

Topic : The Contribution of the Dual Function of the State Comptroller and Ombudsman of Israel to the Defense of Human Rights

Speaker : Orly Levinson-Sela, Adv.

**Deputy Director of the Office of the Ombudsman
(Office of the State Comptroller and Ombudsman, Israel)**

Dear Colleagues,

It is a great privilege to have the opportunity to speak to you about our unique integrated model of the Israeli State Comptroller and Ombudsman Office.

Let me start with a little bit of history. In 1949, shortly after the establishment of the State of Israel, the Office of the State Comptroller, the Supreme Audit Body, was established. At that time, no Israeli body had explicit statutory authority to investigate complaints from the public against governmental authorities; however, in practice many such complaints were submitted to the State Comptroller as the authority in charge of overseeing Israeli public administration. So the State Comptroller began to investigate such complaints on a voluntary basis, the feeling being that the quality of service given to the individual reflected the efficiency and competence of the administration subject to the Comptroller's oversight.

Years later, in 1971, the State Comptroller Law was amended so as to reflect this de facto situation and the functions of the Ombudsman were added to those of the State Comptroller.

In recognition of the importance of the new role given to the State Comptroller, it was decided that the Office of the Ombudsman would constitute a separate unit within the State Comptroller's Office. This unit is headed by a director appointed by the State Audit Affairs Committee of the Parliament of Israel, upon the proposal of the Ombudsman.

Today the Ombudsman receives over 15,000 complaints a year. The Office of the Ombudsman comprises 8 divisions that are engaged in the investigation process and an additional "front line" division that reads all incoming inquiries and provides immediate assistance where necessary. 80 lawyers and one social worker are employed to investigate the complaints and our employees speak several languages that are prominent in Israel: Arabic, English, Russian, Amaharic, French, Spanish and so on.

The combination of the roles of the State Comptroller and Ombudsman is highly beneficial for both the State Audit units and the Office of the Ombudsman and it enhances the ability to supervise public administration and promote its moral integrity. The Ombudsman provides assistance to the individual who has been wronged by an unjust or unlawful act on the part of the authorities, while the State Comptroller is concerned with improving administration and revealing defects in the activities of the executive authority. The State Comptroller examines the legality, orderly management, efficiency, economy and moral integrity of the audited bodies.

The Ombudsman's staff is assisted in the investigation of complaints by information amassed by the auditing units regarding the subject matters of the complaints. Obviously, a lot of information is accumulated by State Audit on various matters regarding an extensive range of audited bodies, including all government ministries, state institutions, local authorities, governmental corporations and so on. Because the staff of the Ombudsman and the staff of the audit institution are part of the same office, the staff of the Ombudsman has direct contact with those doing the auditing and receives all the information required regarding a specific topic or a certain body. This often helps with the investigation of the complaints.

Conversely, if a faulty method of administration or systematic violation of law is exposed during the Ombudsman's investigation of a complaint, then the Ombudsman's additional role as State Comptroller allows him to instruct the members of his staff engaged in state audit to inspect the subject matter of the complaint not only from the viewpoint of the complainant, but also from a general viewpoint that takes into consideration the overall public interest.

The dual functions and the protection of human rights

The dual authority and functions of the State Comptroller and Ombudsman enable him to embrace the fundamental precept of human and civil rights. The State Comptroller and Ombudsman places emphasis on the defence of human rights in the State of Israel, including social and economic rights of the weaker sections of society, since the true test of the attainment of human rights is the defence of the rights of these weaker sections. In his capacity as State Comptroller, Judge Joseph Shapira carries out audit in bodies in which there is a greater risk of violation of human rights, such as prisons, hospitals and the social welfare institute, and publishes reports regarding human rights, such as "Government Activities to Promote Food Security" and "Representation of Women in Senior Positions in the Public Sector". As Ombudsman he regards his role as the "Agent for Social Rights", especially in all that concerns protecting the rights of the weaker sections of Israeli society.

In order to increase the accessibility of the services provided by the Ombudsman to all members of the public, several branch offices were opened throughout Israel, especially in city centers that are characterized by a low socio-economic status. Minority groups use these branch offices frequently, and the staff of the branch offices consists of employees who speak various languages.

So, how does it actually work? How does the Israeli model of dual functions help enhance the protection of human rights?

Let me present two examples of the way the combined efforts of the audit units and the Office of the Ombudsman have helped in broadening the protection of human rights in Israel.

