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CHAPTER

The State Comptroller

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Abstract

The state of Israel founded the institution of the State Comptroller, by legislation, shortly after its establishment in 1948. The State Comptroller is an important constitutional organ that has several functions which are entwined with the Israeli separation of powers and its system of checks and balances. This chapter analyzes the State Comptroller's functions, duties, and powers, as well as its relations with the government authorities. Supreme audit institutions worldwide, as well as the Israeli State Comptroller, act according to guidelines, principles and standards formed by the International Organization of Supreme Audit Institutions. This chapter emphasizes the unique characteristics of the Israeli Audit Institution and focuses on some distinctive aspects such as real-time audit, moral integrity audit, and imposition of personal responsibility. It also reviews some additional functions of the State Comptroller such as the exceptional responsibility to examine public complaints in its capacity as the Israeli Ombudsman.

Keywords: [State Comptroller](#), [Basic Law](#), [inquiry](#), [audit](#), [ombudsman](#)

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I. General Overview

One year after the establishment of the State of Israel (1948), the Knesset (the parliament of Israel) passed the State Comptroller Law (1949).¹ The original law from 1949 was incorporated into the new version from 1958, in the State Comptroller Law 1958 [Consolidated Version] (hereinafter, the "State Comptroller Law"), which included all the amendments introduced until its passage. In 1971, the Knesset introduced another important amendment stating that in addition to already-declared duties, the State Comptroller would also act as State Ombudsman.²

In 1988, the Knesset passed Basic Law: The State Comptroller (hereinafter, “Basic Law”), which awarded constitutional status to the Comptroller’s duties and powers. From that point on, the State Comptroller became a “constitutional institution” that plays an important role in the protection of Israeli democratic values.³

Section 1 of the Basic Law states that the “state audit is vested in the State Comptroller.” Constitutionally, this means that the Knesset, as the legislature, has the authority to diminish the State Comptroller’s duties and powers only by amending the Basic Law.

The term “state audit” refers primarily to an independent examination of the executive branch (the government), with the State Comptroller acting as the “long arm” of the legislature: “In the fulfillment of his functions, the State Comptroller shall be accountable to the Knesset alone and shall not be dependent on the Government.”⁴ Section 12(a) of the Basic Law declares that “the State Comptroller shall maintain contact with the Knesset as determined by law.” Furthermore, Section 6(a) of the State Comptroller Law states: “The Comptroller shall carry out his activities in contact with the State Audit Affairs Committee of the Knesset ... and shall report to the Committee on his activities whenever he thinks fit or required to do so by the Committee.”

II. Aspects Examined by the State Comptroller

The state audit is distinguished from other forms of review, such as judicial review and internal audit, by its status, goals, and methods. It is based on the collection of information (documents, protocols, procedures, and decisions) about the activities of the audited bodies and their assessment according to standards pertaining to different fields. The audit entails an independent examination of the actions taken by state institutions and government corporations. The Basic Law specifies precisely what the State Comptroller is to examine during the audit.⁵ “The State Comptroller shall audit the economy, property, finances, obligations, and administration,” and lists the aspects of these activities that are to be audited:⁶ “The State Comptroller shall examine the legality, moral integrity, orderly management, efficiency, and economy of the audited bodies, and any other matter he deems necessary.” The State Comptroller Law further details specific topics of audit,⁷ ordering the comptroller to examine whether expenditures were undertaken within the limits of their legal appropriation and for the purposes to which they had been intended; whether income was received in accordance with the law and authorized by law; whether sufficient accounting vouchers exist for all expenditures and receipts; whether every act within the scope of the audit was carried out in accordance with the law and by a person competent to perform it; whether the maintenance of the books of accounts, the drawing-up of balance sheets, the checking of cash-in-hand and stock, and the voucher system are efficient; whether the method of retaining money and safeguarding property is satisfactory; whether the state of the cash-in-hand and the stock tallies with the accounts; and whether the audited bodies have operated economically, efficiently, and in a morally irreproachable manner.

The list of issues and aspects that the State Comptroller examines is not a closed one. The Basic Law and the State Comptroller Law explicitly state that in addition to everything mentioned, the State Comptroller is authorized to examine “any other issue that he deems necessary.”⁸

III. The Scope of the Audited Bodies

The Basic Law outlines the general scope of the bodies to be audited⁹ and the State Comptroller Law provides a detailed list of the institutions.¹⁰ The list includes all government offices (including the ministers themselves and the prime minister); all state enterprises and institutions; all persons or bodies holding any state property or managing or controlling any state property on behalf of the state other than under contract; all local authorities (including mayors); all government companies and enterprises, institutions, funds, and other bodies in whose management the government takes a share; all government subsidiary companies and enterprises; and every enterprise, institution, fund, or other body assisted, either directly or indirectly, by the government. Yet such bodies shall not be audited unless the State Audit Affairs Committee of the Knesset or the Comptroller so decides.¹¹

Common to all the entities legally subject to audit by the State Comptroller is the presence of some connection to the government (ministries and agencies, state-owned companies, local authorities, etc.), control by the government, holders of government-owned property, or financing by the government. The main exception to this rule is an audit authorized by the State Comptroller of a “general employees’ organization”¹² (and every enterprise, institution, fund, or other body in whose management such an employees’ organization takes a share) as long as the audit is not imposed on its trade union activities.¹³ According to the principles underlying state audits, and especially the operating principles guiding SAIs, subjecting trade unions to state audit is far-reaching and unusual. Historically, the stipulation was introduced in response to the centrality of the *Histadrut*, Israel’s primary trade union organization, in the public sphere, the exceptional breadth of its activities, characterized by irregularities and an ineffectual internal auditing system. To protect the workers’ right of association and ensure the longevity of their unions, the state audit was subordinated here to international conventions to which the State of Israel is party, which enshrine the right to organize and protect trade unions from state intervention.¹⁴

Another unusual section authorizes the State Comptroller to audit private entities—persons, enterprises, institutions, and funds, among others—whether by law, Knesset decision, or agreements between these entities and the government.¹⁵ Yet, despite its broad implications, the terms of this section have been used exclusively when the entities involved were tied to the executive branch if they had public sector attributes, or provided services to the public.

