STATE OF ISRAEL

THE OMBUDSMAN

ANNUAL REPORT 27
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SELECTED CHAPTERS

JERUSALEM, 2001

EDITOR'S NOTE

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

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Hereby submitted to the Knesset, pursuant to section 46(A) of the State Comptroller Law, 5718-1958 [Consolidated Version], is the twenty-seventh report of the Ombudsman.

This report, like the previous reports of the Ombudsman, presents a general survey of the activity of the Ombudsman and an account of the handling of selected complaints. In many cases, along with examining the activity of the government authorities and public administration in handling the matter of the complainant, the Ombudsman also considered it appropriate to relate to the authority's procedures and activities concerning the general population, as reflected in its handling of the complainant's case. Indeed, the relevant authorities responded positively to the Ombudsman's comments and directives and improved their procedures, thereby benefiting the citizen and ensuring his statutory rights, dignity and liberty.

On March 6, 2001 the Knesset amended the State Comptroller Law. This legislation also amended several provisions related to the activity of the State Comptroller as Ombudsman. The change in the Law includes, *inter alia,* a new provision, according to which the Ombudsman shall not investigate a complaint "if he is of the opinion that the Ombudsman is not the appropriate body to investigate the matter." This provision is necessary to respond to cases in which the law does not formally prevent investigation of the complaint, but another body is clearly more appropriate to make the investigation, especially a court of law, because of the complexity of the subject or the nature of the relief sought. Another change relates to the special power given by the State Comptroller Law to the Ombudsman to protect an employee who has been victimized because he

informed about acts of corruption committed in the body for which he works (sections 45A - 45E of the Law). To raise awareness of these provisions, a new section of the Law directs publication of the principal elements of the provisions in a conspicuous location at the work place.

Another amendment that I initiated to the Basic Law: The State Comptroller and to the State Comptroller Law seeks, *inter alia,* to incorporate into the Law the function of the State Comptroller and Ombudsman as defender of human and civil rights. It is certainly not new that a function of the State Comptroller and Ombudsman is to protect human and civil rights and investigate complaints that they have been violated, but it is important to incorporate this function expressly in the Law. In addition, this provision combines well with the goal of protecting the democratic nature of the State. I hope that the legislative procedures to enact this amendment will be taken expeditiously.

The Ombudsman is the defender of the "common citizen" who is deprived of his rights by government authorities. The great advantage of the Ombudsman is his availability: complaints may be addressed to him by mail, by facsimile, at the service offices and in 1999, the Ombudsman's Office began to receive complaints by electronic mail. Complaints to the Ombudsman entail no fee and filing a complaint does not require legal assistance.

In an era in which the status of fundamental human rights is increasing, the Ombudsman plays an important role in protecting these rights. The Ombudsman has the power to remedy cases of discrimination, arbitrary conduct and other human rights violations. Government authorities must develop a culture of governance that shows respect for the citizen and his rights and views establishment of this norm their basic duty. Internalization of this culture and norm affects the nature of the relations between the

citizen and the governing authorities, and shapes the individual's quality of life and the image of the society in which we live.

The survey presented in this report reflects the Ombudsman's contribution in correcting and improving public administration, and in the internalization by government authorities and public bodies, which are subject to review by the State Comptroller and the Ombudsman, of the recognition that they are public servants.

Eliezer Goldberg
State Comptroller
and Ombudsman

Jerusalem, April 2001

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GENERAL SUMMARY

1. DATA ON THE NUMBER OF COMPLAINTS AND THEIR OUTCOME

1. During the year under review, the number of complaints received by the Ombudsman increased by some twenty-seven percent in comparison to the preceding year, 1998/1999. It should be noted that, in addition to the complaints addressed directly to the Ombudsman, the Ombudsman received copies of hundreds of complaints that had been submitted to bodies subject to review. As a rule, the Ombudsman does not investigate these latter cases since it is assumed that the addressed bodies will respond directly to the complainant. In such a case, the complainant receives notification that if the body to which he wrote does not reply, or the reply does not satisfy him, he may complain directly to the Ombudsman, who will examine, based on the Law's provisions, if an investigation is appropriate.

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

(a) In the year 5760 (1999/2000), 6,644 complaints were submitted directly to the Ombudsman (as compared to 5,249 complaints submitted in the previous year).

Of the 8,423 complaints that were handled in 1999/2000 (including 1,779 complaints remaining from the previous year) the investigation of 6,295 complaints, which included 6,932 matters for investigation, was completed.

(1) Of the 3,884 complaints dealt with substantively, 1,441 (37.1 percent) were found to be justified (37.4 percent in the previous year).

(2) The investigation of 1,170 complaints was halted at various stages for a variety of reasons, primarily because the matter had been resolved or the complainant withdrew his complaint or did not reply to questions posed by the Ombudsman.

(3) A total of 1,878 complaints could not be investigated because they did not meet the criteria set by sections 36 and 37 of the State Comptroller Law, which provide against whom a complaint may be submitted and what the subject of the complaint may be; or because they fell into the category of items mentioned in sections 38 or 39 of that Law, which state the complaints that shall not be investigated.

(b) At the end of 1999/2000, the handling of 2,128 complaints had not been completed.

3. (a) Data on the breakdown of complaints according to the various bodies are presented in Table 1 and in Graphs 1-7, which are appended to this report.

(b) Table 2 presents the breakdown of complaints according to the principal subjects: welfare services, services by the local authorities, provision of public services and others.

2. BRANCH OFFICES HANDLING ORAL COMPLAINTS

In the year under review, as in previous years, hundreds of citizens submitted oral complaints at the branch offices in Jerusalem, Tel-Aviv, Haifa, Beersheva and Nazareth. These offices were set up to meet the requirements of the Law, as set forth in section 34, that the complainant's oral statement be recorded in instances where persons wish to submit complaints in this manner.

The branch office personnel record oral complaints and solve simple problems that can be handled speedily by a telephone call or by referring the complainant to the proper body. They provide this assistance without

the need to involve the investigative mechanism of the body complained against. Many complaints are resolved in this manner.

3. INTERNATIONAL RELATIONS

1. In September 1999, Mr. Mutalip Unal, from the Prime Minister's Office of Turkey, visited the Ombudsman and met with the Director of the Office of the Ombudsman, Mr. A. Ravid, and Senior Assistant Mrs. M. Bamberger, in preparation for establishing the institution of ombudsman in Turkey.

Mr. Unal was given a review of the structure and operating procedures of the Office of the Ombudsman in Israel, the State Comptroller Law and the Office's procedures for investigating complaints.

2. In November 1999, the Ombudsman, Justice Eliezer Goldberg, and senior officials in his office met with Mrs. Sandra Pisk, the Ombudsman of Costa Rica. Mrs. Pisk was informed about the functions of Israel's Ombudsman and State Comptroller. The parties also discussed matters of mutual interest and decided to continue the relations between the two institutions.

3. In November 1999, as part of his visit in the region, the Human Rights Commissioner in the Foreign Ministry of Germany, Mr. Gerd Poppe, met with Mr. Ravid and Mrs. Bamberger. The guest received an explanation of the Ombudsman's activities, particularly in human rights issues.

4. In February 2000, the Ombudsman of Slovakia, Mrs. Zuzana Szatmary, visited the Office of the Ombudsman. Mrs. Szatmary heads the committee that is preparing a proposed law to establish an ombudsman for human rights issues in Slovakia.

The guest met with senior staff members of the Office of the Ombudsman and was provided details about the institution of the Ombudsman in Israel.

SUMMARIES OF SELECTED CASES

MINISTRY OF FINANCE

CONVALESCENCE BENEFITS TO DISABLED VICTIMS OF NAZI PERSECUTION

1. In December 1999, the complainant, a disabled victim of Nazi persecution, complained to the Ombudsman against the Office for the Rehabilitation of Disabled Persons of the Ministry of Finance (hereafter - the Office). The complainant claimed, in part, that the Office had failed to pay the benefits due to him for 1997.

2. The Ombudsman's investigation revealed the following:

(a) In September 1997, the complainant filed a claim with the Office for recognition as a disabled victim of Nazi persecution. In 1998, the claim was approved and he was recognized as a disabled person.

(b) Following recognition of the complainant as a disabled person, the Office paid him the compensation to which he was entitled under the Invalids from the War with the Nazis Law, 1957-5717 (hereafter - the Law), retroactively from the day on which he filed his claim. However, the Office paid the complainant's convalescence benefits (which are categorized as payment for medical treatment to which disabled persons are entitled by the Law) only from the day on which he was recognized as a disabled person.

