

# The Office of the Ombudsman and the Right to Access the Administration in the Welfare State

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In recent years, increasing recognition has been given to the importance of making social rights accessible in order to fulfil the notion of social citizenship. In an article from 2018<sup>1</sup>, which addressed the serious problem of non-take-up of social rights, Avishai Benish and Liron David proposed recognizing the right of all persons to access the administration for the purpose of taking-up the rights granted them by law. Following the theoretical and conceptual development of the right to access the administration, they called for conceptualization of this right and for the adoption of proactive policies in order to minimize non-take-up of rights. In recent years, progress has been made in the Israeli governments' approach to the take-up of rights; furthermore, Israeli judicial rulings and scholarly works have started to address the right to access the administration.

In the current article, we seek to examine the role of the Office of the Ombudsman (within the Office of the State Comptroller and Ombudsman of Israel) regarding to the right to access the administration. We assert that the Ombudsman can, and should, play a unique role in developing and promoting this right as an inseparable part of its institutional function as an Ombudsman. We will point out the principles and modi operandi that the Office of the Ombudsman can adopt, whether in handling complaints or increasing its own administrative accessibility. We will discuss in brief the challenges facing the Ombudsman in this role and will attempt to demonstrate, through illustrative examples of actual cases handled by the Ombudsman, how these principles and modi operandi can be implemented.

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<sup>1</sup> Avishai Benish and Liron David, *The Right of Access the Administration in the Welfare State: The (Non)-Take-Up of Social Rights and the Duty to Make Social Rights Accessible*, 19 MISHPAT UMIMSHAL LAW REVIEW (LAW AND GOVERNANCE LAW REVIEW), 395 (2018) (Hebrew).

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## Introduction

In recent years there is a growing awareness of the importance of take-up social rights in order to fulfil the notion of "social citizenship"<sup>2</sup>. The importance of this issue has been recognized in extensive academic literature<sup>3</sup> as well as in Israeli public reports, such as the report of the Committee on Socio-Economic Change<sup>4</sup>, the report of the Israel Committee for the War against Poverty<sup>5</sup> and several reports of the Israeli State Comptroller. As the Israeli State Comptroller stated:

"In a just society, which is founded on values of justice and equality, it is to be expected that the path to rights take-up be open and accessible, as far as possible, to the general public. The public authority, which is a trustee of the public, is obligated to grant the right to those entitled to it and should act to provide the public with the information at its disposal, especially information about the very existence of the right and the conditions for receiving it, in a full and transparent manner. Therefore, every public body that is authorized

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<sup>2</sup> The British sociologist Thomas Humphrey Marshall coined the term "Social Citizenship" as an elaboration on the perception of citizenship prevalent on the backdrop of the rise of the welfare state from the end of the 19<sup>th</sup> century, and in particular after World War II. It also reflects the growing recognition of social rights in the fields of health, education, employment and social security. See THOMAS HUMPHREY MARSHALL, *CITIZENSHIP AND SOCIAL CLASS AND OTHER ESSAYS*, 7, 40 (1950). See also Abraham Doron, *The Advancement of Social Citizenship as a Struggle for Social Justice*, 92 *SOCIAL SECURITY*, 75 (2013); HARTLEY DEAN, *SOCIAL RIGHTS AND HUMAN WELFARE* (2015).

<sup>3</sup> See for example the Taub Center for Social Policy Studies in Israel, *ACCESS TO SOCIAL JUSTICE IN ISRAEL* (John Gal and Mimi Ajenstadt Eds. 2009) (Hebrew); ISRAEL (ISSI) DORON, *OLD AGE IN COURTS OF JUSTICE: OLDER PERSONS AND AGEISM IN ISRAEL'S SUPREME COURT OF JUSTICE* (2013); NETA ZIV, *WHO WILL GUARD THE GUARDIANS OF THE LAW? LAWYERS IN ISRAEL BETWEEN STATE, MARKET AND CIVIL SOCIETY* (2015) (Hebrew); YUVAL ELBASHAN, *STRANGERS IN THE REALM OF THE LAW (ACCESS TO JUSTICE IN ISRAEL)* 35-36 (2005) (Hebrew); Einat Albin, *Introduction: Access to Law and Access to Justice*, 8 *HUKIM - JOURNAL OF LEGISLATION* 5 (2016) (Hebrew); Sagit Mor, *Accessible Justice for All: The Right to Access and Access to Justice - A Disability Perspective*, 8 *HUKIM - JOURNAL OF LEGISLATION* 15 (2016) (Hebrew); Roni Holler et al., *Take-up of rights in Israel: the State of Knowledge and Future Research Directions*, 113 *SOCIAL SECURITY* 5 (2021) (Hebrew) and the other publications in Vol. 113 *SOCIAL SECURITY* (2021), which was dedicated to the issue of rights take-up in the social security system. See also: HARTLEY DEAN, *SOCIAL RIGHTS AND HUMAN WELFARE* (2015); JEFF KING, *JUDGING SOCIAL RIGHTS* (2012); *SOCIAL RIGHTS IN EUROPE IN AN AGE OF AUSTERITY* (Stefano Matteucci & Simon Halliday eds., 2017); HANS DUBOIS & ANNA LUDWINEK, *ACCESS TO SOCIAL BENEFITS: REDUCING NON-TAKE-UP* (2015), OFFICE OF THE EUROPEAN UNION; PAMELA HERD & DONALD MOYNIHAN, *ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS* (2019), RUSSELL SAGE FOUNDATION.

<sup>4</sup> The committee established a special team for addressing the issue of accessibility of social services. See TAJTENBERG COMMITTEE, *REPORT OF THE COMMITTEE ON SOCIO-ECONOMIC CHANGE* 107 (2011).

<sup>5</sup> The report of the Israel Committee for War against Poverty addresses the issue of social rights take-up, pointing out, among other things, that "many people who live in poverty do not exercise their rights and do not enjoy the services that can help them alleviate their circumstances". ALALUF COMMITTEE, *REPORT OF THE ISRAEL COMMITTEE FOR WAR AGAINST POVERTY* 14 (2014).

to bestow a right, or has information about a right established for an eligible person in another body, should take steps to ensure the take-up of the rights and the accessibility of the information about them to the citizens, in accordance with the recommendations of this report. This should be done to ensure the implementation of the fundamental principle of social justice - not merely to anchor the rights on paper, but also to give those entitled the opportunity of exercising their rights in practice"<sup>6</sup>.

Similarly, in an article discussing the non-take-up of social rights, Benish and David pointed out the need to recognize the right of all persons to exercise the rights granted them by law<sup>7</sup>. According to Benish & David, similarly to the Israeli Supreme Court's recognition of the right to access the courts<sup>8</sup>, so should the right to access the administration be recognized, for the purpose of exercising rights. Following the theoretical and conceptual development of this right, Benish & David call for proactive acts of policy in order to remove barriers and promote access to the administration, with the aim of minimizing the non-take-up of rights.

In the current article, we seek to examine the role of the Office of the Ombudsman (hereafter - the Ombudsman), within the Office of the State Comptroller and Ombudsman, in relation to the right to access the administration. We assert that the Ombudsman can, and should, play a unique role in developing the right to access the administration as an inseparable part of its institutional role. We also contend that

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<sup>6</sup> STATE COMPTROLLER ANNUAL AUDIT REPORT 65C - FOR THE YEAR 2014 AND FOR THE ACCOUNTS FOR FISCAL YEAR 2013, 3 (2015), at 8 (Hebrew). The State Comptroller has recently published a follow-up report in the wake of this report, ANNUAL AUDIT REPORT 72A (PART ONE) TAKE-UP OF SOCIAL RIGHTS - FOLLOW-UP AUDIT 865 (2021) (English abstract); see also the report on "Communal Mental Rehabilitation" which addresses in depth the issue of rights take-up in this field, STATE COMPTROLLER ANNUAL AUDIT REPORT 66C - FOR THE YEAR 2015 AND FOR THE ACCOUNTS FOR FISCAL YEAR 2014, 575 (2016) (Hebrew); for the follow-up report addressing the take-up of rights in the Tax Authority, see STATE COMPTROLLER ANNUAL AUDIT REPORT 72A (PART TWO), 5782-2021, RECEIVING TAX BENEFITS FROM THE TAX AUTHORITY, EXTENSIVE FOLLOW-UP (2021) (English abstract).

<sup>7</sup> Benish and David, *supra* note 1.

<sup>8</sup> CA 733/95 Arpal Aluminium Ltd. v Klil Industries Ltd, 51(3) PD 577 (1997) (Isr.); HCJ 2171/06 Cohen v Speaker of the Knesset, paragraph 19 of Supreme Court President Beinisch's Judgement (Nevo, 29.8.11) (Hebrew); Permission to Submit Civil Appeal 993/06 State of Israel v Dirani, 65(1) PD 65(1) 438 (2011) (Isr.); YORAM RABIN, ACCESS TO COURT AS A CONSTITUTIONAL RIGHT (1998) (Hebrew); Yoram Rabin, *The Right of Access to Court - From an Ordinary Right to a Constitutional Right*, 5 HAMISHPAT 217 (2000) (Hebrew); ISSACHAR ROSEN-ZVI, THE CIVIL PROCESS 131 (2015) (Hebrew); AHARON BARAK, THE RIGHT TO ACCESS THE JUDICIAL SYSTEM, Shlomo Levin's Book at 31 (Asher Grunis, Eliezer Rivlin and Michael (Mikhail) Karayanni Eds. 2013) (Hebrew); SHLOMO LEVIN, CIVIL PROCEDURE THEORY - INTRODUCTION AND FUNDAMENTAL PRINCIPLES 30-38 (2d ed. 2008) (Hebrew); Albin, *supra* note 3. See also the special volume (8) of the Hukim journal (2016) (Hebrew) which was dedicated to the issue of the accessibility of the law.

the take-up of rights and ensuring the accessibility of the administration are an inseparable part of the Ombudsman's function, in light of its purpose and vision. We claim that the tools granted to the Ombudsman by law<sup>9</sup> are particularly suitable for advancing the right to access the administration. Furthermore, the institutional position of the Ombudsman between the citizen and the government authorities enables it to identify problems of accessibility to rights and to offer a solution, both at the individual level and the systemic level, thereby assimilating the concept of accessibility of the administration and the take-up of rights within the bureaucratic mechanism while integrating and synergizing the role of the Ombudsman with the functions of the State Comptroller<sup>10</sup>.