The list of audited bodies by the State Comptroller is dynamic and updated periodically, with more than 1,000 bodies listed as of 2020.

IV. Reports, Opinions, and Recommendations

The State Comptroller publishes his findings in reports and opinions where he presents recommendations for the rectification and prevention of defects. These recommendations are not binding and cannot be enforced because the State Comptroller is not part of the executive branch and does not bear responsibility for the actions of the auditees. It may be also argued that the Comptroller’s lack of authority to enforce recommendations by imposing sanctions is not a vulnerability but a source of strength and the price he must pay for the enormous moral authority he enjoys.¹⁶

The Basic Law states that “the State Comptroller shall submit to the Knesset reports and opinions within the sphere of his duties and shall make them public, all in a manner and subject to the restrictions prescribed by law.”¹⁷

In adherence to this directive, the State Comptroller submits various reports to the Knesset that are later made accessible to the public. Each report contains a summary of the actions taken as part of the audit. In the reports,

the Comptroller specifies any infringement of moral integrity,¹⁸ defect, and infringement of a law or of the principles of economy and efficiency that, in his opinion, deserve to be mentioned,¹⁹ and makes recommendations for their rectification and prevention.²⁰

In addition to the audit reports, the Comptroller also prepares and publishes separate special reports on topics selected according to their relation to a core issue, efforts to maintain moral integrity, or any other reason deemed sufficiently important to bring them to the public's attention.²¹ According to Section 21 of the State Comptroller Law, if requested to do so by the Knesset, the Knesset Committee for State Audit Affairs, or the government, the Comptroller shall prepare an opinion paper on any subject within the scope of his functions.²² The opinion shall be made public at a time specified by the Comptroller.

As noted, the Basic Law requires the Comptroller to make all reports public. As part of the democratic regime of the country, the widespread media coverage of state audit reports and their findings is of paramount importance for achieving the purpose of the audit.²³ The publication of audit reports serves the public's right to obtain information about the performance of public authorities, a right resting on several principles considered essential for the preservation of a properly functioning, free, and democratic society. One such principle is based on the argument that the information held by government entities belongs to the public.²⁴ Another principle is based on the argument that publication of the State Comptroller's reports encourages audited entities to correct the malfunctions mentioned in the reports.²⁵

V. Investigation of the Public's Complaints

The Fifth Amendment to the State Comptroller Law, passed in 1971, added a seventh section to the law, assigning an additional function to the State Comptroller: investigation of the public's complaints.²⁶ This function was also introduced into the Basic Law: "The State Comptroller shall investigate complaints from the public about bodies and persons, as provided by or under law; in this capacity the State Comptroller shall bear the title of Ombudsman."²⁷

An ombudsman, similar to other judicial and quasi-judicial instances, is dedicated to protecting a person's rights by examining the issues arising in the space between the individual and public authorities. Any person may submit a complaint to the ombudsman²⁸ against an audited body or employee, official, or holder of any position in such a body.²⁹ The subject of the complaint may be: "an act directly injurious to, or directly withholding a benefit from, the complainant ... Such act being contrary to law or without lawful authority or contrary to good governance or involving excessive inflexibility or flagrant injustice; for this purpose, [an] 'act' includes an omission or delay in acting."³⁰ By contrast, a member of the Knesset can submit a complaint regarding an "act directly injurious to, or directly withholding benefit from, another person."³¹

When the Ombudsman finds a complaint to be justified, he can note the necessity of correcting the misconduct and indicate how to do so, although his decision retains the status of a recommendation and not of a binding order. Yet, it has become customary to carry out these recommendations.³²

The State Comptroller Law stipulates that the Ombudsman is prohibited from investigating "a complaint as to a matter pending in a court or tribunal or in which a court or tribunal has handed down a decision with regard to the substance thereof."³³ But after the Ombudsman has completed his inquiry into a complaint, the complainant can still submit the same complaint to the courts.³⁴ The High Court of Justice (HCJ) ruled that filing a complaint with the Commissioner for Public Complaints (the Ombudsman) does not count as an alternative remedy or exhaust the proceedings. The law has defined two separate paths. The existence of the Ombudsman does not influence the remedy provided by the courts. The law has an interest in both state institutions, operating in different ways and built on different normative foundations, which are not intertwined.³⁵

Another responsibility assigned to the Ombudsman by the legislature is that of protecting whistleblowers—employees who in good faith and according to proper procedure have exposed an act of corruption, a serious breach of the law, or a serious violation of the rules of proper administration in the workplace, where such action results in their victimization or dismissal by their superiors.³⁶ The legislature has likewise authorized the Ombudsman to protect internal auditors who have been victimized after dutifully meeting their professional responsibilities.³⁷ By virtue of his responsibility to protect whistleblowers and internal auditors, the Ombudsman may issue any order he deems right and just, including a provisional order, revocation of the dismissal, or award of special compensation to the employee, in money or in rights.³⁸

The Israeli State Comptroller is the only state auditor in the world who simultaneously serves as the Public Complaints Commissioner, that is, Ombudsman.³⁹ This unique situation has some advantages: the Comptroller can independently initiate a comprehensive systemic audit the performance of the audited bodies and simultaneously investigate in detail, as Ombudsman, complaints of harm inflicted on individuals. If in the course of a probe into an individual's complaint, inappropriate administrative practices or systematic violations of the law come to light, the Ombudsman, in his other role as State Comptroller, can initiate a systemic audit aimed at protecting the interest of the general public. Moreover, the information collected by the State Comptroller's investigative units can assist the Ombudsman in the investigation of complaints, and *vice versa*: information compiled by the Ombudsman can support the State Comptroller's investigative units in conducting systemic audits.

