduct 50% of his monthly pension on account of the debt. Following the complainant's appeal to the NII, the deduction was reduced to 25% of the old-age pension and the deduction was made every month until the debt was cleared.

(e) The NII explained to the Ombudsman that it had considered cancelling the debt but since the income of the complainant and his wife exceeded twice the monthly average wage and in light of the Benefit Provisions, it had found no grounds for cancellation, notwithstanding that the debt was caused by fault of the NII. The examination carried out by the Ombudsman following the NII's explanation revealed that in fact the income of the complainant and his wife was less than twice the monthly average wage and not as the NII had determined. The Ombudsman brought this to the attention of the NII.

(f) The NII notified the Ombudsman that it had submitted the complainant's matter to the Committee for the Cancellation of Debts. On 16.11.04 the Committee discussed the complainant's matter and decided to

cancel half the debt that had been deducted from his pension, in accordance with the Benefit Provisions.

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

(a) The Ombudsman ruled that the circumstances relating to the complaint justified cancellation of the entire debt and not only half of it as determined by the Committee for the Cancellation of Debts. The Ombudsman's decision was based on the fact that the mistake which had given rise to the debt was caused solely through the fault of the NII:

(1) The complainant had stated his full birth-date in the pension-claim form which was submitted to the NII and he had been entitled to assume that the NII had carried out the requisite checks to determine his eligibility for the pension and the amount of the pension prior to making payment. He had also been entitled to assume that he was receiving the pension to which he was entitled by law.

(2) The complainant had managed his expenses in reliance on this assumption and had thus changed his circumstances for the worse.

(3) The NII had not carried out suitable follow-up measures regarding the complainant's eligibility for pension and only following the complainant's application to the Office of the Population Administration did it become apparent that for eight years the complainant had been receiving a pension postponement increment to which he was unwittingly not entitled.

(4) The NII had not informed the complainant that his eligibility had been examined on the basis of a different birth-date from the one he had declared.

(b) The Ombudsman therefore indicated to the NII the need to cancel the entire debt of the complainant and repay him the monies deducted from his old-age pension.

4. The NII notified the Ombudsman that it had carried out his ruling. The NII also gave notification that it would issue guidelines to the branches of the NII regarding the manner of handling claims where there is an inconsistency between the details given in the claim form and the data held by the NII.

## **8. RELIANCE ON MISTAKEN INFORMATION PUBLISHED ON WEBSITE**

1. In March 2004, the complainant filed a complaint with the Ombudsman against the National Insurance Institute (hereafter – the NII). Following are the details of the complaint:

(a) In July 2000, the complainant reached the age of 65. Since he continued working freelance in the years 2000 and 2001 he was not entitled by law to old-age pension during this period due to the level of his income. Thus he did not file a claim for old-age pension (hereafter – pension).

(b) In July 2003, after the complainant's accountant had filled out the annual tax report for the tax year 2002, the complainant discovered that according to his income in the year 2002 he was ostensibly entitled to pension for that year. The complainant surfed the website of the NII in order to find out whether he would lose his right to pension if he postponed filing a claim with the NII. According to the information on the website, if the claim is filed more than 12 months after the commencement of the eligibility period, the NII will pay pension for up to 48 months retroactively from the time the claim is filed, even if the eligibility period commenced at an earlier time.

(c) According to the information on the website, the complainant understood that there was no urgency to file the claim and that his right to receive pension for the year 2002 – if indeed he was entitled to it – was

retained for 48 months. However, when he filed the claim in December 2003, the complainant discovered that he was entitled to receive the pension for up to 12 months retroactively from the time of filing the claim, not for the period of up to 48 months as had been published on the website.

(d) The NII approved payment of the pension to the complainant from December 2002 (one year retroactively from the time of filing the claim – December 2003) but not from January 2002, to which he claimed he was entitled. According to the complainant, after repeated petitions the NII eventually agreed to pay him, in addition, pension for the months of October and November 2002.

(e) The complainant contended that the mistaken information on the website had caused him to lose his eligibility for pension for the months of January to September 2002. He demanded that the NII pay him pension for these months as well.

2. (a) Section 245(a)(1) of the National Insurance [Consolidated Version] Law, 5755-1995 (hereafter – the Law) provides that the age of eligibility of a man for old-age pension is “seventy and if his income in a tax year does not exceed the maximum income – sixty-five”<sup>4</sup>.

(b) According to section 249(a) of the Law, where a beneficiary has reached the age which would entitle him to old-age pension if his income from work did not exceed the maximum income, the pension to which he is entitled shall be increased by 5% for every year in which his eligibility was rejected (hereafter – pension postponement increment).

(c) Up until 1.7.03, Section 296 of the Law provided that the NII was entitled to pay a benefit up to 48 months retroactively from the time the

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<sup>4</sup> Following the increase in the retirement age under the Retirement Age Law 5764-2004, the eligibility age for old- age pension was also raised (gradually). This is irrelevant to the present complaint which concerns the year 2002.

benefit claim was filed. Following an amendment to the Law which was passed by the Knesset on 17.12.02 and entered into effect on 1.7.03 (amendment no. 60), it is possible to pay a benefit up to only 12 months retroactively from the time the claim is filed.