In the first part of the article we will review in brief the conceptual and theoretical basis for the right to access the administration and the main insights gained from the literature dealing with the non-take-up of rights. In the second part, we will put forward our argument regarding the role of the Ombudsman in developing and promoting this right. Firstly, we will present the Ombudsman institute and the reasons for our belief that it can, and should, take measures to promote the right to access the administration in the welfare state. Afterwards, we will present the principles and *modi operandi* that the Ombudsman can adopt, both in the investigation of complaints and in making the Ombudsman institute itself accessible. We will demonstrate how these principles and *modi operandi* can be implemented through examples based on cases handled by the Ombudsman. In the last part, we will summarize our assertion and the challenges inherent in its implementation.

## **The Theoretical Framework: Non-Take-Up of Rights and the Right to Access the Administration**

The non-take-up of rights is a phenomenon whereby persons entitled to benefits or social services do not exercise their right to receive the benefit or service for which they are eligible by law<sup>11</sup>. Elsewhere, we conducted a comprehensive review of the

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<sup>9</sup> State Comptroller Law, 5718 -1958 [Consolidated Version] (hereafter - the State Comptroller Law).

<sup>10</sup> In this article, we will focus our argument and analysis on the rights existing in the social realm. This is a central issue for us and the main concern of the Office. It is important to point out, however, that the argument and analysis in the article are relevant, with the necessary adaptations, to rights in other fields as well.

<sup>11</sup> Wim van Oorschot, *Non-Take-Up of Social Security Benefits in Europe*, 1(1) JOURNAL OF EUROPEAN SOCIAL POLICY 15-30 (1991); HANS DUBOIS & ANNA LUDWINEK, ACCESS TO SOCIAL BENEFITS: REDUCING NON-TAKE-UP (2015), OFFICE OF THE EUROPEAN UNION; Holler et al., *supra* note 3, at 6.

research literature on this subject in the fields of law and social policy<sup>12</sup>, and for the purposes of our argument in the current article we shall briefly present here the main insights gained from that review.

Firstly, while the legal literature on access to justice focuses mainly on the barriers to accessing the judicial system, in the social fields barriers to accessing the administration are the main obstacle to exercising rights. The importance of accessing the courts is obvious, but in the field of social rights and their take-up the courts are secondary, while the administration constitutes the first port of call for the take-up of social rights<sup>13</sup>.

Secondly, in the social policy literature scholars have pointed out the serious problem of non-take-up of rights, particularly among disadvantaged communities. Despite the methodological difficulties inherent in measuring non-take-up of rights, it has been found that in Israel and Europe the rate of non-take-up of rights ranges between 40% to 70%<sup>14</sup>. Moreover, the findings reveal that the rates of non-take-up of rights are higher among eligible persons who are older, who live alone, who are immigrants or members of minority ethnic groups, or who have disabilities<sup>15</sup>. The research also

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<sup>12</sup> Benish and David, *supra* note 1, at 401-409.

<sup>13</sup> Amir Paz-Fuchs asserted this in relation to the scant research existing on the administrative aspects of the access to rights: "The law in general, and legal rights in particular, apply to and influence not only (and some would say - not mainly) the lawcourts. Legal rights are supposed to influence the actions of the administrative authorities, the government bureaucracy and the various welfare institutions. These objects of rights are much less accessible to legal researchers, and they remain, principally, the realm of research of sociologists and researchers from the field of social work". Amir Paz-Fuchs, *Why do rights on paper remain on paper? Access to Social Rights - Theoretical Background*, 29 ACCESS TO SOCIAL JUSTICE IN ISRAEL 34 (John Gal and Mimi Ajzenstadt Eds. 2009) (Hebrew).

<sup>14</sup> Holler et al., *supra* note 3, commented on research in different countries of Europe as showing rates of non-take-up of rights that are higher than 40%, and stated that the problem of non-take-up of rights is exacerbated when dealing with matters of benefits or selective services based on income tests. On these issues, the not-take-up of rights is likely to reach 70% and above (though attention should be paid to the many differences between the various selective programs). Furthermore, it is also frequently possible to identify prominent not-take-up in programs that are not based on income tests, but are contingent on a functional evaluation or employment tests (such as disability pension or unemployment benefit). In recent years, the National Insurance Institute has also started to measure the scope of non-take-up, and from its analysis of the data a similar picture emerges, whereby there is a higher rate of non-take-up of rights in the field of selective benefits, with income support at the top of the list. Daniel Gottlieb, *Take Up of Social rights in Israel: Empirical Evidence*, 11 SOCIAL SECURITY 17 (2021); Benish and David, *supra* note 1, at 401-403.

<sup>15</sup> Regarding persons with disabilities, see Mor, *supra* note 3.

shows that generally people living in poverty are more susceptible to non-take-up of rights<sup>16</sup>.

Thirdly, the various barriers found in the literature can be classified into three main groups of barriers to the take-up of rights in the interaction with administration authorities<sup>17</sup>:

- a. **Awareness and knowledge barriers** include people's lack of knowledge of the existence of the right, its terms, its content and the manner in which it is exercised. Naming of rights and the ability to understand that a particular state of affairs may bestow a legal right is crucial for take-up<sup>18</sup>. In this context, the non-take-up of rights is likely to stem from lack of information, from erroneous information, or from partial information as to what the right includes, what its terms are and what the rules for exercising it are<sup>19</sup>. In most cases, the information is published by the administration in general terms and the person entitled to the right is perceived as responsible for taking active measures to exercise it<sup>20</sup>.
- b. **Bureaucratic barriers** are reflected in the overall interaction between persons claiming the benefit or service and the administrative system, from the seeking of information pertaining to eligibility to the receiving of the services. These barriers include various burdens imposed on the citizen, such as the requirement to attend in person, the filling out of documents and forms, repeated demands to supplement information and provide documents<sup>21</sup>, and

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<sup>16</sup> In certain situations, it is possible that the rate of rights take-up among vulnerable groups will be higher. Benish and David, *supra* note 1, at 403-404. See also: EYAL PELEG, POVERTY CHALLENGE OF ADMINISTRATIVE LAW (2013) (Hebrew).

<sup>17</sup> *Id.*, at 404-409. In this respect, it is important to point out that these barriers are frequently intertwined and, together with the data in the literature on the percentage of take-up of rights, emphasize the sad reality of non-take-up of social rights.

<sup>18</sup> Dafne Barak-Erez, *From Perceived Injustices to Legal Remedies: After Naming, Blaming, Claiming*, 3 MA'ASEH MISHPAT 33 (2010) (Hebrew).

<sup>19</sup> EYAL PELEG, POVERTY CHALLENGE OF ADMINISTRATIVE LAW (2013), 257-258 (Hebrew).

<sup>20</sup> Lia Levin, "Coalition of Exclusion": Non-Take-Up of Eligibility for Assistance in the Social Security System by Persons Living in Extreme Poverty, 225 ACCESS TO SOCIAL JUSTICE IN ISRAEL 240 (John Gal and Mimi Ajzenstadt Eds. 2009) (Hebrew).

<sup>21</sup> Krumer-Nevo and Barak coin the incessant demands of the administrative authority to provide forms and documents, notwithstanding their having been sent in the past, the "missing document syndrome". Michal Krumer-Nevo and Adi Barak, *Service Users' Perspectives on the Benefits System in Israel: A Participatory Action Research*, 72 SOCIAL SECURITY 11 (2006) (Hebrew).

so on. To these burdens can be added the fact that the different authorities are divided and uncoordinated in a manner that sometimes requires filing different requests with different bodies relating to the same problem, and sometimes requires a financial outlay for exercising the right (for example, a request to pay a former debt or provide a private opinion as a preliminary condition for examining eligibility). The addition of these burdens makes the "administrative cost" entailed in exercising the rights heavier, to the point that some of the researchers in the field of the bureaucracy of welfare have described this situation as generating "red tape deterrence"<sup>22</sup>.

- c. **Psychological and cultural barriers** relate both to potential claimants and to the administrative authority. On the part of the administrative authority, these barriers are reflected in a negative attitude towards service users, especially communities living in poverty or belonging to excluded groups, such as assuming that they are trying to obtain money that they do not deserve or perceiving them as frauds or lazy persons. On the part of the claimants, often they lack trust in the system and the administrative system is perceived as an "enemy"; there is also a psychological barrier whereby they do not have a sense of entitlement and they feel that they are to blame for their situation. An additional barrier can be the social distance between the claimants and the administration staff. Among claimants from vulnerable groups, this distance can generate a feeling of isolation and the impression that the service provider is unable to understand their language and culture.