VI. Independence and Self-Sufficiency

The principles of independence and self-sufficiency are the cornerstones underlying the work of SAIs.⁴⁰ Independence ensures that the SAI is protected from every type of external intervention, direct or indirect, during the fulfillment of its duties. Institutional independence is, therefore, the primary condition guaranteeing an objective, professional, and efficient audit.⁴¹ In the case of the State Comptroller of Israel, independence has two dimensions: institutional and personal.⁴²

A. Institutional Independence

The institutional independence enjoyed by the State Comptroller is enshrined in Section 6 of the Basic Law: "In carrying out his functions, the State Comptroller shall be accountable only to the Knesset and shall not be dependent upon the Government." This raises several issues.

1. Institutional Independence or the Long Arm of the Legislature

In Israel, two interpretive approaches have emerged concerning Section 6. Rubinstein and Medina considered the Office of the State Comptroller as a "long arm" of the Knesset. Although they noted that the Comptroller was an institution that was not part of the political process, they argued that the office acted in the name of the Knesset as a meaningful oversight mechanism over the executive branch.⁴³ It may still be argued, however, that the Comptroller's activities are meant to fill the void in the Knesset's oversight of government actions: Knesset members are required to deal with many and varied issues although they lack access to information and professional counseling on many of the areas that the government deals with. It is for this reason that they require the Comptroller's input concerning the audited bodies.⁴⁴

By contrast, Justice Ben-Porat, a former State Comptroller, held that the State Comptroller was an independent entity; despite the many signs indicating the Comptroller's subordination to the Knesset, the term "responsible," in Section 6 of the Basic Law, does not express subordination but rather accountability.⁴⁵

2. Budgetary Independence

The State Comptroller's independence also derives from the special process by which its budget is determined. The budget of the State of Israel is determined annually based on a government proposal, as set down in the Budget Law. Preliminary budget proposals, formulated by each ministry, are subjected to review and revision by the government, with assistance from the Ministry of Finance. At the conclusion of this process, the government submits a comprehensive proposal. By contrast, the State Comptroller submits its own annual budget proposal directly to the Knesset Finance Committee, which is the only body authorized to request that the Comptroller clarify particular items of the proposal and may approve changes in the budget. After the review of the proposal, the Knesset Finance Committee approves the Comptroller's budget and the proposal is published together with the state budget.⁴⁶

Not less important is the Comptroller's freedom to use the budget as he sees fit. The view commonly held in Israel is that the funds transferred to the State Comptroller are to be allocated strictly according to the Comptroller's decisions, free from any external intervention.⁴⁷ In sum, the Comptroller's ability to use his budget according to his own discretion is the true mark of his independence.

3. Setting the Audit Agenda

An essential aspect of the State Comptroller's institutional independence is his exclusive authority to set the agenda of the Office, especially when selecting the bodies to be audited, the issues to be investigated, and the priorities of the audit. The HCJ clearly stated so in its ruling in the *Haberfeld* case:

The State Comptroller can exercise broad discretion in his choice of the issues to be examined during an audit, a fact inherent in the independent and impartial status of the State Comptroller as an institution ... It has been decided that the Court will minimize its intervention in matters the State Comptroller has opted to examine. We accept the Comptroller's argument that the broad range of discretion his Office enjoys likewise extends to the determination of the internal priority of the issues within his purview.⁴⁸

Recognition of the possibility of encroaching upon this independence can be inferred from Section 21(a), the State Comptroller Law: "The Comptroller shall, if requested to do so by the Knesset, the Committee,⁴⁹ or the Government, prepare an opinion as to any matter within the scope of his functions. The said opinion shall be made public at a time specified by the Comptroller" (emphasis added). The authority of the government, according to Section 21(a), cited above, to direct the State Comptroller to examine a specific issue has raised concerns regarding government use of the Comptroller to harm certain audited bodies and to negatively influence his agenda. Ben-Porat has suggested that Section 21(a) should be read as stating that the government is allowed to request that the Comptroller prepare an opinion, and that the Comptroller is to consider doing so in a positive light. The government is prohibited, however, to force him to do so if, in his professional opinion, he thinks it inappropriate to comply. But even if this interpretation is correct on a practical level, Section 21 offers no legal definition of "opinion." Hence, even if the Comptroller is "forced" to prepare such an opinion, he can, for example, present the Committee with a short opinion paper or a letter that is not equivalent to a full audit report and therefore has little value. In any case, the exact pace at which the opinion is prepared remains to be decided by the Comptroller.⁵⁰

4. Staff Independence

To protect the institutional independence of the State Comptroller, it is necessary to also protect the independence of his staff. This feature of the Comptroller's independence is safeguarded by Section 22(a) of the State Comptroller Law, which states: "The staff of the Comptroller's Office shall have the same status as other State employees, but as regards the receipt of instructions, and as regards dismissals, it shall be under the sole authority of the Comptroller."

B. Personal Independence

According to the international standards applied to SAIs, it is fitting to enshrine also the personal independence of the State Comptroller.⁵¹

1. Appointments

Basic Law: The State Comptroller stipulates that the Knesset shall elect the Comptroller by a secret ballot.⁵² The secret ballot mechanism ensures that the Comptroller is elected according to the voters' conscience, free from external pressure. Another factor motivating the use of a secret ballot is the need to avoid the undesirable situation where candidates become aware of who voted for them and who did not, information that may result in accusations of biased audits.

2. Term of Office and its Extension

In the past, it was legally possible to appoint the State Comptroller for countless additional terms. The Basic Law has limited the Comptroller's term of office to seven years, without any possibility of reappointment.⁵³ This clause was likewise intended to protect the Comptroller's independence based on the assumption that incumbents who cannot be re-appointed will feel less obligated to those responsible for their appointment. Thus, the impossibility of reappointment is thought to ensure that the Comptroller will be free from pressures exerted by Knesset members or by government ministers during a reappointment process.

3. Salary

Section 11 of Basic Law: The State Comptroller states: "The salary of the State Comptroller and other payments payable to him during, or after, his term of office, or to his heirs after his death, shall be determined by law or by a resolution of the Knesset or of a committee of the Knesset authorized by the Knesset for this purpose." Concerning this issue as well, the legislators were scrupulous to avoid any intervention on the part of the Government or any other arm of the executive branch. These directives are consistent with the desire to ensure the Comptroller's independence. Any interference with the Comptroller's exercise of his personal rights by an entity about to be audited is thought to undermine the image of the Comptroller's independence and objectivity.

