

# OMBUDSMAN IN TURKEY: ITS CONTRIBUTIONS AND CRITICISM

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## Abstract

Ombudsman institution is an independent, impartial, and a legal body which aims to protect the ruled ones against the trend of lawful authority, eliminate bad management practices, and act upon a complaint or ex officio. Ombudsman has authority in the investigation of incident, analysis, and in the making of announcement to the general public. With the legal arrangement made in Turkey, ombudsman institution has an Ankara-based special budget and legal entity connected to the Grand National Assembly of Turkey. The transition of the ombudsman institution into a constitutional institution has made significant contributions to both public administration and also to the citizens. This paper aims to study the various contributions and criticisms of the ombudsman institution in our country, Turkey.

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**Keywords:** Ombudsman, Turkey, institution, Transparency, Management

## Introduction

Ombudsman institution in Turkey which supervises the implementation of the institutions that make up the state structure, has taken a giant step towards the rule of law in attaining constitutional status. Rapid administrative developments, ease of citizens to obtain information, and the necessity of rapid resolution of arising problems have made ombudsman an essential requirement today. This necessitates the issue of the progress of our country towards the European Union. However, this was followed by the constitutional amendment made in our country in 2010. Ombudsman Institution Law came into force in 2012.

The ombudsman institution law is aimed to produce solutions by solving citizens' problems that may arise in their work with the state. Consequently, they perform the work quickly thereby easing the burden on the state greatly. Ombudsman, as a part of modern management, contributes in increasing the efficiency of public services standing by the citizen unlike the classic bureaucratic understanding.

In this case, ombudsman will be evaluated in terms of public management perspective. Therefore, this study analyzes the concept of ombudsman in general, its practices in our country, its contribution to the country's governing, and its criticism.

### **What is the ombudsman, its features, and types**

“It is a concept that is appointed by the parliament on principle, but independent to the parliament as much as to the government, regardless of any shape, acting upon the complaints of people who suffered from management's actions and procedure, equipped with an extensive investigation and research authority, pursuing the goals of revealing the injustice done by the management, preventing it from abusing its discretion, ensuring to respect the regulations and appropriate action, advising suggestions bearing no executive character, and finally, proposing the necessary reforms or better execution of public services.” (Yılmaz, Kılavuz and Işçi, 2003: 54). According to another definition, it is a means of ensuring that the citizens, who benefit from the service in public works carried out by bureaucracy structures, are treated well, quick, and in a respectful way (Pickl, 1986:37). Ombudsman institution is an independent, impartial, and a legal body which aims to protect the ruled ones against the trend of lawful authority, eliminate bad management practices, and act upon a complaint or ex officio. Ombudsman has authority in the investigation of incident, analysis, and in the making of announcement to the general public (Parlak and Sobacı, 2003:281). Furthermore, the ombudsman himself/herself is an individual officer with high-status that helps citizens in administrative tasks, receives their problems, and has investigative powers elected by the legislation (Mıhçıoğlu, 1987:169). Although ombudsman has different definitions in various fields and in many countries, ultimately, it is an institution that protects the citizens against the government and stands by the citizen in the face of injustice. Therefore, they are able to provide positive contribution to the functioning of the administration.

### **Ombudsman's Features**

a) **Impartiality:** As required by the principles contained in the country's basic law, ombudsman tries to solve the problems of the citizens without any distinction or impartially.

b) **Independence:** Ombudsman is independent due to its policies and laws. Therefore, no authority gives orders and directives to ombudsman. Also, no authority dictates to ombudsman how it should perform its duty, nor holds it responsible for its deeds and actions (Odyakmaz, 2011: 100). However, since ombudsman receives its general support from the parliament

elected by the citizen, it fulfills its authority independently through the influence of this power.

c) **Being Bound of Ombudsman's Decisions:** Demands from citizens are investigated, questioned, and the decisions taken are relayed to the relevant institution by the ombudsman institution. However, the relevant institutions are in a position of either complying with these decisions or ignoring them.

d) **Accessibility:** Citizens can easily apply to the ombudsman institution without complexity, difficulty, or without stumbling due to the bureaucratic difficulties. Consequently, citizens can place demand easily. A lawyer is not needed or required before they can apply to the ombudsman institution. Furthermore, they can give their complaints through the telephone, post office, and e-mail as well (Fendoğlu, 2011: 63). Thus, the easy accessibility feature is the most important feature which differs from other methods of control and complaints.

e) **Comprehensive Research Examination:** In ombudsman institution, beyond some exceptions, relevant institution is obliged to provide requested documents guaranteed by law institutions (Ozden, 2008: 37). However, the aim here is to examine the situations that are related to the citizens' problems into the smallest details and oversee them.

f) **Works with the Public Bureaucracy:** The Ombudsman is definitely interested in public dealings with the state to be a part of them. So, one of the two parties is the state's institutions, while the other is the citizens. In addition, they are not interested or involved in problems between citizens or any special problems that are non-public.