In light of these barriers, Benish and David asserted that it is not sufficient to recognize social rights in legislation, but we need also to recognize the right of all persons to exercise their rights when engaging with the administration. In their opinion, this right obligates the administration to take active measures to remove existing barriers and to pro-actively make these rights accessible to the public in general and to disadvantaged communities in particular<sup>23</sup>. This argument is based on three normative sources<sup>24</sup>. The first normative source is the principle of the rule of

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<sup>22</sup> Paz-Fuchs, *supra* note 13, at 53 and the references there. See also PAMELA HERD & DONALD MOYNIHAN, *ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS* (2019), RUSSELL SAGE FOUNDATION; Peleg, *supra* note 16.

<sup>23</sup> Despite the emphasis on the active aspects of the rights, attention needs to be paid to the fact that the right to access the administration also has a negative aspect, in the sense that the authority is prohibited from restricting the possibility of individuals exercising their rights or from imposing administrative demands that make it unreasonably difficult to access the take-up of the rights.

<sup>24</sup> Benish and David, *supra* note 1, at 410-419.



law. The rule of law does not only include the negative dimension, which restricts the administrative authority to the specific power granted it by law, but also the "positive aspect of the rule of law", which obligates the administrative authority to take active measures to ensure that all persons receive what they are entitled to by law. This positive aspect reflects the approach whereby the action of the administration should fulfill the legislator's perception of social justice. When the non-take-up of rights is prevalent, it signifies that the desire of the legislator, as reflected in the law, is unfulfilled and that the principle of the rule of law has been violated.

The second normative source is the right to access justice<sup>25</sup>. This right is based on the notion that human rights lose significance when there are no effective mechanisms for exercising them<sup>26</sup>. However, usually the right to access justice is focused on the access to the courts. But since in relation to social rights it is the administration that plays a central and crucial role in the ability of individuals to exercise their rights, the right to access justice should be extended to its "pre-judicial" stage, to the stage of accessing the administrative authorities. The right to access justice is also based on the notion that not everyone suffers to the same extent from the barriers to accessing justice, and that these disparities violate the very essence of the principle of equality before the law<sup>27</sup>. The fact that the problem of rights non-take-up is more prominent among disadvantaged communities testifies to the violation of the principle of equality before the law at its essence<sup>28</sup>.

The third normative source of the right to access the administration stems from the social rights themselves. Every social right inherently contains the right to exercise it through the administration. Unless the right can be exercised via the administration,

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<sup>25</sup> Some consider the right to access justice a civil right (since it deals with the legal system), some see it as a social right (due to its being essential for implementing social legislation) and some associate it with the unique category of foundational rights whose purpose is to ensure the upholding of all the other rights. Andrea Durbach, *The Right to Legal Aid in Social Rights Litigation*, SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW 59 (Malcolm Langford ed., 2008). In this context it is interesting that Marshall, who posited the social citizen idea, referred to the right to access justice as the "right to justice" and pointed out that "[it] is of a different order from the [other rights], because it is the right to defend and assert all one's rights on terms of equality with others and by due process of law". See Marshall, *supra* note 2, at.10-11.

<sup>26</sup> As pointed out by Cappelletti and Garth: "The possession of rights is meaningless without mechanisms for their effective vindication", Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFF. L. REV. 181 (1978); Hilary Sommerlad, *Some Reflections on the Relationship between Citizenship, Access to Justice, and the Reform of Legal Aid*, 31 J. LAW SOC. 345 (2004).

<sup>27</sup> Cappelletti & Garth, *supra* note 25, at 181-182. See also Mor, *supra* note 3, at. 52 and the citation there.

<sup>28</sup> Peleg, *supra* note 16.

we fail to achieve its purpose. This is the interpretation given by the Israeli law to the right to access the courts<sup>29</sup>, and in our opinion this is how the right to access the administration should be treated. This interpretation is also consistent with the Covenant on Economic, Social and Cultural Rights and its explanatory notes<sup>30</sup>.

The right to access the administration must therefore tackle lack of knowledge and awareness barriers, bureaucratic barriers, and psychological and cultural barriers facing persons wishing to exercise their rights<sup>31</sup>.

There has been progress in the Israeli government's approach to the issue of rights take-up in recent years, recognizing that active measures must be taken to make rights, especially social rights, accessible<sup>32</sup>. For example, government decisions have been made regarding public service and bureaucratic burden reduction<sup>33</sup>; an inter-ministerial committee published standards and measures for service provision, which apply to government ministries and the ancillary units<sup>34</sup>, and a government service guide has been published<sup>35</sup>. Furthermore, the Government ICT Authority is trying to integrate these standards in its interface with the public bodies by advancing digital services, making government databases accessible to the public and creating a single site for government services, including a "personal account" for transferring

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<sup>29</sup> As pointed out by Barak, "Every fundamental right includes the right of access to its substance". Barak, *supra* note 8, at 43-44. Barak added that the very "power" to turn to the court is protected by the basic law as a constitutional right, irrespective of the constitutional standing of the "essential" right itself. See also Levin, *supra* note 8, at 34.

<sup>30</sup> Benish and David, *supra* note 1, at 418.

<sup>31</sup> For details of the content of the right to access the administration and its potential characteristics, and for a discussion of the different considerations for delineating the scope and types of the various duties emanating from it - *id.* at 419-425.

<sup>32</sup> Peleg in his book suggests instituting active duties to improve people in poverty, see *supra* note 16, at 589-590.

<sup>33</sup> Decision 2097 of the 33<sup>rd</sup> Government: *Broadening the fields of government computing activity, encouraging innovation in the public sector and advancing the national initiative "Digital Israel"* (10.10.14); Decision 1933 of the 34<sup>th</sup> Government: *Improving the transfer of government information and making government databases accessible to the public* (30.8.16).

<sup>34</sup> The headquarters of the Government ICT Authority (Information and Communications Technology) SUMMARY REPORT, INTER-MINISTERIAL COMMITTEE FOR DETERMINING STANDARDS FOR THE PROVISION OF PUBLIC SERVICES (2016).

<sup>35</sup> The unit for improving government service for the public at the Government ICT Authority Service Guide (2016).

information between the individual and the government<sup>36</sup>. Judicial rulings<sup>37</sup>, and scholarly works both in law and social policy<sup>38</sup> have also started referring more extensively to the right to access the administration and to the recognition of the significance of barriers in relation to accessing the administration. Notwithstanding, the right to access the administration is yet a right in the making, and the journey towards developing, incorporating and implementing it, in all its aspects, is still long. In the current article we will try to establish the potential role of the Ombudsman in this context.

## The Right to Access the Administration and the Office of the Ombudsman

### The Office of the Ombudsman

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<sup>36</sup> STATE COMPTROLLER ANNUAL AUDIT REPORT 71C - 2021, ASPECTS OF PUBLIC SERVICE AT THE ISRAEL LAND AUTHORITY 1753 (2021) (English abstract).

<sup>37</sup> For example, see Permission for Civil Appeal 2334/18 Ephroni v Holocaust Survivors' Rights Authority at the Ministry of Finance (Nevo, 10.3.19) (Hebrew); Administrative Petition (Tel Aviv-Jaffa) 26217-07-18 Inga Oren v Ministry of Construction and Housing (Nevo, 16.3.21) (Hebrew); Administrative Petition (Tel Aviv- Jaffa) 28922-03-17 Devorah Elbaz v Ministry of Construction and Housing (Nevo, 1.4.19) (Hebrew); Administrative Petition Appeal 3554/19 Ministry of Construction and Housing v Devorah Elbaz (Nevo, 31.5.20) (Hebrew); Administrative Petition (Tel Aviv-Jaffa) 2531-05-18 Benayah Moshe v Ministry of Construction and Housing (Nevo, 31.3.20) (Hebrew). It should be pointed out that in the appeal to the Supreme Court the parties reached a compromise whereby it was decided to revoke the judgement; Administrative Petition Appeal 4136/20 Benayah Moshe v Ministry of Construction and Housing (Nevo, 11.10.21) (Hebrew); Administrative Petition (Tel Aviv-Jaffa) 47545-01-18 Sigalit Levi v Ministry of Construction and Housing (Nevo, 4.8.21) (Hebrew); National Insurance Appeal 59462-12-15 Monica Malu v National Insurance Institute (Nevo, 24.8.18) (Hebrew).

<sup>38</sup> For example, see Yaniv Roznai and Nadiv Mordechay, *On the Access to legislation*, 19 LAW AND GOVERNMENT 429 (2018) (Hebrew); Becky Cohen Keshet, *Circle Visits or Circular Criticism*, 8 MA'ASEH MISHPAT 179 (2018) (Hebrew); Holler et al., *supra* note 3; Tal Arazi and Yael Sabag, TAKE-UP OF RIGHTS AND SOCIAL SERVICES FOR CITIZENS - STRUCTURING A CONCEPT AND WORKING PRINCIPLES (MYERS-JDC-BROOKDALE INSTITUTE 2020) (Hebrew); Benjamin Porat, *The Right to a Dignified Living in Light of Jewish Law: Its Constitutional Status*, 51 MISHPATIM 1 (2020); Dana Peer, *The Right of the Public to Understand: A Call to Reform Legal Writing in Israel - From Highfaluting Sentences to Simple Legal Language*, 45 IYUNEI MISHPAT 1 (2021) (Hebrew); Sharon Yadin, *The Democratic Paradox of COVID-19 Regulations*, 24 LAW AND GOVERNMENT (2021) (Hebrew); Doron Dorfman, *Between Pity and Suspicion: Perceptions of Disability Rights as Privileges and of Misuse by the Law*, 3 LAW, SOCIETY AND CULTURE 421 (2020) (Hebrew); Sivan Rosso Carmel, Iris Sokolover-Ya'akovi and Michal Krumer-Nevo, *What is the Difference between Take-Up of Rights and Active Take-Up of Rights? Active Take-Up of Rights in the "Families Encounter Opportunity Program"*, 106 SOCIAL SECURITY 1 (2019) (Hebrew).

