**Bartın University Publication No: 16**
**The Faculty of Economics and Administrative Sciences Publication No: 03**

# Ombudsman System In The World And A Case Study

## The Nederland's Experiences And Turkey's Situation

Prof. Dr. İsmail CERİTLİ, Ph.D.
(Editor)

**Authors**

Prof. Dr. İsmail CERİTLİ, Ph.D.
Prof. Dr. Abdurrahman EREN, Ph.D.
Asst. Prof. Ayhan Nuri YILMAZ, Ph.D.

**Bartın – 2015**

**OMBUDSMAN SYSTEM IN THE WORLD AND A CASE STUDY: NEDERLAND'S EXPERIENCES AND TURKEY'S SITUATION**

This book was published depending on the desicion (No:2014/25-Date:31/12/2014) ) of Bartın University Administrative Board.

**© Copyright**

*All the broadcasting rights of this publication belongs to The Rectorate of Bartın University. Complete book or a part of the book can not be published, disseminated, reproduced and distributed by using electronic, mechanic or copying methods without the official permission of The Rectorate.*

**Typography, cover:** Sürat Printing

**LIBRARY INFORMATION LABEL**

Ombudsman System in The World and a Case Study: Nederland's Experiences and Turkey's Situation / İsmail Ceritli, Abdurrahman Eren, Ayhan Nuri Yılmaz. – Bartın : Bartın University Faculty of Economics and Administrative Sciences, 2015.

208 p.

**ISBN : 978 605 9895 02 6**

1.Public adjudicator-Turkey's 2 nd Ombudsman-Turkey

**PUBLISHED BY**

Sürat Printing Paperwork Commerce and Industry Limited Company

Eski Hastane Cad. Bülent Ecevit Bulvarı No:56 Bartın

Tel-Fax:(+90) 378.224 55 00

# OMBUDSMAN SYSTEM IN THE WORLD AND A CASE STUDY: NEDERLAND'S EXPERIENCES AND TURKEY'S SITUATION

**CONTENT.....1**

**LIST OF TABLES.....5**

**LIST OF FIGURES.....5**

**LIST OF PICTURES.....5**

**PREFERANCE AND THANKS TO THE CONTRIBUTERS.....6**

## CONTENT

**1 INTRODUCTION ..... 11**

**2 HISTORICAL PERSPECTIVE OF OMBUDSMAN SYSTEM (İsmail CERİTLİ and Ayhan Nuri YILMAZ) ..... 15**

2.1 Purpose of Ombudsman System ..... 15

2.2 The Root of Ombudsmanship ..... 17

2.3 First Establishments ..... 19

2.4 Proliferation of Ombudsman System ..... 21

2.5 Types of Ombudsman ..... 24

2.6 European Ombudsman (EO) ..... 26

2.6.1 Establishment ..... 28

2.6.2 Appointment ..... 31

2.6.3 Status ..... 32

2.6.4 Functions and Roles ..... 35

2.6.5 Operational Methodology of European Ombudsman ..... 37

2.6.6 Reporting ..... 38

2.7 International Instititions ..... 38

**3 OMBUDSMAN SYSTEM AS A PUBLIC AUDIT MECHANISM (İsmail CERİTLİ) ..... 43**

3.1 Organizational Structure of Ombudsman SystemAs a Central Office ..... 43

3.2 Regional and Local Offices ..... 47

3.3 Appoinetment of Ombudsman ..... 48

3.4 Ombudsman for Non-State Organizations ..... 49

3.5 Budget Definition of Ombudsman ..... 50

3.6 Control Function of Ombudsman ..... 51

3.7 Complaints Appointments and Investigation Method of the Ombudsman ..... 53

3.8 Goals and Benefits ..... 61

3.9 Relationship Between Parliement and Ombudsman ..... 64

3.10 Autorities and Responsibilites ..... 65

3.11 Relationship With Judiciary Institutions ..... 67

3.12 Relationship With Administrative Justice ..... 67

**4 SYSTEM CODES OF OMBUDSMANSHIP IN TERMS OF ACCOUNTABILITY AND TRANCPARENCY (İsmail CERİTLİ) ..... 69**

4.1 Awareness ..... 70

4.2 Accessibility ..... 70

4.3 Reliable Data Provision ..... 71

4.4 Effectiveness ..... 71

4.5 Equity and Neutrality ..... 73

4.6 Confidentiality ..... 74

4.7 Human Rights Protection ..... 76

4.8 Timeness ..... 79

4.9 Independency ..... 79

4.10 Transparency and Accountability ..... 81

4.11 Good Administration and Corporate Governance ..... 81

4.12 Reporting ..... 86

4.13 Public Relations and Democratization ..... 87

**5 NEDERLAND'S OMBUDSMAN SYSTEM AS A MODEL APPLICATION (İsmail CERİTLİ and Ayhan Nuri YILMAZ) ..... 89**

5.1 Institutional History ..... 89

5.2 Regulations on the Ombudsman Offices ..... 89

5.2.1 Regulations on National Ombudsman Institution ..... 89

5.2.2 Regulations on Local Ombudsman Offices ..... 90

5.3 The Organizational Structure of The National Ombudsman ..... 92

5.4 The Tasks and Juristiction of TheNational Ombudsman ..... 92

5.5 The Complaint Procedures ..... 94

5.6 The Decisional Prodecures ..... 96

5.6.1 The Ombudsquadrant ..... 98

5.6.2 Problems encountered in the actions of government ..... 100

5.7 The Effect of The National Ombudsman on The Government and Recommandations ..... 101

5.8 An Interview with Nederland's Ombudsman Alex BRENNINKMEIJER on Ombudsman Mechanism, Functions and Benefits at National Level in Holland ..... 102

5.9 An Interview with Rotterdam Ombudsman Mrs. Anne Mieke ZWANEVELD on Ombudsman Mechanism, Functions and Benefits at Local Level in Holland ..... 108

**6 ESTABLISHMENT AND PROGRESSES OF OMBUDSMAN SYSTEM IN TURKEY (Abdurrahman EREN) ..... 113**

6.1 History ..... 113

6.2 Formation of the Public Auditorship Institution ..... 118

6.2.1 Structure of Institutional Model ..... 119

6.2.2 Legal Characteristics ..... 122

6.2.3 Legal Basis of the Institution ..... 124

6.2.4 Institutional Independency ..... 127

6.2.5 Candidacy and Election ..... 130

6.2.6 Assurances of Duty ..... 136

6.2.7 Institutional Infrastructure ..... 143

6.2.8 Working Procedures and Principals..... 150
6.3 Duties and Authorizations of the Public Auditorship Institution .... 157
6.3.1 Complaint Mechanism..... 160
6.3.2 Other Duties..... 185
**APPENDIXES.....191**
**REFERENCES.....201**

## LIST OF TABLES:

Table 1: Complaint Numbers to the European Ombudsman in 2012 by Countries ..... 39
Table 2:International Associations for Organizational and Classical Ombuds 41
Table 3:Associations for Organizational and Classical Ombuds in America... 44
Table 4:Other International Ombuds Associations..... 45

## LIST OF FIGURES:

Figure 1:The Organization Chart of The Nederland National Ombudsman Office ..... 92
Figure 2: Expected Atittudes Acording to The Concern Directions..... 99
Figure 3: The Concepts of 'Proper Conduct' and 'Lawfulness' in Relation to Each Other..... 100

## LIST OF PICTURES:

Picture 1: A Picture from The Interview with Mr. Alex Brenninkmeijer (National Ombudsman of Nederland) ..... 103
Picture 2: A Picture from The Interview with Mrs. Anne Mieke ZWANEVELD (Rotterdam Local Ombudsman) ..... 109

## PREFERANCE AND THANKS TO THE CONTRIBUTERS

When the Turkish Public Audit Institution was established, I felt hopes and got excited seeing some more steps towards the new public management approach of Turkey which aims to realize the accountable and transparent management system regarding public institutions. Actually there have been taken many steps on this issue in last decay, but the new institute will add more in succeeding citizen-orianted public management. In this regard, I thought to make a study on the ombudsman systems in the world and speciphically on the applications in Nederland. As a result, I decided to visit Nederland and besides literature scanning, I intended to visit applicants and to get informations from the first hands.