3. The Ombudsman's investigation revealed the following:

(a) The complainant filed for pension on 3.12.03. The NII approved his eligibility for the pension (including a 10% pension postponement increment for two years) retroactively from 1.10.02. According to the amendment to Section 296 of the Law (hereafter – the amendment), he was entitled to the pension from December 2002 only (twelve months prior to his filing the claim). However, because of the strike in the branches of the NII which prevented the filing of claims, his eligibility was approved from 1.10.02. His eligibility for the months of January to September 2002 was rejected because of his delay in filing the claim, in accordance with the amended version of Section 296.

(b) According to the complainant, when he entered the website of the NII in July 2003, there was no mention of the amendment to Section 296 and according to the website it was possible to receive the pension up to 48 months retroactively.

(c) The complainant's reliance on the information on the website caused him to lose only three months' eligibility (July to September 2002), since when he checked his rights on the website – in July 2003 – he was entitled by law (which had already been amended) to pension twelve months retroactively only, from July 2002, not 48 months retroactively.

4. The NII admitted to the Ombudsman that at the time that the complainant checked his rights, Section 296 had not yet been updated on the website. According to the NII, the website provides a service to the public and the information on it is updated from time to time. However, on

the opening page of the website it is emphasized that “this site includes general information, this information should not be treated as a binding version of the law”; since under the provisions of the Law it is possible to pay a benefit up to twelve months retroactively only, it is not possible to satisfy the complainant’s request.

5. The NII’s position was based on the precepts laid down in several decisions of the National Labour Court, according to which the NII and the labour courts have no discretion to grant eligibility for a benefit or grant if this payment is not provided by law. In a decision of the National Labour Court<sup>5</sup> (hereafter – Za’arur judgement) the claim filed to the NII by a discharged soldier for an “essential work grant” was considered. The soldier claimed, *inter alia*, that his eligibility for the grant should be recognized despite his not fulfilling all the conditions laid down by law, since he had relied on information in the pamphlet “Handbook for the Discharged Soldier” which is issued by the Ministry of Defence. The Labour Court rejected this claim and determined that “the handbook is indeed likely to mislead, but it cannot grant a right that is not granted by law.”

It was similarly determined in another decision of the National Labour Court<sup>6</sup> (hereafter – Matarani judgement):

“A right by law is granted only under a provision of the law. The law, and the law only, is the source for the determination of rights and obligations. Therefore, information issued by the National Insurance Institute or any other institute cannot replace this sole source”.

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5 LA 20028/98 *National Insurance Institute v. Yaniv Za’arur*, taken from Takdin.

6 LA 20243/97 *Ezer Matarani v. National Insurance Institute*, PDL 36, 326

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

(a) The law concerning the rights of beneficiaries is essential information for the public and its availability on the website of the NII is required by virtue of the NII's public function. However, the NII is obligated to apply caution when publishing the relevant laws on the website since it is to be expected that people receiving this information will rely upon it and act according to it. This reliance is not only reasonable, it is desirable since it improves the service provided to the public. Were this information not published on the website, the person seeking the information would have to apply to other, less available, sources in order to check the applicability of the law.

With regard to the duty of caution in transmitting information, a decision of the Court of Appeal<sup>7</sup> (hereafter – the Kiryat Ata Municipality decision) laid down as follows:

“Where an application to receive information has been made to a body which controls an information data-base that is of interest to the public, in circumstances in which the supplier of that information, as a reasonable man, may expect the person seeking that information to rely upon it and act in accordance with it, it is incumbent on the supplier of the information to apply reasonable caution in supplying the requested information... violation of the duty of caution described above may generate liability for negligence in damages towards the circle of people who were expected to rely on the information and whom it was known would rely on the information at the time the information was supplied and liability for the amount of damages which could have been foreseen at the time of giving the information”.

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<sup>7</sup> CA 209/85 *Municipality of Kiryat Ata and others v. Ilanko Inc.*, PD 42(1), 190,203

(b) In a complaint against the NII, which was investigated in the past by the Ombudsman<sup>8</sup> - according to which the complainant did not sign-on at the Employment Agency because of mistaken information given to her by a clerk in the NII and was thus found ineligible for unemployment benefit – the Ombudsman ruled, in reliance upon the Kiryat Ata decision, that the NII owed a duty of caution to the complainant in supplying the information and that it had violated this duty when the clerk told the complainant that she did not need to sign-on in the Employment Agency. The Ombudsman thus determined that the NII must pay the complainant the employment benefit to which she would have been entitled if she had signed-on at the Employment Agency.

(c) In the present complaint the NII violated its duty of caution towards the community of beneficiaries since it did not ensure the update of Section 296 which was published on its website, despite the fact that it had had time to do so since the amendment was legislated half a year before it went into effect. Notwithstanding that on the second page of the website it is mentioned (in small letters) that “the information should not be considered a binding version of the law”, the handbook on old-age insurance which was issued by the Benefits Authority of the NII (and is also published on the website) makes reference to the site as a source for finding out about rights.

(d) The complainant relied on an outdated version of the law which was published on the website of the NII and this caused him to postpone filing his pension claim.

(e) Taking into consideration the complainant’s reliance on the outdated information, he should be regarded as having filed his claim at the time he first relied on the information, this being July 2003. Therefore the

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8 See *Annual Report 17 of the Ombudsman* (1989), p.71

commencement of his eligibility should be determined in accordance with the law applying at that time, under which he was entitled to pension retroactively from July 2002.