4. Dismissal

The special procedure required to remove a sitting State Comptroller likewise attests to his independence. The original Section 13 of Basic Law: The State Comptroller states that the Comptroller cannot be removed from office unless the Knesset approves the removal by a two-thirds majority of participating parliamentarians. This arrangement has drawn criticism because of the possibility that if the number of Knesset members present during the voting is low, the removal of the Comptroller may be confirmed by a miniscule number of legislators.⁵⁴ In 2005, Section 13 was revised as follows:

The State Comptroller shall not be removed from office, save for one of the following: (1) He is permanently unable to fulfill his post for health reasons—on the day on which the Knesset decided so, in a decision adopted by at least the majority of its members⁵⁵ ...; (2) Owing to conduct that is inappropriate to his status as State Comptroller—on the day on which the Knesset decided so, in a decision adopted by a majority of at least three-quarters of its members⁵⁶

The amended Section 13 equated the causes for dismissal and the number of legislators needed to remove the Comptroller with those required to remove the President of the State of Israel from office, as stated in Basic Law: The President. This amendment, which makes it difficult to dismiss the Comptroller, reinforces his status and independence.

VII. The Powers of the State Comptroller

The Knesset has delegated various powers to the State Comptroller that enable him to discharge his constitutional functions. These powers are surveyed separately below.

A. The Authority to Receive Documents

Auditing is inherently based on information received from the audited bodies. To conduct a professional and objective audit, state auditors must have full access to the information contained in a range of documents, including meeting protocols, work plans or schedules, opinions, and correspondence on diverse topics. Hence, a key prerequisite for the State Comptroller's Office to carry out its work in a professional, credible, and effective manner is access to all the information associated with the issues being audited. The Comptroller's authority to receive the necessary information from audited bodies is stated in Section 3 of the Basic Law: The State Comptroller: "A body subject to the audit of the State Comptroller shall at his request, without delay, provide the State Comptroller with information, documents, explanations, or any other material which the Comptroller deems necessary for the purposes of audit." In his role as Ombudsman, the Comptroller possesses the same authority to receive documents and other materials.⁵⁷

Furthermore, the State Attorney General, in the opinion papers he prepared in response to requests made by audited entities, has historically supported the approach that Section 3 enjoys special constitutional status that overrides the confidentiality legally enjoyed by government bodies. The authority granted to the State Comptroller to obtain all the information necessary for the audit is also extremely broad, covering documents containing information that may violate privacy and documents classified at various levels of confidentiality, especially material considered secret for security and military reasons.

Nevertheless, the era of digital information has raised significant challenges to the State Comptroller's work. In recent years, archives and document binders have "disappeared," with the bulk of the material needed to conduct a professional audit now located in computer files and electronic mail. Physical fieldwork has been replaced by rummaging through the audited bodies' computers, especially emails and digital folders. In substantive terms, the digital era was not meant to alter the essence of fieldwork; but in practice, the new technology instigated sharp confrontations between the Comptroller and the audited bodies. The argument most frequently raised by the audited bodies was that the State Comptroller did not have the legal authority to directly enter their computer networks. Over the years, the difficulties faced by the Comptroller's staff when attempting to obtain audit materials deepened. The controversy ended in 2019, with the introduction of a directive formulated by the State Comptroller together with the Attorney General, which formulated, for the first time, the Comptroller's authority to search for information located in the computerized information networks maintained by the audited bodies.⁵⁸

B. The Authority to Receive Balance Sheets and Reports

In addition to all the general information the State Comptroller is authorized to obtain according to Section 3 of The Basic Law, he is also authorized to demand that every audited body prepare a report specifying its annual income and expenditures as well as the balance sheets detailing its assets and liabilities at the expiration of each year, in addition to a detailed survey describing the economic and administrative operations carried out during that year.⁵⁹

C. The Authority Delegated through the Commissions of Enquiry Law

Section 26 of the State Comptroller Law states that the Comptroller and any person appointed by him for this purpose with the approval of the State Audit Affairs Committee of the Knesset shall have, according to the Commissions of Enquiry Law, 1968, the powers to summon witnesses, including private individuals, demand that they present documents or any other exhibit in their possession, compel witnesses to appear before the State Comptroller, order the deposition of witnesses abroad, and impose fines on witnesses who refuse to appear or to present the required documents and exhibits. Note that the State Comptroller tends to avoid making routine use of this authority.

D. The Authority to Issue an Order to Protect Whistleblowers

As noted, the State Comptroller, as Ombudsman, is mandated to protect whistleblowers, that is, public servants (including internal auditors) who expose acts of corruption or serious breach of a legal norm or rule of proper administration committed in the audited body.⁶⁰ According to Section 45C of the law, the Ombudsman is authorized, *ex officio*, to issue any order he deems correct and just, including provisional orders, to protect employee rights. If a whistleblower is dismissed because of his disclosure, the Ombudsman is authorized to order revocation of the dismissal or to award the employee with special compensation, whether in money or in rights. The Ombudsman is also authorized to “order the transfer of the employee to another post in the service of his employer.”⁶¹ Furthermore, as part of his authority to issue orders, the Ombudsman tends to issue provisional orders to protect employees from dismissal or to compel the employer to pay compensation should the employee choose to resign from his position with his current employer as a result of the harm caused him following his exposure of the said corruption.⁶²

The labor court has the authority to issue binding orders for the protection of whistleblowers as well. Nevertheless, whistleblowers usually prefer the path of seeking the protection of the Ombudsman because the procedures are free of cost and more efficient.

E. The Lack of Authority to Carry Out Criminal Investigations

In the course of an audit, the State Comptroller’s staff often uncovers facts suggesting the likelihood of criminal conduct, but the State Comptroller does not have the legal authority to carry out any investigatory activity or criminal enforcement. According to Section 14(c) of the State Comptroller Law: “If the audit work gives rise to a suspicion that a criminal act has been committed, the Comptroller shall notify the Attorney General of the matter and may do so if the audit work gives rise to a suspicion that a disciplinary infraction, as defined by law, has been committed; the Attorney General will inform the Comptroller and the Committee of how the matter was handled within six months of being notified.”

