



The Israeli Ombudsman for Complaints against Judges

The Israeli Ombudsman for Complaints against Judges:

A Summary of the 2007 Annual Report

A. Introduction

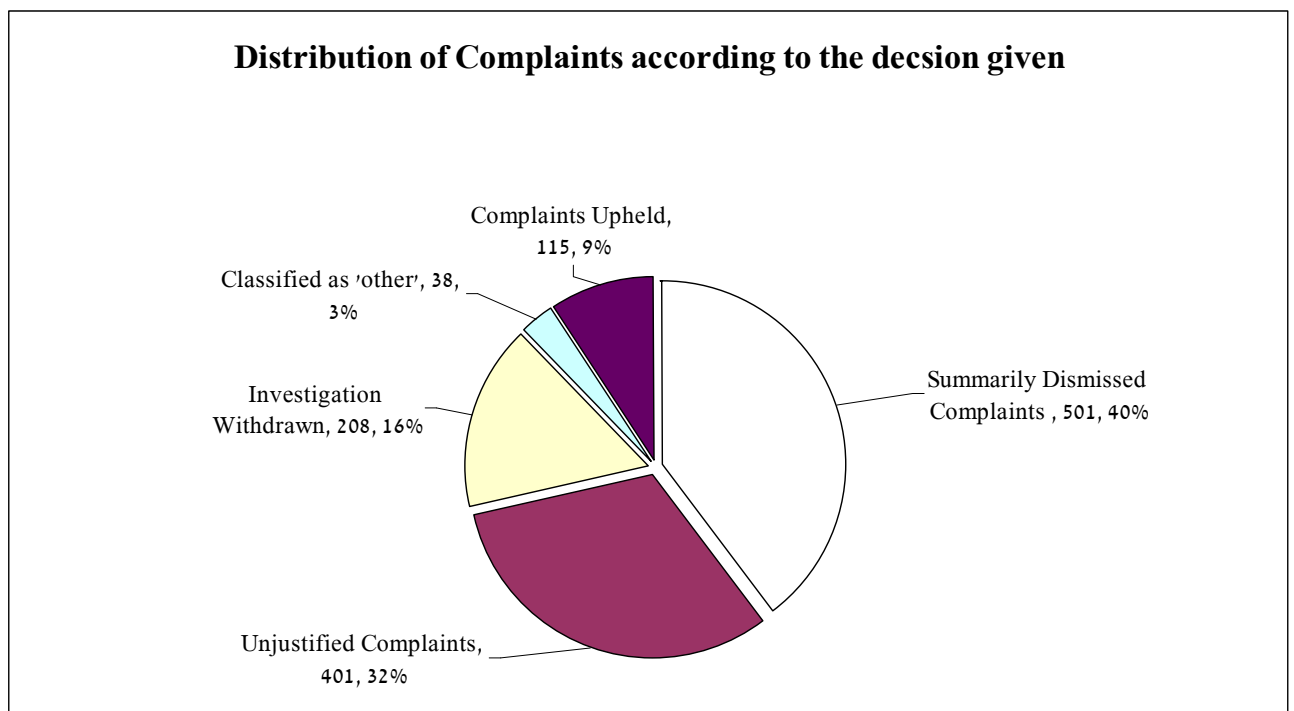
The Israeli Ombudsman for Complaints against Judges was established in 1st October 2003, pursuant to the Ombudsman for Complaints against Judges Act, 2002 [hereinafter "the Act"]. Its purpose is to improve the unique service that the judiciary supplies while maintaining judicial independence. The 2007 annual report is its fourth annual report.

The Ombudsman's activities in 2007 were generally similar to those of 2006 (see an account on the classification of complaints in section B, below). They reflect the Ombudsman's range of jurisdiction as delineated in the Act, which states that the Ombudsman **"is set up to inquire [...] into complaints lodged by the public against judges' conduct in the fulfillment of their duties, including the manner in which trials are conducted by them"**. Notwithstanding this basic similarity to the previous year, in 2007 the Ombudsman's scope of supervisory action was extended in specific areas and narrowed in others, corresponding to the type of complaints received. The investigation of complaints often raises fundamental questions such as:

- Who is entitled to issue a complaint and upon which grounds?
- What are the limits of the Ombudsman's jurisdiction?
- Does the Ombudsman's scope of authority extend to private inappropriate behavior? Does it include treatment of unnecessary use of offensive or insulting language in decisions (i.e the mode of language used rather than the contents of decisions)? Does it include errors in the administration of justice which border on procedural mistakes? Etc.
- How to apply the duty of confidentiality to which the Ombudsman and the Ombudsman's employees are bound and how to correctly balance it with the principles of freedom of information and the public's right to know?