(c) The Invalids from the War with the Nazis Regulations (Medical Treatment), 5719-1958 (hereafter - the Regulations), provide that reimbursement for medical treatment is conditional on a licensed physician's prior approval of the treatment. However, if the reason for failure to obtain prior approval is justified - such as where the delay of treatment in order to obtain the approval was liable to endanger the disabled

person's life, increase his disability or complicate his rehabilitation - the physician may grant approval retroactively, provided that the disabled person made request of the physician within two weeks from the completion of treatment.

(d) Notwithstanding the provisions of the Regulations, several years ago the Office made an administrative decision to pay convalescence benefits to disabled persons without medical certification of the need for convalescence. However, the Office did not apply the said administrative decision to the period that preceded recognition of the applicant as a disabled person.

Therefore, the Office's position was that the complainant was not entitled to convalescence benefits for 1997 because he did not meet the conditions set in the Regulations regarding obtaining approval for medical treatment.

(e) Section No. 3.06 of the Compilation of Office Procedures provides:

> 6.B.2. A new disabled person whose notice of right to compensation reaches the compensation bursar on or before December 31 and whose application for compensation was received by the Office at least three months prior thereto, shall be entitled to receive the complete convalescence grant for that year.
>
> 6.B.3. Where the Office did not receive the application for compensation three months prior thereto, he shall be entitled to receive the proportional part of the convalescence grant for that year based on the months that transpired from the day of receipt of his application to the end of the year.

(f) Pursuant to a 1995 amendment to the Law, where the time for a disabled person to make a claim for compensation has passed, he may submit a claim for compensation, however he shall only be paid compensation from the first of the month in which he filed his application for compensation.

Based on the aforementioned amendment, the Office pays compensation to disabled persons retroactively from the time of filing of the application for compensation, but it does not pay disabled persons retroactively for the other benefits to which they are entitled under the Law, including convalescence payments.

3. The Ombudsman ruled that the complaint was justified.

(a) The Ombudsman found no reasonable basis for the Office to deny payment of convalescence payments, which are within the category of medical treatment provided to disabled persons under the Law, from the time of filing of the application for compensation, when, pursuant to the 1995 amendment to the Law, it makes compensation payments retroactively from that date.

(b) Pursuant to section 6.B of the Office's procedures, the determining date for payment of convalescence payments is the day of receipt of the notice of right to compensation in the compensation bursar's office. However, this date depends on how expeditiously the Office processes claims and is not dependent on the disabled person.

(c) An investigation of previous complaints against the Office revealed that the processing of each claim takes approximately twelve months, and the Ombudsman previously informed the Office that such a period is excessive, particularly since the majority of claimants are elderly and sick.

(d) The complainant submitted his claim in September 1997. If the Office had acted with due dispatch to process the complainant's claim and approved it prior to the end of 1997, the claimant would have been entitled to receive convalescence payments for that year. Following the prolonged delay in processing the claim, not only did the complainant have to wait a year to receive a decision in the matter, he also lost convalescence payments for 1997.

4. Therefore, the Ombudsman ruled that the Office's refusal to pay convalescence payments to the complainant retroactively is inconsistent with the spirit of the law, and pointed out to the Office that it should pay

the claimant convalescence payments for 1997. The Ombudsman also indicated that the Office should consider amending its procedures to conform with the Law, such that convalescence payments and other benefits for disabled persons should be granted from the day of filing their application for compensation.

5. The Office informed the Ombudsman that it would act in accordance with the Ombudsman's ruling, and that it would amend its procedures to provide that convalescence payments be made to disabled persons from the time of filing of the application for compensation.

MINISTRY OF EDUCATION

FAILURE TO PROVIDE INFORMATION ON CONDITIONS FOR ADMISSION TO COURSE

1. In October 1999, two complainants, both of whom are new immigrants, complained to the Ombudsman against the Ministry of Education (hereafter - the Ministry). The details of their complaints are as follows:

(a) The complainants registered for an "orientation course for immigrant mathematics teachers" held at Oranim College, which is supervised and funded by the Ministry.

(b) Approximately one year after they registered for the course, the college requested the complainants to take entrance examinations. They passed the examinations and were called for an interview with the admissions committee. During the interview, one of the complainants was told that she was ineligible for the course because she did not hold a teaching certificate. The other complainant was subsequently given, in writing, similar notification.

(c) Complainant A stated in her complaint that she has fifteen years' teaching experience, and requested that she be accepted despite her lack of a teaching certificate because of her extensive teaching experience. Complainant B, who did not have experience, stated in her complaint that when she registered for the course at the Ministry, she presented her certificates and was told that she was eligible for the course. The complainant requested that the Ministry compensate her for causing her to prepare needlessly for the examinations, even charging her for the examinations, and for raising expectations that could not be realized.

2. The Ombudsman's investigation revealed the following:

(a) The Ministry requires course applicants to complete a registration form in which they must state their personal details, education and teaching experience, and the subject that they teach. They are not required to state whether they hold a teaching certificate, even though the Ministry stipulated admission to courses of this kind on the applicant's having a teaching certificate.

(b) The Ministry also does not inform applicants at the time they register for the course of the criteria for acceptance, so that they can themselves check whether they are eligible.

Neither does the Ministry inform candidates with teaching experience but no teaching certificate that they can complete their pedagogic studies and receive a teaching certificate before appearing before the admissions committee.

(c) The Ministry provides Oranim College with the names of the candidates who have registered for the course. Approximately two weeks before the course opens, the college invites them to take entrance examinations. The invitations state that they should bring their identity cards and "all their documents indicating an academic degree and a teaching certificate translated into Hebrew." Candidates who pass the examinations are invited for an interview with the admissions committee.

(d) Both complainants arrived at the college to take the examinations. Despite their lack of the necessary teaching certificate, they were given the examinations. They passed and were called for an interview with the admissions committee. It was only after the interview that the college sent Complainant A a letter stating that she was not accepted to the course because she does not have a teaching certificate. Complainant B was informed at the interview that she is not eligible for the course because she does not have either a teaching certificate or teaching experience.

3. The Ombudsman ruled that the complaints were justified.

The Ministry should have informed applicants for the course, immediately upon submission of their applications, that a teaching certificate is a condition for admission. Not only did the Ministry fail to do this, it also failed to check whether the complainants had teaching certificates when they registered for the course. The Ministry also failed to inform Complainant A, who has teaching experience, that she could complete her pedagogic studies and obtain a teaching certificate before being interviewed by the admissions committee.

The Ministry's conduct caused the complainants mental anguish, superfluous expenses and effort entailed in preparing for and taking the examinations and in appearing before the admissions committee. The Ministry's conduct also wasted the time of the examination graders and admissions committee members.

4. Therefore, the Ombudsman informed the Ministry as follows:

(a) The Ministry should pay each complainant NIS 1000 in compensation for the expenses they incurred as a result of its failure to act properly.

(b) The Ministry should inform course applicants, in a detailed written document, of all the conditions for acceptance to the course, and of the possibility for experienced teachers without teaching certificates to complete their pedagogic studies and receive a teaching certificate prior to appearing before the admissions committee.

(c) The Ministry should direct employees involved in registering candidates for the course to check carefully whether they meet the criteria and to ensure that they attach to their application all the documents indicating that they meet the admissions criteria.

5. The Ministry informed the Ombudsman that it would act in accordance with the Ombudsman's ruling.

ISRAEL POLICE FORCE

UNLAWFUL DENIAL OF ENTRY INTO ISRAEL

1. The complainant complained to the Ombudsman against the Israel Police Force (hereafter - the Police). The details of his complaint are as follows:

(a) On June 28, 1999, the complainant, a citizen of Canada, and his wife, a citizen of Kenya, arrived by air at Ben-Gurion Airport (hereinafter - the airport) for a stopover of about ten hours on their way from Canada to Kenya. The complainant planned to use the stopover on the way to Kenya to visit Bethlehem with his wife.

(b) Israel and Kenya do not have an agreement waiving the requirement for a visa. Because the complainant's wife is of Kenyan nationality, before embarking she obtained what is referred to as a "transit visa" from the Israeli consulate in Canada. The transit visa states that the holder is allowed to stay in Israel for two days.