(f) In the abovementioned Labour Court decisions the plaintiffs sought to create a right which did not exist in law. In this case, the complainant contended the loss of his rights under the law. Therefore the complainant should be granted the rights to which he was entitled at the time he was misled.

7. In light of the above, the Ombudsman indicated to the NII that it must pay the complainant pension retroactively from July 2002.

8. The NII notified the Ombudsman that it had acted in accordance with his ruling.



# ISRAEL POLICE FORCE

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## **9. ERRONEOUS USE OF DISCRETION CONCERNING TIME OF DELIVERY OF SUMMONS**

1. In October 2003 the complainant filed a complaint with the Ombudsman against the Israel Police Force. Following are the details of the complaint:

On 1.10.03, at **6:00 a.m.**, police officers came to the complainant's house in order to deliver to her a summons to give evidence in court on 27.11.03.

The complainant has a son serving in the army and the police officers' unexpected knocking on her door at such an early hour caused her acute anxiety. In her complaint the complainant contended that there had been no urgency to deliver the summons and that the Police should have acted in a more sensitive manner and sent the police officers at a more reasonable hour.

2. The Ombudsman's investigation revealed the following:

(a) The investigation which was carried out in the District Attorney's Office revealed that the complainant was due to give evidence for the prosecution in a court criminal proceeding. The attorney handling the file phoned the complainant in order to ascertain that she had received the summons sent on behalf of the court and to prepare her for giving evidence. According to the attorney, in his telephone conversations with the complainant the complainant notified him that she had not received the summons in the post and that she had no desire to appear in court to give

evidence; all his attempts to persuade the complainant to appear in court failed.

In light of the above, the attorney asked the Police to deliver personally to the complainant a summons to the hearing on 27.11.03. The attorney pointed out that his application to the Police also included, as is customary, the complainant's telephone number, since the Police sometimes phones the witnesses in order to coordinate with them a time for delivering the summons.

(b) The District Police Superintendent replied to the Ombudsman as follows:

(1) The request of the attorney that the summons be delivered personally to the complainant was received after several summonses had been sent by the court to the complainant by post and the complainant had not appeared at the hearing. The attorney emphasized in his request the importance of her being summoned to give evidence.

(2) In light of the above and after several unsuccessful attempts of district police officers to deliver the summons to the complainant "at a reasonable hour as is customary in the Police Force", it was decided to make the delivery at 6:00 a.m, on the assumption that at this time the complainant would be at home.

(3) The District Superintendent pointed out that the Police was authorized to make personal deliveries at any hour of the day.

(4) The District Superintendent added that he was sorry if the appearance of the district police officers at the complainant's home early in the morning caused her anxiety concerning her son who was serving in the army, but in light of the circumstances there had been no alternative but to make the delivery in this way.

(c) The Ombudsman's investigation revealed no evidence to support the Police's claim that district police officers had come to the complainant's house previously in order to deliver the summons to her.

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

The Police regulations do indeed permit, as a rule, the personal delivery of a summons in the early hours of the morning. However, the appearance of the Police at this time causes tension and anxiety, especially in these times. Therefore, delivery should be made during these hours only if attempts to make the delivery at a more acceptable hour have failed. The Police does in fact act in this way, as is apparent from its answer that in this case it had made previous attempts to make the delivery at a reasonable hour as is customary in the Police Force. However, as stated, there are no records to support that this was indeed done.

Furthermore, since the hearing to which the complainant was summoned was due to take place some two months after the appearance of the Police at the complainant's home, there had been no urgency to deliver the summons; thus even if previous attempts to make a personal delivery to the complainant at a reasonable hour had been unsuccessful, further attempts should have been made to find the complainant at home at a reasonable hour.

4. The Ombudsman pointed out to the Police, that a summons should be delivered early in the morning only upon the decision of an authorized officer, after he has ascertained, *inter alia*, that previous attempts to make the delivery at a reasonable hour have been unsuccessful and if the circumstances (such as the imminence of the hearing) require making an exception to this rule.

5. The District Superintendent informed the Ombudsman that “the matter had been brought to the attention of the relevant officers to prevent a repetition of the affair”.

## **10. MISTAKEN DEMANDS FOR PAYMENT OF FINE**

1. The complainant filed a complaint with the Ombudsman against the Israel Police Force. Following are the details of the complaint:

(a) In December 2002, the complainant’s son (hereafter – the driver) received a warning pending postponement of the renewal of his driving license. According to the warning, on 11.7.02 the driver committed a traffic offence and a fine notification, numbered 30-23-66846-4, for the sum of NIS 750, was registered in his name. The fine was to be paid by 9.10.02. Since the fine was not paid on time, he had to pay the fine, together with an arrears penalty, to the sum total of NIS 1,125 by 11.4.03.

Since the driver had been abroad since August 2002 and the complainant had no contact with him at the time, and since the license number of the vehicle registered in the fine notification was unfamiliar to the complainant, he wrote to the Police on 1.1.03 and requested details concerning the offence.

(b) On 3.1.03 the driver received a further warning pending postponement of the renewal of his driving license, bearing the same notification number as above, only this time the original fine was stated to be NIS 270 and since it had not been paid on time, the balance to be paid by 11.4.03 was NIS 300.

