

Ombudsman of the Israeli Judiciary:  
A Short Summary of the 2006 Annual Report

**A. Introduction**

The office of the Ombudsman of the Israeli Judiciary was established in 1<sup>st</sup> 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 2006 annual report of is its third annual report.

The Ombudsman's activities in 2006 were generally similar to those of 2005 (see a separate file on the classification of complaints during the year 2006). They reflect the Ombudsman's range of jurisdiction as delineated in the Act, which states that the Ombudsman "**is established 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**". Nonetheless, the scope of action was extended in specific areas and narrowed in others, corresponding to the type of complaints received.

**B. Topics Handled by the Ombudsman**

The following list describes some of the principal topics concerning which the Ombudsman is authorized to inquire:

**Judge's conduct:**

**1. Inappropriate behavior at 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; etc. In 2006, the Ombudsman upheld 13 complaints of this type. In one case, a judge answered a call to his mobile phone during a court hearing, and left the court for a few minutes. In his response to the complaint, the judge explained that he was waiting for an important call, and that it was an exceptional situation. The Ombudsman upheld the complaint, stating that judges' mobile phone should be switched off during hearings. In urgent

cases, one can reach the judge through his or her chambers or through the secretary of the court (case 289/06). In another case, a judge was unable to restrain the parties who were disturbing the proceedings, so she left the courtroom and went to her chambers. The Ombudsman upheld the complaint, saying that a judge is responsible for the occurrences inside the courtroom and should be able to use proper means to avoid disturbance (case 760/06).

**2. Pressuring parties to settle.** This category covers cases in which judges forced litigants to reach a compromise or agree to a compromise judgment. In 2006, the Ombudsman upheld 5 complaints of this sort. In one case, the complainant waited two years for his case to be heard. When finally the case was heard, the judge told the complainant that he should agree to settle; otherwise he would have to pay trial expenses of 100,000 NIS. The complainant, feeling threatened by the excessive amount, agreed to settle. The Ombudsman upheld the complaint and wrote in her decision that even if the judge thought that the settlement will be beneficial to both parties, one cannot ignore the fact that his remarks made the complainant feel that he must agree. Ultimately, this manner of conducting trials could influence the public trust in the courts system (case 248/06).

**3. Unnecessary use of offensive remarks in courts' decisions.** This category includes inappropriate, exceptional or offensive language in judgments and decisions of the court. 8 complaints were upheld in 2006 regarding unsuitable remarks in courts' decisions. In one case, the court discussed the behavior of a victim of sexual offense committed by her father, writing that it is possible that the girl took pleasure in her father's behavior and therefore did not prevent them and did not complain for many years. None of the other judges of the panel expressed discontent with this remark. The Ombudsman stated found the remark to be inappropriate, saying that even if there was no intention of offending the victim, it can be interpreted as humiliating and it has the potential of preventing victims of sexual offences from complaining and testifying courts. The complaint was upheld and the Ombudsman recommended that each of the three judges will be reprimanded by the Chief Justice of the Supreme Court (case 583/06 and others).

**4. Inappropriate behavior off-the-bench.** In 2006, 11 complaints were upheld under this category, referring to inappropriate conduct off-the-bench. In one case, a judge – being an acquaintance of a victim in a criminal case that took place in another court– acted to facilitate the proceedings. He called the State Attorney, and assisted in forwarding to her, through the victim, a document that arrived at the secretariat of the court. In his response to the complaint, the judge explained that his interference in the case was solely on bureaucratic issues and that he was acting in good faith, with no intention of intervening in legal matters. In retrospect, he learned that he had to restrain himself from any involvement. The Ombudsman upheld the complaint, stating that the judge's behavior was exceptionally inappropriate. Since the judge announced he will voluntarily retire, no further measures were undertaken (case 626/06).

**The manner in which trials are conducted:**

**5. Unreasonable prolongation of proceedings.** This category encompasses complaints concerning the duration of legal proceedings. 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. 47 complaints of this category were upheld in 2006. Among the causes of delay are: acceptance of many dilatory pleas; excessive number of pre-trial proceedings that do not promote the case; changes of judicial personnel; failure to take measures against litigants who fail to comply with time limits; etc. In one complaint, a case was submitted to the court in 1996 and the parties were repeatedly called to the courtroom to try and reach a settlement. The judge explained to the Ombudsman the reasons for the repeated attempts to reach a settlement, and mentioned the litigants' contribution to the delays. Eventually, after the Ombudsman's intervention, a verdict was given. The Ombudsman did not accept the judge's explanations, stating that the judge, and not the parties, is responsible for promoting the case (case 463/06).

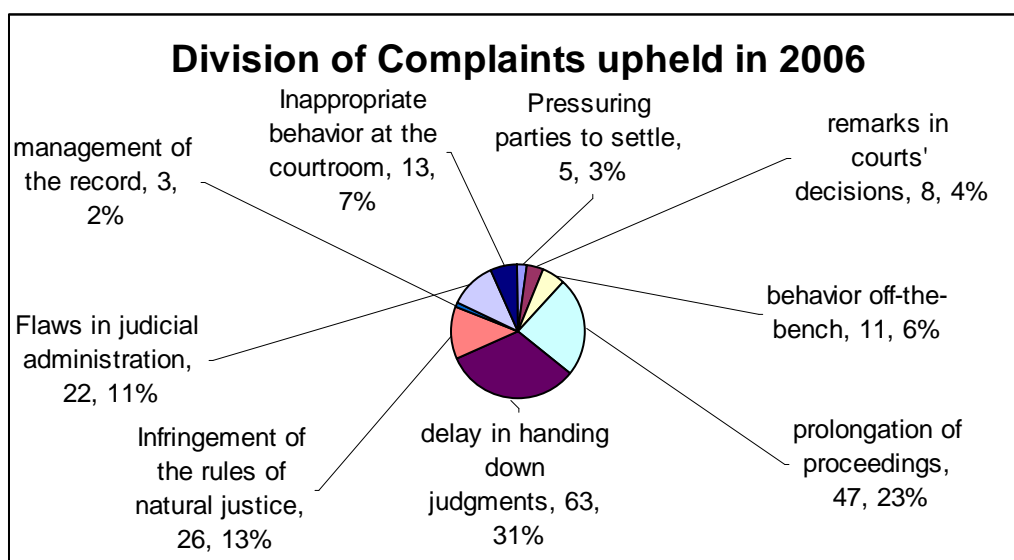
**6. Excessive delay in handing down judgments.** This category, which includes complaints regarding excessive postponements in delivering court's decisions, was the major one in the last year, with 63 justified complaints. These delays violate the parties' right to complete a trial within reasonable time, and undermine the public's