The Office of the Ombudsman (Ombudsman) was established in 1971 with the amendment to State Comptroller Law, 5718-1958 [Consolidated Version], to which a seventh chapter was added. The amendment provides for the appointment of the State Comptroller as Ombudsman, and the Office of the Ombudsman was established as an ombuds institution<sup>39</sup>. The background to the establishment of the Ombudsman was the understanding that the heavy dependence of individuals on the administrative bodies and the difficulty in finding their way in the bureaucratic maze was likely to harm their rights and prevent them from receiving the rights to which they were entitled. For these reasons there arose the need to establish an accessible, objective and effective state institution that would assist individuals in their interaction with the governing authorities, without the need to go to court<sup>40</sup>, and in 1988 the status of the State Comptroller as Ombudsman was anchored in Section 4 of Basic Law: The State Comptroller.

The Ombudsman office is the body through which the Ombudsman investigates complaints against some of the public bodies that are subject to audit by the State Comptroller, such as government ministries, local authorities, government companies or enterprises or state institutions, as well as their office holders<sup>41</sup>. Any

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<sup>39</sup> The Ombudsman is an institution with historic roots in ancient governmental systems, and it expanded in its modern form, during the 1950s, in Denmark and New Zealand. See Isaac Becker, *The Birth of the Modern Ombudsman Concept*, 63 IYUNIM - THE ISRAEL JOURNAL OF STATE AUDIT 105 (2018). For a comprehensive theoretical analysis of this organization see TREVOR BUCK, RICHARD KIRKHAM & BRIAN THOMPSON, *THE OMBUDSMAN ENTERPRISE AND ADMINISTRATIVE JUSTICE* (2016); *RESEARCH HANDBOOK ON THE OMBUDSMAN* (Marc Hertogh & Richard Kirkham eds., 2018).

<sup>40</sup> In the explanatory notes to State Comptroller Bill, it is written that despite the internal supervision of administration authorities and the audit existing outside the administrative system (such as the court system), there is still a need to establish an additional independent and effective body that can handle complaints swiftly. This is because there are still areas and matters that for various reasons are not supervised by the courts, whether because of their nature or because citizens avoid bringing them to the courts due to difficulties and limitations in activating them, even if they believe there are grounds for complaining. Explanatory notes to State Comptroller Bill (Amendment no.5), 5729-1969, Bill 858, 403 (hereafter - State Comptroller Bill) (Hebrew); see also MIRIAM BEN-PORAT, *BASIC LAW: THE STATE COMPTROLLER, INTERPRETATION OF THE BASIC LAWS 27 - 28* (Yitzhak Zamir Ed. 2005) (Hebrew). The Bill was filed on the basis of the recommendations of a joint committee comprising the Knesset Committee, the Finance Committee and the Constitution, Law and Justice Committee. The joint committee recommended establishing an institution for handling public complaints and vesting the function of Ombudsman in the State Comptroller. Ben-Porat, *id.*, at 27-33. See also *OMBUDSMAN ANNUAL REPORT 47* (2021), at 18 (Hebrew). For the option open to an injured person to turn to the courts or file a complaint with the Ombudsman, see HC 453/84 Iturit Communications Services Ltd. v Minister of Communications 38(4) PD 617 (1985) (Isr.), at 622; BEN-PORAT, *BASIC LAW: THE STATE COMPTROLLER, INTERPRETATION OF BASIC LAWS 29-30* (Hebrew); *OMBUDSMAN ANNUAL REPORT 46* (2020), at 14 (Hebrew).

<sup>41</sup> Under Section 36 of the State Comptroller Law, a complaint may be filed against any body subject to audit by the State Comptroller under sections 9(1)-9(6) of the law, and against additional bodies listed in section 9(7)-(8) of the law, to which the Ombudsman or the State Audit Affairs Committee decided to apply the seventh chapter of the law, and notification of this has been published in the

person who feels harmed by the acts of these bodies may contact the Ombudsman<sup>42</sup>. The complaint may be filed, free of charge, verbally, in writing or online<sup>43</sup>. The Ombudsman is authorized to examine if the act or omission complained about was performed without legal authority, in contravention of the law, in violation of good governance, or was excessively inflexible or flagrantly unjust<sup>44</sup>. The investigation is conducted by complaint investigators at the Ombudsman (almost all of whom are lawyers with a Master of Laws<sup>45</sup>), and at the end of the investigation the Ombudsman determines whether or not the complaint is justified, and he may notify the person complained about and their superior of the need to rectify the defect disclosed by the investigation, the way of rectifying it and the time period for doing so<sup>46</sup>.

We believe that the characteristics of the Ombudsman - the powers and tools that the legislator vested in it and the ways in which the Ombudsman has implemented them over the years - give it the standing of an important public body that can advance the right to access the administration in an optimal manner, both through

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official gazette.

<sup>42</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 33.

<sup>43</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 34. According to the law, the complaint shall be filed in writing, but it is also possible to file it verbally in the reception bureaus, where the Office's representative writes down the complaint as dictated by the complainant.

<sup>44</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 37.

<sup>45</sup> At the end of 2020, the Office comprised 91 lawyers, three social workers, 18 investigation auxiliary staff, three substitute staff members, two articulated clerks and eight students. OMBUDSMAN ANNUAL REPORT 47, at 18 (Hebrew).

<sup>46</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 43. The section does not provide direct powers of enforcement, but lays down that if the response of the public body does not satisfy the Ombudsman he may bring the matter to the knowledge of the relevant minister or before the State Audit Affairs Committee. Furthermore, judicial rulings have laid down that the authority is expected to comply with the Ombudsman's directives, and "it is permissible to assume that as a rule the Ombudsman's decision will be fully respected in practice, and whoever fails to do so will have to answer to Israeli public opinion and the Knesset [parliament]." H CJ 384/71 Dudai v Harel 25(2) PD 555 (1971) (Isr.); Iturit case, *supra* note 37; H CJ 129/07 Haddad v Israel Police Legal Aid Committee (Nevo, 26.11.09) (Hebrew); see also Ben-Porat, *supra* note 37, at 30. In H CJ 9223/10 Movement for Quality Government in Israel v Prime Minister (Nevo, 19.11.12) (Hebrew) the court ruled that sweeping and unexplained disregard for the Ombudsman's recommendations cannot be considered reasonable, and giving insufficient weight to the Ombudsman's recommendations is likely, under certain circumstances, to be seen as unreasonable. In this regard, Yitzhak Zamir wrote that the court's findings were of pragmatic importance, "since wherever the supervised body fails to comply with the State Comptroller's recommendations, be they recommendations included in a report or opinion or recommendations made following a complaint to the Ombudsman, a person with a legal case may request a remedy from the court". YITZHAK ZAMIR, 4 THE ADMINISTRATIVE AUTHORITY 2373, *supra* note 33 (2017) (Hebrew).

the investigation of complaints filed with it and by making its services accessible to the public. There are four main reasons for this:

Firstly, take-up of rights and making the administration accessible to the public are an inseparable part of the role of the Ombudsman, in light of its purpose and mandate. From the outset, the Ombudsman was established to help the public with the problems encountered by it in its interface with the administration, and since then it has served as an institutional source of which one of the main functions is to further rights and improve good governance and public service in the public bodies, through the investigation of specific complaints<sup>47</sup>. This perception of the role of the Ombudsman was developed by the Ombudsmen over the years<sup>48</sup>, including the present Ombudsman, Mr. Matanyahu Engelman, who in his vision for the Ombudsman emphatically laid down: "The Ombudsman is an objective, professional and accessible body for investigating complaints received from any person for the purpose of upholding rights and advancing effective and just public service for all sectors of society."<sup>49</sup>

Accordingly, the **super-goals** of the Ombudsman relate to increasing access to the public administration, exposing the work of the Ombudsman to the population in general, and marginalized communities in particular<sup>50</sup>, and strengthening the relations and cooperation with the public bodies to spur them into action<sup>51</sup>. The perception of this role, which emphasizes upholding the rights of people from all sectors of society, as well as making the Ombudsman itself accessible to the public at large, is very much in line with the right to access the administration.

Secondly, the Ombudsman has at its disposal powers and tools that are particularly suited to advancing the right to access the administration. This is reflected in broad

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<sup>47</sup> See State Comptroller Bill, *supra* note 37; Ben-Porat, *supra* note 37, at 29-32; OMBUDSMAN ANNUAL REPORT 47, at 18 (Hebrew).

<sup>48</sup> See the opening remarks of State Comptroller and Ombudsman Judge (ret.) Joseph Shapira, OMBUDSMAN ANNUAL REPORT 45 (2019) (Hebrew). See also the preamble of State Comptroller and Ombudsman Judge (ret.) Micha Lindenstrauss, OMBUDSMAN ANNUAL REPORT 37 (2011) (Hebrew).

<sup>49</sup> OMBUDSMAN ANNUAL REPORT 47, at 17 (Hebrew).