(c) On 16.1.03 the complainant again wrote to the Police and requested clarification concerning the two contradictory fine notifications, since they both ostensibly concerned the same offence. On 29.1.03, the Police notified

him that the fine for the offence was NIS 270 and that since the driver had paid only NIS 105, he was requested to pay the difference together with an arrears penalty.

(d) In a telephone conversation between the complainant and the driver (who as said, was abroad), the driver confirmed that in July 2002 he had received a notification to pay a fine for the sum of NIS 270 and that he had paid the entire fine in cash in the postal bank of Kfar Saba in August 2002. The driver did not remember where he had put the receipt of payment of the fine and the complainant also did not succeed in finding it.

(e) On 12.2.03 the complainant wrote back to the Police, informing them of what he had been told by the driver. In his letter he also claimed that after checking the matter, he had found out that it was impossible to pay only part of a fine in the postal bank. Therefore, if the Police had records showing that part of the fine had been paid, this constituted proof that the entire fine had been paid as required. The complainant requested that the Police locate the cause of the mistake in its records and exempt the driver from any further payment.

(f) On 2.3.03 and 11.3.03 the complainant received notifications from the Police informing him that his inquiry had been forwarded to the department dealing with inquiries from drivers. He was also informed that the filing of an inquiry did not defer the time limit for the payment of the fine or waiver the postponement of the renewal of the driving license.

In order to prevent a delay in the renewal of the driving license, the complainant paid in protest NIS 300, this being the sum registered in one of the demands for payment sent to him by the Police.

(g) In his letter of 4.5.04, the Head of the Department for Drivers' Inquiries in the Police Force notified the complainant that in order that his

complaint be handled, he must provide a copy of the offence report that the driver had received and the receipt of payment of the fine.

In his letter to the Head of the Department for Drivers' Inquiries dated 21.5.03, the complainant reiterated all his correspondence with the Police. He again explained that he did not have the original report and was not complaining about the payment of the fine but repeated his contention that the fine had been paid and that the record of the Police showing payment of part of the fine attested to this.

(h) In reply, the Police informed the complainant that in the absence of the receipt, his inquiry could not be handled. The complainant thus filed a complaint with the Ombudsman.

2. The Ombudsman's investigation revealed the following:

(a) Prior to the Ombudsman's inquiry with the Police, the Police found the original notification for payment of the fine, numbered 30-23-66846-4. Failure to pay this fine in time had incurred the sending of warnings to the driver. Examination of the notification revealed that it was connected with a traffic offence committed by someone other than the driver and that the amount of the fine registered in it was NIS 105. However, in the Police computerized system the notification was mistakenly attributed to the driver and for this reason the warning notices for failure to pay the fine on time had been sent to him. The Police explained to the Ombudsman that following the complainant's inquiry it had become apparent that a mistake had occurred and thus the Police had looked for the original fine notification registered in the driver's name. Since the notification could not be found, the Police had asked the complainant to provide the receipt of payment of the fine, since the number of the notification printed on the receipt would help the Police to find the notification and check whether the fine had indeed been paid.

(b) On 22.9.03, in the course of the Ombudsman's investigation, the Police notified the complainant that after making a further examination it had "decided to settle on the payment of NIS 300 received for the above offence and close the file". The Police also notified him that if he provided the receipt showing payment of the fine on time it would check the possibility of reimbursing the excess sum paid.

3. (a) The Ombudsman pointed out to the Police that it was not enough to close the file but that the original fine notification registered in the driver's name should be found in order to properly examine the cause of the mistake and rectify it.

(b) The Police notified the Ombudsman that after an exertive search the original fine notification had been found and that the number of the notification was 30-23-684463-6. It was discovered that the mistake had been caused by the inaccurate typing of the fine notification number in the Police computer system: next to the details of the driver had been typed the number of the fine notification registered in the name of a different person.

(c) After the Police found the fine notification registered in the driver's name it became apparent that the driver had indeed paid the entire fine on time, as claimed.

(d) The Police notified the Ombudsman that it had rectified its faulty records and that it was dealing with the reimbursement of the NIS 300 which had been paid by the complainant in excess. Upon the Ombudsman's request, the Police sent the complainant a letter of apology, explaining the mistake and informing him of the reimbursement of the excess payment.

#### **4. The complaint was found justified.**

For more than half a year the complainant had written repeatedly to the Police, pointing out the mistake in its records but only following the

Ombudsman's inquiry did the Police find the original fine notification registered in the driver's name.

Despite the fact that it had become clear to the Police that the notification had been mistakenly attributed to the driver in the computerized system, it demanded that the driver pay the fine determined in the notification and pointed out to the complainant that in the absence of the receipt it was not possible to locate the payment he claimed had been paid.

After the Police discovered that a mistake had been made in its records, it should have made an effort to find the fine notification registered in the driver's name and not place the onus on him to prove that he had paid the fine on time.

5. Following the above defects, the Ombudsman pointed out to the Police as follows:

(a) It was incumbent on the Police to ensure that details of fine notifications be fed into its computer system with maximum precision and that a proof-reading be made of the details typed in against the original notification.

(b) The Police should instruct all the relevant departments to check thoroughly inquiries of people concerning fine notifications received by them. Should it become apparent that there is a fault in the Police records concerning a particular notification, the Police must find the cause of the fault and rectify it.

6. The Police notified the Ombudsman that it had instructed the relevant departments in accordance with the above directives.