### **Ombudsman Types**

Numerous classifications of the Ombudsman institution have been made. In this study, significant ones of these numerous types are given as shown below:

a) **Corporate Ombudsman:** After the ombudsman came into implementation process, it gained an organizational identity. Ombudsman takes care of problems and complaints between polarized legal persons, groups, or individuals in an impartial way (Ozden, 2008:51). As can be understood from the definition, they deal with institutions of public administration. In addition, they work as a corporate organization, and not as a personal organization.

b) **Parliamentary Ombudsman:** Despite the public administration, it consists of a person protecting the rights and freedoms of citizens. Thus, this has gained the confidence of the public and they are well-known (Temizel, 1997:59). He/she starts to work after being elected by the parliament. However, they are unbiased and independent.

**c) Military Ombudsman:** They fulfill the task of solving disputes between members of the armed forces, the military, as well as its members (Ozden, 2010:59). Also, they give advice and recommendations to the Ministry of National Defense.

**d) Health Ombudsman:** They help in solving problems and in evaluating complaints related to health issues. In avoiding the shortcomings, they identify the health institutions of the addressee. In addition, they make recommendations for the improvement of the service quality of health institutions (Akıncı, 1999:342). Thus, it is a kind of ombudsman that can provide important contributions to the improvement of the quality of service of health institutions.

**e) Consumer Ombudsman:** Today, as a result of competition brought by rapid sales and marketing, consumers could be easily deceived by advertisement, promotion, and other marketing activities. This type ombudsman is intended to eliminate the consumer's victimization (Ozden, 2010:63). It plays an important role in both solving the problem easily and reducing the burden of consumer courts.

**f) Local Government Ombudsman:** It deals with problems arising in the implementations of local governments. It was established in the UK for the first time. Its mission area is for the institutions of local government to be related. It is an important ombudsman at the point of good service and control. Thus, this is because the central government has passed its many powers to the local governments today.

### **Ombudsman and its contributions in turkey**

Tradition from the Ottoman and administrative reforms carried out since the proclamation of the Republic, unfortunately did not reduce the bureaucracy ordeal in Turkey. European Union harmonization process and citizen-oriented management approach have accelerated the work on the ombudsman institution. Ombudsman institution came up many times during the preparation of the 1982 constitution and at later periods. However, it became a constitutional institution with the constitutional changes in 2010. In the next section, “why ombudsman in Turkey,” ombudsman law and its contributions in Turkey will be the major focus.

### **Why Ombudsman in Turkey**

Consequently, various factors such as management, problems in the audit area, the active role of civil society organizations, the rise of democratic consciousness, and globalization, have made ombudsman institution inevitable in our country. Below are the reasons for the establishment of the ombudsman institution in our country. Thus, this will be addressed step by step.

**a)** The development of the Welfare State has increased its public bureaucracy. The growth of public bureaucracy has become an important issue in terms of the public bureaucracy political power. From the perspective of the citizens, it has moved away a good management from staying in a difficult position in the face of public administration (Talas, 1994:45).

Problems in public bureaucracy in Turkish public government bring huge costs to the state and its citizens. To resolve these costs and problems, officials are constantly working to produce solutions and reforms (Ozsemerci, 2005:3). Furthermore, the structural size of the public bureaucracy, its strong bureaucratic structure, its awareness of the rights and interests of citizens, and the defending of the rights and interest of the citizens, have become very difficult (VIII. Five-Year Development Plan, 2001:241). This difficulty has led the citizens to bribery and unethical ways of overcoming the bureaucratic obstacles. Therefore, to get rid of such negative cases, the existence of the ombudsman is of utmost importance.

**b)** Nowadays, monitoring all transactions made by the state and by every citizen clearly without blocking and getting information, is the most important step in terms of human rights and freedoms. In a democratic society, the government must not remain confidential and closed (Demirkan et al., 2011:179). Transparency enables citizens to be more conscious against public administration and it permits the control of public works. Also, public administration can continue its operations efficiently and effectively. Transparency contributes to the habit of the democratic participation of citizens and in the reformation of the management.

