



The State Comptroller
and Ombudsman of Israel

Abstracts of Articles from the Jubilee Publication of the Office of the Ombudsman

The IOI, Sharing Best Practice and Supporting Global Standards during COVID-19

Peter Tyndall*

The author, outgoing President of the IOI (International Ombudsman Institute), opens by congratulating the Ombudsman of Israel on the celebration of the Office of the Ombudsman's 50th Anniversary. In his article, which reviews the activity of the IOI, the author explains that the goal of the IOI is to promote human rights and fundamental freedoms; the rule of law; democracy; the fairness of proceedings conducted by public institutions, and to advance the principles of transparency and justice for all - via the ombuds institutions around the world.

According to the author, the member ombuds institutions of the organization are characterized by innovation, both from the aspect of their modus operandi and from their manner of providing services; they adapt themselves to the vast activity taking place in the online communication channels, including the increasing use of social networks. All this they do while cooperating on a global level, in the framework of which they determine appropriate, joint standards, and compile joint written opinions that review relevant issues from several angles and from the perspectives of different ombudspersons around the world.

For example, the Ombudsman of Israel organized a webinar that discussed Israel's modus operandi on the backdrop of the Covid-19 pandemic. This webinar, which was attended by ombudspersons from different countries, provided the participants with knowledge that will help their countries in their struggle with the pandemic and its impact. In this context, the author elaborates on the success of the ombuds community in coping with the global Covid-19 crisis and praises the ability of the ombuds institutions to adapt to the conditions generated by the crisis and to provide assistance for those in need.

In his closing remarks, the author emphasizes that it is the duty of ombudspersons across the globe to ensure the realization of the individual's right to enjoy the services of good governance and the protection of his freedoms. He calls on the different ombuds institutions to conduct peer review for the purpose of streamlining and adapting to changing conditions.

[For the full article](#)

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“The State Mediator”

Mediation Procedures at the Office of the Ombudsman and Changes in the Last Decade

Michal Adar* and Revital Rottenstein Anani**

An article published in 2011 reviewed the mediation pilot initiated by the Office of the Ombudsman in 2008. Even then, the Office was a promoter and pioneer in the area of public mediation in Israel.

Now, over a decade later, the Office wishes to share details of its extensive and welcome activity in the field, its professional journey and the vast experience it has acquired over the years. All these preserve the Office's status as a leader in the field of public mediation, serving as a beacon and professional resource for other public bodies in the field.

The article reviews the nature of mediation in general; public mediation in Israel; the work of the Office of the Ombudsman in the field of mediation during the decade from 2011 to 2021; and the online mediation procedures that have come to the forefront over the last two years.

The article includes many examples of successful mediations conducted by the Office throughout the years. The variety of examples illustrate that mediation has become a key tool in the professional toolbox of the Office's staff, gaining momentum over the years as a successful alternative to the classic investigation procedure.

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The Many Conflicting Loyalties of the Israeli Ombudsman

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The Ombudsman of Israel owes many duties of loyalty, which often contradict each other; he owes a duty of loyalty towards the individual complainant whose complaint he handles; he owes a duty of loyalty to the general public, to which the complainant belongs; he owes a duty of loyalty to the public service to which he himself belongs, obligating him to protect this service. In addition, he owes a duty of loyalty towards the Public Cause as laid down in Basic Law: State Comptroller that determines his role, including protecting the values of the rule of law, integrity, good governance, effectiveness and efficiency of the public bodies. These are all simply duties emanating from his “professional I”, and they join the duty of loyalty emanating from his “I, as a human being” - his personal world of values. In the article, we will chart each and every group of duties of loyalty and clarify their many contradictions, while reviewing the history of their formation.

The article does not seek to offer an academic solution to the paradox stemming from these many conflicting loyalties, for the simple reason that no such solution exists. According to the author, all that can be done is to heighten awareness of this challenge and to hope that the person serving such a complex role will be aware of its issues and will duly consider the many conflicting duties arising within each complaint. This awareness also obligates the ombudsperson to examine continuously the conceptualizations that he/she makes in the matter and to take into account the possibility of ethical dilemmas between the different duties.

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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 granted to the importance of making social rights accessible, in order to fulfill the concept of social citizenship. In an article from 2018, which presented the serious problem of non-take-up of social rights, Avishai Benish and Liron David proposed recognizing the right of every person to exercise fully the rights granted him/her by law when engaging with the public administration - that is to say, recognizing the right to access the administration for the purpose of exercising rights. Following the theoretical and conceptual development of the right to access the administration, they called for the conceptualization of the right, the charting of barriers and the adopting of proactive policies by different bodies in order to minimize the phenomenon whereby rights are not exercised. In recent years, progress has been made in the government's approach to the exercising of rights; furthermore, court judgments, works of jurisprudence and social policy address the right to access the administration.