<sup>50</sup> This is reflected in the State Comptroller and Ombudsman's vision and super-goals. OFFICE OF THE STATE COMPTROLLER AND OMBUDSMAN AUDIT REPORT FOR THE YEAR 2020 UNDER FREEDOM OF INFORMATION LAW 5758-1998 (2021), at 17-21 (Hebrew). This consequently also influences the goals, aims and assignments set down in the Ombudsman's annual work schedule.

<sup>51</sup> *Id.*

grounds for investigation, flexible procedures, unique investigatory abilities and multifarious remedies, as follows:

- **Broad grounds for investigation:** The grounds for the Ombudsman's investigation include typical administrative law causes, as well as other causes such as flagrant injustice and excessive inflexibility. These grounds for investigation enable the complainants to file complaints about matters that are not generally suitable for litigation in the law courts or that are not worth the complainant's pursuing a legal procedure, which entails paying court and lawyer's fees<sup>52</sup>.
- **Flexible procedures:** The Ombudsman is permitted to investigate complaints in any manner that it sees fit and is not bound by rules of procedures or rules of evidence<sup>53</sup>. Furthermore, **unlike the courts, the complaint investigation procedure is inquisitorial**, not adversarial<sup>54</sup>, and the Ombudsman also has the discretion to terminate the investigation or broaden it for reasons of efficacy or policy<sup>55</sup>. This flexibility enables the complaint investigators to identify actively the legal categories that match the complainant's claims, even if the complainant did not raise them, and to act in a manner that focuses on giving the complainant a relevant answer, sometimes even on a systemic level, without being bound by the restrictions of legal procedure. In appropriate cases, the Ombudsman can also investigate complaints by mediation, which is conducted free of charge and with the parties' consent<sup>56</sup>. The mediation

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<sup>52</sup> For example, over a third of the complaints filed with the Office concern matters of public service, complaints that generally do not reach the courts. These matters include lack of response to an inquiry, delay in handling requests, problems with a call center or the provision of accessible and optimal services, the publishing of misleading information, and others. OFFICE OF THE OMBUDSMAN ANNUAL REPORT 46, at 2.

<sup>53</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 41(a).

<sup>54</sup> Notwithstanding, the investigation includes giving the public body to right to be heard. See State Comptroller Law, 5718-1958 [Consolidated Version], § 41(b); Ben-Porat, *supra* note 37, at 35-37.

<sup>55</sup> Broadening the investigation is part of the practice that has evolved from the perception of the systemic role of the Ombudsman's function. See subsection "Examples" below.

<sup>56</sup> The mediation process is conducted by staff of the Office that are not the investigators of the complaint itself. These mediators have been trained for the task and are qualified to conduct a mediation process. For further details, see OMBUDSMAN ANNUAL REPORT 47, at 29 (Hebrew); for an elaboration on the mediation process at the Office of the Ombudsman see also MICHAL ADAR & REVITAL ROTTENSTEIN, "THE STATE MEDIATOR" - MEDIATION PROCEDURES AT THE OFFICE OF THE OMBUDSMAN AND CHANGES IN THE LAST DECADE" (published herein) (Hebrew).

procedure can assist the administrative authority and its staff in undergoing a process of change, accepting responsibility for the case, apologizing to the complainant and incorporating changes in a procedure that is more amicable and less formal.

- **Investigatory abilities:** The Ombudsman may demand, from any person or body, information and documents that it deems likely to assist in the investigation of the complaint<sup>57</sup>. In addition, the Ombudsman's investigatory toolbox includes unique instruments, such as onsite inspections, "undercover clients" and swift investigation by phone or remote meetings<sup>58</sup>.
- **Flexible remedies:** The Ombudsman also has broad discretion and considerable flexibility concerning the remedies that it is authorized to grant. According to the law, the Ombudsman may point out the need to rectify a defect in the manner and within the period that it determines, and monitors the rectification of the defect<sup>59</sup>.

Thirdly, the institutional position of the Ombudsman between the complainants and the administrative authorities enable it to identify problems of access to rights, to resolve them and integrate the concept of accessibility of the administration and the take-up of rights as part of the public service ethos. On the part of the complainants, since filing a complaint is free of charge and does not require legal representation, the Ombudsman is more accessible than the courts and thus receives many complaints, including about matters that are considered personal and minor by the courts, such as discounts and benefits. On the part of the authorities, the Ombudsman enjoys a special status when engaging with them, which combines formal and informal aspects: on the formal level, the law grants the Ombudsman

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<sup>57</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 41(d) and Basic Law: The State Comptroller, § 3.

<sup>58</sup> For example, following a complaint about the failure to be answered by the courier post call center of the Israel Postal Company Ltd. in Be'er Sheva, a staff member of the Office called the center several times, but was not answered. Another member of staff went to the center and while there, phoned the center. It transpired that the telephone did not ring and for this reason the center's staff were not answering calls. The Office presented these findings to the Israel Postal Company Ltd. executive and requested rectification of the defect. OMBUDSMAN ANNUAL REPORT 47, at 29 (Hebrew).

<sup>59</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 43(a) - (b). As said, while this section does not prescribe direct powers of enforcement, judicial rulings have determined that the authority is expected to respect the Ombudsman's directives. See the Dudai case, *supra* note 43; the Iturit case, *supra* note 37; the Haddad case, *supra* note 43; the Movement for Quality Government in Israel case, *supra* note 43; Zamir, *supra* note 43.



authority to provide a remedy and point out the need to rectify defects detected by it; on the informal level, the complaint investigators are in direct daily contact with administration sources, from the junior public servants to senior members of staff. This ongoing relationship, and the fact that the Ombudsman is considered an objective source working in the public interest, enables open discourse between the Ombudsman and the authorities in a manner that can promote the finding of more creative solutions than are possible in court rulings. It also encourages the integration of new norms through dialogue. Furthermore, the fact that the Ombudsman also serves as a **professional and guiding resource for ombudsmen and complaint investigators in the entire public sector**<sup>60</sup> enables it to promote and incorporate the perception of the accessibility of the administration through these sources as well.

Fourthly, the perception of the systemic function of the Ombudsman enables it to identify problems of access to rights and to solve them not only on the individual level, but on the systemic level as well. The systemic approach is deeply rooted in the logic of the activity of ombudspersons around the world<sup>61</sup>, and also forms the basis of the activity of the Ombudsman of Israel, whose policy and orientation advocate for the systemic approach "from the specific to the general"<sup>62</sup>. The significance of this is that in appropriate cases, where the complaint discloses a systemic defect, the Ombudsman will not suffice to solve the individual's problem, but will broaden the investigation to the systemic defect and will point out the need to rectify it. This is, of course, also true in cases where a systemic rectification is required in relation to the right to access the administration. Furthermore, the additional function of the Ombudsman as State Comptroller enables him to instruct the audit staff of the Ombudsman to examine the complaint not only from the perspective of the complainant, but also from a comprehensive perspective that takes into account the interest of the general public. Thus, the Ombudsman and state audit fertilize each other through their work. The information gathered by the audit divisions relating to

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<sup>60</sup> For example, in recent years the Office has held peer learning events dealing with the investigation of complaints in the public sector. In 2019 the Office held a widely attended conference on the subject: "The Multi-Dimensional Protection of Social Rights in Israel", to which all those dealing with the investigation of complaints in the public sector were invited. In 2021 the Office held an online peer learning event to mark the publication of its annual report for the year 2020; at the event there was a panel that addressed the issue of the Ombudsman as a key factor in the process for improving public service. The Office advanced recognition by the Knesset (parliament) of National Ombudsdays, whose function is to raise awareness of the Office and its activity and of the important work of the ombudspersons and public complaints commissioners in the public bodies. On this matter see OMBUDSMAN ANNUAL REPORT 47, at 5 (Hebrew).

<sup>61</sup> Ben-Porat, *supra* note 37, at 21 and the references there; Hertogh and Richard, *supra* note 36.

<sup>62</sup> OMBUDSMAN ANNUAL REPORT 47, at 18 (Hebrew).

the matter of the complaints and the state audit reports assist the Ombudsman and optimize the complaint investigation procedure, and vice versa: the information disclosed by the complaints received by the Ombudsman serve as a "sensor" for issues coming from the public and can serve the audit divisions when auditing the public bodies<sup>63</sup>. Likewise, in the field of advancing take-up of rights and access to the public administration, this double role of the State Comptroller and Ombudsman is also an advantage<sup>64</sup>.

## **The Ombudsman as Promoter of the Right to Access the Administration**

### **Principles and modi operandi in the investigation of complaints against administration authorities**

The combination of the vision of the Ombudsman as an objective, professional and accessible source for the investigation of complaints in order to uphold rights and advance efficient and just public service for all sectors of society, and the characteristics of the Ombudsman's activity, generate a broad spectrum of possibilities for the Ombudsman. It can execute it as a promoter of the right to access the administration, both in its investigation of complaints against the administration and in internally within the organization through its own accessibility. We are unable, and do not intend, to exhaust the whole range of possible actions at the Ombudsman's disposal when engaging with the administration. As we will demonstrate further on, the Ombudsman already acts in a manner that advances the right to access the administration, and it does so as a matter of course and as an inseparable part of its activity. However, in this part we seek to lay down and refine six principles and modi operandi through which the Ombudsman can develop the right to access the administration, promote it and implement it in its work with the authorities.

**The first principle of action** promoting the perception of the role of the Ombudsman as advancing access to the administration is the integration of the barrier prism -

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<sup>63</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 47(b); Ombudsman, *id.*, at 18; Ben-Porat, *supra* note 37, at 276-277.