## **11. NEGLECT OF RAPE INVESTIGATION FOR TWO AND A HALF YEARS**

1. In May 2003 the complainant filed a complaint with the Ombudsman against the Police. Following are the details of the complaint:

In November 2000 the complainant filed a complaint with the Police against two men (hereafter – the suspects) who she claimed had raped her. According to the complainant, she and her social worker had since made many inquiries to the investigator handling the rape investigation (hereafter – the investigator) and to the District Attorney's Office (hereafter – the DA's Office) requesting to know where the investigation of her complaint stood. However, in the police station where she had filed the complaint (hereafter - the station) and in the DA's Office, no one was able to answer her inquiry nor even state the number of the investigation file that had been opened following her complaint.

2. The Ombudsman's investigation revealed as follows:

(a) The investigator was appointed to investigate the complaint on 3.12.00. The investigator performed several actions in the investigation file, including taking evidence from the complainant and the suspects and referring the complainant to a medical examination. According to the investigator, she had written in the file a summary of the investigation that she had prepared, including a recommendation to transfer the file to the DA's Office and charge the suspects.

According to the recording in the station's computer, entered by the registrar of the station, the inquiry file was transferred to the DA's Office on 1.1.01. However the Ombudsman's investigation in the DA's Office revealed that the file was not received there.

(b) The Ombudsman's further investigation revealed that the investigation file was found on 31.7.03 in the station's archive of closed

files. The file was filed in the archive though no directive had been given to do so nor had any other instructions been given as to the further handling of the file.

(c) After the Ombudsman submitted the above findings to the District Superintendent, the Police decided to appoint an officer to examine the circumstances of the case and the people responsible for neglecting the investigation file and for handling it negligently. The examining officer found that the computer recording, according to which the file had been transferred to the DA's Office on 1.1.01, had been made on 13.8.02, that is to say – about a year and eight months after the date recorded in the computer and that it had been made on the basis of an oral notification, with no written documentation. In his findings the examining officer stated that the postal vouchers documenting the transfer of investigation files from the station to other bodies were destroyed in the course of one and a half to two years.

When the complainant and her social worker had asked the investigator where the investigation stood, she had replied that the file had been transferred to the DA's Office, on the basis of the recording in the station's computer. However even after the investigator had been informed that the file was not in the DA's Office, she did not find out where the file was situated nor did she report the matter to her superiors.

The examining officer also pointed out in his findings that the file did not contain a summary of the investigation which the investigator claimed she had prepared and placed in the file; nor did it contain the instructions of the Investigations Officer which are given at the beginning of every investigation. Furthermore, the file did not contain a medical opinion following the medical examination undergone by the complainant.

Upon conclusion of his examination, the examining officer recommended that the Department for the Investigation of Police in the Ministry of Justice (hereafter – DIP) investigate how the investigation file had found its way to the archive for closed files; how documents had disappeared from it; and who had asked the registrar to record in the computer that the file had been transferred to the DA's Office on 1.1.01.

The examining officer also recommended saving for at least five years the postal vouchers which documented the transfer of files from the station to other bodies and to ensure written documentation for every registration concerning the transfer of files.

(d) The officer in the station responsible for investigating juvenile offences notified the Ombudsman in writing, on 12.8.03, that after the file had been located it had been transferred to the investigator, “and the investigation is presently in its final stages and the file will be transferred as soon as possible for the further handling of the DA's Office”.

The file was transferred to the District Attorney's Office on 8.10.03. However it became apparent to the DA's Office that even after the investigation file had been returned to the investigator, the inexhaustive investigation that had been carried out in the year 2000 had still not been completed. Therefore on 2.11.03, the DA's Office sent to the Police District Superintendent “an urgent request to complete the investigation” in the file, a copy of which was sent to the Ombudsman.

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

The Police's handling of the investigation file was negligent and improper, as a result of which the investigation of the complainant's complaint was not completed in the earlier stages of the investigation nor after the file was found.

The Ombudsman indicated to the Police the need to ensure that every computer recording concerning the transfer of an investigation file outside the investigating station, be accompanied by written documentation by the person authorized to order the transfer of the file; the recording should specify the number of the postal voucher attesting to the sending of the file; no change should be made to the recording except upon written documentation; the documentation should be saved for a reasonable length of time; the recording should provide a trustworthy record of the handling of the file.

4. The Ombudsman pointed out to the Police that because of their neglect of the file and the failure to complete the investigation even after the file had been found, it was likely that the investigation would never actually be completed owing to the length of time that had passed since the complaint had been filed and the effect this would have on the memories of the people being interrogated.

5. The Ombudsman pursued the further handling of the file by the Police, the DA's Office and the DIP and revealed the following:

The Police completed the investigation of the complaint, according to the instructions of the DA's Office. The investigator charged with the completion of the investigation was replaced by a different investigator, upon the request of the complainant in her complaint to the Ombudsman. After the investigation was completed and the file was transferred to the DA's Office for its decision, the attorney handling the file on behalf of the Office met with the complainant. After examining the file, the attorney decided not to charge the suspects due to lack of evidence and she notified the complainant of her decision. It should be pointed out that according to the provisions of Section 64 of the Criminal Procedure [Consolidated

Version] Law, 5742-1982, the complainant was entitled to appeal this decision but she did not exercise this right.