In the present article, we seek to examine the role of the Office of the Ombudsman, within the Office of the State Comptroller and Ombudsman, regarding the right to access the administration. We contend that the Ombudsman can and must play a unique role in developing and promoting the right to access the administration, as an inseparable part of his institutional function as 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 accessibility, in line with the approach that the Office should advance the right to access the administration. We will discuss in brief the challenges facing the Office in this role and will attempt to demonstrate through illustrative examples of actual cases handled by the Office, how these principles and modi operandi can be put into practice.

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“Ombudsman from the Torah - from where?” On Complaints and Complainants, Then and Now

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Anyone seeking the “ombudsman” institution or “complaints commissioner” in Jewish sources is likely to experience enormous disappointment. Even if one searches the Bible in its entirety, the writings of the Sages and the other sources of Jewish law, as well as modern Hebrew literature and that of past generations, it is doubtful he will discover even the minutest reference to this institution.

Indeed, the “Complaining Man” (or if you prefer, by derivation, “Homo Complainantus”) is a component of every human culture. The complaint is frequently restricted to the specific person, to his home and family, his workplace or the community to which he belongs. Sometimes, however, it erupts into the “public domain”, and is conveyed to an external body in the hope that the latter will handle the complaint and find a solution.

A study of diverse Jewish sources from across the generations teaches that along with formal institutions for handling complaints and arguments - chiefly a tribunal that investigates the matters at issue via a regulated legal procedure - different “ombudspersons” have arisen, in theory and in fact. Some have undergone organized institutionalization, while others have undertaken the role in practice, serving as a kind of “lightning rod” for complaints, even if not acting within an official capacity and lacking any assistance mechanism.

The article examines the societal phenomenon of complaints and the filing of complaints from different perspectives - linguistic, historical and literary, examining the lessons and insights that can be learnt today from Jewish sources brought down through the generations to the present day, in light, among other things, of the activity of the Office of the Ombudsman within the Office of the State Comptroller.

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There is an Ombudsman in Israel - The Establishment of the Ombuds Institution

Avital Levran* and Uriel Hess**

This article reviews the legislative procedures and discussions of the parliamentary (Knesset) committees that led to the enactment of State Comptroller Law (Amendment no. 5), 5731-1971, by which the Office of the Ombudsman was established. On January 3, 1966, a bill for the establishment of an institution for handling public complaints was tabled for a pre-discussion of the Knesset by Members of Knesset Joseph Shufman and Joseph Tamir. On February 2, 1966, MK Gabriel Cohen raised on the agenda the subject of handling citizens' complaints, following which the Knesset set up a committee chaired by MK Baruch Osnia. The main ideas raised in the Osnia Committee will be presented in the article, some of which continue to serve the Office of the Ombudsman in its work to this very day. In 1968, the Osnia Committee recommended vesting the role of ombudsman in the State Comptroller. The government adopted the committee's conclusions and on September 25, 1969, filed State Comptroller Law (Amendment no. 5), 5729-1969 Bill, which proposed adding to State Comptroller Law, 5718-1958 [Consolidated Version] a chapter dealing with the handling of complaints. After the bill passed the first and second readings in the Knesset, the latter set up a special committee to discuss it. As the article will detail, the ombudsman committee discussed different aspects relating to the function and authority of the ombudsman, such as whether he will be authorized to initiate the investigation of matters about which a complaint has not been filed, if he will have the authority to obligate the public body to provide him with information and documents, and if the public bodies will be obligated to implement his decisions. On March 31, 1971, the Knesset passed State Comptroller Law (Amendment no. 5), 5731-1971, which added to the law the seventh chapter relating to the handling of complaints.

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Thus in Israel, the State Comptroller also serves as Ombudsman. The amalgamation of the two functions in one office is unique in the world, and is beneficial both to state audit and to complaint investigation. The article will discuss the different aspects of this amalgamation of functions in one office. The accumulation of complaints against a particular body can indicate the need to audit it, and the reports of state audit sometimes illustrate the issue at hand by describing complaints handled by the Office of the Ombudsman on the matter, or by providing data on the number of complaints received on a particular matter or relating to a particular body. Even within the framework of complaint investigation in the Office, use is made of state audit reports and the report findings sometimes act as the basis for the Office's decision in a complaint. The seventh chapter of State Comptroller Law has been amended many times, and this article will review the main amendments, which have had an impact on the authority and role of the Ombudsman.