**c)** Democratic systems are successful compared to other political systems used to combat corruption (Griffth – Traversy, 2000:19). Authorities in the central governing increase secrecy within the bureaucracy, and their external closure (Aktan, 2002:327). This position negatively affects the outlook of relevant authorities and citizens on the public process. Secrecy causes corruption far from accountability within the organization structure that is evaluated in a negative way by the public bureaucracy in time. The decline in the level of accountability leads public managers to act arbitrarily and irresponsibly. The ombudsman institution, by preventing such unintended consequences in the public administration, makes the bureaucracy clean up its act.

**d)** Centralism understanding of the Ottoman Empire until today has driven apart the citizens from rights such as obtaining information due to democratic participation. Lack of democratic participation has prevented the creation of civil society organizations and/or their developing institutionally. Multiparty democracy life which started in 1950 brought the citizen to an important and active position of politics. Although it was interrupted several

times by military interventions, democratic life, especially after 1980, has progressed very rapidly. The development of a democratic culture has contributed to the proliferation of non-governmental organizations, and has increased citizens' awareness. During this process, strengthening of local governments with the works to enter the European Union and social reforms, has opened the way for citizens to participate in the management process. In addition, it has led the public bureaucracy to develop a more cautious administrative attitude. Export-oriented policies followed in the years after 1980 in Turkey, have resulted in the enrichment of citizens and an increase in economic growth. These types of economic and social developments have brought institutional infrastructure and legal arrangements with itself. Ombudsman alerts for problems and solutions that is emerging or that may emerge through this legislation, or during the implementation of the law. As a result, making regulations in favor of the citizens and its efficiency in public administration increases.

e) Changes in the understanding of public administration in the world have brought about the concept of governance which is based on the interaction between the public administrations and social actors (Argüden, 2006:1). Subsequently, governance, accountability, and transparency have to do with principles such as the rule of law. With governance, the state has to be citizen-focused. This focuses on a more flexible relationship of public-private management (Peters and Pierre, 2007:3). New Public Management approach foresees the development of a participatory and democratic manner. Rapid technological advances, both in terms of public administration and in terms of citizen, gave the opportunity to minimize the costs arising from time and human resource. In particular, based on the e-government applications in our country, citizens can reach out for the information and documents they need. Hence, this has made the state structure to be a coordinative and organized public administration structure (Tarhan, 2011:49). The use of e-government gives important support to the management concepts mentioned above such as accountability and transparency. Public administrators are forced to be more careful in their work. The citizens become effective by participating in the process of a kind of public bureaucracy and administrative procedures. Free market economy and the rapid commercial developments, and state downsizing, have brought about a reduction in bureaucracy with themselves. Here, the importance of local governments increased. Thus, managing where they live together with citizens has led to fruitful results. Ombudsman helps to solve citizens' problems by involving in the situation at any level of participation.

f) Developments within the meaning of governing, naturally affected the audit and judicial institutions. The judiciary's workload is increasing steadily in our country. However, it prolongs the process of the judicial

decisions to be taken. The aim is not to place a burden on citizens, which is one of the important tasks of ombudsman that comes into play here. At the same time, the decision taken by the judiciary may lead to unfair results. By disapproving the result, ombudsman can contribute to justice by coming into play (Akbaroğlu, 2002:42). Thus, ombudsman gives contribution to the rule of law and makes decisions of the judiciary about being fair.

For these reasons, we tried to summarize shortly, the contributions of the ombudsman institution in Turkey which has an undeniable importance. Management, political behavior, raising awareness of citizens, elimination of bureaucratic obstacles, and the citizen-focused policies of political power, has institutionalized ombudsman concept in our country.

### **Ombudsman Act in Turkey**

In our country, as a result of the referendum on constitutional amendments in 2010, the establishment of the ombudsman institution was decided upon. With the name of “Draft Law on Ombudsman”, which was agreed in the Parliament (TGNA-Turkish Grand National Assembly), it was published in the Official Gazette. However, after entering into force as required by the law in question, the process was completed through electing the Chief Ombudsman by the Parliament. In addition, a brief information about the functioning of the institutions will be given.