The DIP notified the Ombudsman and the Police that it had decided not to make a criminal investigation in the matter since “no concrete basis had crystallized as to the committal of a criminal offence by any of the Police officers”. The DIP thus returned the file to the Police “in order to deal with the professional and disciplinary aspects arising from the examination”.

The DIP notified the Ombudsman that even though the complainant had not filed the complaint with the DIP, the latter would treat her complaint as an appeal should the complainant so request. The Ombudsman passed this information on to the complainant.

6. The Police notified the Ombudsman of the steps it had taken following the Ombudsman’s findings, in order to prevent a recurrence of the defects revealed by the investigation. The Police also pointed out that the investigator had been brought to disciplinary judgement for her negligent handling of the investigation.

In addition, on 12.1.04 the Police sent a letter to the complainant apologizing for the way her complaint had been handled.



# LOCAL AUTHORITIES

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## **12. MUNICIPALITY OF JERUSALEM – FAILURE TO MAKE FINANCIAL CONTRIBUTION FOR EMPLOYMENT OF ASSISTANT FOR DISABLED PUPIL**

1. In January 2003 the complainant, a resident of Jerusalem, filed a complaint with the Ombudsman against the Municipality of Jerusalem (hereafter – the Municipality). Following are the details of the complaint:

The complainant is the mother of a child attending a religious school in Jerusalem (hereafter – the pupil). Due to the pupil's disability, the Ministry of Education, Culture and Sport (hereafter – the Ministry) approved the employment of an assistant to provide continuous aid to the pupil during the school years 2001/2002 and 2002/2003. The salaries of the assistant were to be paid jointly by the Ministry and Municipality.

According to the complainant, the Municipality did not pay its share of the salaries of the assistants who aided the pupil during the above years. The assistants were paid only the Ministry's share of their salaries. In consequence, there was a frequent turnover of assistants. According to the complainant, one of the assistants had even filed a claim against her for the payment of salaries.

2. (a) The employment of assistants in the framework of special education is designed to assist the professional educational staff in these frameworks to carry out the multifarious tasks demanded of them. The assistants have many and varied tasks, including providing physical aid to disabled pupils from a motorial and functional aspect.

(b) The guidelines of the Managing Director of the Ministry of Education, Culture and Sport 58/10(c) from June 1998 (hereafter – the Guidelines) lay down a procedure for the allocation of assistants in frameworks for special education. The procedure provides as follows:

(1) The Supervisor for Special Education in the district in which the pupil learns is authorized to determine the most suitable form of assistance for the pupil and where necessary, recommend to the District Council of Assistants (hereafter – the District Council) to allocate an assistant for the pupil.

(2) The District Council shall determine the number of hours allocated for the employment of an assistant to aid an individual pupil, taking into consideration the recommendation of the Supervisor for Special Education and the budgetary allowance for the district.

(3) The application to the Supervisor for Special Education to approve the employment of an assistant to aid an individual pupil shall be made by the local authority in whose jurisdiction the pupil lives, upon its approval. After the District Council has approved the application, the District Council shall forward the application to the local authority in order that the latter agree to the employment of the assistant.

(4) If the District Council decides to approve the allocation of an assistant to an individual pupil learning in a recognized but unofficial educational institution – the allocation shall be made provisional upon the local authority's undertaking to contribute 30% of the cost of employing the assistant. The 70% contribution of the Ministry to financing the employment of the assistant shall be forwarded to the local authority. The local authority is supposed to transfer the Ministry's contribution, together with its own share of the assistant's salary, to the owners of the institution in which the pupil learns in order to pay the assistant's salary.

3. The Ombudsman's investigation revealed as follows:

(a) The religious school in which the pupil learns is an educational institution defined as "a recognized but unofficial institution" and is not a state or municipal institution.

(b) The Ministry approved the allocation of an assistant for the pupil during the school years 2001/2002 and 2002/2003 for 30 hours per week. The approval was given after the Municipality made a commitment to the Ministry, on the application form for the allocation of hours for the employment of an assistant for the pupil, to contribute 30% of the cost of employing the assistant.

(c) Despite the above undertaking, the Municipality did not pay its share in financing the employment of the assistants and thus the assistants who aided the pupil during the above school years did not receive their full salaries.

4. The Municipality contended before the Ombudsman that the commitment it had made to the Ministry was not to pay part of the assistants' salaries but to confirm that there indeed existed a religious school which required assistance hours.

The Municipality also claimed that it was responsible for forwarding the Ministry's share of the assistants' salaries to the institution in which the pupil learnt. However, since the pupil learnt in a recognized but unofficial institution, it was the responsibility of the institution employing the assistants, not of the Municipality, to contribute the rest of the assistants' salaries at the time fixed by law.

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

(a) The Guidelines provide that where the Ministry has approved the employment of an assistant for a pupil in an educational institution, the

Ministry shall finance 70% of the assistant's salary during the period approved and the local authority in whose jurisdiction the pupil lives shall finance 30% of the salary.

(b) Having made a commitment to the Ministry to pay its share of the assistant's salary, the Municipality should have honoured its commitment. The wording of the commitment in the application form for the allocation of an assistant for the pupil, which the Municipality had signed, was unequivocal. Therefore the Municipality's explanation that its signature on the form was intended only to confirm that there existed an institution requiring assistance hours was unacceptable.

(c) The Ombudsman pointed out to the Municipality that its failure to honour its commitment was contrary to proper administration.