Since the Law was enacted, in 1958, and under Section 14(c), when suspicions of criminal acts arose during an audit, these suspicions were brought before the Attorney General. In some cases, the notification was followed by the Attorney General ordering an investigation, and some investigations led to criminal indictments⁶³ or disciplinary hearings.⁶⁴

VIII. Other Functions and Issues

A. Moral Integrity Audit

The explicit stipulation in the Basic Law that the State Comptroller is authorized to conduct moral integrity auditing is rare.⁶⁵ Israel is apparently the only country where statutory law grants such broad authority to its SAI. Although most SAIs recognize the importance of fighting corruption and their potential contributions to that effort, only a small number of SAIs have been authorized to examine whether the audited bodies have operated in a morally irreproachable manner. Of the SAIs conducting moral integrity-oriented audits, the majority examine this aspect within the framework of performance or compliance audits.⁶⁶

Although the duty to investigate infringements of moral integrity is mentioned once in the Basic Law and four times in the State Comptroller Law, no definition of moral integrity appears in either law. Some references to the meaning of the term, however, may be found in Supreme Court rulings and the literature. In the *Sheves* case, President Aharon Barak noted that “moral integrity” refers to “a public servant acting fairly and honestly.”⁶⁷ The late Justice Haim Cohn identified three types of infringements of “moral integrity”: criminal, disciplinary, and moral.⁶⁸ Justice Miriam Ben-Porat, a former State Comptroller, wrote that the term “moral integrity” expresses the moral and fair behavior befitting public servants and holders of public office.⁶⁹ As noted, when suspicions of possible criminal conduct arise, the State Comptroller is required to bring them to the attention of the Attorney General, as the Comptroller has no authority to act in these areas. Yet, all other activities that constitute deviations from the behavior expected from a public servant are also considered to breach moral integrity. As defined by a leading Israeli scholar on the subject, the State Comptroller’s role is to investigate moral integrity that is situated in the “twilight zone,” the gray area between criminal offenses and indications of faulty or inappropriate administration.⁷⁰ Since the early days of the State of Israel, State Comptrollers have examined moral integrity and published scathing audit reports, for example, regarding financial and political collusion, political appointments and other types of nepotism, misuse of public funds, and conflicts of interest. Such moral integrity audits advance the fight against public corruption in two ways. First, they expose acts of corruption and bring them to the public’s attention. Second, they help articulate appropriate norms of behavior for public officials and the formation of a culture of governance that condemns corruption. Thus, moral integrity audits contribute to the eradication of corruption both by deterrence and by educating public servants.⁷¹

B. Real-Time Auditing

Real-time auditing refers to the auditing of actions as they occur and the publishing of findings before the audited action has been completed. Real-time auditing raises complex and delicate issues. It places the SAI at the heart of heated disputes with public agencies at a time when they are delivering programs that are the object of public attention, making the SAI vulnerable to criticism.⁷² The main argument against real-time auditing is that it undermines the separation of powers because auditing events that are in progress risks interfering with decision-making processes.⁷³

Real-time auditing became popular in some countries in the 2010s as a result of growing public demand for effective and timely review of executive actions. The practice expanded significantly following the 2020 COVID-19 pandemic and the costly actions governments took to confront it. In Israel, however, the State Comptroller has been conducting real-time audits since the 1970s.⁷⁴ The Basic Law: The State Comptroller and the current State Comptroller Law make no mention of the timing of the audit or the authority of the Comptroller to conduct audits in real time. But over the years, it has been the accepted perception of the State Comptroller that the authority granted by law was so broad that the authority to conduct real-time audits can be inferred from it by way of interpretation. The expression “any other matter he deems necessary,” which

appears in Section 2(b) of the Basic Law, indicates that the authority of the State Comptroller is general and not limited to a list of specified issues.⁷⁵ The suggested interpretation is also consistent with the view of the Israeli HCJ, which ruled consistently that the State Comptroller enjoys wide discretion, essential for an effective and comprehensive audit.⁷⁶ Even comptrollers who generally accepted that after-the-fact audits should be the rule agreed that the law allowed them to initiate real-time audits. Miriam Ben-Porat, State Comptroller through most of the 1990s, believed that although an audit should be conducted after the fact, there was no prohibition in the law to carry out an audit before an action is completed.⁷⁷

In 2018, the Israeli State Comptroller issued what is quite likely the most comprehensive official set of real-time audit guidelines, containing a section that laid out various criteria that auditors should apply when considering whether or not to conduct a real-time audit. These include the public importance of the topic under review; the contribution of the audit to the prevention of irreversible or serious damage; the ability to influence the result through the audit; the degree of complexity of the topic; the experience and knowledge available as a basis for a substantive audit; and the damage that may be caused by conducting the real-time audit. The guidelines make clear that *ex post* audits remain the rule and real-time audits the exception.⁷⁸

Real-time auditing has been and remains unpopular with the executive branch. This tension is evident in a bill proposed by members of the government coalition in the Knesset in 2017. The bill sought to explicitly revoke the Comptroller's authority to conduct real-time audits, but it failed to become law.⁷⁹

C. Institutional Audit vs the Imposition of Personal Responsibility

The traditional role of the state audit is to point out deficiencies and recommend their correction to improve the functioning of the audited body. By this approach, it is not the role of the State Comptroller to impose personal responsibility for deficiencies, nor is his role to indicate in his audit reports the names of the public servants who caused the deficiencies.