(c) At passport control, the complainant's wife was refused permission to leave the airport and was taken together with the complainant to the transit hall to wait for the connecting flight to Kenya. The complainant contends that he and his wife were told that the Israeli government refuses to allow them to enter the country.

(d) The complainant contends that he and his wife had planned in advance to use their stopover in Israel to visit Bethlehem and for that reason his wife obtained a transit visa. He demands a letter of apology and compensation for the expenses incurred in obtaining the visa.

2. (a) The investigation revealed that the complainant's wife was given a transit visa, with "two-day stay" written in the place on the visa designated for comments. This type of visa is intended for people making brief visits to Israel on their way to another country.

(b) During the course of the investigation, the head of the Police border inspection office informed the Ombudsman that the Police do not have clear instructions regarding differentiating the different types of visas. In addition, the Police, the Ministry of the Interior and the Ministry of Foreign Affairs disagree about the terms used in visas.

No records of the event mentioned in the complaint were found at the Police border inspection office. The facts do indicate that those involved treated the complainant's wife's transit visa as a "day visitor transit" visa. This type of visa permits the holder to stay only at the airport for the connecting flight to the final destination; therefore, she was not allowed to leave the airport.

The complainant's wife's "two-day stay" transit visa was not honored, and the couple consequently incurred unnecessary expenses and suffered mental anguish. The Police informed the Ombudsman that they were unable to determine unequivocally if police officers or airline employees were the ones who treated the complainant and his wife in the above-mentioned manner. However, because the complainant contended that policemen were involved, the Police will compensate the complainant and his wife and send them a letter of apology.

3. The Ombudsman ruled that the complaint was justified.

(a) Whatever the explanation for the events that resulted in the refusal to allow the complainant's wife to leave the airport to visit Israel, it is clear that her visa, which allowed her to stay in Israel for up to two days, had not been honored, thereby causing the couple mental anguish and unnecessary expenses.

(b) The Police compensated the couple, to the amount of $42 (Can.), for the expenses they incurred and sent them a letter of apology.

(c) Following the investigation, the Office of the Legal Advisor of the Police informed the Ombudsman that, in order to prevent similar occurrences in the future, it recommended that clear instructions be issued regarding differentiating the types of visas, especially relating to the difference between ordinary transit visas and "day visitor transit" visas. The Ombudsman will continue to monitor the Police's handling of the matter.

MINISTRY OF JUSTICE, NATIONAL INSURANCE INSTITUTE AND MINISTRY OF HOUSING

FAILURE TO INFORM A CITIZEN OF HIS STATUTORY RIGHT OF APPEAL

In the process of investigating three separate complaints, public officials made decisions concerning which the complainants had a statutory right of appeal, however the notices of these decisions did not inform the complainants of their right of appeal.

The details of the complaints are as follows:

1. Complainant A applied to the Registrar of Contractors to be entered in the registry of contractors, which is administered pursuant to the provisions of the Engineering Construction Contractors (Registration) Law, 5729-1969 (hereafter - the Registration of Contractors Law). In his complaint to the Ombudsman, the complainant complained against the prolonged period of processing his application and the failure to reach a decision on it.

During the investigation of his complaint, the Registrar of Contractors decided to reject the complainant's application to be entered in the registry of contractors.

Pursuant to section 9 of the Registration of Contractors Law, a person who considers himself aggrieved by the Registrar's decision rejecting his

application to be entered in the registry may lodge an objection before an objection committee that is established under the same law. However, upon informing the complainant that he had rejected his application, the registrar did not mention the complainant's right to object to the decision.

2. The two other complaints related to requests for information under the Freedom of Information Law, 5758-1998 (hereafter - the Freedom of Information Law).

(a) Complainant B applied to the Custodian General of the Ministry of Justice, in his capacity as the Official Receiver, to obtain information under the Freedom of Information Law on the debts of a person whose case was being handled by the Receiver. After some time passed without receiving a reply, he requested the assistance of the Ombudsman.

During the investigation of the complaint, the official at the Ministry of Justice who is responsible for freedom of information notified the complainant that the requested information would not be provided to him because, according to the Freedom of Information Law, it is forbidden to provide, or there is no obligation to provide, the information requested.

(b) Complainant C requested from the National Insurance Institute (hereafter - the Institute) a list of non-profit organizations that receive funding from the Development of Services for Disabled Persons Fund, which is administered by the Institute.

In the course of the Ombudsman's investigation of the complaint, the Institute informed the complainant that his request had been rejected. The rejection was based on section 8 of the Freedom of Information Act, which provides that a public authority may reject a request for information if handling the request would entail the allocation of an unreasonable amount of resources.

(c) Pursuant to section 17 of the Freedom of Information Law, which relates to denial of a request for information under the law, the applicant may file an appeal within thirty days of being informed of the decision - at the time to the District Court and, since December 2000, to the Court on

Administrative Matters. Section 7G of the Freedom of Information Law expressly provides that a public authority that denies an application for information must inform the applicant of his right to appeal the decision pursuant to section 17.

In the responses that were sent to Complainant B and Complainant C, the said right of appeal was not mentioned.

(d) In addition to the provisions of the relevant laws referred to above, section 5 of the Administrative Procedure Amendment (Decisions and Statement of Reasons) Law, 5719-1958 (hereafter - the Statement of Reasons Law), provides as follows:

> Where a decision of a public servant is subject to objection or appeal under any enactment, the public servant shall notify the person entitled to lodge the objection or appeal, in writing, of the right of objection or appeal and of the modes and times of lodging it in so far as they are prescribed in the enactment.

3. The Ombudsman brought to the attention of the three bodies complained against that, in light of the provisions of the said laws, they were obligated to inform the complainants - and others, whose requests made pursuant to these laws were denied - of their statutory right of objection or appeal.

4. As a result of the Ombudsman's investigation, the bodies complained against rectified the flaw:

(a) The Registrar of Contractors informed the Ombudsman that it would in the future specify in notifications that it sends to applicants seeking to be registered in the Registry of Contractors, where he denies the application for registration, the right of the applicant to object to the decision before an objection committee.

(b) The person at the Ministry of Justice in charge of freedom of information informed the Ombudsman that, in the future, any notice of rejection of a request to obtain information would explicitly mention the

applicant's right to file an appeal as stated and also indicate the procedure and time for filing the petition.

(c) The spokesman of the National Insurance Institute informed the Ombudsman that, currently, every notice of denial of a request pursuant to the Freedom of Information Law specifies the right of the applicant to appeal to the competent court within thirty days of obtaining notice of the decision.

STATE INSTITUTE OF TECHNOLOGICAL TRAINING

CONDITIONAL ENTITLEMENT TO AN ENGINEERING DIPLOMA

1. In March 1999, the complainant, a resident of Netanya, complained to the Ombudsman against the State Institute of Technological Training (hereafter - SITT):

(a) The complainant studied for three years at the School of Practical Engineering of the Institute of Production and Productivity (hereafter - the Institute), successfully passing all the examinations. Upon completion of his studies, he learned that SITT, which is one of the bodies whose signature is required on the practical engineer's diploma to which he is entitled upon completion of his studies, conditioned its signature on his completing his matriculation examinations in Hebrew, English, mathematics and physics.

(b) The complainant claims that if he had known that he would be required to complete his matriculation examinations as a condition for receiving the practical engineer's diploma, he would not have selected that course of study. The complainant notes that he now works as a practical engineer but is paid a lower salary because he does not have a diploma.

The complainant requested the diploma.

2. The investigation by the Ombudsman revealed the following:

(a) Studies for the practical engineering degree are a joint enterprise of the Institute and SITT. The classes are held at the Institute in accordance with a course plan established by SITT. SITT is responsible for regular supervision of the studies and for grading the final exams and projects. Upon successfully completing their studies, graduates receive a diploma bearing the names and signatures of both the Institute and SITT.

By mutual agreement of SITT and the Institute, the Institute only accepts candidates for the course if they meet SITT's admissions criteria.

The SITT admissions criteria were delineated in a document that SITT published in 1984 (hereafter - the criteria document).

(b) In August 1994, the complainant submitted to the Institute a high school vocational training diploma which states that it entitles the holder to "admission to studies in schools for technicians and practical engineers subject to their admission requirements." On the basis of this diploma, the complainant applied for admission to the Institute's practical production-engineering course, towards a degree in practical industrial and management engineering.