6. Following the Ombudsman's ruling, the Municipality notified the Ombudsman that it had changed its policy and that since the school year 2003/2004 it had been paying its share of the assistant's salaries.

### **13. REGIONAL COUNCIL OF GILBOA – DISMISSAL OF INTERNAL AUDITOR DUE TO ACTIVITIES CARRIED OUT IN PERFORMANCE OF DUTIES**

1. The complainant serves as internal auditor of the Regional Council of Gilboa (hereafter – the Council). On 2.4.04 she filed a complaint with the Ombudsman in which she claimed that she had been dismissed from her job in the Council in response to activities carried out by her in the performance of her duties as internal auditor. Following are the details of the complaint:

(a) The complainant began to work in the Council in the year 2000, after being chosen in a tender published by the Council. However, according to

her, the course of affairs during the period in which she worked bore witness to the fact that the Council did not want her to act as a genuine internal auditor.

From the beginning of her employment in the Council, the complainant was not provided with the basic means and conditions necessary for the proper fulfillment of her work – she was not allocated a room and a suitable place for keeping her documents; she was not allowed free access to documents and information; she was not informed of audits carried out in the council by external sources; she was not informed of plenary sessions nor of management meetings; and in particular – she was not permitted to publish the reports she had prepared and submitted to the Head of the Council.

(b) In her complaint, the complainant pointed out several prominent events which, she claimed, had precipitated the decision to dismiss her:

(1) In September 2003 a member of the Council asked her to examine suspicions of improper activities in the Council. The complainant notified the Head of the Council of the request and pointed out that she was examining the matter and that upon the conclusion of her examination, she would notify the Ministry of the Interior of her findings in accordance with a directive issued by the Legal Department of the Ministry. The complainant also notified the Head of the Council of her intention to attach her findings to the audit report of 2003.

(2) The Chairman of the Audit Committee of the Council, which was supposed to discuss audit reports before their publication, had resigned a few months after the commencement of the complainant's employment and since then the Committee had not functioned. Therefore the complainant agreed with the Head of the Council that the reports would be brought directly before the plenary of the Council. However, despite her requests,

the reports were not brought before the plenary and thus could not be published.

(3) In 2003 the complainant notified the Head of the Council that it was her intention to publish in the near future the reports she had prepared but that since it was election year, she would postpone publication of the reports until after the elections so as not to give the impression that their publication was an attempt to influence the results of the elections. The complainant pointed out to the Head of the Council that if after the elections an audit committee was not appointed to discuss the reports, she would submit the reports directly to every member of the plenary so that they might discuss the reports.

A fortnight after the elections the complainant sent a letter to the Head of the Council (who was re-elected) in which she repeated the need to appoint an audit committee and her intention to submit the reports directly to the members of the plenary if a committee was not appointed.

Three weeks from the date of this letter the complainant received notice of the intention to dismiss her.

(c) According to the complainant, there was a direct connection between the decision to dismiss her and her steadfast insistence and resolve to perform her function properly and carry out effective auditing in the Council, as shown by her standpoint in the above events and by her other activities in the framework of her function.

The complainant requested that the Ombudsman order the Council to revoke its decision to dismiss her.

2. The complaint was investigated in accordance with Sections 45A(2)-45E of the State Comptroller Law 5718-1958 [Consolidated Version] (hereafter – the Law). These sections deal with the complaint of an

employee, who serves as internal auditor of a body subject to audit, relating to his removal from that post or to other acts enumerated in Section 45A(2) of the Law, carried out by his superior in response to his activities in fulfilling his function as internal auditor.

3. The Council claimed before the Ombudsman that the complainant was dismissed following discussions held in the Council immediately after the elections (at the end of January 2004) concerning the need to make cutbacks and dismiss employees. The subject of the complainant arose in a meeting held at the beginning of February 2004, in which the organizational advisor of the Council participated and which discussed the need to make cutbacks and dismiss employees. The Council added that it was decided to terminate any service not obligatory or indispensable and since by law there is no obligation to employ an internal auditor in the Council<sup>1</sup>, it was decided to dismiss the complainant despite the fact that no one questioned the complainant's professional ability.

The Council denied the complainant's claim that during the term of her employment in the Council she had not been allowed to fulfill her function properly. According to the Council, it had indeed been difficult to find a room for the complainant but there had been a similar difficulty concerning many of the other employees. The Council also claimed that documents and protocols had been prepared upon the complainant's request, but that the complainant had not always taken the documents prepared for her.

The Council added that the dismissal of the complainant would not prevent discussion of the audit reports prepared by her. On the contrary, the Head of the Council intended to hold a discussion concerning the reports and the

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1 The Council is subject to the Local Councils (Regional Councils) Order, 5718-1958, which does not impose an obligation to employ an internal auditor.

complainant would be invited to present them at the plenary of the committee at a time fixed by her.

4. The Ombudsman's investigation revealed the following:

(a) The findings of the investigation confirmed the complainant's claim that from the start of her employment in the Council she was not provided with the conditions necessary to do her work and was generally hampered from receiving information and documents required by her. More than once the intervention of the District Officer of the Ministry of the Interior was required to try to assist the complainant in receiving what she needed to perform her function.