This approach characterized the audits in Israel in the early years of the state. In those days, the state comptrollers mentioned the names of the audited bodies but the officials whose actions were mentioned in the reports remained anonymous. This practice has gradually changed. In one of his reports, Justice Eliezer Goldberg, who served as State Comptroller during 1998–2005, stated that according to modern approaches, state audits tend to deal not only with the deficiency but also with those who caused it.⁸⁰ This trend was strengthened during the term of Justice Micah Lindenstrauss, who served as State Comptroller during 2005–2012.⁸¹ In 2008, Lindenstrauss wrote that personal responsibility means that public servants are expected to be personally sanctioned if they act against the law, maliciously, with total indifference, gross negligence, or by turning a blind eye. In his opinion, a violation of moral integrity constituted a serious violation of the public interest and could not be tolerated, even if it did not cause real or immediate damage.⁸²

In 2018, professional guidelines regarding the publication of names and the imposition of personal responsibility were promulgated by the State Comptroller's Office.⁸³ The rules determined that caution and integrity should be exercised when considering imposing personal responsibility by publishing the names of officials. Before publication, the public interest in publication should be weighed on one hand and the need to prevent unjustified damage to the reputation of the auditee on the other. Thus, the decision regarding the publication of the names of officials should be based on several considerations, including the seriousness of the harm caused by the public servant to the public interest and to the protected value, according to the audit report; the rank of the official; whether the act or omission involved a violation of moral integrity; whether it was a repeated phenomenon or a one-time lapse; and whether there were mitigating circumstances to diminish the severity of the deficiencies. Additionally, the imposition of personal responsibility and publishing the names of the audited officials in the reports (and even more so when imposing personal responsibility for

failures of moral integrity) should be carried out with strict adherence to the rules of natural justice, especially the right of any person expected to be harmed by having his name mentioned in the report.

The final decision in imposing personal responsibility and publishing the names of officials is at the discretion of the State Comptroller. The law stipulates that the Comptroller will note in the audit report outstanding improvements and actions.⁸⁴ In this case it is necessary to also consider whether it is appropriate to mention in the report the names of the officials at the audited body who contributed to the improvement or the positive action.

D. Audits of Political Parties and Candidate Financing

Section 5 of the Basic Law states that “the State Comptroller shall carry out other functions as provided by law.” Over time, and by virtue of that section, the Knesset has broadened the State Comptroller’s role, assigning additional functions that deviate from the classic definition of state auditing. One such function assigned to the State Comptroller is based on the authority enshrined in various statutes to audit election campaigns and party financing.⁸⁵ The State Comptroller can review the financial records of parties running in Knesset elections, factions and lists participating in local authority elections, candidates seeking to be elected at the head of regional councils, and candidates running in party primaries. The Comptroller can also audit the current accounts of parties already represented in the Knesset. The regulations and limitations applying to persons running for office are found in the relevant statutes⁸⁶ and in the instructions that the State Comptroller publishes occasionally. As part of his audit, the Comptroller examines whether the parties and candidates have managed their finances in accordance with the law, that expenditures did not exceed the maximum allowed, and that contributions met the limitations fixed by law, determined based on the identity of the contributors and the sums contributed. The Comptroller’s findings are then published in a report showing whether each party and candidate acted in accordance with the law, that is, whether the Comptroller considered the findings of the audit to be positive or negative. The Comptroller can subsequently impose fines on candidates running in party primaries as well as on the parties and lists that did not abide by the directives of the law. He may also revoke some of the state funding allocated to those parties or factions.

E. Prevention of Conflicts of Interest: Ministers and Deputy Ministers

In 1977, the government adopted a set of standards known as the Rules of Ethics for the Prevention of Conflicts of Interest of Ministers and Deputy Ministers (hereinafter, “the Rules”).⁸⁷ Based on recommendations in the Report of the Public Committee headed by Judge Shlomo Asher (Ret.), the Rules are comprised of provisions for the conduct of ministers and deputy ministers when discharging their duties, primarily the obligation of doing so in fairness and without bias, avoiding conflicts of interest and even the appearance thereof, and not engaging in additional occupations. The Rules also established restrictions on the management of financial affairs by ministers and their deputies, as well as the control of assets, including those held by their families. The Rules prescribe that ministers and their deputies be subject to the supervision of the State Comptroller regarding their fulfillment of the stated provisions.

F. Judicial Review of the State Comptroller

The Office of the State Comptroller is an integral part of the state administration. Formally, the HCJ exercises judicial review over the Comptroller but the HCJ has declared that such judicial review is limited:

The fitting judicial policy is for the HCJ to avoid reexamination of issues already discussed in the State Audit reports. This judicial policy is also desirable from the standpoint of the audit in order to avoid rendering the respective audit inconclusive and thus empty it of its significance and efficiency ... The

duty of studying the conclusions of the audit rests on the Executive Branch, which is the object of the audit, and of the Legislative Branch, which receives the report that will later be discussed in detail by the Knesset committee assigned to do so. Criticisms and objections are most appropriately discussed within the framework of the audited entity's right of response to the audit ..., as well as in the comments expressed in the State Control Committee, where the details of each report are clarified. To summarize, it is neither desirable nor fitting ... for the HCJ to deal with appeals on the State Audit and its findings.⁸⁸

The Court has ruled, however, that the State Comptroller and Ombudsman are subject to the basic principles of administrative law, such as the duty to respect the rules of natural justice of the audited bodies, that is, the right of the audited body to be heard by the Comptroller before the publication of the final report, with respect to which the HCJ exercises judicial review.⁸⁹