interest in just and efficient proceedings. One example concerns a judge who had 14 cases pending for a verdict and 36 requests waiting for decisions. The judge asked for a vacation period in order to write these decisions, and with the intervention of the Ombudsman, a vacation was authorized. After the vacation, though, the judge still had cases pending, including cases waiting for a judicial decision for over 3 years. These delays were, according to the judge, a result of excessive amount of cases, complexity of the cases, and great deal of material provided by the parties in each request. The Ombudsman's decision states that there is no justification for these delays. The complaint was upheld and it was recommended that the Chief Justice of the Supreme Court will warn the judge to avoid such delays in the future. In addition, the Ombudsman laid down a schedule for the judge in order to clear the backlog (case 374/06 and others).

**7. 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. In three different cases under this category, the complaints were filed by professional experts, appointed by the court, whose appointments were cancelled due to a litigant's request without asking for their response and under circumstances which may blot their professional reputation. The Ombudsman upheld the complaint, stating that although experts are not formal parties to the court's proceedings, they should be given a right to respond when their appointments are cancelled in circumstances that may impact their business (Case 721/06 and others).

**8. Flaws in judicial administration.** This category includes problems in the way judicial decisions are reached. Examples from the past year include complaints about judges being replaced during trials; flaws in the use of forms when issuing warrants; flaws related to the specific arrangement regarding representation in Small Claims Court etc. During 2006 a total of 22 complaints were found to be justified in this category. In one example, the complainant was a reporter accused of publishing privileged information on the internet. He complained that the court issued a deficient warrant, lacking most of the details required, and that this warrant was used by the police in order to intrude his parents' house. The Ombudsman upheld the complaint (case 1093/06).

**9. Inappropriate management of the record.** In 2006, the Ombudsman found 3 complaints in this category to be justified. In one case, the court sent the parties to mediation without explaining the essence and goals of such process. The judge responded to the complaint, saying he usually explains these matters to the parties, and so does the mediator, and added that these explanations appear on the formal forms signed by the parties who commence mediation. The Ombudsman upheld the complaint since the record did not show any relevant explanation on the mediation process, which is part of a judge's responsibilities (case 273/06).



**C. Causes of the abovementioned flaws**

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

- Heavy load of cases. In 2006 only 537 judges had to deal with 739,716 new cases, not including motions, and with 75,691 cases that remained in the system from 2005;
- 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;
- Faults of specific judges which can usually be improved by training and guidance;

- Faults in the conduct of the parties and their lawyers.

#### **D. Institutional and Personal Recommendations**

The Ombudsman is authorized to issue both institutional and personal recommendations. On the institutional level, the Ombudsman suggested that many problems can be reduced by modifying the general conditions that cause flaws. This can be achieved through significantly increasing the number of judges and legal assistants; allowing courts' presidents to change the division of cases between courts of the same level and among judges of the same court; providing courts' presidents with administrative training; and developing ethical and administrative programs to judges.

On the personal level, in addition to upholding complaints and adding an appropriate note in the judge's personal file, the following recommendations were made by the Ombudsman during 2006:

- Recommendation to the president of the relevant courts' system to warn or reprimand a judge. During 2006, 9 decisions concerning 11 judges included such recommendations. Most decisions were about delays in handing down decisions.
- Recommendation to bring a judge to a disciplinary tribunal. Such recommendation was made concerning one judge of the general courts' system and one judge of the rabbinical courts' system. In both cases the judge interfered with a case which was pending before another court.
- Recommendation to the Minister of Justice and the President of the Supreme Court to remove a judge from office. In 2006, it was recommended to remove one registrar from office, for inappropriate behavior outside the courtroom when obtaining an academic degree. The recommendation was upheld and the registrar's service was ended. The registrar appealed to the Supreme Court of Justice against this decision, and the case is now pending.
- According to a decision given by the Ombudsman in 2005, rabbinical judges had to change their place of residence and live close to their judicial area. This decision, based on a rule which applies to rabbinical judges and was

confirmed by each of them when commencing his tenure, was not followed by 8 judges. Thus, the Ombudsman recommended removing them from office.

**E. Other activities of the Ombudsman**

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 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 daily 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 are manifest in articles, lectures to different audiences, annual reports and in an academic seminar taught by the Ombudsman at the Hebrew University in Jerusalem in 2006.

**F. Objectives for 2007**

In 2007 the Ombudsman's Office intends to deal with all matters arising from complaints submitted and extend its actions in areas where the judicial flaws are common or severe. Most notably, the Ombudsman intends to investigate courts' cases which were submitted before 1996 and remain undecided. Furthermore, the Ombudsman intends to continue its explanatory activity to different audiences and intensify theoretical and comparative research. In addition, a representative of the

Ombudsman's Office will attend an international conference on judicial ethics in the United States.