(b) The audit reports prepared by the complainant were never brought before the Audit Committee which, as said, had not functioned since the resignation of the chairman of the Committee. Nor were they submitted to the Council despite the fact that this had been agreed upon with the complainant and despite her repeated requests to coordinate a time to discuss the reports in the plenary of the Council.

(c) In the years 2002 and 2003 audits had been carried out in the Council on behalf of the Ministry of the Interior. One of the defects enumerated in the reports prepared following these audits was that the audit reports drawn up by the complainant were not brought for discussion before the Audit Committee or the plenary of the Council. Furthermore, the Ministry's report criticized the non-functioning of the Audit Committee.

(d) In 2002 several members of the Council demanded that the Head of the Council hold a discussion relating to the reports prepared by the complainant, of which they had been informed by the audit report of the Ministry of the Interior which had been published on the website of the Ministry. However their request was rejected.

(e) In September 2003 a member of the Council wrote to the complainant and raised suspicions of improper administration in the activities of the Council. These included suspicions relating directly to the Head of the Council and his deputies. The complainant gave a copy of the letter to the Head of the Council and notified him that she was examining the claims raised in it and that the Ministry of the Interior had asked to be notified of the results of her examination. The complainant intended to attach the findings of her examination to the audit report of 2003.

(f) As claimed by the complainant, the investigation revealed that after postponing publication of the audit reports of 2003 till after the elections which were due to take place at the beginning of 2004, on 9.2.04, about a fortnight after the elections, the complainant asked the Head of the Council to appoint an audit committee without delay to discuss the reports. She added that if he did not do so she would submit the reports directly to the members of the plenary.

On 4.3.04 – about three weeks after her application to the Head of the Council – the complainant was sent notification of the intention to dismiss her within the framework of the Council’s “recovery program”. She was also called to a hearing on 14.3.04.

(g) On 14.3.04 the complainant was given a hearing in the plenary of the Council. After putting forward her case before the plenary, a discussion was held in her absence. The discussion was followed by a vote in which the majority voted to dismiss her. In the course of the discussion preceding the vote, the Head of the Council referred to the content of the audit reports prepared by the complainant and said that the complainant “had chosen to present them from an inappropriate viewpoint”.

(h) The Head of the Council declared before the plenary and the Ombudsman that the Council intended to hold a discussion concerning the

audit reports and that the complainant would be invited to the Council at a time chosen by her in order to present the reports before the Audit Committee and the plenary. The Council also notified the Ombudsman that the members of the Audit Committee had received an explanation as to the importance of their function and that they were resolved to perform it. However the Ombudsman's investigation revealed that despite these declarations, no real step was taken to discuss the reports.

On 23.3.04, the plenary of the Council approved the formation of its committees, including the Audit Committee, but by the end of July of the same year, more than four months after the appointment of the Committee, the audit reports prepared by the complainant had still not been discussed. A meeting fixed for 21.6.04 did not take place and the complainant was not invited to this meeting. An additional meeting, which was fixed for 29.7.04, was postponed on 27.7.04 until 24.8.04.

At the end of July 2004, after receiving an invitation to the meeting of the Audit Committee which was fixed for 29.7.04, the complainant spoke to one of the members of the Council and from their conversation it became apparent that the members of the Audit Committee had not yet received the audit reports. Moreover, even though the invitation to the meeting bore the date 11.7.04, a conversation held between the Ombudsman and the chairman of the Committee on 14.7.04 revealed that the latter had no idea that he had to hold a discussion relating to the reports, nor did he know that a date had been fixed for the Committee to discuss the reports.

(i) Contrary to the claim of the Council that the matter of the complainant's dismissal had already been brought up at the beginning of February 2004 in the discussions concerning the Council's "recovery program", the protocols of the meetings of the Council management which took place in the same month revealed that these discussions related from

the beginning to a “recovery program” which did not include dismissals. In any case, the protocols contained no reference to the matter of the complainant’s dismissal and the organizational advisor of the Council also pointed out to the Ombudsman that the complainant’s matter was not discussed in the meetings he had held with the Council management. Furthermore, the complainant was notified of the intention to dismiss her in the framework of the Council’s “recovery program” before the program had been approved by the plenary of the Council. The hearing given to the complainant was held in the course of the plenary’s meeting in which the “recovery program” was approved.

(j) Admittedly, employees of the Council were eventually dismissed in the framework of the “recovery program” but the employees dismissed were those concerning whom the Ministry of the Interior had informed the Council that their employment was improper. These employees did not include the complainant.

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

Although the Council was forced to make cutbacks in manpower in the framework of the “recovery program”, and by law it is not obligated to employ an internal auditor, the findings of the investigation revealed that the Council had had no real interest in the implementation of proper internal audit. The real reasons for the complainant’s dismissal were her determined resolve to perform suitable internal audit and uphold proper audit procedures, including discussion of the reports prepared by her by the audit committee and the plenary of the Council, and her intention to carry out investigations in sensitive matters in which, according to the complaint she had received, the Head of the Council and his deputies were involved. The “recovery program” of the Council was merely a facade and an easy

way to screen the real reason for the complainant's dismissal, but this was to no avail.

6. In light of the above, on 15.8.04 the Ombudsman decided to issue an order, in accordance with his authority under Section 45C(b) of the Law, instructing the Council to revoke the complainant's dismissal.

7. The Council notified the Ombudsman that it had acted in accordance with the order and had reinstated the complainant.