- How to deal with errors relating to unreasonable delays in legal proceedings, while retaining quality and efficiency in judicial activity?
- How to distinguish a genuine claim concerning a conflict of interests or the apparent conflict of interests as opposed to an unfounded and speculative claim that indicates a similar flaw?

B. Distribution of the Complaints in 2007 according to the Decision given



C. Topics Handled by the Ombudsman

The following is a description of the principal topics concerning which the Ombudsman inquires:

Judge's conduct:

1. Inappropriate behavior in the courtroom. This category covers various types of judicial misconduct, including impatience or lack of good manners towards lawyers and litigants; use of offensive language in the courtroom; loss of control over the events in the courtroom; lack of neutrality and objectivity; bullying parties to come to a settlement; etc. In some cases, the Ombudsman finds the claims of an allegedly inappropriate behavior to be groundless (case 912/07). In others, as in 17

different complaints during 2007, the Ombudsman upheld complaints of this type. For example, in one case it was claimed that the judge's remarks towards investigators, lawyers and prosecutors of the IRS were blunt and offensive. It was also claimed that the judge was hostile towards the complainants and thus indicating a loss of impartiality. The Ombudsman found that the judge's behavior did not accord with the proper ethical standards relating to a judicial function and therefore upheld the complaint (case 22/07). In two other cases, lawyers complained of being removed from the courtroom against their will. The Ombudsman inquired into the relevant circumstances and checked the applicable legal provisions. The Ombudsman found that removing a person from the courtroom is an exceptional sanction which must be used only rarely, especially regarding lawyers to whom other rules are normally applied (cases 1153/06, 988/06).

In another case, a complainant claimed that the judge treated him with disrespect and impatience, suggested that he give a compromise judgment, and then dictated to the protocol the complainant's alleged consent. The Ombudsman found that the atmosphere in the court was tense. The judge insulted the complainant and gave him the feeling that there is no chance for his claim, forcing him – in that way – to "consent" to a compromise. Criticizing this conduct, the Ombudsman emphasized that a compromise should reflect the litigants' free will (case 613/07). Furthermore, reviewing other – similar – complaints, that all concentrated upon compulsion to agree to a compromise, the Ombudsman recommended appointing a commission which will investigate the matter and decide if further ethical rules are required.

2. Unnecessary use of offensive remarks in courts' decisions. This category includes inappropriate, exceptional or offensive language in judgments and other decisions of the court. These complaints were dealt with only in relation to the language used (the actual wording and style of expression) and not to the substantive content of the decision, which is excluded from the Ombudsman's Jurisdiction. 3 complaints were upheld in 2007 regarding unsuitable remarks in courts' decisions. In one case, a plaintiff complained that while trying to establish that there was a contradiction in the respondent's explanations concerning the delay in submitting the statement of defense, and therefore her request to cancel the courts' ruling should be dismissed in limine, the judge told him: "Do you think it's proper to bother the court with such nonsense?" In light of this remark, the complainant asked for the judge to

recuse himself. The judge denied the request and wrote in his decision: "The court is fed up with the conduct of the plaintiff, who refuses to allow the hearing of the dispute itself, and insists on each and every petty detail". The Ombudsman found that there was no place for such remarks, which did not match the language expected from a judge. The complaint was upheld (case 819/07).

3. Private inappropriate behavior. In 2007, 3 complaints were upheld under this category, referring to inappropriate conduct outside the courtroom. In one case it was claimed that a judge acted in favor of a foreign worker she was acquainted with, while speaking with a police officer by phone. The judge believed that the officer was violating a court order (issued by another judge). The officer believed he was fulfilling his duty – based on information given by the police's database – and that the judge's intervention disrupted him from doing that. The Ombudsman's investigation concluded that the conversation mentioned was short, and very tense, and it appears that its content was understood differently by the sides involved. The Ombudsman's decision ruled that the officer ought to have accepted the judge's word. Nonetheless, it is advisable for a judge not to get involved in such telephone calls, in order to avoid being dragged into angry responses or critical remarks regarding other legal authorities. The judges' code of ethics establishes that a judge should abstain from using his status to advance his or another person's interest, in circumstances where the use of the title is liable to appear as an "improper attempt to attain preferential status". It would have been better had the judge refrained from attempting to use her title and status while angrily arguing with a police officer who believed he was fulfilling his duty. The complaint was upheld (case 604/07).