<sup>64</sup> See STATE COMPTROLLER ANNUAL AUDIT REPORT 72A (FIRST PART), *supra* note 6; STATE COMPTROLLER ANNUAL AUDIT REPORT 71C, *supra* note 33; STATE COMPTROLLER ANNUAL AUDIT REPORT 72A (SECOND PART), *supra* note 6.

knowledge and awareness barriers, bureaucratic barriers, and psychological and cultural barriers - as an inseparable part of the complaint investigation. The prism of barriers must fit into the process of the legal and administrative examination of complaint investigation. While examining the facts and legal framework, it is also important to take into consideration the context of the complaint, including power gaps between the administrative authorities and the complainants, and other structural aspects, especially when dealing with vulnerable communities<sup>65</sup>. Understanding the context is essential for identifying the true problem at the base of the complaint and for considering the solution and *modi operandi* that will succeed in solving it in the specific case, and sometimes systemically.

**The second principle of action**, which is tightly connected to the first principle, is to adopt an interpretation of the grounds for the Ombudsman's investigation and of the social rights it deals with that promote accessibility. The Ombudsman can interpret social rights in legislation as inherently including the duty to make them accessible<sup>66</sup>. In addition, it can develop the grounds of good governance (including the principles of due process and transparency), the prevention of flagrant inflexibility or blatant injustice in a manner that promotes access to the administration and to rights. For example, arguments regarding the legality of the action can focus not only on the rule of law in its liberal-negative sense but also on the positive dimension of the rule of law, namely that the principle of legality obligates the authority to take active measures to ensure that all persons receive what they are entitled to by law<sup>67</sup>. Furthermore, the aims of advancing effective and just public service and improving public service, which are part of the Ombudsman's vision and goals, can form the basis for the development of practices that focus on removing barriers and designing an administration that is accessible to all.

**The third principle of action** is paying special attention to accessibility for complainants from vulnerable communities. The Ombudsman and the administration authorities obviously serve all sectors of the population, but the research literature shows that vulnerable communities in particular suffer from barriers relating to

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<sup>65</sup> For an analysis of the aspects of power gaps and their effect on the accessibility of vulnerable communities, see Michal Krumer-Nevo, *Poverty-aware Social Work - A Paradigm for Social Work Practice with Families in Poverty*, 35(3) *SOCIETY AND WELFARE* 301 (2015); Elbashan, *supra* note 3.

<sup>66</sup> Benish and David, *supra* note 1, at 416-418.

<sup>67</sup> This perception is rooted in the understanding that sometimes, and especially when social rights are concerned, the authorities are required to adopt the approach of "get up and do it", in order to fulfill the legislator's desire and the perception of social justice embodied in legislation. For a broader analysis of the positive dimension of the rule of law, see the text next to footnote 23.

receiving service from the public administration<sup>68</sup>, and thus special attention and effort must be invested in the accessibility of the Ombudsman itself and the administrative authorities to these communities<sup>69</sup>.

**The fourth principle of action** is pro-activeness or reaching out, deriving from the fields of care and welfare and meaning actively assisting people. In the present context, the meaning of reaching out is that the authority "makes the first move" and does not wait for the individual to approach it, for example by initiating the sending of a notification to a potential beneficiary<sup>70</sup>. The application of this principle is not simple, since as a rule, the Ombudsman cannot initiate the investigation of an issue that was not the subject of a complaint. One possible solution to this is wide publicity of the Ombudsman and its activity, which can raise awareness, as well as collaboration with other bodies, both governmental and civil, that can refer people to the Ombudsman<sup>71</sup>. Another option is that when the Ombudsman is aware of a problem in accessing the administration but has not received a complaint that can be investigated, it can convey the information to the state audit, which by nature is an initiating body, and this way, the two bodies can complement each other. Furthermore, the principle of reaching out can be reflected in two additional aspects of the Ombudsman's activity. One aspect relates to the activity of the Ombudsman itself: while investigating a complaint filed, the Ombudsman can be proactive in identifying barriers and removing them. From this aspect, the broad grounds for investigation and the flexible procedures, the inquisitorial approach and the wide investigatory abilities, discussed above, enable the Ombudsman to go beyond the specific matter raised by the complainant. The second aspect relates to maneuvering the public bodies into adopting a proactive approach to make themselves more accessible. This principle is consistent with the super-goals of the Ombudsman in spurring public bodies into action<sup>72</sup> and comports with the proactive duty of

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<sup>68</sup> *Supra* note 14 and the text by it.

<sup>69</sup> See Benish and David, *supra* note 1, at 403-404. This principle is also consistent with the principle of advancing marginal communities that is part of the Ombudsman's vision. Office of the State Comptroller and Ombudsman, *supra* note 47. For a discussion on the encounter of poverty and administration, see Peleg, *supra* note 16, at 105-271 (Section 2).

<sup>70</sup> Peleg, *supra* note 16; Benish and David, *supra* note 1, at 420; Yuval Elbashan, *Preventative Lawyering as a Tool for Working with Disempowered Communities*, 4 MA'ASEH MISHPAT 151 (2011) (Hebrew).

<sup>71</sup> *Infra* note 74 and the text by it.

<sup>72</sup> OMBUDSMAN ANNUAL REPORT 45 (Hebrew); OMBUDSMAN ANNUAL REPORT 37 (Hebrew).

accessibility incumbent on the authorities by virtue of the right to access the administration<sup>73</sup>.

**The fifth principle of action** is aspiring to make systemic rectification while using individual complaints as a springboard for amending a general defect that affects a large group of people, not only the individual complainant. In the context of this article this means that in appropriate cases, where the investigation of a complaint discloses a systemic defect relating to the right to access the administration, the Ombudsman will not suffice to solve the individual's problem, but will extend the investigation to the systemic defect and will point out the need to rectify it.

**The sixth principle of action** is the principle of persistence and follow-up. The Ombudsman is authorized by law to monitor the rectification of the defects revealed by the investigation. The development of the follow-up mechanism and the wise use of it, to ensure that the public bodies amend the defects, can be indispensable for generating systemic change and improving the integration of the perception of the right to access the public administration within the different state authorities.

## **Making the Ombudsman Administratively Accessible**

In this section, we will discuss the accessibility of the Ombudsman itself to the public. As said, from the outset the legislator created procedures aimed at making the services of the Ombudsman accessible to the public: contacting the Ombudsman does not cost money, the complainant does not require legal representation or know how to make legal allegations, the acts or omissions about which a complaint may be filed and the grounds for investigating are given broad definition, filing the complaint does not entail a complicated procedure and complaints may also be filed about seemingly minor issues<sup>74</sup>. The complaint may be filed in a variety of ways that accommodate the whole of the population (by post, by fax, by email, by online form, via the website or social networks, and in exceptional cases also by phone). The Ombudsman operates regional reception bureaus that are distributed over a relatively wide geographical area<sup>75</sup>; the bureaus are accessible to persons with

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<sup>73</sup> For further details on this duty of the administration authorities and its characteristics, see Benish and David, *supra* note 1, at 419-424.

<sup>74</sup> State Comptroller Law, 5718-1958 [Consolidated Version], § 40(a) grants the Office authority not to investigate complaints that are vexatious or troublesome, but rare use is made of this provision.

<sup>75</sup> The Office operates regional reception bureaus in Nazareth, Lod and Be'er Sheva, in addition to the reception bureaus situated in the offices of the State Comptroller and Ombudsman in the three major cities: Jerusalem, Tel Aviv and Haifa. In order to make the residents of the periphery aware of the

disabilities<sup>76</sup>; their staff speak a variety of languages; the public can file complaints with them, receiving the assistance of the Ombudsman's staff in writing the complaint and filing it. Furthermore, since the Ombudsman is authorized to investigate the complaint in any manner that it sees fit and is not bound by rules of procedure or evidence, it is able to handle the complaint swiftly<sup>77</sup>.

In recent years, as part of the State Comptroller and Ombudsman's vision, steps have been taken to raise the awareness and knowledge of people in the community as to the existence of the Ombudsman, its functions and the ways in which its services can be used. For example, the staff of the Ombudsman conduct webinars and lectures in different bodies, such as non-profit organizations; legal clinics; community centers and civil organizations; units for the take-up of rights and welfare departments within the different authorities; for high school pupils and in the media in different languages. In addition, it hosted an event called "Meet the Comptroller and Ombudsman", which was attended by the staff of the Office and civic studies teachers, and it launched a course on the Office of the State Comptroller and Ombudsman, in conjunction with the Supervision of Civic Studies unit within the Ministry of Education. Furthermore, the Office of the Ombudsman analyses the data of complaints filed with it and reaches conclusions relating, among other things, to the accessibility of its services to the public<sup>78</sup>, and it holds conferences and study

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Office, its authority regarding the investigation of complaints and the ways of filing complaints, the regional bureaus hold awareness-raising activities in the periphery, including at the welfare offices of the local authorities in the periphery. The regional bureaus also conduct awareness-raising activities for social organizations and volunteer organizations.

<sup>76</sup> See Equal Rights for Persons with Disabilities Law, 5758-1998; Equal Rights for Persons with Disabilities (Customized Accessibility of Service) Regulations, 5773-2013.

<sup>77</sup> The advantages of this flexibility were also reflected in the ability to handle complaints swiftly during the Covid-19 pandemic, when the Office of the Ombudsman tailored its investigation procedures to the prevailing restrictions and challenges. For example, schemes for the swift handling of the problems of complainants were put into effect whereby daily contact was made with the relevant staff within the public bodies; mediation processes were permitted to be conducted online and meetings with public bodies were conducted via video calls, etc. OMBUDSMAN SPECIAL REPORT NO. 1 - INVESTIGATING COMPLAINTS DURING THE FIRST WAVE OF THE COVID-19 PANDEMIC (2020), at 10-11.

