



# OMBUDSMAN FOR POLICE AND PRISON SERVICE PERSONNEL: A REVIEW

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## Introduction

The Ministry of Public Security has a unit, headed by an Ombudsman, to deal with complaints submitted by Israel Police (IP) and Israel Prison Service (IPS) personnel. The Office of the Police and Prison Personnel Ombudsman (PPPO) is an autonomous, quasi-judicial statutory body. Its roles include representing the individual vis-à-vis the service, investigating the complaints of service personnel, presenting findings and reaching conclusions, and, in appropriate instances, indicating deficiencies and methods for rectifying them.

The complaints that the PPPO handles are numerous and diverse. Some of the complaints concern claims regarding wages and other rights, some of them pertain to claims of discrimination and biased decision-making in relation to promotion and staff appointments, while a significant portion relate to complaints about unfair treatment, harassment, or strained relations between a commander and his subordinates or amongst personnel of the same rank. There are complainants from all levels in the chain of command, although complaints from senior officers constitute a minor percentage of the total.

## The background to the establishment of the PPPO

The PPPO was established following attempts by a group of police officers to “unionize” the service. Three young officers at the beginning of their careers, with degrees in law, led the battle. *Inter alia*, the officers filed a petition to the Supreme Court to order the then Minister of Police (today Public Security) – who is in charge of the Israel Police – and the hierarchy of the Police to refrain from attempts aimed at restricting their activities to establish a union.

Until that time, police personnel had been deprived of the fundamental right to unionize, under an internal directive issued by the Israel Police Commissioner, both by virtue of the authority vested in him as the head of the organization and the officer responsible for its actions, and by virtue of the powers vested in him by law to run the organization. Failure to comply with any order in that directive constituted a disciplinary violation with a maximum punishment of two years incarceration.<sup>1</sup> The Israel Police's objection to unionization is rooted in the unique nature of this body as a semi-military, hierarchic body, and it is believed that it cannot both fulfill the missions imposed on it and give its personnel the right to strike. Although the possibility of adopting the arrangement in practice in England was also considered (where the police have a union, but are denied

permission to use the strike as a tool to achieve their demands), the Minister and the IP high command believed that this model was not appropriate for Israel, where the police has responsibility both for law enforcement and public security, especially for the continual fight against terror.

The Supreme Court came to the conclusion that the legal framework used by the Police Commissioner to impose a prohibition on unionization **was not** the appropriate framework. The Supreme Court ruled that the said permanent directive was invalid, and that it is not possible – except under legislation – to deprive police personnel of fundamental rights, such as the freedom to organize and the right to strike.

In light of this Supreme Court decision, and in order to prevent the establishment of a union, an amendment

to legislation was promoted that anchored the prohibition imposed on police to join a union or in taking part in any activity to establish, convene or manage such an organization.<sup>2</sup> Any violation of the prohibition was also ruled to be a disciplinary violation.<sup>3</sup>

## Establishment of the PPO

Alongside the legislation that forbade Police personnel to unionize, but in order to provide a mechanism which would balance the denial of this right and would also afford police personnel redress when they are in conflict with the organization (because of alleged financial or other infringement against their rights, or due to harassment or improper, discriminatory and unjust conduct), it was decided to establish an institution anchored in law – the Office of the Police and Prison

<sup>1</sup> According to the legal situation in practice at that time, the law empowered the police disciplinary court to impose a maximum punishment of two years incarceration. In addition, the law included a directive applying the general laws of evidence on the court. Both these led the Supreme Court to adopt the Weiss Miller ruling, which proscribed the existence of the plea of “double jeopardy”, which prevents prosecution of a person in respect of the same offense under criminal law when that same person is at risk of conviction by the disciplinary court. Upon amendment of the legislation, under Amendment No. 9 of the Police Ordinance (New Version), 5731 - 1971, when the court was denied jurisdiction to impose punishment of incarceration, and the obligation to act in conformity with the general laws of evidence was rescinded, the aforesaid Weiss Miller ruling was no longer warranted.