The manner in which trials are conducted:

4. Unreasonable prolongation of proceedings and excessive delay in handing down judgments. This category encompasses complaints concerning the duration of legal proceedings and unreasonable delays in delivering court's decisions. The excessive duration of legal proceedings violates the principle of due process of law, and is inconsistent with the interest of the litigants and the public in bringing a case to an end within a reasonable period of time. 55 complaints of this category were upheld in 2007. Among the causes of delay were: acceptance of many dilatory pleas; excessive numbers of pre-trial proceedings that do not take the case forward;

replacement of a judicial panel; failure to take measures against litigants who fail to comply with time limits; etc. In one case, the head of the National Council for the Protection of Children complained of an unreasonable prolongation of proceedings in a criminal case in which the charges were submitted in 2003 but the hearing had not started yet in 2007. The complainant claimed that the lapse of time delays justice for the victim, a minor. The Ombudsman upheld the complaint and stated that there is no way to justify a situation in which a case is not heard – even once – for more than a year. Such a prolongation causes delay of justice for both the defendant and the victim (case 1055/06).

In another case, the Minister of Justice asked the Ombudsman to investigate an excessive delay in handing down a verdict in a criminal case in which the charges were submitted in 1998. It was only in 2006, three years after the last closing argument was submitted, that the judge gave his verdict. The Ombudsman stated that even though the case was unusually complicated, the manner in which the judge managed the trial was unacceptable. Despite the heavy burden laid on judges' shoulders, one should not belittle the interest of speedy trial. The prolongation of proceedings causes inconvenience to the litigants and the public, especially in criminal cases. The Ombudsman also encouraged judges that encounter an objective problem to conclude a case in a reasonable time to apply to the court's President and consult with him in order to find a solution and bring the case to an end (case 294/06).

5. Infringement of the rules of natural justice. This category includes conflict of interests; infringement upon the right to be heard; flaws related to partiality; etc. During 2007 a total of 17 complaints were found to be justified in this category. In one of the cases upheld in this category the complainant claimed that the judge spoke on the phone a few times with the prosecutors and the complainant's office, which represented the defendant in a traffic court. The investigation of the complaint established that the judge called the prosecutor to clarify if a list of references was mistakenly left out of his closing written arguments. Afterwards, the judge called the lawyers to inform them of the acquittal of the defendants, and release them from the need to attend a hearing scheduled for the next day. The Ombudsman ruled that it is improper for a judge to contact a litigant or his lawyer directly by phone. Every technical or administrative clarification should be made by the administrative staff of the court. Every substantive clarification should be made with a decision sent to the

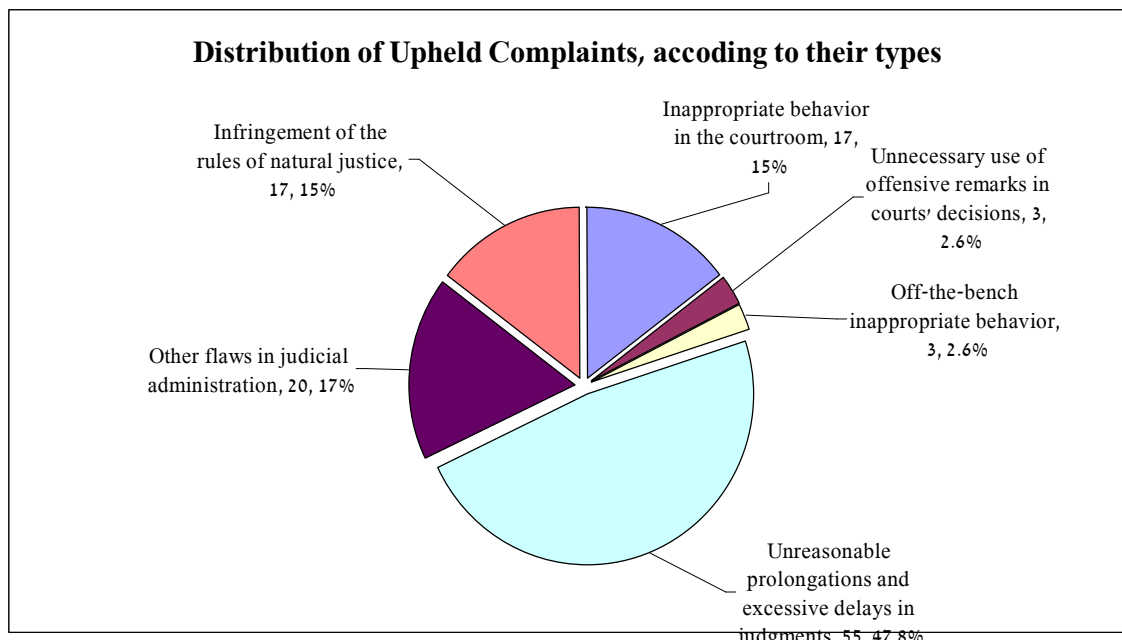
litigants, or handed down in the courtroom. Phone conversations with litigants, conducted by a judge, might create misunderstandings, suspicions or even an impression of loss of impartiality. They stand in contradiction to the status of a judge and might harm the image of the judicial system. The Ombudsman also noted that it seems that there is no place for informing the parties by phone the acquittal of defendant, before the scheduled verdict hearing (case 1104/06).