As a result, I reached Prof. Dr. Kees van Paridon who is the Head of Public Administration Department in Erasmuss University by the great help of my nephew Burak Han Ceritli. Mr. Paridon kindly dealed with my request and directed me to Prof. Dr. Mark van Twist who is the member of academic staff of the department. Both Prof. Paridon and Prof. Twist made their best to help me in my reserach.

I would like to express my full thanks to Mr. Paridon and Mr. Twist for their friendly wellcome and valuable help. I also would like to thank to my nephew for reaching those distinquished teachers of Erasmuss University and organizing and realizing the related meetings.

There are two more nice people to be thanked. One of them is the National Ombudsman of Nederlands' distinquished Mr. Alex Brenninkmeijer. He kindly accepted me for the interview and enlightened me about the ongoig procedures in Nederland in national level. He is very gentle and warm-bloded man besides his experiences and good leadership to the National Ombudsman Institute. I was very surprized when I first met with a smiling face which serves as a top level beurocrat. I know that beurocrates are generally serious faced since maybe they need to express their authority. But I also believe that one can apply autrhortiy even with smiling face and warm relations with public. And I witnessed my belief seeing and knowing Mr. Brenninkmeijer.

I also had oppurtunity to meet Local Ombudsman of Rotterdam, respected Mrs. Anne Mieke Zwaneveld. She was also very kind and helpfull towards me. If you visit Mrs. Zwaneveld, you will feel that you are not in a state institute, more than that you will feel yourself as if visiting one of your close friends.

I also have to thank to those who provide some logistic support to the study. First of all, I have to express to my brother Hanifi CERİTLİ who opned his home and his restaurant to me. I have to admit that it is higly important for one who wants to realize his study abroad in a comfortable situation and also with a low expenditure. Especially I like to thank him for letting me for using his restaurant as my working office.

I like to thank to Rsearch Assistant of Bartın University Mrs. Leyla Çiftçi and her husband Mr. Salih Çiftçi for their support and contribution in the preperation period of this book. They always wellcome me when I need their help in any time.

I also want to thank to my co-writers Prof. Dr. Abdurrahman Eren and Dr. Ayhan Nuri Yılmaz. Mr. Eren provided a huge contribution with their parts on the establishment history, functional aspects and higly beneficiary suggestions about the Turkish Ombudsman System. Mr. Yılmaz also made a haigly valuable addition to the book with his knowledge about the issue and with his excellent English language.

As the last but not the least, I thank to my family for their patience and also for their support while I was away from home during my three months staying in Nederland. Actually they always supported me in all situation during my academic and professional works and that is why they deserve the biggest part of my blessing.

As the reault of my effords, I tried to make out the situation of ombudsman models in the world and also the structure and procesess of The Nederland Ombudsman System. I hope, all these outcomes will make some benefits in the developing period of Turkish Public Audit Institution to manage a full accountable, transparent and open public management system in Turkey.

I like to thank to all those kind and respected people of Nederland once more for their higly valuable contributions.

March 2015

**Prof. Dr. İsmail CERİTLİ**

# 1 INTRODUCTION

In this booklet, establishment of ombudsman system in the world is handled and the purpose of the system, functions, responsibilities, types and shape of the structures around the world is analyzed to get some best points for Turkey's new ombudsman system, Public Audit Institution.

As a begenning lets express the nature of ombudsman in brief. If the definitions from different academician, applicants or other related people are observed, it is seen that actually all of them is less or more met in the same explanations on the ombudsman.

In this respect Spenheimer defines the ombudsman as mentioned below:

An ombudsman is a neutral member of a public or private association who receives complaints from sources both internal and external to the association and helps to resolve these complaints through mediation, counseling, and other innumerable dispute resolution techniques.[1]

According to Reif, the Ombudsman is a public establishment by the legistlative branch of government, to supervise the administrative activities of the executive branches.[2]

In the other side, a 1974 resolution of the International Bar Association defines “ombudsman” as follows: An office provided by the constitution or by action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government-agencies, officials and employers or who acts on his own motion, and has the power to investigate, recommend corrective action and issue reports.[3]

In the same parallel, Gokce also states the role of ombudsman such as:Ombudsman has a main purpose to protect the public against slow servises or against non-fullfilling the needs of them, in case of the the

[1] Spanheimer, p.664.
[2] Reif, 2004, p.2.
[3] Michael Mauerer, **Equity-The Supplementary Function Of The Ombudsman**, Occasional Paper #55, September 1996, pp.2-3 (quoted from N. Schwärzler, **"The Austrian Ombudsman (Volksanwalt)”**, in Public Administration in Austria, Federal Chancellery (ed.) (1992).

mixed structures of public administration system and slow beurocratic procedures. It serves as an agent between the citizens and state institutions. The system is regarded as the first point to solve the problems resulted against the public as a result of the official procedures between the state institutions and public.[4]

In this regard, the system around the world will be taken in hand with an historical perspective, as a case study Nederland's National Ombudsman institution will be introduced and analyzed and at the end under the light of the experiences, Turkish Ombudsman (Public Audit Instıtute) will be discussed.

Taking into account the ombudsman basic purpose mentined above, the booklet is designed in five main section when the introduction section is not considered. In line with this short explanation:

In the second section, ombudsman system in general will be held in an historical perspective. In this part, European Ombudsman will also be introduced in a genaral manner.

In the third section, Ombudsman system as a public audit mechanism will be discuessed with its all aspects like selection method of Ombudsman, functions, complaint procedures, authority and responsibilities, relations with offices and institutions, reporting issue, etc.

The system codes and main principals of Ombudsmanship will be explained in the fourth section. This part is especially important to understand in which determined condisitons and how an Ombudsman system can be successful.

In the fifth section, The Nederland National Ombudsman Institute will be held and analyzed as a case study. The aim of this section is to see what are the problems faced in an applied and functioning system already which has a long historical bacground. In this part, takes place an interwiev realized with The Nederland National Ombudsman

[4] Gökçe, p.205.

Distinquished Mr. Alex BRENNINKMEIJERand Rotterdam Ombudsman Distinquished Mrs. Anne Mieke ZWANEVELD.

In the last section, Turkish Ombudsman Institute will be handled and discussed under the circumstances and realities explained in the previous parts.

## 2 HISTORICAL PERSPECTIVE OF OMBUDSMAN SYSTEM (İsmail CERİTLİ and Ayhan Nuri YILMAZ)

We know that the ombudsmanship was created as a result of some administrative, judiciary human rights and social needs. In this respect, the historical period and purpose of the system are discussed in this part. Let's begin to look at the details starting with the purpose of the system.

### 2.1 Purpose of Ombudsman System

Ann Abraham expresses that the chief purpose of the Ombudsman is to assist Parliament in holding the executive to account. The means of doing that is by the investigation of citizens' complaints. That process entails a direct relationship with the complainant and establishes reciprocal responsibilities and obligations. The investigation of individual complaints is the primary activity of the Ombudsman and the means by which the Ombudsman exercises its constitutional role.[5]

In this explanation, two main targets of Ombudsman are found out:

1.To succeed accountability, Ombudsman has a responsibility towards Parliament,

2.To investigate public complaints related with the state institutions and offices.

Especially with the rise of welfare and social awareness and incresing complexicity of the modern administrative systems, Ombudsman is getting more and more important every day. In the same parallel, Ladi declares the situaion as to be mentioned below:

"The rise of the welfare state has led to a growth in national bureaucracies and as a consequence the emergence of the necessity to protect citizens from maladministration. Furthermore, from the mid-1980s, 'new' democracies also started adopting similar institutions in

[5] Abraham, p.97.

order to prevent maladministration, corruption and infringements of human rights.[6]

Haydar Efe, takes this purpose of Ombudsman in hand in a different aspectcategorizing the genaral audit system. According to him, there are four main audit system (Judiciary, Administrative, Political and Public Audit) in the administrative structıre of the countries and the practices shows us that all these controlling mechanisms somehow can not meet the need of the public and have lack in fullfilling the the complete rights in public services. So that Ombudsman system emerged to eliminate the weaknesses of the present audit mechanims and to serve to the public in a low cost, simple, direct, quick and non-buerocratic manner[7].