Rights of detainees

It is unnecessary to talk at length about the importance of strict adherence to legal detention procedures; detention, by its very nature, violates the fundamental human right of freedom, and the Police must therefore carry out detentions to the letter, in strict accordance with the relevant legal directives.

The Ombudsman receives yearly many complaints against the Israel Police. Some of the complaints relate to faulty detention procedures – unlawful detention or imprisonment of the suspect; inappropriate behavior of the policemen towards him; unlawful handcuffing of him during his detention or imprisonment; disregard of his medical or personal needs. Other complaints relate to the search procedures – whether on the body of the suspect or in his home, motor vehicle or tools.

A significant number of these complaints are found justified and we point out with severity to the Police that the procedures conducted by them violated the rights of the person interrogated (detained); in some cases our investigation promotes the making of changes to the regulations and the briefing of the policemen involved.

As a result of some of these complaints, one of our former State Comptrollers and Ombudsmen decided to examine (in the framework of State Audit) the use made by the Police of its powers to detain criminal suspects, the legality of its detentions, its reasons for imprisonment and its use of imprisonment for interrogation purposes.

The audit disclosed grave findings, including the fact that in some 40% of the detentions defects were revealed in the different stages of the detention procedure. 3% of the detentions were carried out without authority (illegal detention). In some 12.5% of the detentions, not even one of the causes justifying detention existed (unjustified detention), and in some 24.5% of the detentions, no investigatory actions were carried out in the course of the suspects' detention or the investigatory actions took an unreasonable length of time (unexploited detention).

Implementation of economic rights

Ensuring social justice is dependent not only on the existence of social rights in laws and regulations, but also on the implementation of these rights and their bestowal on all those entitled to them. It is the inspiration of a just society, which is based on values of justice and equality, that the enjoyment of rights be open and accessible to all.

Many of the complaints submitted to the Ombudsman relate to a failure to receive from the National Insurance Institute (the NII) benefits to which citizens are entitled. In order to receive a benefit, it is necessary to file a claim with the NII, but not all those eligible for the benefit know about their right and therefore do not file a claim for the benefit within a short time of their becoming eligible. According to the National Insurance Law, a claim for a benefit must be filed within twelve months of becoming eligible: if a claim is filed after this time, the benefit will be paid only a year retroactively.

Complaints investigated by the Ombudsman disclosed that it was a common occurrence that persons eligible for a benefit were unaware of their right and thus did not file a claim for the benefit on time. We therefore asked the NII to consider taking actions to locate eligible persons and notify them of their rights and of the need to file a claim on time – so as to prevent the violation of rights of the weaker sections of society. And indeed, in recent years the NII has taken measures to ensure the implementation of rights of ensured persons: on its own initiative it notifies ensured persons to file claims for benefits, pays some benefits without demanding the prior filing of a claim and alleviates the bureaucratic procedures for filing claims. Having said this, the investigation of complaints shows that the NII does not make efficient use of the vast and comprehensive information in its data bases in order to increase the rate of claims to benefits; furthermore, it shows that there are defects in the transfer of information between the NII and other public bodies and in the removal of bureaucratic obstructions in the implementation of rights.

In conjunction with the investigation of the complaints by the Ombudsman, the State Audit Institution carried out systematic audit of several bodies that provide benefits, including the NII. The audit disclosed that monetary rights to the value of at least 300 million New Shekels had not been transferred as required to beneficiaries. The audit mapped out the systematic blocks in the NII that prevented the implementation of rights, including, for example, the inaccessibility of information about the rights to benefits of the relevant populations from the bodies handling them, such as the social services and health authorities.

In the report that he published relating to this issue, the State Comptroller made a list of recommendations to the NII on ways of increasing the implementation of rights, such as: recommending the Ministry of Welfare to determine rules and methods for guiding the social workers in the welfare departments as to how to help their clients implement their rights. Another recommendation was for the Welfare Ministry to examine with the local authorities ways of concentrating budgets and distributing efficiently centers for the implementation of rights throughout the country.

This joint activity – of the ombudsman institution via the investigation of individual complaints and of the state audit institution via systematic and comprehensive audit – increased public awareness of the matter and propelled the NII to improve the situation.

Conclusion

In conclusion, the synergy between the two branches of the office – the Ombudsman and state audit - contributes greatly to the protection of human rights. The ability of one entity - the Ombudsman - to protect the rights of individual complainants, combined with the ability of the other - state audit - to point out systematic deficiencies in the protection of human rights by the authorities, enhance the protection of those rights.

I'd like to thank you all for giving me the opportunity to highlight the importance and the uniqueness of the dual role of State Comptroller and Ombudsman of Israel.