<sup>78</sup> For example, after finding that the least number of complaints per resident were from the northern district, the Office of the Ombudsman began a series of actions for raising the awareness of residents of the North as to its services: three "Ombudsman in the Community" centers were opened in the periphery of the North, in conjunction with non-profit organizations that deal with communities that are worthy of special attention; in 2020 the Office operated a legal clinic within the Faculty of Law at the Zefat Academic College, with the aim of raising the awareness of the northern community of the Ombudsman and to acquaint the students with the importance of handling complaints to uphold the rights of the individual and promote good governance. In this regard see Notice to the Public "The Office of the Ombudsman, within the Office of the State Comptroller, has opened a clinic for learning and practical work at the faculty of Law within the Zefat Academic College" (not dated).

days in the local and international arena, both for its staff and for ombudspersons and complaint handlers in the public sector dealing with access to rights<sup>79</sup>.

In this respect, the Ombudsman is noticeably proactive in increasing its accessibility to the public in general and to vulnerable communities in particular<sup>80</sup>. The challenge facing the Ombudsman is how to continue these activities and initiatives as part of the promotion of the right to access the administration. In this context, three matters requiring discretion and thought can be recalled: whether the Ombudsman should insist that the complainants exhaust proceedings with the administrative body about which they are complaining, and if so, to what extent<sup>81</sup>; how the Ombudsman exercises the discretion granted it under Section 39 of the State Comptroller Law, whereby as a rule the Ombudsman will not investigate complaints about acts that are subject to objection, contestation or appeal procedures, or complaints filed after a year has elapsed from the date of the act to which it relates, unless there is a special reason justifying their investigation<sup>82</sup>; whether it is possible to be proactive regarding complainants who have already filed a complaint but cease to cooperate in the course of the investigation, and to what extent they should be urged into action in these cases<sup>83</sup>.

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<sup>79</sup> Since 2020 the Office has been hosting events for exposing the annual report: in 2021 it held a study day for its staff on the topic "Making justice accessible in Israel - rights, barriers and what is in between"; in 2020 an international conference was held that addressed coping with the Covid-19 crisis, while emphasizing the accessibility of services during the pandemic; in 2021 an additional international conference was held on the theme of older persons.

<sup>80</sup> For a review of all the activity of the Office of the Ombudsman in this field, see OMBUDSMAN ANNUAL REPORT 47, at 5, 8-9 (Hebrew).

<sup>81</sup> It is important to point out that this requirement is subject to discretion and exceptions, and the Office of the Ombudsman takes into account considerations relating to the characteristics of the complainants, their identity and their ability to exhaust proceedings in their entirety. However, it is in any case necessary to consider the relationship between this requirement and the accessibility of the Office of the Ombudsman itself and define policy that is obligated to making the Office of the Ombudsman accessible. To this end, the Office of the Ombudsman has recently set down an internal directive relating to the exhaustion of proceedings.

<sup>82</sup> These issues raise the question whether the Ombudsman must take into account considerations relating to the characteristics, identity and ability of complainants to file an objection or contestation, or to insist on their rights so that they do not become obsolete. The Ombudsman must also cope with the tension between taking these considerations into account and values of equality.

<sup>83</sup> Since the complainants did not respond to the Office of the Ombudsman's inquiries, in 2018 the Ombudsman closed 396 files, which constituted 3% of the total number of complaints that the Ombudsman was authorized to investigate; in 2019 the Ombudsman closed 356 complaints, which constituted 2% of the total number of complaints that the Ombudsman was authorized to investigate; in 2020 the Office closed 483 complaints which constituted 3% of the total number of files that the Ombudsman was authorized to investigate.

In order to make the right decision in these and other matters, it seems that systematic research and the gathering of data from the databases of the Ombudsman and other sources, along with analyzing the data with an eye to accessibility barriers, will enable the Ombudsman to adopt a data-based policy, while at the same time adapting the tools required for making the Ombudsman accessible itself.

## Case Studies

In this part we wish to demonstrate how the principles and *modi operandi* of the Ombudsman, which promotes the right to access the administration, can be put into practice. The examples are based on cases that have been handled by the Ombudsman<sup>84</sup>, and they teach us, as pointed out above, that the Ombudsman already works to a large extent in a manner that advances the right to access the administration. They also teach us that the challenge facing the Ombudsman is to enhance these principles and *modi operandi* and institutionalize them, while recognizing the right to access the administration and developing the required organizational ability. Although the examples presented are based on the type of barriers disclosed by the complaints, each case study presents a combination of the different principles and *modi operandi*. The case studies illustrate that the principles and *modi operandi* are intertwined, as well as the fact that the handling of specific cases can form the foundation for systemic changes.

### Tackling knowledge and awareness barriers

**Duty to make a certain right public:** In the course of the investigation of a complaint that concerned the right to exemption from standing in line at the Population Authority, it transpired that due to the policy of the Population Authority to encourage the making of appointments in advance, it had avoided publicizing that senior citizens aged 80 and above enjoy an exemption from standing in line. Following the investigation of the complaint and the Ombudsman's intervention, the Population Authority amended its public notice about the exemption, so that it also included information about the right to exemption from standing in line for the entire population eligible. Similarly, the investigation of the complaint of a pregnant woman

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<sup>84</sup> Almost all the examples are from the field of social rights, which plays a central role in the Office's activity, but with the necessary adjustments, these principles can, of course, apply to other fields as well.



who had not received the exemption from standing in line, despite being eligible by law - due to the Tax Authority's staff being unaware of the right - led to the Tax Authority issuing an organized procedure for its staff for implementing the right to exemption from standing in line for the three eligible classes of the population<sup>85</sup>.

**Duty to notify persons making inquiries of their rights:** The Ombudsman received the complaint of a public housing tenant - a mother of three who stood at the head of a single-parent household. The mother applied to purchase the apartment under the Public Housing Law. The price she was asked for the apartment, which also included the building rights of the apartment, was NIS 514,850. The complainant contacted the Ombudsman, claiming that the price of the apartment was too high for her and that the Ministry of Construction and Housing was refusing to allow her to purchase the apartment without the building rights. Following the Ombudsman's intervention, the complainant's issue was resolved: the Ministry of Construction and Housing notified the Ombudsman that the Exceptions Committee had decided to allow the complainant to purchase the apartment with only part of the building rights, on which there was a discount of some NIS 190,850. Notwithstanding, the investigation, which was extended to the systemic issue as well, disclosed that the public housing companies did not inform their tenants that in addition to the possibility of purchasing the apartment with the full building rights, they had a further option of purchasing the apartment without building rights or with partial building rights at a reduction<sup>86</sup>. The Ombudsman brought to the attention of the Ministry of Construction and Housing the findings of the complaint investigation, as well as its stance regarding failings in the directive to the public housing companies. In response, the Ministry of Construction and Housing accepted the Ombudsman's opinion and agreed that apartment purchasers must be informed of all the possibilities at their disposal when purchasing an apartment that has building rights; it would accordingly amend the directive and disseminate it among the companies that managed public housing<sup>87</sup>.

**Duty to give information about an additional right:** The Ombudsman investigated a complaint about a municipality's refusal to grant the complainant a discount in municipal tax according to an income test. In the course of the investigation it

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<sup>85</sup> OMBUDSMAN ANNUAL REPORT 46, at 63 and 23 (Hebrew), regarding a case where after amending the illegal charging of an entrance fee, the authority failed to rectify its notice to the public on the matter.

<sup>86</sup> Public Housing Law (Purchase Rights), 5758-1998, § 9.

<sup>87</sup> OMBUDSMAN, ANNUAL REPORT 47, at 149 (Hebrew).

transpired that the complainant was not entitled to this discount, but that her personal circumstances were likely to afford her eligibility to a discount in the category of a discount for the needy<sup>88</sup>. The investigation revealed that even though the representatives of the municipality were aware of the circumstances of the case, they did not notify the complainant of the additional discount and did not recommend her filing the appropriate application. Following the intervention of the Ombudsman, and even though the fiscal year had already ended, the municipality notified the Ombudsman that it would allow the complainant to file the appropriate application. The Ombudsman pointed out to the municipality that in light of the complainant's situation and taking into account her circumstances, the municipality should help her to exercise her rights and should endeavor to put her on the appropriate track for receiving the discount<sup>89</sup>.

**Duty to give advance notice of termination of services:** The complainant complained that the Ministry of Health had stopped providing services for her son, who has a mental health disability, in the framework of the Rehabilitation Basket<sup>90</sup>. Following the intervention of the Ombudsman, the Ministry of Health agreed to continue delivering the services to the son via a different service provider, and the provision of services was renewed. However, the investigation of the complaint also disclosed a systemic defect in the procedure for terminating the delivery of rehabilitation services, and particularly in the manner of informing the persons undergoing rehabilitation of the intention to terminate the services. In a meeting held with the responsible sources at the Ministry of Health, the Ombudsman's stance was accepted whereby the persons undergoing rehabilitation must be informed in writing of the intention to terminate the rehabilitation services and of the reasons for doing so, and in appropriate cases, details must be furnished as to the actions that they may take to continue receiving the services. The Ministry of Health undertook to start acting accordingly<sup>91</sup>.