(c) In a letter dated October 18, 1994 on stationery displaying the name of the Institute and the words "In cooperation with the State Institute of Technological Training", the Institute informed the complainant that he had been accepted to the course. The notification bore the stamp of the Ministry of Labor and Social Welfare.

(d) The complainant commenced his studies on November 1, 1994 and successfully completed them on September 15, 1997. On November 6, 1997, the Institute issued a certification to the complainant stating that the holder had fulfilled all the requirements and examinations and was thereby eligible to receive a practical engineering diploma.

(e) The Institute prepared a signed practical engineering diploma in the name of the complainant but SITT refused to add its signature. SITT explained its refusal by stating that the complainant should not have been admitted to the course because he did not meet the condition of section C of the criteria document - pursuant to which a person will be admitted if he passed his matriculation examinations or "pre-practical engineering" courses in mathematics, physics, Hebrew and English.

(f) On the other hand, the Institute contended that the complainant was eligible for the course because, as holder of a vocational training diploma (which states that those holding such a diploma are eligible for admission to schools for technicians and practical engineers) section B(2) applies to him, unlike, for example, students with a diploma for eleven years of study, which, according to section B(1) of the criteria document must complete "pre-practical engineering" studies and pass the examinations.

The Institute stated that, at the time the complainant was accepted into the course, it was not aware of SITT's interpretation of the criteria document, i.e. that fulfillment of the requirements of section B(2) is insufficient and that the Institute must check whether the applicant also meets the requirements of section C of the document.

The Institute further contended that, even if its interpretation of the criteria document was incorrect, it was not due to any fault on the part of the complainant and it is inconceivable to force him, after having completed his studies, to sit for matriculation or "pre-practical engineering" examinations in subjects some of which he studied at a higher level at the Institute.

It should be noted that SITT did not contend that failure to pass matriculation examinations or "pre-practical engineering" courses was liable to impair the complainant's ability to work as a practical industrial and management engineering, or that the knowledge and experience that the complainant had acquired was not a proper substitute for the missing

part of his education. Its refusal to sign the diploma is based solely on its interpretation of the criteria document.

3. The Ombudsman ruled that the complaint was justified.

(a) The criteria determined by SITT in the criteria document can be interpreted in different ways. The Institute's interpretation, which is not unreasonable, is that the complainant met the criteria for admission.

(b) The Institute's decision to accept the complainant for the course, on which the complainant relied, invested three years of study and expected to obtain a degree in practical engineering, created a new reality for him. The complainant was justified in assuming, absent any contrary representation by SITT, that the Institute was acting with the authority and knowledge of SITT. SITT cannot ignore this new situation.

(c) Case law in Israel provides that the power of an administrative body to alter decisions is not unlimited, and that a balance should be maintained between the need of the administrative body to rectify what it considers a flaw in a decision and the right of a citizen, who acted properly and did not cause the flaw in the decision, to receive what he is entitled to pursuant to the decision. This right is available to the citizen where he relied on the decision and altered his situation to his detriment, when the body subsequently contends that the misleading decision (in our case - the representation made by SITT) led the citizen to assume that another body that handled his matter in accordance with the same decision is its agent and acts with its authority.

(d) As stated, SITT did not contend that the complainant's ability to function as a practical industrial and management engineer was liable to be impaired as a result of his not having passed the matriculation examinations, or that a clear public interest opposed granting the diploma, such as prevention of harm to the public. SITT's attitude was based solely on its strict observance of its own interpretation of the criteria for

admission. Therefore, the necessary balancing of interests weighs in favor of the complainant.

(e) The Ombudsman informed SITT that it should sign the complainant's practical engineering diploma and grant it to him without conditions and without delay.

(f) On June 7, 2000, the director of SITT informed the Ombudsman that, in light of the Ombudsman's ruling, the complainant would receive a diploma in practical industrial and management engineering.

MINISTRY OF THE INTERIOR

CHANGING THE SURNAME OF MARRIED WOMEN

1. The Ombudsman received several complaints on an identical matter against the Ministry of the Interior. The details of the complaints are as follows:

The complainants, who married in 1999, subsequently discovered that their surnames had been changed to their husbands' names in the Population Registry.

The complainants contended that the Ministry of the Interior did not ask them whether they wanted the change of name and failed to inform them of the change, which they discovered by chance. They requested revocation of the change and resumption of their surname as it was prior to marriage.

2. The change of name of a person is regulated by the Names Law, 5616-1956 (hereafter - the Names Law).

(a) Section 6 of the Names Law, according to its wording prior to 1996, provided:

> A woman receives on marriage the surname of her husband, but she may, at any time, add her maiden name or previous surname to the surname of her husband, and she may also bear her maiden name or previous surname alone.

In accordance with the previous text of section 6 of the Names Law, the Ministry of the Interior automatically changed a married woman's name in the Population Registry to her husband's surname, unless the woman informed the Ministry otherwise.

(b) In 1996, section 6 of the Names Law was amended and now states as follows:

> (a) A person upon marriage may at any time -
>
> (1) continue to bear or reassume a previous surname;
>
> (2) choose the surname of his spouse;
>
> (3) add the spouse's surname to his surname;
>
> (4) choose a surname identical to the surname selected by his spouse even if it differs from the couple's previous surnames;
>
> (5) add to the surname the surname that his spouse chose to add to his surname.
>
> (b) At the time he marries, a person shall inform the person recording the marriage of the surname he has chosen to bear after marriage; where he decided to change his name, the change shall take effect upon marriage.
>
> (c) The Minister (of the Interior), upon consultation with the Minister of Religious Affairs, shall establish the modes of notification referred to in subsection (b).

3. (a) The Ombudsman's investigation revealed that, although the Law was amended in 1996, regulations had not yet been enacted regarding the procedures for informing the persons recording the marriage. The lack of regulations resulted from the failure of the Ministry of the Interior and the Ministry of Religious Affairs to reach agreement in the matter.

(b) In the absence of regulations, the persons recording marriages failed to ask the complainants what names they had chosen. When the Ministry of the Interior received a copy of the marriage certificate from the person recording the marriage and it did not mention the chosen name, the

Ministry of the Interior's Population Registry's computer automatically gave the complainants the surnames of their husbands.

(c) The Ministry of the Interior informed the Ombudsman that the complainants can request to revoke the change and reinstate their former surname.

4. (a) During the course of the investigation, the Ministry of Religion Affairs informed the Ombudsman that, in coordination with the Ministry of the Interior, instructions had been circulated to all persons recording marriages, to record in the marriage certificates issued, in the designated space, the surnames that the couple selected to use after their marriage.

(b) The Ministry of the Interior informed the Ombudsman that it is acting to incorporate the aforesaid arrangement in regulations, as the Law requires.

MINISTRY OF TRANSPORTATION

REFUND OF FEE FOR OUT-OF-SERVICE FORKLIFT TRUCK

1. In July 1999, the complainant, a forklift truck owner, complained to the Ombudsman against the Ministry of Transportation. The details of his complaint are as follows:

(a) On May 23, 1999, the complainant paid the annual registration fee for registering engineering equipment for his forklift truck. The forklift truck ceased to be used about one month after he paid the fee.

(b) The complainant requested that the Ministry of Transportation refund the fee that he had paid for the period that he was unable to use the forklift truck.

(c) The Ministry of Transportation refused his request, contending that the law and regulations regulating collection of the fee contain no provision enabling refunding of a fee that has been paid.

(d) The complainant contended before the Ombudsman that, in his opinion, the Ministry of Transportation should reimburse him the proportional amount of the fee that he paid as stated, and that it should act in regard to the forklift truck as it does concerning a fee paid for a motor vehicle registration, i.e., when the vehicle is out-of-service, the proportional portion of the fee is reimbursed for the out-of-service period.

2. The Registration of Engineering Equipment Law, 5717-1957 (hereafter - the Law), and the Registration of Engineering Equipment Regulations,

5719-1959 (hereafter - the Regulations), provide that an owner of engineering equipment must register it with the Registrar of Engineering Equipment. Section 5(a) of the Regulations provides that an annual registration fee must be paid for engineering equipment, in an amount stated in the second schedule of the Regulations. Section 5(b) of the Regulations provides that the fee is to be paid for the period from April 1 to March 31 of each year.

It should be noted that section 5(b) states that, in the case of equipment purchased during the course of the year, a reduced fee is paid in an amount proportional to the part of the year from the time of purchase of the equipment until the end of the year.