<sup>2</sup> It should be noted that the need for establishing the institution of an ombudsman in the Israel Police and in the Israel Prison Service had been indicated even prior to the said attempt to unionize, by the National Committee for the Investigation of Crime in Israel (the Shimron Committee), whose recommendations included the need for providing police officers with the possibility of addressing their complaints to an ombudsman directly, and not through the customary command channels. This need was recognized by the Committee also in relation to prison personnel, whose service and disciplinary procedures are similar to those in the Israel Police. This need was recognized by the Committee in light of the provisions of section 38(7) (f)(8) of the State Comptrollers Law (Consolidated Version), 5718 – 1958, which prevent prison personnel and police officers from addressing complaints to the Public Complaints Commissioner about any matter concerning their service, including any matter pertaining to discipline.

<sup>3</sup> Despite the fact that the Minister of the Interior had been in charge at that time both of the work of the Israel Police and the work of the Israel Prison Service, a parallel legislative amendment was not anchored in the Prison Ordinance (New Version), 5732 – 1971. Only recently was a legislative arrangement finalized in this regard.



Personnel Ombudsman, similar to the institution established by law to redress complaints from personnel in the Israel Defense Force.

## Salient points of the law

### A. Method of appointment, the autonomy of the Ombudsman and the powers pertaining to the office:

The law obligates the Minister of Public Security to appoint an Ombudsman for police officers and prison service personnel.

The appointment is made by the Minister of Public Security, in consultation with the Minister of Justice and with the approval of the Parliamentary Committee for Internal Affairs and the Environment of the *Knesset* (Parliament).

The Ombudsman's term of office is for five years, and the Minister of Public Security, in consultation with the Minister of Justice and with the approval of the *Knesset* Committee for Internal Affairs, has the authority to extend the term of office for a period not exceeding two years.

The law gives the Ombudsman total autonomy. The Ombudsman is not answerable to any authority in carrying out his duties, apart from the law. The provisions conferring investigative powers to the chairman of a commission of inquiry pursuant to the Commission of Inquiries Law apply, *mutatis mutandis*, to an investigation by the Ombudsman or by anyone he has so empowered. All Police and Prison Service personnel are obligated by law to assist the Ombudsman in the execution of his duties, and failure to provide the required assistance or to obstruct him constitutes a disciplinary violation.

### B. Qualifications for serving in the office of Ombudsman:

A person fulfilling all the following criteria is qualified to serve in the office:

- Answers the requirements to be appointed a district judge;
- Is not a serving police officer;
- Has professional knowledge, background or experience

in fields associated with the police;

- Has not been convicted of an offense whose nature, severity or circumstances make him unfit to serve as an ombudsman.

### C. Who is entitled to lodge a complaint and about what:

A complaint may be lodged by any police or prison officer, or by any party on their behalf, provided that that party is not another police or prison officer; or, if the complainant has since passed away – by a parent, spouse, son, daughter, brother or sister.

A complaint **may be lodged** by any person who, at the time the act was committed was a serving police or prison officer in respect of any act as follows:

- It **directly concerns the service** in the Israel Police or in the Israel Prison Service.
- It **adversely affects** the police officer or prison personnel, or directly deprived him of a benefit;
- It is committed **without legal authority** or **contravenes legislation, ordinances** or binding directives in the Israel Police or in the Israel Prison Service, or **contravenes proper administration**, or if it involves **arbitrariness, excessive intransigence or obvious injustice**.

**D. A complaint may not be lodged in relation to the following:**

- A complaint concerning any matter that is *sub judice* in a court, tribunal or before a sole judge, or when a judgment has been pronounced in respect thereof in a court or tribunal or in a judgment pronounced by a sole judge;
- A complaint concerning a judicial act of a disciplinary court in the Israel Police or in the Israel Prison Service;
- A complaint concerning an offense under investigation in accordance with the law.

**E. Complaints requiring special reasons for investigation:**

- A complaint concerning a matter for which a decision has been handed down, which may be objected to or appealed;
- A complaint that was lodged more than one year after the complainant became aware of the act that is the subject of his complaint;
- A complaint concerning an act, which, due to the nature thereof, warrants investigation by the involved police or prison officer's commander, or by another authority in the Israel Police or in the Israel Prison Service;
- A complaint concerning an act whose harm is negligible;
- A complaint concerning

a matter that had been investigated or is under investigation as a complaint by another duly authorized authority in the Israel Police or in the Israel Prison Service, including by an investigation officer or board of inquiry;

- A complaint against a person who ceased to be a police or prison officer prior to the investigation of the complaint, and the complaint refers to conduct that is of a personal nature.