6. Other flaws in judicial administration. This category includes problems in the way judicial decisions are reached. Examples from the past year include complaints about unnecessary replacements of judges during trials; errors in the use of forms when issuing warrants; errors related to the specific arrangement regarding representation in Small Claims Court; inappropriate management of the record of proceedings etc. During 2007 a total of 20 complaints were found to be justified in this category. In one example, the complainant, a journalist who was arrested for publishing privileged information, complained that while he was brought to court in order to be remanded, the escort officers refused to untie his handcuffs. He addressed the judge and asked to be untied, but was refused. In response to the Ombudsman's query, the judge claimed that she was acting according to a police guiding instruction, and it was carried out in order to keep the public order, and promote the judicial process. The Ombudsman upheld the complaint, emphasizing that the authority to untie the defendant's handcuffs in court is given not to the police but to the judge. Every time a handcuffed detainee is brought to court a judge should consider the issue of untying him. Considerations of comfort or efficiency – important as they are – cannot stand alone while considering this issue, since being handcuffed in the courtroom is a serious affront to the detainees' dignity, particularly as long as the presumption of innocence is made. The basic rule is that a detainee should not be handcuffed in the public domain, except in unusual cases (case 1088/06).

In another case, a brother of a litigant in the small claims court complained that her law suit against a matchmaker was sent to publication in the court's e-mail system with her name stated inside, even though she asked that only her initials would be published. The Ombudsman's investigation found that the judge accepted the litigant's request, but his decision was not recorded in the protocol or in a decision. The judge tried to rectify the problem, which was the outcome of a human error, and called for a computer technician. The Ombudsman stated that it was better to record

the request in the protocol so as to avoid error. However, taking into account the specific circumstances of the case, the Ombudsman noted the judge's sincere attempts to immediately rectify the flaw (case 901/07).

D. Distribution of Upheld Complaints according to their types



E. Causes of the abovementioned errors

There are several reasons for the aforementioned errors in judges' behavior and the manner of conducting trials:

- The case load of judges which is particularly heavy in Israel. In 2007 only 574 judges had to deal with 1,100,233 new cases, not including motions, and with 607,284 cases that remained in the system from 2006;
- Lack of human resources, including legal assistants and law clerks;
- Inadequate distribution of cases between courts of the same level;
- Inadequate distribution of cases among judges;
- Lack of administrative assistance to courts' presidents;
- Lack of administrative guidance to judges;
- Mistakes made by judges which are related to lack of judicial courtesy or administrative qualifications can usually be improved by training and guidance;

- Faults in the conduct of the parties and their lawyers which sometimes lead to mistaken conduct or inappropriate administrative response on the part of the judge.

F. Institutional and Personal Recommendations

The Ombudsman is authorized to issue both institutional and personal recommendations.