To be an answer for the need of an Ombudsman, Walter Gellhorn states that administrative can not provide good government itself. They cannot themselves create sound social policies. They have no capacity to organize a competent civil service. They are at their best when calling attention to infrequent departures from norms already set by law or custom, at their weakest when seeking to choose among competing goals or to become general directors of governmental activity.[8]

Under the light of these explanations and other concerns, we can say that Ombudsman serves to protect human rights in general against the administravie bodies and offices regarding the principals like:

1.Citizen right protection,
2.Cost effectiveness,
3.Quick reply to the remedy of the public complaints,
4.Simplifying the beurocracy,

---

[6] Ladi, p.1651 (quoted from Gregory, R. and P. Giddings, **"The Ombudsman Institution: Growth and Development"** in R. Gregory and P. Giddings (eds), Righting Wrongs. Amsterdam: IOS Press, 2000, pp. 1–20).

[7] Efe, pp.3-4.

[8] Carl A. Auerbach, **"When Americans Complain, by Walter Gellhorn; Ombudsman and Others: Citizen's Protectors in Nine Countries, by Walter Gellhorn,",** Indiana Law Journal, Volume 43, Issue.2, 1968, p.500 (Book Reviews of Walter Gellhorn, **When Americans Complain**, Cambridge-Massachusetts, Harvard University Press, 1966; Walter Gellhorn, **Ombudsman And Others: Cıtızens' Protectors In Nıne Countrıes** Cambridge-Massachusetts, Harvard University Press, 1966).

5.Accountability and transparency,
6.Public satisfaction,
7.Easy accessibility to the public services,
8.Equality and neutrality,
9.Justice,
10.Public awareness,
11.Good governance and etc.

We can accept all these principals as the frame concept of Ombudsmanship. In this study, these and some other parameters are considered as the codes of the system and will be discussed in details in another chapter of the book.

## 2.2 The Root of Ombudsmanship

In 1697, when he was only 15 years old, Charles (Karl) XII became King of Sweden. For the next 17 years, however, Charles was out of the country fighting wars, mostly against Russia. During this time, because he was away from the country, Charles signed a law creating an office called the King's Highest Ombudsman. The job of the King's Highest Ombudsman was to make sure that while the king was away the government workers, judges, and the military were acting properly and following the rules the King had left for them. When the wars were over and the King returned to Sweden, the office of the ombudsman disappeared for several decades, but it was not forgotten.[9]

Related with the roots of Ombudsman, in Toronto Ombudsman web page it is stated that when the Swedish King Charles XII was in self-exile in Turkey after the Battle of Poltava in Russia, he learned about the second Muslim Caliph, Umar (634-644) and the concept of Qazi'ul'Quzat ("judge of judges") developed in the Islamic law of the Ottoman Turks.[10]

As to be the indicators explaining that Charles impressed from the Ottoman, there are some studies related with Military Judge Institution ,

[9] http://www.ombudsman.sk.ca/info/the-history-of-the-ombudsman, 25.07.2013.
[10] http://www.ombudstoronto.ca/history-ombudsman, 25.07.2013.

AkhismOrganization, Justice Board (Dar'ul Adl) and Board of Injustices (Divan-ı Mezalim).[11]

Divan-i Mezalim was the high judiciary and audit institution in muslim states before the Ottoman.[12]In the same parallel, Dar'ul Adl and Divan-ı Mezalim were the institutions listening public complaints and producing solutions to the problems acrossed between the public and state offices.[13]Taking into account all these evaluations, Gokçe express that Swedish King were affected from the Akhism Organization more than Dar'ul Adl or Divan-ı Mezalim institutions.[14]

When King Charles returned to Sweden in 1713, he created the Office of Supreme Ombudsman to make government administrators more accountable. There followed fifty years of dispute between the King and Parliament about who the Chancellor of Justice would report to. The outcome was that in 1809, an ombudsman was established in the Swedish Constitution linked to Parliament, not the executive. It was designed to be a supervisory agency independent of the executive branch of government, charged with the responsibility of protecting the rights of the people.[15]

As a result, today, everybody recognizes ombudsman as a Swedish word and the concept “ombudsman” is in a royal decree signed by King Karl (Charles) XII in the year 1713. This great warrior king spent many years

---

[11] Gökçe, p.206.
[12] Gökçe, p.206 (quoted from Vecdi AKYÜZ, **İslam Hukukunda Yüksek Yargı ve Denetim Divan-ı Mezalim**, Marmara Üniversitesi ilahiyat Fakültesi Yayinlan, İstanbul, 1995, pp.24-42).
[13] Gökçe, p.206 (quoted from Feyzullah ÜNAL, **Türkiye'de Yerel Yönetimlerin Denetimi ve Yerel Yönetim Ombudsmanı**, Basılmamış Doktora Tezi, Gazi Üniversitesi Sosyal Bilimler Enstitüsü, Ankara, 2008, p.108).
[14] Gökçe, p.206.
[15] Stephen Mackenney and Lars Fallberg**, Protecting Petients' Right: A comperative Study of the Ombudsman in the Health Care**, Radcliffe Medical Pres Ltd., Abingdon-UK, 2004, p.3; http://www.ombudstoronto.ca/history-ombudsman, 25.07.2013; Charles L. Howard, **Organizational Ombudsman:Origins, Roles and Operations, A Leading Guide**, American Bar Assosiation, Chicago, 2010, pp.3-4.

in Central and Eastern Europe, moving from battlefield to battlefield. It was not easy to rule the Kingdom of Sweden when the king spent year after year abroad. There were no mobile telephones, Internet and video conferences at this time. Consequently, the king had to reorganize the Royal Chancellery in Stockholm in order to make it more effective. The chancellery was divided in five departments -"expeditions"-one responsible for foreign affairs, one for judicial matters and so on. This was also an embryo of ministries in a modern government.[16]

## 2.3 First Establishments

As the first modern ombudsman system, Sweden experince is generally accepted. In 1809, Sweden established the Justiceombudsman, the predecessor of the modern institution of the ombudsman. The Swedish legislature appointed the ombudsman to supervise the conduct of the government administration and the judiciary. It had the power not only to prosecute public officials, but also to pursue investigations and make recommendations to the government. Until the early 1960s, the ombudsman institution could only be found in a few Scandinavian states[17].

After the establishment of Swedish system in King Charles Period (Karl) XII, a number of Ombudsman have been developed. Among those, there are Chancellor of Justice (1713), Parliemantary Ombudsman (1809), the Consumer Ombudsman (1971), the Children's Ombudsman (1993), the Ombudsman against Aethnic Discrimination (1996), the Equel Oppurtunities Ombudsman (1980), the Disability Ombudsman (1994).[18]

In 1919, Finland adopted the ombudsman idea in a republican constitution for the first time. Nevertheless it was Denmark which

---

[16] Par-Anne Jigenius, **King Karl XII and His High Ombudsman**, 28.05.2008, http://newsombudsmen.org/events/conferences/2008-conference/high-ombudsman, 25.07.2013.

[17] Linda C. REIF, **"Transplantation And Adaptation: The Evolution Of The Human Rights Ombudsman"**, Boston College Third World Law Journal, Vol.31, 2011, p.269.

[18] Stephen Mackenney and Lars Fallberg**, Protecting Petients' Right: A comperative Study of the Ombudsman in the Health Care**, Radcliffe Medical Pres Ltd., Abingdon-UK, 2004, p.3.

initiated its increasing popu- larity and, by creating a new legal structure, became a role model for its fur- ther development. In 1963, this legal structure was adopted by Norway and in 1967 by the United Kingdom. Soon the idea spread rapidly throughout.[19] It's increasing significance for the protection of human rights and the liability of administration is recognised worldwide. Ombudsman institutions are nowadays inherent in all kinds of legal orders. In Europe, the concept developed with immense dynamism within the last century throughout Europe.

The meaning of "ombudsman" spread throughout the world in the 20th century. The constitutional concept of independent, easily accessible and "soft" control of public administration through highly reputable persons is nowadays inextricably linked to the principles of democracy and the rule of law, as it is an essential contribution to the efficiency of those principles.[20]

The collapse of totalitarianism in Portugal, Spain, Greece, as well as Central and Eastern Europe and the resulting process of democratisation provided new incentives for the idea of the ombudsman. By combining the basic concepts of both the rule of law and human rights the figure of the ombudsman was lifted up to a new level. As a reaction to the entry of new states into the Council of Europe many new institutions were brought to life.[21]. (See details in The Appendix 1).