**F. Functions of the Ombudsman:**

The Ombudsman is obligated to investigate the complaint, to reach a position in respect thereof, to give a detailed response in writing to both the complainant and to the one against whom the complaint was lodged, and to any other authority as the Ombudsman deems fit. If the Ombudsman decides not to investigate a complaint or to transfer it for investigation to another authority, he is required to give the reasons for his decision and to inform the one against whom the complaint was brought.

If the results of the investigation reveal a *prima facie* suspicion of the existence of a disciplinary or criminal offense, the Ombudsman discontinues his handling of the complaint and transfers the material to the investigative authority.

The Ombudsman's second statutory role relates to the obligation to submit a report at least once a year to the Minister of Public Security and to the Knesset Committee for Internal Affairs and the Environment. The law obligates this committee to examine the report submitted to it.

The Ombudsman convenes meetings periodically with senior staff officers and commanders in the field.

**G. The authority of the Ombudsman to make recommendations and the weight of his recommendations:**

In instances whereby the Ombudsman finds that a complaint is justified, in whole or in part, he has the power to notify any authority in the Israel Police or in the Israel Prison Service, as he sees fit, of the need to rectify the deficiency or the injustice that his investigation found, and may issue recommendations regarding the way to rectify it or prevent its recurrence.

In such instances, the units involved are obligated to notify the Ombudsman, no later than two months after receiving his recommendations, of the measures taken to implement them. If no measures have been implemented, reasons have to be given.

The Ombudsman's recommendations must be

implemented, unless the Police Commissioner or the Prison Commission demur and notify the Ombudsman of the reasons and receive the Ombudsman's response in this regard.

## The scope of PPPO

The PPPO handles approximately 600 complaint files annually, which are opened as investigation files. A rising trend in the number of complaints lodged has been discerned. Besides handling complaint cases, the PPPO offers a counseling service for complainants before they lodge a complaint. Often the investigation officer is the party who refers the complaint for handling by the appropriate authority, or serves as a mediator prior to a formal investigation of the complaint, in an attempt to bring the matter to resolution before a formal complaint file is opened. The counseling service is provided via telephone, and often, following the initial counseling by phone, meetings and preliminary consultations are held in the unit itself.

## Use of the mediation process to resolve conflicts

In relation to complaints involving disputes or incidents of harassment between a commander and a subordinate, or between two police officers or two prison personnel who

often must continue working together, the PPPO tries – with the consent of the parties – to solve the dispute by mediation. Up until now, mediation has been handled mainly through an external mediator. The intention is to try to implement this process through investigation officers trained in mediation. The objective is to attempt to resolve the dispute by the parties themselves in a process in which they jointly participate, thus enabling them to continue working side by side, or one under the command of the other, in an amicable atmosphere.

## The Ombudsman does not replace the commander

The Ombudsman does not see himself a substitute for commanders. Therefore, in those instances when a complaint has been lodged that the Ombudsman believes should be handled by the commander, as the officer bearing responsibility for what happens in his unit, due to the nature of the complaint or due to the fact that the Ombudsman believes it is a petty matter not justifying his involvement, the PPPO transfers the complaint to that commander for his handling.

## Summary

This document presented the background leading to the establishment of the PPPO as well as the powers

vested it by the legislature in order to enable it to fulfill its role autonomously and be accountable to no one other than the law of the land.

The success of the PPPO depends, first of all, upon the Police and Prison Service hierarchy recognizing the importance of this institution and its contribution to imparting a sense of well-being to their personnel. This is because the PPPO provides an "address" where police and prison personnel can raise issues that are bothering them. The PPPO's role is to recommend solutions, to root out instances of injustice and deficiencies that are discovered during its investigations, and to take action to prevent their recurrence. Furthermore, the expectation is that the hierarchy will honor the right of police officers and prison staff to lodge complaints, and will not view this as any form of defiance or undermining of the system.

Collaboration between the PPPO, the Israel Police and the Israel Prison Service hierarchy will contribute to the elimination of the sense of discrimination among serving personnel. It will impart a feeling that the system is attentive to the problems of those serving in its ranks and will create a positive atmosphere which will motivate them to perform their duties in the best manner possible.