With the legal arrangement made in Turkey, ombudsman institution has an Ankara-based special budget and legal entity connected to the Grand National Assembly of Turkey. Furthermore, a lead auditor, five auditors, and a general secretary occupy offices in the institution. However, this office can be opened where necessary. The lead auditor manages and represents the institution. The main task of the institution, with regards to the complaints about the operation of the administration, is to inspect and investigate the work of the administration in aspects of law and fairness with justice, and to make recommendations to the administration (KDKKMS No. 6328). In the mission field of the Presidency in Turkish Public Administration, the use of legislative-judicial powers and administrative jobs in the military nature of the Turkish Armed Forces, are not covered by the institution's mandate.

Natural or legal persons through confidential application, can apply to the institution on the grounds of interest violation. The institution under the relevant legislation, examines the application and accepts it if necessary. Thus, it may request information and documents related to the complaint from the relevant government agency. Information and documents requested by the institution must demonstrate ease. The institution concludes on the applications it receives within six months. The institution may get help from an expert when necessary, and would need to listen to witnesses. In addition,

ombudsman institution notifies the relevant institution about its concluded works.

Ombudsman submits its findings concerning the actions it carried out and its recommendations to the relevant commission yearly in order to be discussed. Based on this, and considering the relevant legislation, Ombudsman Institution has no enforcement authority on public administration (Aktas, 2011:315). However, it just notifies them about the deficiencies in public administration and gives recommendations about these deficiencies. The institution also provides information by sharing its conclusions with the public.

### **Its Contributions**

Ombudsman institution's turning into a constitutional institution has made significant contributions to both public administration and also to the citizens.

However, these contributions include:

- It serves as the rule of law because it protects the rights of the citizens. It allows the correction of unlawful processes without legal proceedings (Tutal, 2013:537). Thus, it lightens the burdens of both sides. It reinforces the sense of justice.
- With transparency in management, citizens' perspective of the state is changing more positively. Citizens can easily monitor public affairs.
- In the aspect of European Union, it strengthens the image of our country. It contributes to the image of our country in a positive sense in terms of human rights.
- It brings positive results by contributing to correcting management's misapplication of legislations, incomplete application or even not applying them. However, it also leads to deficiencies in the quality of services when applied, by contributing to the improvement of relations with citizens (Sengül, 2010:136). Thus, it supports public administration and enables it to be improved.
- By ensuring productivity in management, the understanding of total quality will be reached (Odyakmaz, 2012:145). Therefore, standards of governing will be increased.
- It has taken an important step in public management in the development of public relations. The purpose of public relations is to ensure the public trust and support to the management by making it sensitive to public's demands (Golonu, 1997:12). This institution informs both citizens through public relations, and provide information to the public. After all, public relations has been one of the important tools of ombudsman in setting a solid foundation for citizen-oriented management concept.

- Ombudsman institution has an important role in the protection of citizens' fundamental rights and freedoms in the democratic system. Decision-making process and actions in participatory democracy are provided by people's discussion on the decisions about their own lives, planning them, and their applications (Sahin and Temizel, 2004:254). Consequently, citizens are involved in the process. At least, they are partly related to the provisions given to them. Therefore, thanks to ombudsman.

- It has contributed to the alleviation of the burden of the judiciary. It makes citizens to trust the judiciary and the rule of law by increasing the accountability measures of the judiciary (Unal, 2012:341). It strengthens the citizen's perspective towards the government through democratic awareness. Rule of law is the result of modern practices by which people's rights and freedoms are secured. Citizens' faith in democracy and law is increasing in Ombudsman.

It is an undeniable fact that ombudsman Institution in Turkey, although is still a new institution, has significantly contributed to the bureaucracy and citizens in terms of administration and judiciary. In addition, it has brought some criticism. This criticism will be discussed in the next section.

### **Critics**

Although ombudsman has positive sides in our country, there are also critics based on the lack of Ombudsman.

For example, we have several audit institutions in our country. However, ombudsman institution might not be needful, as it is likely to bring new burdens. The existing control mechanisms are expected to be improved instead of this institution. Furthermore, there is a similar institution like the ombudsman institution known as the State Audit Board (DDK) in our central organization structure, which might result to confusions (Dursun, 2011: 399). In addition, its limits which is related to the institutions involved in the task area should be specified precisely.

It was argued that the country in which ombudsman institution is applied has small criterias such as population and square measure, rule of law principles are developed, and media is effective i.e. it is specific to Nordic countries (Efe and Smith, 2013:67). Although our country has a very crowded population, public bureaucracy is problematic. Therefore, due to the sheer number of applications, the mission of the institution in question will not be productive.