Swedish and Finnish ombudsman institutions aim to control the entire executive branch, even the jurisdiction, and they are empowered to impeach judges and public servants. Danish and Norwegian institutions have limited authority and can therefore only control administration through "soft" sanctions such as recommendations and reports.[22]

Nevertheless, early in its history, the ombudsman's mandates diverged. While in Sweden and Finland the ombudsman had both prosecutorial

---

[19] Kucsko-Stadlmayer, p.1.
[20]Kucsko-Stadlmayer, p.2 (quoted from Mauerer, Die parlamentarischen Ombudsmann-Einrichtungen in den Mitgliedstanten des Europarates, in Matscher (Hrsg), Ombudsmann in Europa. Institutioneller Vergleich, 1994, p.123.)
[21] Kucsko-Stadlmayer, p.2.
[22]Kucsko-Stadlmayer, p.2.

powers and jurisdiction over the jtidiciary, the Danish ombudsman had neither of these funcuons. It was the Danish model that became popular in other jurisdictions around the world, particularly in Common-wealth nations and some Western European states. The core function of this popular Scandinavian ombudsman model—the so-called "classical" ombudsman—is to investigate administrative conduct impartially based either on a complaint or the ombudsman's own motion, to make recommendations, to rectify any illegal or unfair conduct uncovered, and to issue annual and special reports. The classical ombudsman is an institution that uses "soft powers" of persuasion and cooperation to control conduct rather than coercive or adjudicative means.[23]

## 2.4 Proliferation of Ombudsman System

Since the 1970s, governments around the world, on both national and sub-national levels, have established hybrid versions of the ombudsman institution by giving one institution multiple mandates. These additional mandates include protectitig human rights, fighting corruption, enstiring ethical conduct by elected public officials, and protecting the environment. Even classical ombudsmen are being given "second hats" of differing scope with respect to freedom of information, protecting privacy, child protection, and health system oversight.[24]

Since the 1960s, as government bureaucracies have grown in size, nations have steadily perceived the ombudsman as a useful mechanism for controlling administrative misconduct. Specifically, governments began adopting Scandinavia's classical ombudsman model.[25]

By the 1970s and 1980s, as the public con- sciousness of the human rights abuses being committed by authoritarian or military dictatorships expanded, the number of international human rights laws increased. At the same time, democratization flourished, first in Southern Europe, then in Latin American as well as in Central and Eastern Europe.[26]

As transitioned to democracy in the mid-1970s, Portugal and Spain became the first countries to establish human rights ombudsmen. In 1975, Portugal established the 'Provedor defustiça'. Spain enshrined its

[23] Reif, 2011, p.270.
[24] Reif, 2011, p.271.
[25] Reif, 2011, p.273.
[26] Reif, 2011, p.274.

'Defensor del Pueblo' in the country's 1978 Constitution as well as in a legislative enactment.[27]

In Sweden, legislation passed in 1986 established an express, albeit more subtle, duty for the ombudsman to protect human rights: 'The Ombudsmen are to ensure in particular . . . that the ftindamental rights and freedoms of citizens are not encroached upon in public administration'. After the collapse of the Soviet Union and the Eastern Bloc and their turn toward democracy in the late 1980s, similar desires both to improve bureaucratic performance and halt human rights abuses by the government led many Central and Eastern European governments to establish human rights ombudsman institiitions. Hybrid itistitittions also began to appear in some African, Asian, Caribbean, Pacific, and Western European nations.[28]

The vast majority of parliamentary ombudsman institutions in the world are monocratic-only one ombudsman is appointed. In other countries, two, three, four, or as is Lithuania's case, five ombudsmen are appointed. The biggest parliamentary ombudsmen institutions are in Sweden with four ombudsmen and in Lithuania with five.[29]

As the time passed and different ombudsman were establieshed in the countries, the system began to cause complexity. Ann Abraham expresses these complexities in ombudsman system considering United Kingdom case and mentions three reasons related with this complexcity:

"First, nobody can say definitely what administrative justice is about, whether it is just about courts and tribunals or whether it includes first-instance decision-making, ombudsmen and other complaint-handlers too. Second, nobody is very sure what administrative justice is for: is it just a question of 'fire-fighting', or is there scope for 'fire-watching' or 'fire-prevention' as well. Third, nobody knows where administrative justice belongs: after decades of homelessness it was finally offered shelter by the Administrative Justice and Tribunals Council (AJTC) in November 2007, but by November 2012 the AJTC itself will almost certainly be no

[27] Reif, 2011, p.275.
[28] Reif, 2011, p.276.
[29] Edita Ziobiene, **"Reform of The Ombudsman Institutiin In Lıthuania"**, Jurisprudence, Mykolas Romeris University, Faculty of Law, Department of Constitutional Law, 15 March, 2010, p.31.

more, and administrative justice will then have to make do with makeshift accommodation somewhere within the Ministry of Justice".[30]

As the Ministry of Justice of United Kingdom explained in 2007, 'the new landscape of justice' is one in which justice is provided not just by courts and tribunals but by 'a range of interlocking institutions and mechanisms' which will pursue their 'common goal' in different ways.[31]

In UK, the effors are still being persuaded to entegrate the sub-systems and to form unified ombudsman system. One-stop shops' for public service complaints in Scotland, Wales and Northern Ireland; separate Local Government, Housing and Health Service Ombudsmen in England, with boundaries that at times defy all logic; and on top of all that a UK-wide Parliamentary Ombudsman with responsibility for central government functions in England and reserved functions throughout the UK were reshaped. In addition, there are the various Case Reviewers and Adjudicators, as well as the Prisons and Probation Ombudsman, who is not an ombudsman at all. Outside the public sector the landscape is even more cluttered, as ombudsmen and complaints-handlers of all descriptions vie for territory within an ever-shrinking green belt.[32]

The Médiateur in France was instituted by means of Law N73-6 of January 3, 1973. This law confers to a third and independent party the task of 54 receiving complaints from citizens against their administration and, whenever these complaints are found to be justified, to encourage the administration to change its attitude in order to resolve conflict. This institution in France was inspired by foreign examples such as the Swedish Ombudsman and the British Parliamentary Commissioner. The law of 1973 was amended on various occasions. Law N76-1211 of December 24, 1976 recognizes in particular the principle of "equity" as a 55 key principle governing the actions of the ombudsman institution and vests the Médiateur with the power to propose legislative and regulatory reforms. Law N89-18 of January 13, 1989 gave the Médiateur the status of an independent 56 authority and substituted the title Médiateur with Médiateur de la République. Law N92-125 of February 6, 1992 enables legal persons to lodge complaints 57 with the Médiateur while Law N2000-321 of April 12, 2000 enables foreign 58 ombudsmen and the European Ombudsman to forward cases to the Médiateur. Law N2000-

[30]Ann Abraham, **"Making sense of the muddle: the ombudsman and administrative justice, 2002–2011"**, Journal of Social Welfare & Family Law, Vol. 34, No. 1, March 2012, p.91.
[31]Abraham, p.93.
[32] Abraham, p.93.

321 also gives legal status to delegates of the Médiateur, allows the Médiateur to propose reforms on his own-motion, and requires the Médiateur to present his annual report to the two assemblies. The French Médiateur is appointed by the country's executive power for a six year mandate that cannot be renewed. The appointment is at the discretion of the President of the French Republic and is made by a decree of the President adopted in the Council of Ministers.[33]

Ombudsman sysyem was established in many countries at the moment when compared with the past situation. At the past for example fewer than twenty jurisdictions had an ombudsman in 1970, but now over 100 countries have now established an office.[34]

## 2.5 Types of Ombudsman

Linda Reif tells about many ombudsman types including classical ombudsman, hybrid ombudsman, municipal ombudsman, the single-sector ombudsman, government department ombudsman, hybrid public/private ombudsman, international ombudsman etc. [35] The definitions and types of ombudsman are changing from country to country or from region to region depending on the administrative systems of the countries.[36]In the same context, Gokce explains that excluding parliemantary Ombudsman, different Ombudsman istitutes were established in the countries depending on the administrative types. The Ombudsman can be evalutaed in three main categories with changing applications inside them: 1.Classical Ombudsman, 2.Judiciary Ombudsman, 3.Administrative Ombudsman.[37]That is why it is said that

[33] Ivan Mifsud and Cécile Plaidy, **"The Roles of Admınıstratıve Courts and Ombudsmen In France and Malta: A Revıew of Two Contrastıng Systems"**, The Internatıonal Ombudsman Yearbook (Ed. Linda C. Reif), Volume:8, 2004, p.45.