3. The Ombudsman pointed out to the Ministry of Transportation the situation in which motor vehicle owners receive proportional refunds of vehicle registration fees when their vehicle is out-of-service, and the ostensible injustice to owners of engineering equipment, to whom a different law applies.

4. In reply to the Ombudsman, the Ministry of Transportation informed the Ombudsman that, following his request and similar requests from owners of engineering equipment, it is acting to amend the Regulations so that one rule will apply to both owners of regular vehicles and owners of engineering equipment, whereby both are reimbursed the proportional part of the annual registration fee in instances where the vehicle is out-of-service.

LOCAL AUTHORITIES

REQUEST FOR REDUCTION IN MUNICIPAL PROPERTY TAX ON A VACANT APARTMENT

1. In June 1999, the complainant, a resident of Jerusalem, complained to the Ombudsman against the Ramat Gan Municipality (hereafter - the Municipality). The details of his complaint are as follows:

(a) The complainant's mother owns an apartment in Ramat Gan (hereafter - the apartment). Because of her advanced age, she moved into the home of her son in Jerusalem, and the apartment remained vacant and was not used for about one-half of 1998.

(b) On November 5, 1998, the complainant requested a reduction in municipal property tax (hereafter - the request) that is given on apartments that are vacant and unused.

(c) The Municipality denied the request on the grounds that it was unable to check retroactively whether the apartment indeed contained no objects during the period of time mentioned by the complainant. The Municipality explained that the said reduction is given from the time that the request is submitted, because only then can it verify the accuracy of the details stated in the request. The Municipality rejected the complainant's proposal that he provide an affidavit that the apartment was vacant, together with water and electricity bills that indicate that the apartment was not used during the relevant period.

(d) Because the complainant filed his request on November 25, 1998, the Municipality approved the reduction in municipal property tax only for one month (December 1998).

2. Section 13(a) of the State Economy Arrangements Regulations (Reduction in Municipal Property Tax), 5753-1993 (hereafter - section 13(a)) provides as follows:

> The Municipality may, for a period that shall not exceed six months or a part thereof, establish a reduction of up to 100 percent for the occupant of a vacant building containing no users thereof continuously for at least the aforesaid period, commencing on the day that they ceased to use it.

A similar directive appeared in the Tax Order for 1998 published by the Municipality.

3. The Ombudsman ruled that the complaint was justified.

Section 13(a) does not condition obtaining a reduction in municipal property tax on submitting a request in advance, unlike other provisions of law where an exemption or reduction in municipal property tax is expressly conditional on submission of a request at a specific time, such as section 330 of the Municipalities Ordinance (New Version) (hereafter - the Ordinance), regarding a building that was demolished or damaged, and sections 325 and 326 of the Ordinance regarding cessation of ownership or occupancy of a property.

Furthermore, according to section 13(a), the Municipality may grant a reduction in municipal property tax of up to six months on a vacant building containing no users continuously for the said period, even though an owner may not know at the beginning of the period that the property would remain vacant and unused throughout the entire period. Therefore, there should be no reason to prevent the request from being submitted near the end of the period of time in which the apartment was vacant and unused.

As to the subject of the complaint, the complainant submitted his request to the Municipality in November 1998, which was prior to the end of the six-month period, at a time that the Municipality still could have checked if the apartment was vacant and unused. Indeed, in December 1998, the

Municipality verified that the property was presently vacant, for which it granted a reduction in municipal property taxes.

The Ombudsman ruled that the Municipality's refusal to grant the reduction, for the reasons it mentioned, is inconsistent with the provisions of section 13(a). Furthermore, the Municipality's denial comes within the rubric of excessive inflexibility and flagrant injustice in light of the complainant's willingness to provide an affidavit together with water and electricity bills to prove his contention.

4. The Ombudsman informed the Municipality that it should approve the complainant's request provided that he submit an affidavit on the period of time in which the apartment was vacant and unused, and documents that support the affidavit (such as water and electricity bills).

5. The Municipality informed the Ombudsman that it is acting in accordance with the ruling.

CHARGE FOR APPRECIATION LEVY

1. In 1999, the complainants, residents of Givatayim, complained to the Ombudsman against the Givatayim Municipality (hereinafter - the Municipality). The details of the complaint are as follows:

(a) The complainants live in a two-room apartment in a condominium in Givatayim. When they wanted to sell their apartment, the Municipality demanded that they pay an appreciation levy on the appreciation of the building that resulted from approval of a city outline town planning scheme for the area in which the building is situated (hereafter - the scheme).

The Municipality informed the complainants that, according to the assessment, the appreciation levy amounts to the shekel equivalent of $2,500 - $5,000. Municipal employees refused to inform the complainants

of the precise sum of the levy unless they pay the Municipality NIS 1,000 for providing the information.

(b) Alternatively, the Municipality requested the complainants to have the purchasers of the apartment sign a form in which they undertake to pay the appreciation levy when they obtain a building permit, in the event that they apply for a building permit for the apartment, or when they sell the apartment - whichever occurs first. The purchasers refused to sign such a form and the sale did not take place.

(c) In their complaint, the complainants requested that the Ombudsman examine the legality of the Municipality's actions relating to the appreciation levy. They also requested that the Municipality inform them of the precise amount of the appreciation levy they are demanded to pay.

2. The third schedule of the Planning and Building Law, 5725-1965 (hereafter - the Schedule), which regulates the subject of the appreciation levy, states, *inter alia*, that if the value of the land increased in consequence of the approval of a scheme, the owner of the land shall pay an appreciation levy.

Section 4 of the Schedule provides:

> The following provisions shall apply to the assessment of the appreciation:
>
> (1) The appreciation shall be determined by a land assessor immediately after the approval of the scheme, the authorization of the non-conforming use or the grant of the relief; however, the Local Committee may postpone the assessment of an appreciation-upon-approval-of-a-scheme until the realization of the rights in the appreciated property (hereafter - postpone the assessment until the realization of the rights).
>
> …

> (4) Where the Local Committee has decided to postpone the assessment until the realization of the rights, every owner of property may request the Local Committee to enable him to pay forthwith the charge due from him. Where such a request has been received, the appreciation of the property shall be assessed within ninety days from the date of receipt.

Section 5 of the Schedule provides:

> Where a scheme is approved and the Local Committee does not decide to postpone the assessment until the realization of the rights, the Local Committee shall, on the basis of an opinion by a land assessor, draw up an assessment schedule for the whole of the approved scheme, specifying the properties appreciated in consequence of the approval of the scheme and the amounts of their appreciation.

Section 6 of the Schedule provides:

> (a) An assessment schedule drawn up under section 5 shall be exhibited at the offices of the Local Committee and at the offices of the District Committee within half a year from the date of the approval of the scheme.
>
> (b) Upon the exhibition of the assessment schedule or following a realization of rights, the Local Committee shall notify every person liable to a charge of the amount of the appreciation in respect of which he is so liable and of his right to file an assessment on his own behalf or to appeal against the imposition of the charge.

The Schedule does not provide that the Municipality is authorized to charge the person charged with the levy for providing information regarding the amount of appreciation on which the levy is charged.

The Committee may, therefore, choose one of two ways to assess the appreciation: postpone the levy until such time as the rights in the land on

which the appreciation applies are realized, or prepare an assessment schedule for all the properties included in the scheme that was approved, and present it within six months from the date that the scheme was approved.

If the Committee selects the first option, each property owner may demand that the Municipality allow him to pay immediately the applicable levy, and in such event (pursuant to section 4(4) of the Schedule) an appreciation assessment will be prepared regarding the land within ninety days from the date the demand is received. Regardless of whether it selected the first or second option, the Committee must (pursuant to section 6(b) of the Schedule) notify every person subject to a levy of the amount of appreciation on which the levy is charged, and of the right to file an assessment on his own behalf or to appeal the imposition of the charge pursuant to section 14 of the Schedule.

3. The Ombudsman's investigation revealed that the Givatayim Local Committee failed to act in either of the ways prescribed in the Schedule to make the appreciation assessment: it did not decide to postpone assessment until realization of the rights, nor did it prepare or present an assessment schedule for all the properties included within the scheme, and, in any event, it did not implement the statutory procedures following the acts required in the first or second method, including notification of the property owners subject to a levy of the amount of the appreciation on which the levy is charged, and on their right to file an assessment on their own behalf or appeal the imposition of the charge.