Notes

- 1 May 5, 1949, Book of Laws 8. Guidelines to be followed when setting up supreme audit institutions (SAIs) were laid down years later in the Lima Declaration of Guidelines on Auditing Precepts 1977, and in the Mexico Declaration on SAI Independence 2007, both of which were accepted by the International Organization of Supreme Audit Institutions (INTOSAI). These declarations stipulate, among others, minimum standards for the foundation of an SAI: legal or constitutional foundations; safeguards of SAI independence and immunity for their lead figures; a broad mandate for action, and the authority needed to carry out their functions according to their discretion; the obligation of audited bodies to grant auditing officials full access to internal information; the authority to report to the public and publish the findings of the audit; freedom of action in everything regarding the scope, subjects, and time of the audit; the responsibility to institutionalize effective mechanisms for rectification of defects; and the provision of suitable resources together with administrative and budgetary independence for the SAI. See Yoram Rabin, Elie P. Mersel, and Alon Rodas, "Auditing" in Rainer Grote, Frauke Lachenmann, and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (Oxford University Press, 2023). The Israeli State Comptroller, like most other SAIs, operates in accordance with INTOSAI declarations, standards, and guidelines.
- 2 State Comptroller Law (Amendment No. 5), 1971, SH 623 (April 9, 1971).
- 3 Elie Mersel, Matan Guttman, and Alon Rodas, "From State Comptroller to National Human Rights Institution—A Short but Necessary Path" (2018) 48 *Israel Yearbook on Human Rights* 161, 175.
- 4 Section 6, Basic Law: The State Comptroller.
- 5 Section 2(a), Basic Law: The State Comptroller.
- 6 Section 2(b), Basic Law: The State Comptroller.
- 7 Section 10(a), State Comptroller Law.
- 8 Section 2(b), Basic Law; section 10(a)(3), State Comptroller Law.
- 9 Section 2(a), Basic Law.
- 10 Section 9, State Comptroller Law.
- 11 HCJ 3107/19 *Eged Transportation LTD v State Comptroller and Ombudsman* (Nevo September 11, 2022) (Isr). In this case, the State Comptroller decided to exercise his authority to audit private transportation companies because they are funded by the state. The Supreme Court ruled that the State Comptroller was not authorized to do so because the private transportation companies cannot be considered a "funded body" under the circumstances.
- 12 "General employees' organization" means a national employees' organization, operating as a trade union in more than one branch of employment.

- 13 Section 9(9) of State Comptroller Law.
- 14 Such as art 22 of the International Covenant on Civil and Political Rights, 1966; art 8 of the International Covenant on Economic, Social and Cultural Rights, 1966.
- 15 Section 9(6) of Basic Law: The State Comptroller.
- 16 HCJ 3989/11 *The Temple Mount Trustees Movement v State Audit Affairs Committee of the Knesset*, s 11 of Danziger J (December 27, 2012).
- 17 Section 12(b), Basic Law.
- 18 Section 15(b)(1) of the State Comptroller Law.
- 19 Section 15(b)(2), the State Comptroller Law.
- 20 Section 15(b)(3), the State Comptroller Law.
- 21 Section 14(b)(1), the State Comptroller Law.
- 22 Section 21, the State Comptroller Law.
- 23 According to section 17, State Comptroller Law, the obligation to publish is restricted in the interest of safeguarding state security or to avoid impairing its foreign relations or its international trade relations.
- 24 Roy Peled and Yoram Rabin, “The Constitutional Right to Information” (2011) 42 Columbia Human Rights Law Review 357, 365–66.
- 25 See HCJ 7805/00 *Aloni v Internal Auditor of the Municipality of Jerusalem*, PD 57(4) 577, 605 (2003) (Isr); HCJ 5743/99 *Duek v Mayor of Kiryat Bialik*, PD 54(3), 410, 415 (2000) (Isr).
- 26 Isaac Becker, “The Birth of the Modern Ombudsman Concept” (2018) 63 *Iyunim* 115.
- 27 Section 4 of Basic Law.
- 28 Section 33, State Comptroller Law.
- 29 Section 36, State Comptroller Law.
- 30 Section 37, State Comptroller Law.
- 31 Section 37(2), State Comptroller Law.
- 32 HCL 304/71 *Dudai v Harel et al.*, PD 28(2) 554 (1971) (Isr).
- 33 Section 38(5), State Comptroller Law.
- 34 This option may be inferred from s 45(a)(2), State Comptroller Law, which states that the decisions and findings of the Ombudsman concerning a complaint “shall not prevent the complainant or any other person from exercising any right or applying for any relief to which he is entitled.”
- 35 HCJ 453/84 *Iturit Communications Services Ltd. v Minister of Communications*, PD 38(4) 617, 624 (1985) (Isr).
- 36 Section 45A(1), State Comptroller Law. For example, fifty-seven complaints were filed in 2019 by employees claiming that their superiors subverted their rights because they had revealed incidents of corruption (taken from the 2019 *Report of the Commissioner for Public Complaints*, vol 46, p 102 (June 30, 2020)).
- 37 Section 45A(2), State Comptroller Law.
- 38 Section 45C, State Comptroller Law.
- 39 Itzhak Ernst Nebenzahl, “Israel`s Contribution to the Development of State Audit Throughout the World” in Asher Friedberg and others (eds), *Studies in State Audit* (The State Comptroller and Ombudsman 1995) 47, 48