[34]John McMillen, **"The Ombudsman And The Rule Of Law"**, The Internatıonal Ombudsman Yearbook, Volume:8, 2004, p.8. To observe the establishments of Ombudsman in the countries with an historical seqeunce, look at the table in the Appendix 1).

[35]Linda C. Reif, **Ombudsman Good Governance and International Human Rights System**, Martinus Nijhoff Publshers, Leiden-Nederland, 2004, pp.25-26.

[36] See also Efe, p.4.

[37] Gökçe, p.209 (quoted from Kemal Özdenl, **"Yerel Demokrasi Baglammda Türkiye'de Ombudsman Denetimi"**, Edt: Bilal Eryılmaz, Musa Eken, Mustafa Lütfü Çen, Kamu Yönetimi Yazılan, Teoride Degişim, Yeniden Yapılanma, Sorunlar ve Tartışmalar, Nobel Yayıncılık, Ankara, 2007, pp.50-51).

the legal bases of European ombudsman-institutions are designed very heterogeneously.[38]

Gellborn, while analyzing Ombudsman institutions, says that countries have different administrative structures and so that the Scandinavian-type ombudsman is more needed and suitable on the state and local levels of government[39] but might not be sufficiant for other countries' need.

In spide of the applied realities acrossed in the countries administrative systems, Reif tries to simplfy the it by classifiying Ombudsman in an general codes. In this respect, it is questionable whether the current classification of worldwide institutions into “classical ombudsmen” and “hybrid ombudsmen” proposed by Linda Reif is also appropriate in the context of the present European study. According to Reif, the “classical ombudsman” is in accordance with the definition of the International Bar Association (IBA), like the Danish Ombudsman for example. In contrast, the “hybrid ombudsman” by her definition is vested with additional authority; provided that this authority refers to human rights pro- tection, he will be denoted as “human rights ombudsman”, otherwise as “ombudsman with other mandates”.[40]

In the other side, Kucsko-Stadlmayer divides classical model into two model such as "Legal Based Model" and "Human Righst Model".[41]

As an example showing the meaning and necessitites for hybrid Ombudsman, let's observe Greek case. Investigating the origins of the Greek Ombudsman reveals a hybrid transfer. Most of the agents involved in the creation of the institution mention a different country or combination of countries as the origin of the Greek Ombudsman. Forexample, an academic and senior government minister argues that: ‘We looked closely at the French model, we looked of course at the

[38] Kucsko-Stadlmayer, p.59.
[39] Auerbach, p.505.
[40] Kucsko-Stadlmayer, p.60.
[41] See Gabriele Kucsko-Stadlmayer, **" European Ombudsman-Institutions: The Legal Structures of Ombudsman-Institutions in Europe-Legal Comparative Analysis"**, (Ed. Gabriele Kucsko-Stadlmayer), SpringerWienNewyork Publishing, Wien, 2008, pp.62-63 for details.

Scandinavian model where the idea originates, we looked at the Parliamentary Commissioner in Britain, we looked at the European Ombudsman and we concluded with this scheme and name'. An academic and informal consultant for the introduction of the Ombudsman explains there were three sources that inspired the Greek model: the Scandinavian model, the Anglo-French model and the intermediate model which includes countries such as The Netherlands, Austria and Spain.[42]

And he asks "if legislative and judicial review of executive and administrative agencies in the United States so inadequate as to require an additional, ombudsman-like instrument of control?" then replies "Yes". As a conclusion he says, for a number of reasons, the administrative procedures which have been prescribed to assure fair treatment of those affected by administrative action have exacted their price. They have deprived the intended beneficiaries of administrative action of the hoped-for "speed, informality, and finality of expert judgments..'. "Contestants are often thoroughly exhausted by the administrative remedies they must exhaust before seeking judicial review and so they wearily drop cases that might be adjudged meritorious.[43]

## 2.6 European Ombudsman (EO)

In general, the function of the ombudsmen is briefly mentioned in the mission statement of EU Ombudsman as "The European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency, and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards of behaviour in the Union's institutions"[44].

The EO can be selected among those who must be Union citizen and he/she should carry onall the civil and political rights and who can bot be doubth in his/her independant behavior. He/she also must carry on the

[42] Ladi, p.1649 (See Linda C. Reif, **TheOmbudsman Good Governance and International Human Rights System**, Martinus Nijhoff Publshers, Leiden-Nederland, 2004, pp.7-12 for details).
[43] Auerbach, p.499.
[44] http://www.ombudsman.europa.eu/resources/code.faces#/page/3

features of those high judiciary staff in his/her country and must have the characteristics in experiences and abilities to manage this position.[45]

In this regard and in general sense, Ombudsman's main role is to struggle against maladministraion. In this context, maladministration means poor or failed administration. This occurs if an institution fails to act in accordance with the law, fails to respect the principles of good administration, or violates human rights. Some examples are:

a) administrative irregularities,
b) unfairness,
c) discrimination,
d) abuse of power,
e) failure to reply,
f) refusal of information,
g) unnecessary delay.

As to be in all other regulations, Ombudsman system was also put in power to realize Europenization with unit administration parameters. Europeanization' refers to: 'Processes of (a) construction, (b) diffusion, and (c) institu- tionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies.[46]

Knill suggests that three mechanisms of Europeanization exist[47]:

The first is institutional compliance and it refers to explicit European policies that prescribe a specific institutional model that has to be introduced at the level of the domestic environment.

---

[45] EFE, p.9.

[46] Stella Ladi, **"Policy Change And Soft Europeanization: The Transfer Of The Ombudsman Institution To Greece, Cyprus And Malta"**, Journal of Public Administration, Vol. 89, No. 4, 2011 p.1644 (quoted from Radaelli, C. 2003. **"The Europeanization of Public Policy"** in K. Featherstone and C. Radaelli (eds), The Politics of Europeanization. Oxford: Oxford University Press, p.30.

[47] Ladi, p.1645 (quoted from Knill, C., The Europeanisation of National Administrations. Cambridge: Cambridge University Press., 2001, pp.214-215).

The second mechanism suggested is changing domestic opportunity structures. It describes instances where European policies alter the distribution of power and resources between domestic actors and as a result institutional change occurs. It is an example of how timing can accelerate policy change.

The final and 'softest' mechanism is framing domestic beliefs and expectations. The EU's goal is to prepare the ground for institutional change by altering the 'cognitive input' of domestic actors. It is claimed here that policy transfer is part of the 'soft' mechanisms, when a European model does not exist and when there is no obligation by the member state to comply. Policy transfer can be described as a 'hard' mechanism when there is a European model to be transferred (for example, a directive).

Responsibilities, duties, appointment procedures and limitations and general features of the Ombudsman are defined and explained in the decision (NL 123, 9 March 1994) of European Parliament.[48] In the follwing parts of this subjects, European Ombudsman instition will be handled and explained in details as far as possible.