Rather, the Committee decided that the charge for the appreciation levy would be determined by individual assessment regarding each request to realize rights that is submitted to the Municipality. The assessment would be based on an "appreciation levy estimates guideline" prepared by land assessors on behalf of the Municipality, which establishes an "agreed-upon assessment" that is defined as a "compromise assessment" that may not be appealed.

4. The Ombudsman ruled that the complaint was justified.

The method selected by the Municipality to assess the appreciation did not comply with the provisions of the Schedule and has no legal basis:

The Committee did not act in accordance with the methods established by law regarding the appreciation levy and failed to carry out its duty under the statute to inform the complainants of the precise amount of the appreciation and of their right to file their own assessment or to appeal the imposition of the charge. Rather, it set an "assessment that could not be challenged" and even demanded NIS 1,000 to obtain information on the precise amount of the levy, without having any legal basis for demanding payment for the information. Also, according to section 119 of the Planning and Building Law, 5725-1965, the complainants were entitled to obtain such information without payment.

It should be noted that, during the course of the investigation, the Municipality informed the Ombudsman that, because it had become apparent that charging for the said information was without legal basis, it would no longer demand the payment.

5. The Ombudsman informed the Municipality and the Givatayim Local Committee that they must refrain from collecting the appreciation levy from the complainants in the method they employed. Regarding the appreciation levy, the Municipality must act precisely as stated in the Schedule, enabling the property owners within the area covered by a scheme to exercise their legal rights pursuant to the Schedule and all relevant laws.

6. The Municipality informed the Ombudsman that it accepts the Ombudsman's ruling and that it would act from now on in accordance with the statutory procedures.

DEMAND FOR EXCESS PAYMENT FOR PERSONAL ACCIDENT INSURANCE

1. In January 2000, the complainant, father of a daughter attending elementary school in Rehovot, complained to the Ombudsman against the Rehovot Municipality (hereafter - the Municipality). The details of his complaint are as follows:

(a) In December 1999, the complainant received a demand for payment of a supplementary services fee for the 1999-2000 school year. The sum included NIS 27 for personal accident insurance (hereafter - the insurance). The complainant claimed that this premium is higher than the premium for the insurance policy agreed on by the Municipality and the Ayalon Insurance Co., which was set at NIS 20 per pupil.

(b) The complainant also contended that the words "school entry permit" were printed on the form containing the demand for payment for the supplementary services fee (hereafter - the notice), although the Municipality had informed him, after he pointed out to the Municipality in the previous school year that the phrase violated the law, that these words would be deleted.

2. The Ombudsman's investigation revealed the following:

(a) Section 6(d1) of the Compulsory Education Law, 5719-1949, provides as follows:

> A person entitled to free education under this section shall be insured by personal accident insurance through the local education authority in whose jurisdiction the educational institution in which he studies is located; the payments for the insurance that are collected from the persons insured shall be set by the Minister in the framework of the payments referred to in subsection (d).

(b) Circular 99-00/2 issued by the Director General of the Ministry of Education (hereafter - the circular), titled "Personal Accident Insurance", states that the insurance premium for all ages is NIS 22 per pupil.

(c) The insurance policy between the Municipality and the insurance company indeed provided that the insurance premium would be NIS 20 per pupil.

(d) Nevertheless, the Municipality charged parents the sum of NIS 27 per pupil for the insurance, i.e., NIS 7 more than it had undertaken to pay the insurance company.

The Municipality transferred the excess amount charged for each pupil to the school in which the pupil studied, to be used as it deemed appropriate.

3. The Ombudsman ruled that the complaint was justified.

(a) From the outset, the Municipality was not allowed to charge more than NIS 22 per pupil, the amount stated in the Director General's circular. Because the Municipality paid the insurance company only NIS 20, it was not allowed to charge a greater amount.

(b) There is no basis in statute or in the circular for transferring the excess sum collected to the pupil's school.

(c) The phrase "school entry permit" that was printed on the notice is misleading because it indicates that failure to pay the sum stated in the notice would result in the pupil not being admitted to school, in contravention of the provisions of a circular issued by the Director General of the Ministry of Education, Permanent Directives 59/1(c), which provides that, "It is forbidden to prohibit entry of children to kindergarten or school because of the failure to pay municipal taxes and fees."

4. In light of the aforesaid, the Ombudsman informed the Municipality that it should refund to the pupils' parents the excess amount collected for the insurance and refrain from demanding an amount in excess of the amount it pays to the insurance company or of the amount set in the Director General's circular - whichever is lower. The Ombudsman also

informed the Municipality that it should delete the words "school entry permit" from the notice.

5. Following the Ombudsman's ruling, on July 25, 2000, the director of the Municipality's Department of Education sent a circular to school principals in Rehovot, in which he requested them to inform parents and parents' committees that the parents of pupils who had paid the entire insurance premium had a credit of NIS 7.

Also, the Director General of the Municipality informed the Ombudsman that the words "school entry permit" would no longer appear on the demand-for-payment form.

DUTY TO PROVIDE GUARANTEE FOR PAYMENT FOR AIR-RAID SHELTER FUND

1. In September 1999, a resident of Nahariya complained to the Ombudsman against the Nahariya Municipality (hereafter - the Municipality) for requiring him to provide a bank guarantee as a condition for obtaining an exemption from building an air-raid shelter or a Protected Area (hereafter - PA) in his home. The details of the complaint are as follows:

(a) In 1997, the complainant applied to the Municipality for a permit to build an extension to his apartment. As a precondition, the Municipality required him to sign a letter of undertaking in which he promised, within three years of signing the undertaking, either to construct an air-raid shelter in the house in which he lives (hereafter - the house) or abutting it, or to construct a PA within his apartment. The letter of undertaking further provided that, if he did not do so, he would be required to share in funding the construction of a public shelter or the enlargement of an existing one for use of his family in case of emergency.

(b) To guarantee performance of his undertaking, the Municipality demanded that the complainant provide a bank guarantee in the amount of NIS 19,458 (hereafter - the guarantee). The letter of undertaking also stated that, if he did not construct a shelter or a PA within three years, he agreed that the Municipality may forfeit the guarantee that he provided and the money could be used to fund the construction of a public shelter or the enlargement of an existing one, as near as possible to his own residence.

(c) The complainant contended that he was prevented from constructing either a shelter in his building or a PA because the engineer that planned the extension to his apartment stated that, from an engineering perspective, such construction was impossible, and the complainant feared that the Municipality would forfeit the guarantee. He added that no public shelter had yet been constructed in the vicinity of his home, so if the Municipality forfeited his guarantee, he would not receive anything in return.

2. Section 14(c) of the Civil Defense Law, 5711-1951 (hereafter - the Law) provides:

> A permit for the erection of a house... or for the erection of an addition to any such house or structure shall not be granted under any Law dealing with planning and building unless -
>
> (1) the building plan for which the permit is to be granted provides for the construction of a shelter for the house, structure or addition or, in the case of an addition, for an enlargement, as approved by the competent authority, of an existing shelter, or exemption has been granted under this section from the duty of constructing or enlarging a shelter;

Section 14(g)(3) of the Law provides that a local authority may, subject to the approval of the competent authority (the Civil Defense Commander or a person appointed by him):

> exempt the owner of a house or of business premises who makes a structural addition thereto from the duty of

> constructing a shelter or enlarging an existing shelter, if it is proven to its satisfaction one of the following:
>
> > (a) that it is not possible to erect or expand an existing shelter on the property in which the structural addition is requested, provided that the applicant shared in the fund whose moneys will be earmarked for the erection, improvement, or enlargement of public shelters (hereafter - the Fund), and the provisions regarding its founding, its financial sources, and the procedures for supervising its activities are set forth in the regulations referred to in section 27(b)(6)...

In accordance with Section 14(g)(3), a shelter fund may be established only in accordance with the regulations that were enacted relating to its founding, its financial sources and the procedures for supervising its activities. However, the Minister of Defense, who is responsible for implementation of the Law, did not exercise his authority and enact regulations in this matter and consequently a shelter fund could not be established in Nahariya.

3. The legal advisor of the Nahariya Local Planning and Building Committee contended before the Ombudsman that, in the absence of a shelter fund, the Municipality had two options: to freeze the granting of building permits for buildings in which it is not possible to construct a shelter or PA until a fund is legally established, or to grant building permits on the condition that the applicant for the permit provides a letter of undertaking and a bank guarantee that will ensure collection of the payment for erecting a public shelter in the future. To reduce as much as possible the harm to residents, the Municipality chose the second alternative.