In addition, it was argued that it is not possible to establish only the ombudsman institution to oversee the central government (Aydin, Tas and Ersoz, 2012:85). However, this is again related to the crowded population and bureaucratic problems.

Because separation of powers is not separated literally in our public administration, this brings a number of critics on the functionality of the institution. This may adversely affect the functionality of the institutions. However, this function includes the election of the head auditor in the parliament. The ruling party's important role during the election is raised in terms of independence and impartiality. In addition, to leave the ombudsman institution to a single person is a troublesome process of operations. Thus, this requires knowledge and expertise.

Ombudsman institution is established according to each country's own political, social, legal, cultural, and demographic characteristics. While ombudsman (ombudsman institution) was being set up, other countries' work on this subject was studied. However, it is clear that different countries have different consequences in the relationship between citizens and state levels. Our country's public administration from the past to the present, has faced many problems in issues of producing service connected to social, political, and economic reasons, as well as its presentation and communication with the public (Kazancı, 2014:410). Therefore, in public administration, all the analyses related to this institution should be made and should be put into practice by raising the awareness of the citizens. Furthermore, there are concerns that it will not be successful, because advocacy culture in the state has not been formed in our country (Efe and Demirci, 2013). Also, the central management structure based on the culture of centralization in our country, leads to compliance issues in the face of external factors and internal social and cultural changes (Batali, 2012:225). This type of compliance issue leads to hesitation among citizens. Turkish management system highly tends to show center originated resistance to innovations. Due to the existence of other audit institutions, requests coming from this institution will not be welcomed with the opinion that there is no need for ombudsman. Moreover, the absence of any binding towards ombudsman institution will trigger this negativity. Such non-binding institutions in the state tradition, which stems from a centralized understanding and culture like ours are not taken too seriously. Therefore, this will eliminate the weight of this institutions with time.

Ombudsman institution in European Union countries is created and operated systematically. However, this institute has not yet sufficiently occupied the public agenda in our country. The most important reason here is that the European Union has lost its importance in the eyes of citizen. Also, bureaucracy does not lean towards the ombudsman institution.

While criticizing, it should be taken into consideration that ombudsman institution has been newly established in our country. As it becomes functional, and as public bureaucracy and citizens increasingly adopt this institution as solutions to the problems, it will be easier to adapt to our management culture.

## Results

Ombudsman studies in Turkish Management System has been raised many times for easier and more reliable services to citizens. However, it came into force in 2012. In today's governance, the ombudsman is regarded as an important and indispensable institution. It is an independent institution which protects the rights of the citizens against the flawed process done by the administration and which affected the citizen negatively. However, first and foremost, while the legislation was being debated in our parliament, there were negative conclusions that it would not be independent. This was especially in the selection of a lead auditor which has been the scene of great controversy.

This institution acts with the complaints it receives, namely: it does not have any spontaneous power to intervene in any administrative action. It has the authority to request information and document from relevant institutions by evaluating the incoming request. However, it should be noted that the institution's decisions are advisory in nature, and there is no binding.

Accountability, transparency, and governance are concepts that forms the basis of the ombudsman institution. To resolve the grievances of the citizens and to share it with the public, it has a particularly significant power through using the media. However, the head of the organization that will exercise this power must be extremely reliable. Also, he/she must have a good knowledge of the law.

Ombudsman as a needed organization by the European Union, should be fully independent. Therefore, while selecting it in our parliament, the qualified majority must be sought and a separate budget should be allocated. In addition, offices to direct the citizens and to facilitate the applications must be rapidly opened in our country. This makes it possible for ombudsman institution to be perceived importantly by the citizen and to become functional.

One of the most important issues to me is that the ombudsman institution established in our country cannot begin investigation by itself. Thus, it only acts upon a complaint. Moreover, as noted above, its mission area regarding some institutions is restricted. Nevertheless, it should be noted that it exists in the public administration history of our country as a young institution. Thus, as it becomes functional, it will make necessary legal arrangements. Reducing the burden on the judiciary, giving the citizens a more effortless and more costless authority to claim their rights, giving suggestions by identifying shortcomings in existing administrative structures, and giving important contributions during the European Union accession process, are the most important plus of the ombudsman institution. Furthermore, this young institution will make expected contributions due to

its activities. Also, it will enable the citizens to acquire the habit of a healthy democratic culture as well.

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