### 2.6.1 Establishment

The concept of human rights or fundamental rights was developed by the philosophers and sociologists of the Enlightenment. The French Declaration of the Rights of Man (1798) and the American Declaration of Independence (1776) started a long and tortuous development.[49]

Human rights also influenced EU law. In response to pressure from especially the German Constitutional Court, the European Court of Justice recognised that fundamental rights in Member States' constitutions were also part of EU law (Case 29/69 Stauder 2). Subsequently, the European Court of Justice explicitly recognised the principles of the European Convention on Human Rights as part of EU law (Case 4/73 Nold II 3 and Case 44/79 Hauer 4). This recognition also resulted in several Council of Europe and European Parliament

[48] For details see Official Journal of European Comminities, NL 113/15-18, 4.5.1994.
[49] Gammeltoft-Hansen, p.20.

resolutions and was included in the preamble to the Single European Act of 1986.[50]

Mostly with the initiatives of Spain and Denmark, the Ombudsman was included into European Union Treaty signed in 7th February 1972 as a part of a European Citizenchip works. Because of this relation, citizenship and ombudsman concepts are tied to each other strictly.[51] But it could be entered into force until 1 November 1993, some 10 months after the 1 January deadline laid down in the Treaty itself.[52]

After the Maastrciht Contract in 7th February 1992 was accepted, European Ombudsman was easteablished to listen the complaints declared by Euorepean citizens against the bad or injustice behaviours or attitudes applied by any unit of European Union.[53]

With the Maastricht Treaty of 1992, the Community became the European Union, the European Parliament's influence on the legislative procedure was increased, an ombudsman provision was introduced, a new Court was established and the European Parliament's Committee on Petitions was given a Treaty basis. In 1995, Sweden, Finland and Austria were admitted as members. The Treaty was amended in 1997 by the entry into force of the Amsterdam Treaty and, in 2003, by the entry into force of the Nice Treaty, which allowed for the admission of a further ten mem- bers (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia).[54]

The outcome of the negotiations leading to the Maastricht Treaty was that the European Ombudsman was based on the model coming from Denmark, where the Ombudsman acts almost like an administrative court. The answer to the first question thus did not seem difficult. It is good administration to follow the law and it is definitely maladministration not to follow the law. Very few ombudsmen in the

---

[50] Gammeltoft-Hansen, p.21.
[51] Haydar Efe, **"Avrupa Ombudsmanı'nın AB İçinde İyi Yönetim, Hukukun Üstünlüğü ve İnsan Haklarını Koruyucu Rolü"**, Avrupa Çalışmaları Dergisi, Volume:19, No:2, 2011, p.2.
[52] Ezio Perillo, **"The Process of Drafting the European Ombudsman's Statute"**, The European Ombudsman:Origins, Establishment, Evolution, Office for Official Publications of the European Communities, Luxembourg, 2005, p.52.
[53] Köseoğlu, p.37.
[54] Gammeltoft-Hansen, p.22.

Member States work on the basis that they should not normally deal with cases that could be presented to the judiciary. To me it appeared that it could only be good if administrative disputes could be solved without going to court, as the courts are normally overburdened with cases.[55]

As early as 1979, the European Parliament passed a resolution to establish an ombudsman. The resolution was opposed by both the European Commission and the subsequently elected Parliament, and provisions to establish such an institution were not agreed upon until the Maastricht Treaty of 1992. In 1995, 16 years after the original resolution, the institution was established.[56]

The export of the ombudsman concept to the rest of the world, which began in the early 1960s, initially started from Denmark. In the first instance, the concept was adopted by Norway, New Zealand and Tanzania, before spreading to the United Kingdom (1967) and a number of other Commonwealth countries. In the 1970s, France (1973) and countries influenced by France adopted the idea of a more flexible and less authoritarian form of control than the traditional control bodies which the ombudsman concept represents. In the French model, mediation played a key role just as the institution, to a greater extent than before, was seen as exercising control that was supplementary to that exercised by other bodies, especially the administrative courts. During the 1980s, ombudsmen were established in very many dif- ferent countries and were influenced both by the Scandinavian coun- tries and the other countries that by then had experiences of this form of institution.[57]

When the European Community was expanded to include Denmark, the United Kingdom and Ireland in 1972, none of the original Member States had ombudsmen and among the three new members, only the UK and Denmark had such an institution. When the European Parliament discussed a proposal to create a European Ombudsman in the mid 1970s, only three of the then nine Member States had a national ombudsman. As the general international implementation of the concept did not really take off until the mid and late 1980s, it is remarkable that the European

[55] Söderman, p.86.
[56] Hans Gammeltoft-Hansen**, "Trends Leading to the Establishment of a European Ombudsman"**, The European Ombudsman:Origins, Establishment, Evolution, Office for Official Publications of the European Communities, Luxembourg, 2005, p.13.
[57] Gammeltoft-Hansen, p.14.

Parliament passed a resolution to establish an ombudsman institution as early as 1979. In the late 1980s, nine of the now twelve Member States had nation- al or regional ombudsmen.[58]

European Ombudsman excetly began to function in 1995 after the Maastricht Treaty. The status and functions of the Ombudsman didn't stop since that date, but the responsibilities, , aothorities, investigation methodologies and appointment procedure of it changed in time. With the Lizbon Treaty signed at 1st December, appointment of the Ombudsman by European Parliament, inclusion of the Ombudsman among the responsibility area of European Council, inclusion of the offices and units of European Union into the duties of the Ombudsman besides it's bodies and institutions and empowering the status could be possible.[59]

### 2.6.2 Appointment

When the first European Ombudsman, Jacob Söderman, was elected by the European Parliament on 12 July 1995, a new era in the history of the European Union began to unfold. The Maastricht Treaty on European Union, adopted three years previously, had created the institution of Ombudsman and had empowered it "...to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies".[60]

While Mr Söderman's solemn undertaking before the Court of Justice that day can be seen as the birth of the European Ombudsman institution, and while its conception can be dated to the signing of the Maastricht Treaty on 7 February 1992, the idea of creating an ombudsman at the European level had already been discussed for over a decade before the Maastricht Treaty was drafted. In fact, the first proposal, by the Legal Affairs Committee of the European Parliament, was voted in May

[58] Gammeltoft-Hansen, p.16.
[59] Köseoğlu, p.57.
[60] P. Nikiforos Diamandouros, **"Introduction"**, The European Ombudsman:Origins, Establishment, Evolution, Office for Official Publications of the European Communities, Luxembourg, 2005, p.1.

1979.[61] Söderman expresses those time with his own words as mentioned below[62]:

"On 12 July 1995, the European Parliament elected me as the first Ombudsman of the European Union. At the beginning of September, I began dealing with the practical issues involved in setting up the office. On 27 September, I gave a solemn undertaking before the Court of Justice of the European Communities in Luxembourg and, from that date, I began to deal with complaints".

The appointment of the first Ombudsman turned out to be a rather long and drawn-out affair, with over a year elapsing between the formal adoption of the Ombudsman's Statute by the European Parliament in March 1994 and the election of the first Ombudsman in July 1995.[63]

In 228th article of Lizbon Treaty, for the European Ombudsman appointment,the word "selection" was used instead of "assignment".[64] It is because of the need to stress that the Ombudsman is not assigned rather selected by the Parliament.

Once appointed, to preserve the autonomy of the office it is essential that the ombudsman is hard to remove given the risks attached where there is an ongoing fear of dismissal on quasi-political grounds. here the strongest solution is the full security of tenure model, as traditionally applied to the judiciary.[65]

### 2.6.3 Status

The "working document" of 6 May 1992 was the starting point for the debate on the Ombudsman's Statute in the Committee on Institutional Affairs. The main aspects of this document are as follows:[66]

• The type of ombudsman created would be a parliamentary ombudsman,

---

[61] Diamandouros, p.1.
[62] Jacob Söderman, **"The Early Years of the European Ombudsman"**, The European Ombudsman:Origins, Establishment, Evolution, Office for Official Publications of the European Communities, Luxembourg, 2005, p.83.
[63] Diamandouros, p.3.
[64] Köseoğlu, p.40.
[65] Buck, Kirkham and Thompson, p.165.
[66] See Perillo, pp.63-64.

• The Ombudsman's first task in the Statute would be to conduct the investigations he deems necessary,

• The affirmation of the principle of independence of the Ombudsman and its implementation should also be among the Statute's priorities,

• The Ombudsman must be selected in accordance with a transparent and suitably formal procedure;

• Two issues must be taken into account in relation to the Ombudsman's field of competence: a) Establishing the boundary between the competences of the Ombudsman and those of judicial bodies; b)Drawing the dividing line between a complaint and a petition,

• As regards his powers of inquiry, the Ombudsman must be able to question the officials of the institution concerned. Secondly, the Ombudsman must have access to any relevant document. Thirdly, it is important to establish the extent to which the Ombudsman can contact the national authorities operating, within their state, on behalf of the European Commission,

• The Ombudsman must report to Parliament on each individual case and Parliament should endeavour to support the Ombudsman's action.