On the **personal** level, when a complaint is found justified, the Ombudsman may use a range of different sanctions used in accordance to the type of error found and its gravity. This range includes the following possibilities:

- (A) Whenever a complaint is upheld (115 in 2007), a notification of the Ombudsman's decision, including findings and reasoning, is sent to the complainant, the judge who is the subject of the complaint, the judge's president, the President of the Supreme Court, the executive director of the judiciary and the Minister of Justice.
- (B) The abovementioned notification is also added to the judge's personal file.
- (C) In every case in which it is appropriate, the Ombudsman's decision includes also a proposal to rectify the error including the steps required to do so. This is usually relevant to flaws related to undue prolongations and other administrative errors.
- (D) In the relevant cases, the Ombudsman and Ombudsman's employees follow-up the steps recommended in order to rectify the flaw.
- (E) When a more serious error is found, the Ombudsman might recommend that the President of the Supreme Court will reprimand, reprove or admonish the judge. In 2007 this happened in 5 cases which related to 7 judges.
- (F) The Ombudsman is also authorized to recommend to the Minister of Justice, that he will issue an indictment for Disciplinary Proceedings against the judge who is the subject of the complaint or to recommend to the committee for appointing judges that a judge's term of office be terminated. None of these sanctions were invoked in any of the cases handled in 2007. However, the Ombudsman continued to check if such

a recommendation – given in previous years regarding 12 rabbinical judges – was carried out; regretfully this was not accomplished to date.

On the **institutional** level, the Ombudsman suggested that many problems can be reduced by modifying the general conditions that cause errors. This can be achieved through significantly increasing the number of judges and legal assistants; improving the judges' working conditions in buildings, equipment and assistance; introducing a proper policy towards reducing the burden of cases imposed on judges; providing courts' presidents with administrative training; developing ethical and administrative programs for judges which are meant implement the code of ethics and other administrative regulations among judges; and a thorough and fundamental treatment for the special errors found in the rabbinical courts system.

G. Other activities of the Ombudsman

During 2007 the Ombudsman carried out, in cooperation and coordination with the President of the Supreme Court, a campaign which aims to dispose of old cases, by locating them, checking their status, and taking measures that will bring them to an end. The campaign will continue until the cases will be completed. The campaign included 78 cases. In most of them (75 cases) no reprimand was justified as in many cases the file was moved between different judges and there was no pertinent reason to uphold the complaint against the judge presently in charge of the case. The decision given in these cases included measures that should be taken in order to bring the case to its end. The Ombudsman also follows up on the adoption and implementation of these measures. In three cases the complaint was upheld and an appropriate decision was given. During December 2007 the President of the Supreme Court requested the same investigation in 22 other old cases. The investigation of these cases will end soon.

In addition to investigating specific complaints and recommending further steps as mentioned, in many cases the Ombudsman followed up cases to ensure that the shortcoming was rectified. This procedure is of importance especially in complaints regarding prolongations of proceedings and delays. The Ombudsman's Office also develops an ongoing relationship with judges through lectures, discussions, meetings, general statements of opinion (see a separate file) etc. The purpose of these activities is to elucidate the aims of the Ombudsman's work and to

elaborate on judicial ethics. The Ombudsman expects these measures will ultimately prevent future shortcomings and improve the unique service given by judges to the public.

Dealing with a sensitive yet important area, the Ombudsman needs a strong theoretical basis which will support day to day work. The Ombudsman's office thus conducts theoretical and comparative research on related topics, such as the status, objective and scope of action of its office; the essence of the judicial duty; the distinction between "manners in which trials are conducted" by judges and other judicial activities which are not under the authority of the Ombudsman; judicial ethics; and trial management. To strengthen its research, the Ombudsman maintains relations with dozens of similar institutions around the world and constantly exchanges ideas with them. The products of this research may be seen in articles, lectures to different audiences, and annual reports. In 2007 a representative of the Ombudsman attended an international conference in California, which related to the work of public commissions in the USA and disciplinary processes against judges.

H. Achievements and objectives for 2008

Over the years one can see a drop in the total numbers of complaints the Ombudsman upheld. In 2005 the number was set on 222, 20% of the decided complaints. In 2007 the same number stood on 115 – 9%. This improvement relates to different areas of the Ombudsman's supervisory activity, including the attempts to restrict unjustified prolongations of proceeding or other delays; endeavors to minimize the number of complaints concerning inappropriate behavior by a judge; and supervisory actions which relate to flaws in judicial administration and infringement of the rules of natural justice.

In 2008 the Ombudsman's Office intends to deal with all matters arising from complaints submitted and to extend its actions in areas where the judicial flaws are common or severe. Most notably, the Ombudsman intends to investigate the subject of compromises, and pressure or coercion exerted by a judge that might deprive the litigant's ability to object to the court's suggested compromise. Furthermore, the Ombudsman intends to continue its theoretical and comparative research, and strengthen the foreign relations with similar institutions in the world. In addition, a

representative of the Ombudsman's Office will attend an international conference in which the Ombudsman institution, purposes and authorities will be presented.