Exposers, Exposed: The Protection Accorded by the Ombudsman to Civil Servants who have Exposed Acts of Corruption

Tali Cohen* and Dikla Damti**

Some 40 years ago, on May 19, 1981, the 9th Knesset (Israeli parliament) passed Amendment no. 11 to State Comptroller Law, 5718-1958 [Consolidated Version], by which Sections 45A-E were added to the law.

These clauses deal with the handling of complaints of civil servants who have given information about acts of corruption and with the ways of protecting the rights of these employees, in cases where their actions are being restrained or they are otherwise being harmed (such as by being dismissed), as a result of their exposing the acts of corruption. The amendment was passed after a legislative process that lasted nearly two years. The process began in January 1979 as a private bill of former Knesset member Prof. Amnon Rubinstein, and led to the establishment of a public committee chaired by Adv. Moshe Ben Ze'ev (the Ben Ze'ev Committee), whose mandate was to discuss the protection of civil servants who expose acts of corruption. The Ben Ze'ev Committee found that the State Comptroller and Ombudsman, in both capacities, is the competent body for handling the matter of a civil servant deserving protection. The Committee recommended anchoring in the law the authority vested in the State Comptroller and Ombudsman, so that the protection granted would be valid and binding like a court judgement.

Since the amendment of the law, the Office of the Ombudsman has investigated hundreds of complaints of civil servants who have requested the protection of the Ombudsman after suffering harm as a result of exposing acts of corruption. Upon completion of the investigation, the Ombudsman must determine whether the complaint is justified and whether there is proof of retaliation entitling the complainant to some sort of remedy. The Ombudsman is empowered by State Comptroller Law to exercise broad discretion.

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The investigation of complaints of civil servants who claim that they are being victimized following their exposing acts of corruption poses no simple challenge at any stage of the complaint-handling process: during the investigation of the complaint, when the question arises as to whether the conditions for granting a protection order have been fulfilled; at the stage where the relief for the civil servant is determined; and after the investigation, following the claims of a civil servant as to the violation of the protection order issued by the Ombudsman.

Often during the investigation, tension arises between the importance of encouraging the exposure of acts of corruption and providing protection for the employee who exposed them, and the need to maintain the proper functioning of the public body; the Ombudsman is obligated to dispel this tension.

This article looks behind the scenes in the handling of these complaints by the Office of the Ombudsman, reviewing the legal provisions that deal with the protection of civil servants who have reported acts of corruption and examining the interpretation of the provisions throughout the years by different ombudspersons, while paying attention to the judgements of the different courts in general, and of the labour tribunals in particular.

Investigation of Complaints about the Execution (Debt-Collection) System: Review of the Development and Reflection on the Challenges facing the Office of the Ombudsman in its 50 years of Existence

Alex Mishkitblit*

The article examines the ongoing handling of one segment of complaints received by the Office of the Ombudsman, the national ombudsman of Israel - complaints about the system of debt collection. These complaints are extremely common, repeating themselves over the years. The article reviews the developments that have occurred in the handling of these complaints in the 50 years since the establishment of the Office, and describes the correlation between the trends identified and the structural changes and legislative reforms that have taken place in the Execution Law during those years.

The article presents the main types of complaints investigated or found not to be subject to investigation, out of the large variety of complaints filed with the Office by each of the three main “players” in the field of debt collection (the beneficiaries, the debtors and the third parties). It also presents the gradual broadening of the investigatory authority of the Office regarding new types of complaints reaching it over the years.

The author of the article tries to identify the main challenges that the Office is likely to encounter in the near future. These challenges are already beginning to emerge from:

- (1) changes in the field of technology and substantive law, regulating the collection of debts in Israel, especially since the transformation of the Israeli debt collection system from one using the method of adversarial litigation between the parties themselves to a system of administrative collection;**
- (2) the revolutionary reform of the insolvency laws which went into effect not so long ago.**

The author contends that the seventh chapter of State Comptroller Law can provide a sufficiently flexible legal basis for coping effectively with the expected challenges, as well as for internal streamlining, the tightening of work interfaces with new complaint investigation bodies that have been established in recent years, and increasing the use of original investigation methods, such as mediation.

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A Solution to Every Dispute - Different Ways of Resolving Conflicts and Adapting them to the Complaint Investigation Procedures of the Office of the Ombudsman

Johnathan Marcovitch*

The Office of the Ombudsman must deal with many complaints and ensure that they are handled to the satisfaction of the complainants. The Office has diverse ways of resolving conflicts. A deep understanding of the nature of the disputes and the possibilities for resolving them can improve the procedures for conflict resolution in the Office.

The article reviews several ways in which complaint investigators handle the variety of complaints received, with the objective of increasing awareness of the potential of the different procedures and deepening understanding of the failings preventing dispute resolution. The author aims to help the Office turn consciously into a “multi-door” forum, referring every dispute to the procedure best suited to its resolution.

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