When comes today, we see that les or more, the Ombudsman's statu is being realized in the same parallel, even more powerfull than desgined before. Article 14 of the European Ombudsman's Implementing Provisions 6 also takes Regulation (EC) 1049/2001 as the basis for public access, although paragraph 2 lays down some limitation due to the extended powers of investigation conferred upon the Ombudsman by the Treaty: "…where the Ombudsman inspects the file of the institution concerned or takes evidence from a witness..., the public shall not have access to any confidential documents or confidential information obtained as a result of the inspection or hearing…". The same condition applies to documents consulted by the complainants themselves (European Ombudsman, Implementing Provisions, Article 13).[67]

The powers of investigation of the two bodies vary considerably. Under Article 195 of the EC Treaty, the European Ombudsman has the task to

[67] Baviera, p.129.

"conduct inquiries". To that effect, "…the Community institutions and bodies shall be obliged to supply the Ombudsman with any information he has requested of them and give him access to the files concerned…", except on duly substantiated grounds of secrecy. This obligation also applies, in certain conditions, to documents originating in the Member States. The same text provides that "…officials and other servants of Community institutions and bodies must testify at the request of the Ombudsman…", although they speak in accordance with instructions from their administrations and are bound by professional secrecy.[68]

In the Newman Report of the Committee on Petitions on the Ombudsman's Report for 1997, the European Parliament welcomed the Ombudsman's definition of maladministration: "Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it".[69]

Examples of the types of maladministration that the Ombudsman gave in his Report for 1997 included "...administrative irregularities or omissions, abuse of power, negligence, unlawful procedures, unfairness, malfunction or incompetence, discrimination, avoidable delay, and lack or refusal of information".[70]

Classicaly ombudsmen powers to conduct inspections and to initiate so-called own-initiative inquiries. Furthermore, most ombudsmen have the power to recommend changes to laws and administrative practices. In addition to these formal proactive powers, ombudsmen naturally also have the important role of providing public officials with guidance as to how they themselves, and the pub- lic administrations in which they serve, can continuously improve their relations with individuals and associations. This is part of what is sometimes referred to as the ombudsman's "educational" role.[71]

---

[68] Baviera, p.131.
[69] Newman, p.160 (quoted from Annual Report of the European Ombudsman for 1997, p. 23).
[70] Newman, p.160 (quoted from Annual Report of the European Ombudsman for 1997, p. 22).
[71] P. Nikiforos Diamandouros**, "Reflections on the Future Role of the Ombudsman in a Changing Europe",** The European Ombudsman:Origins, Establishment, Evolution, Office for Official Publications of the European Communities, Luxembourg, 2005, p.233.

One can find too may clues on the codes of an weel-functioning Ombudsman system in the artcile of Nikiforos Diamandouroswritten on the future roles of Ombudsman.[72]

Article 226 (previously Article 169) of the Treaty states that, in the event of an infringement of Community law, the European Commission may open proceedings against a Member State for failure to fulfil a Treaty obligation. Often the attention of the Commission was drawn to a possible infringement by a complaint made by a citizen directly to the Commission, and sometimes this was done by the Committee on Petitions raising a relevant petition with the Commission.[73]

If we want to summerize the main feautures of the Ombudsman, we can say that the Ombudsman [74]:

- is Independant while carrying out his/her duties,
- acts to protect the rights of of Union citizens,
- must not receive instructions from any government or other institutional bodies,
- must avoid to act against his/her reponsibilities and duties,
- can not deal with the any occupation or position which may provide him/her with financial, political or administrative benefits.

### 2.6.4 Functions and Roles

For the EU Ombudsman, the main duty is framed as "do" and "not do do" codes as mentined below[75]:

The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union (EU). The Ombudsman can also launch inquiries on his own initiative.

---

[72] Diamandouros, **"Reflections on the Future Role of the Ombudsman in a Changing Europe",**, pp.217-240.

[73] Eddy Newman, **"The Policy-Relationship between the European Ombudsman and the European Parliament's Committee on Petitions",** The European Ombudsman:Origins, Establishment, Evolution, Office for Official Publications of the European Communities, Luxembourg, 2005, p.156.

[74] Efe, p.9.

[75] European Commission, **What can the European Ombudsman do for you?**, Belgium, 2008, p.6.

The Ombudsman is completely independent and impartial. In this regard, the Ombudsman cannot investigate:

a) complaints against national, regional or local authorities in the Member States, even when the complaints are about EU matters. Examples of such authorities are government departments, state agencies and local councils;
b) the activities of national courts or ombudsmen. The European Ombudsman is not an appeals body for decisions taken by these entities;
c) complaints against businesses or private individuals.

Thus, the EC Treaty (Article 195) provides for an Ombudsman appointed by the European Parliament and empowered to receive complaints concerning instances of maladministration in the activities of the Community institutions or bodies.[76]

However, beside the system of judicial remedies, there is the possibility of a different type of recourse, allowing individuals to engage in dialogue with the European institutions. According to Article 21 of the EC Treaty, "...[e]very citizen of the Union shall have the right to petition the European Parliament..." and "...[e]very citizen of the Union may apply to the Ombudsman". These two instruments-petitions to the European Parliament and complaints to the European Ombudsman-have a different history and are of a somewhat different nature.[77]

The Ombudsman's role is complementary to that of the courts. An Ombudsman inquiry aims, where possible, to achieve a 'win-win' solution. Furthermore, a finding of maladministration by the Ombudsman does not automatically imply that there is illegal behaviour that could be sanctioned by a court.[78]

The European Ombudsman is an independent and impartial body that holds the EU administration to account. The Ombudsman investigates complaints about maladministration in EU institutions, bodies, offices,

---

[76] Baviera, p.127.
[77] Saverio Baviera, **"Parallel Functions and Co-operation: the European Parliament's Committee on Petitions and the European Ombudsman"**, The European Ombudsman:Origins, Establishment, Evolution, Office for Official Publications of the European Communities, Luxembourg, 2005, p.126.
[78] European Union, **The European Ombudsman's Guide to Complaints**, Germany, 2011, p.7.

and agencies. Only the Court of Justice of the European Union, acting in its judicial capacity, falls outside the Ombudsman's mandate. The Ombudsman may find maladministration if an institution fails to respect fundamental rights, legal rules or principles, or the principles of good administration.[79]

Through its Committee on Petitions, the European Parliament deals with petitions relating to matters falling within the EU's field of activity. Petitions cover a very broad range of issues, from environmental concerns to discrimination and delay. Parliament can draw attention, through petitions, to infringements of European citizens' rights by a Member State, local authority, or other public institution.[80]
The European Commission is responsible for ensuring that Member States respect EU law. In carrying out this task, the Commission is known informally as the 'Guardian of the Treaties'. You can complain to the Commission if you believe a Member State is infringing EU law.[81]

### 2.6.5 Operational Methodology of European Ombudsman

Each complaint appointment reached to the Ombudsman is recorded and given a number. A paper, including the name of the staff responsible for the complaint subject and record number of the document, is delivered to the complainant. Besides, a petition document which is sent to the Ombudsman by European Parliament is accepted as complaint with the allowance of thecomplainant. In some cases, the Ombudsman can send the complaint to the interested body of the European Parliament or other competent authority with the consent of the complainant. The Ombudsman decides if the complaint matter is among his/her respobsibilies or not. If it is related with his/her authortiy, he/she might demand more information or documents from the complainantbefore he/she makes the decision. If the complaint is out of the authority, he/she closes up the file. The close up decision and the reasons are sent to the complaining citizen and he/she might be directed to the right related authority[82].

[79] Eurepoen Union, **Problems With the EU? Who Can Help You?**, Luxemburg, 2011, p.6.
[80] Eurepoen Union, **Problems With the EU? Who Can Help You?**, p.10.
[81] Eurepoen Union, **Problems With the EU? Who Can Help You?**, p.11.
[82] Efe, p.14.