- 40 Conceptually, the principles guiding the operations of SAIs are based on the notion of independence. See the Lima Declaration, cf (n 1), and the Mexico Declaration on SAI Independence, (n 1) which has adopted the eight pillars of SAI independence.
- 41 Lima Declaration and Mexico Declaration (n 1).
- 42 See also Shai Mizrahi, “The Office of the State Comptroller of Israel: A Case Study in Independent Auditing” (2009) 36(4) *International Journal of Government Auditing* 8.
- 43 Amnon Rubinstein and Barak Medina, *Constitutional Law of the State of Israel*, vol 2, 750–51 (6th edn, Schocken 2005) (Hebrew).
- 44 Michal Tamir, *The State Comptroller: A Critical Look* (IDI 2009) 79 (Hebrew).
- 45 Miriam Ben-Porat, *Basic Law: The State Comptroller* (Yitzhak Zamir ed, The Harry and Michael Sacher Institute for Legislative Research and Comparative Law 2005) 342–43 (Hebrew).
- 46 Section 10, Basic Law: The State Comptroller, and section 24, State Comptroller Law.
- 47 Ben-Porat (n 45) 402–03.
- 48 HCL 6700/19 *Haberfeld v The State Comptroller*, s 3 of the judgment handed down by J Amit (Nevo, February 4, 2020) (Isr).
- 49 This paragraph refers to the Knesset Committee for State Audit Affairs.
- 50 Ben-Porat (n 45) 339, 342.
- 51 Principle 2 of the Mexico Declaration on SAI Independence, (n 1).
- 52 Section 7(a), Basic Law: The State Comptroller. Section 8 of the Basic Law states: “Every citizen of Israel who is resident of Israel is eligible to be a candidate for the position of State Comptroller.”
- 53 Section 7(b) and 7(c), Basic Law: The State Comptroller.
- 54 Ben-Porat (n 45) 441.
- 55 That is, during the given session, at least sixty-one of the 120 Knesset members vote for his removal.
- 56 That is, during the given session, at least ninety of the 120 Knesset members vote for his removal.
- 57 Section 41(d), the State Comptroller Law.
- 58 Procedure regarding the accessing of information and documents kept in information networks of audited bodies of the Executive Branch and their collection by the State Comptroller and his staff during the exercise of their legal functions (November 19, 2019); for more on this issue, see Yoram Rabin and Matan Gutman, “Section 3 of ‘Basic Law: The State Comptroller: On the State Comptroller’s Authority to Obtain Direct Access to Computerized Information and the Gatekeepers’ Compromise” (2021) 6 *Mishpat Mafteach* 32 (Hebrew).
- 59 Section 11, State Comptroller Law.
- 60 Section 45A(1), State Comptroller Law.
- 61 Section 45C(3), State Comptroller Law.
- 62 For example, in 2019, fifty-seven complaints were filed by employees who claimed that their superiors had infringed their rights as a result of their exposing acts of corruption. Three complaints received permanent protection orders from the Ombudsman, and six received provisional protection orders. The provisional orders were designed to prevent harm to the complainants until the completion of the investigation (Office of the Ombudsman—Summary of Activity in 2019, page 30). See also David Nahir, “Questions and Answers with the State Comptroller and Ombudsman of Israel, Judge (Ret) Joseph Haim Shapira” (2018) 63 *Israel Journal of State Audit* 5, 13–17.
- 63 See eg the widely covered court decision in the criminal prosecution of then Director General of the Interior Ministry,

- Aryeh Deri, CrimC 1872/99 (Jerusalem) *State of Israel v Deri* (Nevo September 24, 2003); see also, CrimC (Tel Aviv) 66313-12-15 *Hevroni v State of Israel* (Nevo February 2, 2017) (Isr).
- 64 For further discussion of section 14(c) of the State Comptroller Law, see Yoram Rabin and Tehila Winograd, “State Audit Work that Raises a Suspicion of Criminal Conduct—The Case of Israel” (2018) 63 *The Israel Journal of State Audit* 87.
- 65 Section 2(b) of the Basic Law: The State Comptroller. In an amendment to the law from 1952, the Comptroller’s authority was expanded to include investigation of the moral integrity of the audited body; see section 1(c), State Comptroller Law (amendment), 1952, Book of Laws 104, August 5, 1952; Yoram Rabin and Alon Rodas, “The Israeli State Comptroller’s Role in Combating Corruption and Promoting Moral Integrity”, *Law in Times of Crisis* (Eric Hilgendorf ed, Duncker & Humblot 2023) 115, 120–24.
- 66 Ionel Bostan, Bogdan Narcis Firtescu, and Vasile Cosmin Nicula, “The Role of Supreme Audit Institutions in Promoting and Strengthening Ethics and Integrity in the Public Sector. Possible Models and Tools to Follow” (2018) 2(1) *Journal for Ethics in Social Studies*, 43–52, 46–48.
- 67 1397/03 *State of Israel v Shimon Sheves*, PD 59(4) 385, 410 (2004).
- 68 Haim Herman Cohen, “Reflections on Moral Integrity” (1995) 2 *Mishpat U’Mimshal*, 403, 412 (Hebrew).
- 69 Ben-Porat (n 45) 230.
- 70 Asher Friedberg, “The Place of the State Audit in the Examination of Moral Integrity in Israel’s Public Sector”, *The State Audit in Israel in Practice* (3rd edn, State Comptroller’s Office 1995) (Hebrew) 274–79
- 71 Rabin and Rodas (n 65) 122–23.
- 72 For a detailed discussion of the pros and cons of real-time auditing, see Yoram Rabin and Roy Peled, “Real-Time Audit of Public Agencies: Utility, Controversy and Lessons for an Emerging Practice” (2023) 28(2) *International Journal of Auditing* 328.
- 73 *ibid* 332.
- 74 *ibid* 328.
- 75 *ibid* 334.
- 76 HCJ 4870/10 *Blum-David v State Comptroller*, sec 19, the ruling of J Naor (Nevo June 23, 2011) (Isr).
- 77 Ben-Porat (n 45) 9.
- 78 Rabin and Peled (n 72) 336.
- 79 *ibid* 333.
- 80 State Comptroller and Ombudsman, *Report on the Results of the Audit of the Accounts of the Parties—Elections to the Fifteenth Knesset*, 12 (2000).
- 81 Tamir (n 44) 115–16.
- 82 Micah Lindenstrauss, “Personal Responsibility” *Yediot Ahronot* (Israel, July 29, 2008) 20 (Hebrew).
- 83 State Audit—Professional Guide, Chapter 4.6—Publication of Names and Personal Responsibility (The State Comptroller Office 2018).
- 84 Section 15(b)(4), State Comptroller Law.
- 85 Parties Financing Law—5733-1973; Local Authorities Law (Election Financing) 5753-1993; Parties Law, 5752-1992.
- 86 *ibid*.
- 87 The Rules have since been revised occasionally. The version of the Rules currently in effect is entitled Rules of Ethics for the Prevention of Conflicts of Interest of Ministers and Deputy Ministers, 2003.

- 88 HCJ 4914/94 *Turner v State Comptroller*, PD 39(3), 771, 88–787 (1995) (Isr). See also HCJ 6825/06 *Tzur v State Comptroller and Ombudsman*, s 23, ruling of J Procaccia (24 June, 2009) (Isr); HCJ 64/13 *Weiner v State Comptroller* (Nevo April 5, 2014) (Isr).
- 89 *Turner* case (n 88) 789. In this case, the petition was accepted after it was determined that the conclusions of the audit report had no force because the petitioner's right to be heard was denied.

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