The Supreme Court has ruled that a public authority may not demand a guarantee as a precondition for carrying out an action, in the absence of an express provision of statute or regulations empowering it to do so and a legal arrangement exists to implement it. In its decision, the Court stated,

"Arrangements for implementation should not be set in order to establish by means of interpretation a power that does not exist."

The Ombudsman maintained that, even if the Municipality had acted upon consideration of the public welfare, as stated in the explanation given by the legal advisor of the Nahariya Local Planning and Building Committee, there was still no statutory basis for demanding a bank guarantee to ensure the applicant's performing his undertakings. The proper way to solve the problem of issuing building permits for structures like that of the complainant is to enact regulations pursuant to which a shelter fund would be established.

4. The Ombudsman ruled that the complaint was justified.

5. The Ombudsman informed the Municipality that, in the absence of legal authority to demand the complainant to provide such a guarantee, it should revoke the guarantee and return it to him.

6. During the investigation, the Ombudsman was informed that a draft of regulations for the establishment of a shelter fund was recently prepared and submitted for the approval of the Commander of the Home Front (who serves, since 1992, as the Civil Defense Commander).

DEMAND TO APPEAR TO SUBMIT APPLICATION FOR APPROVAL OF FIRE-FIGHTING PLAN

1. In October 1999, the complainant, an engineer and owner of an engineering consultation firm in Tel-Aviv, complained to the Ombudsman against the Association of Fire-Fighting and Rescue Authorities in Judea and Samaria and the Jordan Valley (hereafter - the Association). The details of his complaint are as follows:

(a) The complainant mailed to the Association's office in Givat Ze'ev a request for approval of a fire-fighting plan for a kindergarten (hereafter - the request). He contends that the fire-fighting plan was clear and straightforward.

(b) The Association informed the complainant that it does not accept requests by mail and that he must submit the request in person at their office.

(c) The complainant asked the Association and the Fire-Fighting and Rescue Commission of the Ministry of the Interior (hereafter - the Fire-Fighting Commission), which is in charge of the Association, to revoke the requirement that he appear personally at the Association's offices to submit the request. His request was rejected.

(d) The complainant contends that the aforesaid requirement is not customary practice at other fire-fighting authorities in Israel. He requested that the Ombudsman intervene to revoke the requirement.

2. (a) In response to the Ombudsman's query, the Association stated that the requirement is based on the Association's operating procedures. Applicants are required to appear at the Association's offices to open a file and present their plan, and, if necessary, to receive comments from the Association about the plan, changes that must be made, and the like. The Association did not refer to any legal basis for the requirement that applicants appear in person at its offices.

(b) The Fire-Fighting Commission stated that it supports the position of the Association and that the aforesaid procedure is customary procedure at every fire-fighting authority in the country.

(c) The Ombudsman's investigation revealed that other fire-fighting authorities accept requests for approval of fire-fighting plans that are submitted by mail, or which are submitted through the planning institutions, and applicants are only required to appear at the fire-fighting authority's office if questions arise. The Ombudsman pointed out the above to the Association and the Fire-Fighting Commission, but they repeated

their contention that the complainant must appear personally and submit his request, and informed the Ombudsman that the Association did not intend to deviate from its operating procedures.

3. The Ombudsman ruled that the complaint was justified.

The law pursuant to which the Association was established and operates does not contain any provision requiring submission of a request for approval of a fire-fighting plan to a fire-fighting authority's offices in person.

4. The Ombudsman informed the Association that it should allow requests of the type submitted by the complainant to be submitted by post or by similar means. The Ombudsman emphasized that if, after receiving and reviewing it, a need to receive clarifications and additional details arises, the applicant can be summoned to the offices of the fire-fighting authority. However, it is unjustified to require that the applicant appear just to submit the request.

5. The Association informed the Ombudsman that it had acted in accordance with the ruling.

LOD AND RAMLA DEVELOPMENT COMPANY LTD.

DISMISSAL FOLLOWING EXPOSURE OF ACTS OF CORRUPTION

1. (a) On October 19, 1999, the complainant, an accountant at the Lod and Ramla Development Company Ltd. (hereafter - the company), complained to the Ombudsman that, in response to his reporting acts of corruption within the company, the company's managing director (hereafter - the managing director) dismissed him from his position as acting deputy managing director for finance, to which he had only recently been appointed. The complainant also contended that the managing director hampered his authority as company accountant and his ability to perform his duties. On March 23, 2000, during investigation of the complaint, the managing director dismissed the complainant from the company.

(b) The complaint was investigated pursuant to sections 45A - 45E of the State Comptroller Law, 5718-1958 (Consolidated Version) (hereafter - the Law). These sections deal with complaints by a public employee contending that his rights have been prejudiced by his superior in response to the employee's reporting, in good faith and in accordance with proper procedure, acts of corruption that were committed in the body in which he works.

(c) On March 30, 2000 and April 12, 2000, the Ombudsman issued temporary orders directing that the company continue to employ the complainant as the company accountant until investigation of the complaint is completed or until he issues another order or directive.

2. The Ombudsman's investigation revealed the following:

(a) In January 1993, the complainant, who has been employed by the company since December 1990, was appointed company accountant. In April 1999, the managing director recommended to the board of directors (hereafter - the board of directors) and the Government Companies Authority to raise the complainant's salary to eighty percent of the managing director's salary and the recommendation was accepted.

(b) On September 5, 1999, following the retirement of the company's deputy managing director for finance, the complainant was appointed acting deputy managing director for finance in addition to his position as accountant. On September 8, 1999, the managing director informed the board of the appointment, noting that the complainant was a diligent employee.

(c) On September 14, 1999, the complainant submitted to the State Comptroller, and on September 15, 1999 to the managing director, the chairman of the board of directors and the company's internal comptroller, twenty-six letters of complaint in which he enumerated many improper acts that were committed, according to his contention, in the company, most of them by the managing director. Some of the alleged acts raised the suspicion of acts of corruption and breach of moral integrity.

On the following day, September 16, 1999, the managing director called a meeting of the board of directors for September 21, 1999, whose agenda included, *inter alia*, appointment of a deputy managing director for finance.

At the meeting on September 21, 1999, the board of directors discussed the managing director's proposal to appoint the company's deputy managing director for marketing to the position of acting deputy managing director for finance, replacing the complainant. The board approved the proposal by a 5-2 vote.

(d) On September 23, 1999, the managing director for marketing, in his capacity as acting deputy managing director for finance, wrote a letter to the complainant requesting that he give top priority to assisting the

company's internal comptroller in investigating the claims that the complainant made in his letters of complaint. To this end, he directed that the complainant remain at the disposal of the internal comptroller throughout working hours.

(e) Following the deputy managing director for marketing's letter, most of the complainant's authority as company accountant was gradually withdrawn and the managing director took steps to make it impossible for the complainant to continue to perform his duties: the personal computer and software were removed from his room, his mobile phone was taken from him, and he was not given the keys to the finance department offices after their locks were changed.

At the end of 1999, an accountant was hired who was delegated tasks that previously had been assigned to the complainant.

(f) In a letter of October 13, 1999, the deputy managing director for finance asked the company's legal adviser for an urgent opinion on how to handle grave information that he had received that day regarding "excess benefits" that the complainant had appropriated for himself in the framework of purchasing an apartment from the company about six years earlier.

On October 15, 1999, two days after the deputy managing director for finance's request to the legal adviser about the apartment, at a meeting of the board of director's auditing committee that discussed the internal comptroller's report on the complainant's letters, the managing director stated, referring to the apartment that the complainant had purchased, "I'll have a few things to say about the complainant's personal integrity…," and "next week we'll see who's virtuous."

It should be noted that these statements were uttered by the managing director before a thorough investigation had been made regarding the accusations relating to the complainant's purchase of the apartment and before the legal adviser had stated her opinion on the matter.

(g) At the meeting of the board of directors held on January 26, 2000, the complainant was given an opportunity to defend himself, and he and his attorney responded to the claims regarding the benefits that he took for himself when purchasing the apartment. At the same meeting, the board of directors decided to direct the internal comptroller to prepare a report on the matter. The internal comptroller subsequently informed the chairman of the company's auditing committee that he could not complete the report and an external accountant was therefore requested to prepare the report.