**Duty to notify of right of appeal:** The Ombudsman received the complaint of a woman who contended that the Department for Social Services at the municipality

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<sup>88</sup> Discount under Regulation 7 of Economic Arrangements Regulations (Discount in Municipal Tax), 5753-1993.

<sup>89</sup> Ombudsman's decision in B's complaint against a local authority (2021).

<sup>90</sup> The provision of services for rehabilitation in the community for persons with mental health disabilities is regulated under Community Rehabilitation of Persons with Mental Health Disability Law 5760-2000.

<sup>91</sup> OMBUDSMAN ANNUAL REPORT 45, at 64 (Hebrew).

had, after many years, stopped approving her food vouchers. It transpired that the Department of Social Services had not specified in its decision that the complainant could file an appeal with the Ministry of Welfare and Social Security (hereafter - Ministry of Welfare), and the investigation disclosed that the staff of the Department for Social Services thought that there was no right to appeal this decision. The investigation of the complaint, which extended to the Ministry of Welfare as well, revealed that in accordance with the law and the Ministry's viewpoint, persons receiving the service had the right to appeal to the Ministry of Welfare against every decision of the Department for Social Services regarding care or a material remedy. Following the investigation, the Ministry of Welfare issued a notification to all the departments for social services within the local authorities, clarifying the duty to inform applicants of the right to appeal the decisions of these departments<sup>92</sup>.

**Duty to provide language accessibility:** The Ombudsman investigated a complaint against a public housing company whose investigators demanded that an Arab-speaking tenant sign a form written in Hebrew agreeing to a visit by an investigator. The tenant's refusal to sign the form was held against her, and her application for public housing was refused on the grounds of lack of cooperation. Following the investigation, the Ministry of Construction and Housing decided that the form agreeing to the visit would from then on be in Arabic too, and that the complainant would be allowed to restart the application for public housing. Subsequently, an investigator visited the complainant's home with a form written in Arabic<sup>93</sup>.

## **Coping with bureaucratic barriers**

**Duty to publicize precise and prominent contact details:** The Ombudsman received a complaint about the delay on the part of the Medical Cannabis Unit, within the Ministry of Health, to handle the complainant's application to renew her license for medical cannabis. The investigation disclosed that the complainant had sent her application to incorrect email addresses published on the website of the Ministry of Health, while the Medical Cannabis Unit was receiving applications and documents from patients via a different email address that appeared in small letters only at the bottom of the application form for receiving a license to use cannabis. The Ombudsman notified the Medical Cannabis Unit that it must publish its contact details openly and clearly, to prevent other patients from sending requests and

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<sup>92</sup> OMBUDSMAN ANNUAL REPORT 47, at 37 (Hebrew).

<sup>93</sup> Decision of the Ombudsman in S's complaint against a government ministry (2016).

documents to an incorrect email address and erroneously assuming that their application was being handled<sup>94</sup>.

**Enhancing technological accessibility:** A disabled person at the Rehabilitation Department within the Ministry of Defense, whose disability is below 20%, was asked to send documents to the department by fax only. The complainant contended that the department was obligated by law<sup>95</sup> to provide him with a digital means of sending the documents, while the department claimed that under Section 2(a) of the law it was not subject to the provisions of the law, since it rarely provided services for disabled persons with a less-than-20% disability<sup>96</sup>. The complainant's matter was resolved shortly after he filed the complaint, but the Ombudsman continued to investigate the complaint from the systemic aspect.

In the course of the systemic investigation, the Ombudsman referred the Rehabilitation Department to the amendment to the law that had in the meantime been passed<sup>97</sup>, which clearly provides that a body that enables contacting it on a particular matter by fax must also enable contacting it on the same matter by digital means. The department consequently decided to change its policy systemically and to allocate to disabled persons whose disability is less than 20% a "personal account", where they can communicate with the department and transfer documents digitally and simply. The Ombudsman's investigation spurred the department into action and to a systemic rectification, and the solution found was creative in nature and an exception to the standard remedies<sup>98</sup>.

**Removal of coordination barriers between government ministries:** The complainant, a physical education teacher, complained that two years had elapsed since she had asked for a committee to convene to discuss her retirement on medical grounds. The investigation disclosed that the Ministry of Education and the Ministry of Health had failed to document the procedure for handling the application in an orderly manner, and defects were found in the transfer of information between the ministries, leading to the need for the complainant to provide documents that she

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<sup>94</sup> OMBUDSMAN ANNUAL REPORT 45, at 69-70 (Hebrew).

<sup>95</sup> Contacting Public Bodies via Digital Means of Communication Law, 5778-2018.

<sup>96</sup> Most of these patients are treated by the health funds, but occasionally they require documents and certifications provided by the department in order to receive benefits to which they are entitled, such as a discount in municipal tax, etc.

<sup>97</sup> Contacting Public Bodies via Digital Means of Communication Law (Amended), 5781-2020.

<sup>98</sup> Ombudsman's decision in S's complaint against a government ministry (2021).

had already sent. It was also found that the Ministry of Health had not sent the complainant a single, organized request for documents, and that the Ministry of Education, as her employer, had not monitored in an orderly fashion the progress of the handling of her case. Following the intervention of the Ombudsman, the complainant's matter was immediately presented before the medical committee; she was granted 100% disability and her application for retirement was approved. The bodies involved were asked to take measures to amend the defects and prevent their recurrence, and the Ombudsman was informed that the provisions relating to the transfer of materials and documents and the work interfaces between the bodies would be clarified<sup>99</sup>.

## **Tackling psychological and cultural barriers**

**Removal of cultural barriers:** The complainant, the childless second wife of a Bedouin man, failed to receive from the health fund an undertaking to cover the costs of IVF treatment on the grounds of her being a second wife. The investigation disclosed that the health fund's refusal was in contravention of the law, judicial rulings and directives on the matter, and following the intervention of the Ombudsman, that included a meeting between the complainant and representatives of the health fund, a solution was found and the complainant received approval for the funding of four treatments, as well as reimbursement of the money she had spent on treatments that she had already received. The Ombudsman also pointed out the defect to the Clalit Health Fund and the need to rectify it, and informed the Ministry of Health of the need to instruct the hospitals and health funds accordingly and to refine the procedures relating to this issue<sup>100</sup>.

**The right to speak in mother tongue:** The complainant, a Russian speaker, went to the office of the local planning and building committee. A Russian-speaking official who checked the permits received him and they spoke in Russian. The head of the department intervened in the conversation and asked the complainant if he was a new immigrant. The complainant replied that he was not a new immigrant, but that he preferred to speak in Russian in which he was fluent. The department head responded that the committee allows the staff of the department to speak in Russian with new immigrants only. The complainant filed a complaint about it, and following the intervention of the Ombudsman the mayor informed the staff of the municipality and the local planning committee that persons wishing to speak in their mother tongue should be permitted to do so, if a staff member who speaks their language is

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<sup>99</sup> OMBUDSMAN ANNUAL REPORT 46, at 100 (Hebrew).

<sup>100</sup> OMBUDSMAN ANNUAL REPORT 44 (2018), at 64-65 (Hebrew).

available. Upon the Ombudsman's request, the local committee sent the complainant a letter of apology and informed him of the mayor's directive<sup>101</sup>.

## Summary

In the present article, we asserted that the Office of the Ombudsman in Israel should adopt an approach that advances access to the administration as an inseparable part of its institutional role. As we have shown, making the administration accessible and promoting the take-up of rights are not new functions for the Ombudsman, and it deals with them on a daily basis. However, the challenge facing the Ombudsman is how to develop the principles and the *modi operandi* that fulfill this perception and institutionalize them systemically. To this end, the Ombudsman must develop a conceptual framework and organizational practices, as presented in the article, to give meaning to the right to access the administration. An important aspect of this issue is the integration of the barriers prism to the take-up of rights as a central prism for the staff of the Ombudsman in particular and government ministries as a whole. Thus, alongside the roles of the legislator and the courts<sup>102</sup> the Ombudsman can, and should, play an important role in the development of the right to access the administration, and in integrating the prism of rights take-up into the proper activity of the public administration.

Implementing the perception of the Ombudsman as promoting the right to access the administration is, of course, not free from challenges and dilemmas. Since the right to access the administration is still crystallizing, there continue to be significant difficulties relating to the definition of the concrete meaning of the right and the scope of the duty that it imposes on the authority, for example in situations in which upholding the right requires the investment of resources on the part of the administrative authority. As we wrote elsewhere<sup>103</sup>, it will be necessary to find relevant solutions to these challenges, according to the precise nature of the problem in exercising the rights, by applying criteria such as the importance of the right, the characteristics of the community that fails to exercise its rights, the nature of the barriers and the ability of the authority to tackle them by reasonable administrative and budgetary means. This function obligates finding the appropriate balance

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<sup>101</sup> OMBUDSMAN ANNUAL REPORT 47, at 33 (Hebrew).

<sup>102</sup> Benish and David, *supra* note 1, at 424-425.

<sup>103</sup> *Id.*, at 424.

between the required activism, in order to furnish the right content that will achieve its purpose and secure the complainants' rights<sup>104</sup>, and the required caution not to exceed the institutional limitations of the Ombudsman and the authorities with which it works. However, we believe that the powers and tools at the disposal of the Ombudsman, and the vision guiding it throughout the years, have given it the standing of a public body that can cope with these challenges and dilemmas and promote the right to access the administration in an optimal manner.

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<sup>104</sup> For example, on an interpretative basis and through existing doctrines of public law such as transparency, equality, accessibility and reasonableness, implementation of government decisions, etc.