The external accountant's report, submitted to the company on March 19, 2000, contained findings regarding benefits that the complainant had obtained from the company. The report found that there had been a conflict of interests between his position in the company and his personal interests as purchaser of the apartment from the company, and that he had violated his duty of trust to the company. On March 20, 2000, the board of directors discussed and adopted the report's findings. On March 23, 2000, the managing director informed the complainant of his dismissal.

(h) The managing director contended before the Ombudsman that he had not intended to appoint the complainant to the post of deputy managing director for finance, but that the complainant had been given the position only because of the urgent need to coordinate the finance department's work, a result of the sudden retirement of the deputy managing director for finance.

The managing director did not supply satisfactory explanations to the Ombudsman regarding the impairment of the complainant's authority and ability to function as the company's accountant.

(i) The managing director contended before the Ombudsman that the decision to dismiss the complainant was made in light of the grave findings of the accountant's report, which left no other option.

3. The Ombudsman ruled that the complaint was justified.

The findings of the Ombudsman's investigation reveal that the motive for impairing the complainant's authority and his ability to function, and later

to dismiss him from the company stemmed from the letters of complaint that he had submitted, which raised, *inter alia,* the suspicion of acts of corruption in the company.

(a) The aforesaid conclusion is supported by the proximity of time between submission of the letters and cancellation of the complainant's appointment to the post of acting deputy managing director for finance. The managing director himself had praised the complainant's skills and diligence, had made no complaints about the manner in which he performed his tasks and had recommended that he receive a raise in salary. Despite this, shortly after the complainant submitted the letters, the managing director called an urgent meeting of the board of directors to select a replacement for the complainant in the said position, and undermined his authority and ability to function as accountant.

(b) The managing director's explanation for canceling the complainant's appointment to the post of acting deputy managing director for finance is inconsistent with the appointment in the first place and with the praise given him by the managing director to the board of directors when discussing the appointment.

(c) The circumstances surrounding the transfer of the complainant from the post of acting deputy managing director for finance and the removal of his authority as company accountant, together with the other measures that were taken against him even before the investigation into the allegations relating to the apartment he had purchased, demonstrate that the real motive for dismissing him was the contents of his letters and not the conclusions of the external accountant, as the managing director contended, as to which the Ombudsman did not find it necessary to state a position.

The Ombudsman's investigation findings lead, therefore, to the conclusion that the violation of the complainant's rights and the decision to dismiss him were made following his reporting in good faith and according to proper procedure acts of corruption that he believed had taken place in the company.

4. In light of the aforesaid conclusion, it is necessary to decide on the relief to be given to the complainant.

Section 45C of the Law provides that the Ombudsman may make "any order he deems right and just," including "revocation of the dismissal or the award of special compensation to the employee, in money or in rights." The considerations to be taken into account by the Ombudsman in deciding on the relief are also stated in the aforementioned section, whereby the order given by the Ombudsman should "protect the rights of the employee, having regard to the proper functioning of the body in which he is employed."

In deciding which relief to grant an employee who was dismissed after exposing acts of corruption, it is necessary to take into account that the dispute between the employee and the body in which he is employed is generally accompanied by poor relations, which make it difficult for the employee to return to his position. However, it is clear that revocation of the dismissal is the preferable relief, where approval of the dismissal would most likely levy too high a price from the employee, even if accompanied by an order to pay him special compensation. Compensation in itself cannot always be expected to provide sufficient incentive for employees who discover corruption to report it and to prevent the body employing them from harming them in retaliation. The need to balance protecting the rights of employees and proper administration, on the one hand, and ensuring proper working relations, on the other hand, require the Ombudsman to examine the entire circumstances of each case and, based on the circumstances, decide on relief that is both proper and practical.

In the present case, submission of the letters of complaints led to difficult and poor relations between the employee and the company's management. Several senior employees also expressed concern that the reinstatement of the complainant might hamper the company's ability to function. On August 15, 2000, the Ombudsman, after considering the entire circumstances, decided to direct that the complainant's dismissal be revoked, and ordered as follows:

> The company shall continue to employ the complainant in the position of company accountant with all the powers and functions vested in that position, and according to the work and salary terms for this position or pursuant to any law, agreement, practice, or proper and binding procedure.
>
> The company shall do everything necessary to enable the complainant to perform his duties as company accountant without hindrance and in accordance with any directive lawfully given by his superiors.

In view of the aforesaid result, the Ombudsman recommended to all parties involved, both the company's management and the complainant himself, to make every effort necessary to overcome past history and to turn over a new leaf in relations for the good of the company and to enable it to realize its goals.

5. The managing director informed the Ombudsman that the Company is implementing the Ombudsman's order.

NATIONAL INSURANCE INSTITUTE

DEFECTIVE HANDLING OF REQUEST TO AMEND CERTIFICATION OF INSURANCE PERIODS

1. In November 1999, the complainant complained to the Ombudsman against the National Insurance Institute (hereafter - the Institute). The details of her complaint are as follows:

(a) The complainant was due to retire at the age of 60.

(b) Just prior to the date of her retirement, she inquired at the "continuity of insurance desk" (hereafter - the continuity of insurance desk) of the Institute to clarify the period of her insurance at the Institute (the period of insurance is important in determining eligibility for an old-age pension and in determining the amount of the seniority increment paid in addition to the basic old-age pension).

(c) The continuity of insurance desk responded to her inquiry by sending her a document certifying the periods she was insured by the Institute (hereafter - the certification). The certification stated that, if she possessed documents to prove that she worked during periods other than those specified, she should send them to the continuity of insurance desk to update the period of her insurance in the list of persons insured.

(d) The complainant checked the certification and found that it contained inaccuracies and that it did not list periods in which she worked. She sent the continuity of insurance desk a verification from her place of employment that proved her contention.

(e) Following the complainant's repeated request to the Institute, she received an "amended" certification of her period of insurance in the Institute (hereafter - the amended certification), which stated that it was made at her request and was based on verifying documents that she provided. However, in practice, the amended certificate did not mention some of the changes that were reflected in the verification that the complainant had attached.

(f) The complainant wrote again to the continuity of insurance desk requesting that the list of the periods of her insurance in the Institute be amended according to the verification that she had attached from her place of employment. No reply was received to this letter.

(g) Approximately six months later, the complainant complained to the Institute's internal comptroller that the list of periods of her insurance in the Institute had not been amended and that her last letter had not been answered. The complainant sent a copy of the complaint to the head of the continuity of insurance desk.

(h) After some six weeks passed, the complainant received another certification from the Institute, identical to the amended certificate that had been sent to her about seven months earlier; even the date was the same.

(i) The complainant complained against the Institute for treating her in a way that she described as contemptuous. She voiced the suspicion that, "They didn't even read the letter…they just sent me an automatic, computerized reply."

2. Section 246 of the National Insurance Law [Consolidated Version], 5755-1995 (hereafter - the Law) stipulates the minimum period of time that a person is required to be insured to be eligible for a pension.

According to section 248 of the Law, "A person, male or female, who was insured as an insured employee for more than ten years prior to the first day that he or she was entitled to an old-age pension, the pension shall be increased by two percent for each year of insurance exceeding the initial

ten years of insurance for which the insurance premium was paid, but the increase pursuant to this section shall not exceed fifty percent."

The period of insurance recorded at the Institute is, therefore, extremely significant both in determining eligibility for an old-age pension and in determining the amount of the seniority increment. For this reason, it is very important that the certification is accurate and faithfully reflects the periods of insurance.

3. Following the Ombudsman's request to the Institute, a new certification of the period of insurance in the Institute was sent to the complainant. The new certification vested her with the maximum fifty percent increment for seniority, but it still did not mention all the months that she had worked. Following another request by the complainant, she was sent a full and updated certification.

A letter from a senior department head in the Institute was attached to the last letter. It stated that her requests had been handled properly and that the Institute had not caused any delay.

4. The Ombudsman ruled that the complaint was justified.

The complainant's request for certification of her periods of insurance in the Institute was handled negligently. Time after time, the Institute sent the complainant certifications containing mistakes, although it had the data necessary to issue a correct and precise certification. The complainant only received an accurate certification after the Ombudsman intervened.

5. The Ombudsman pointed out to the National Insurance Institute the defects that had been revealed in its handling of the complainant's matter and the need to prevent the recurrence of such defects in the future.