### 2.6.6 Reporting

At the end of every annual session, Ombudsman presents an annual report to the parliament which is about the complete actions and it includes especially the results of the investigation. Report is discussed in a Parliament session and members of Parliament question to the Ombudsman about his/her activities. These annual and special reports are published in official journal of EU. EO also presents these special reports which are related to institutions and members of EU to the Parliament. These reports in question and the explanations of good practice of the Ombudsman give opportunity to the Union institutions and members for their self-improvement [83] .The complaint numbers from themember countries can be overview in Table 1.

## 2.7 International Instititions

The U.N. standards for NHRIs, poptilarly called the "Paris Principles," were drafted in the early 1990's. Although not legally binding, the Paris Principles are considered to be the core standards for independent and effective NHRIs. Although the Paris Principles suggest a human rights commission as the model NHRI, the U.N. began to accept human rights ombudsmen as NHRIs later in the 1990s. In 1994, an International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights was established under the auspices of the U.N.'s High Commissioner for Human Rights, and later created a NHRI accreditation process that, in effect, grants its highest accreditation only to human rights commissions and human rights ombtidsman institutions. Paralleling this move, U.N. human rights treaty committees have issued general comments that call on contracting state parties in major U.N. human rights treaties to establish or strengthen NHRIs and have also made recommendations to states on the establishment and strengthening of NHRIs in concluding observations to periodic state reports. On a regional basis, both the Council of Europe (COE) and the Organizafion of American States (OAS) have strongly supported the human rights ombudsman model. In particttlar, the mandate of the COE's Commissioner for Human Rights includes facilitathig the activities of national ombudsmen or similar institutions hi the human rights field in COE member states.[84]

[83] Efe, pp.15-16.
[84] Reif, 2011, pp.290-291.

**Table 1: Complaint Numbers to the European Ombudsman in 2012 by Countries**

| Country | Number of complaints | Ratio to Original Country Population |
|---|---|---|
| Luxembourg | 39 | 16 |
| Cyprus | 30 | 6,1 |
| Malta | 14 | 5,7 |
| Belgium | 182 | 3,5 |
| Slovenia | 31 | 3,2 |
| Ireland | 50 | 2,3 |
| Bulgaria | 66 | 1,7 |
| Hungary | 76 | 1,6 |
| Spain | 340 | 1,5 |
| Portugal | 77 | 1,5 |
| Lithuania | 23 | 1,3 |
| Greece | 74 | 1,3 |
| Latvia | 16 | 1,3 |
| Slovakia | 34 | 1,3 |
| Denmark | 34 | 1,3 |
| Poland | 235 | 1,2 |
| Austria | 45 | 1,1 |
| Estonia | 7 | 1 |
| Finland | 7 | 0,9 |
| Sweden | 38 | 0,9 |
| Czech Republic | 42 | 0,8 |
| Germany | 273 | 0,7 |
| The Netherlands | 51 | 0,6 |
| Romania | 58 | 0,5 |
| United Kingdom | 162 | 0,5 |
| France | 138 | 0,4 |
| Italy | 118 | 0,4 |
| Other countries | 138 | |
| Not known | | |

**Source:** European Union, European Ombudsman Overview 2012, Luxemburg, 2013, p.7.

**Note:** The complaint ratio is the result of the percentage of total complaints from each Member State divided by its percentage of the total EU population. The ratio is greater than 1 if more complaints originated in the country in question than might be expected, given the size of its population. Percentages have been rounded to one decimal place.

International Bar Association, even if it is not directly related with Ombudsman issues, deals with human right issues and complaints. Inspired by the vision of the United Nations (UN) and with the aim of supporting the establishment of law and administration of justice worldwide, representatives of 34 national bar associations gathered in New York on 17 February 1947 to create the IBA.

In 1974 the Section on Legal Practice was formed and in 1982 a third section, the Section on Energy and Natural Resources Law, was created.

The Standing Committee on Human Rights and the Just Rule of Law was formed in the 1980s. In 1992 an Action Plan was adopted to establish a Trial Observer Corps and investigate cases where judges and lawyers or the independence of bar associations was threatened. In 1995, the formation of the Human Rights Institute expanded this work and gave the opportunity for member organisations and individual members to contribute actively.[85]

International Ombudsman Associataion is an important organization established to help to the governments and intereseted bodies all over the world. *The mission of IOA is to advance the profession of organizational ombudsman and ensure that practitioners are able to work to the highest professional standards.*[86]

The International Ombudsman Association (IOA) was officially formed in July 2005 following the merger of the University and College Ombuds Association (UCOA) and The Ombudsman Association (TOA). IOA is the largest international association of professional organizational Ombudsmen practitioners in the world, representing over 500 members from the United States and across the globe.

[85] See http://www.ibanet.org/About_the_IBA/About_the_IBA.aspx, 30.07.2013.
[86] See http://www.ombudsassociation.org, 30.07.2013.

## Table 2:International Associations for Organizational and Classical Ombuds

| No | Name of Organization | Description |
|---|---|---|
| 1 | African Ombudsman and Mediators Association | |
| 2 | Asian Ombudsman Association | |
| 3 | Association of Canadian College and University Ombudspersons (ACCUO) | |
| 4 | Association of Ombudsmen and Mediators of the Francophonie (AOMF) | |
| 5 | Australian and New Zealand Ombudsman Association (ANZOA) | |
| 6 | British and Irish Ombudsman Association (BIOA) | |
| 7 | European Network of Ombudsmen in Higher Education (ENOHE) | An informal network established in for academic ombudsmen to learn from each other, and to create a possibility for a more solid base for the ombudsman function in the European educational field. |
| 8 | European Ombudsman Institute (EOI) | |
| 9 | Forum of Canadian Ombudsman (FCO) | |
| 10 | International Ombudsman Institute (IOI) | Established in 1978, is the only global organization for the cooperation of more than 150 Ombudsman institutions. |
| 11 | Mediterranean Network Mediators and Ombudsmen | |

The Association supports organizational ombudsmen worldwide working in corporations, universities, non-profit organizations, government entities and non-governmental organizations. Building on the traditions of TOA and UCOA, IOA offers a full roster of professional training and education programs for the practicing ombudsman professional and those interested in learning about our practice. In addition, the association works to support and promote the profession through strategic partnerships and communication with government agencies and other professional organizations as appropriate.

IOA created and published standart of practices and ethic codes which are lightinig and beneficiary documents for the Ombudsman institutions around the world.[87]

Another worlwide institute dealing on Ombudsman issues is The International Ombudsman Institute (IOI). It was established in 1978, is the only global organisation for the cooperation of more than 150 Ombudsman institutions.[88] The headquarter is settled in Vienn, Austria. It published a declaration offering a frame for the working methodology and status of Ombudsman institutions in the countries.[89]

[87] See The International Ombudsman Association**, Standards Of Practıce, Rev. 10/9** and **Code of Ethics, Rev. 1/7.**
[88] http://www.theioi.org, 30.07.2013.
[89] See International Ombudsman Institute, **Wellington Declaration**, Wellington-New Zealand, 13th November 2012.

# 3 OMBUDSMAN SYSTEM AS A PUBLIC AUDIT MECHANISM (İsmail CERİTLİ)

## 3.1 Organizational Structure of Ombudsman SystemAs a Central Office

On the level of the Council of Europe, Recommendation 757 (1975) of the Parliamentary Assembly advises the Committee of Ministers to invite the governments of member states to appoint ombudsmen. Thereupon a series of recommendations and resolutions by the Committee of Ministers of the Council of Europe ensued. This resulted from the requirement to amend the judicial protection of human rights by extrajudicial, more informal and expeditious means, such as those primarily adopted by ombudsmen. The re- port of the "Steering Committee for Human Rights" from 1998 on non- judicial means for human rights protection at a national level refers to the significance of national, regional and local ombudsmen, who are extensively authorised in the field of human rights protection.[90]

[90] Kucsko-Stadlmayor, p.7.

**Table 3:Associations for Organizational and Classical Ombuds in America**

| No | Name of Organization | Description |
|---|---|---|
| 1 | United States Ombudsman Association (USOA) | Serves governmental ombudsman offices across the United States and member offices in Canada and other parts of the world. We welcome you to browse through the website and learn about our association, membership, activities, and services. |
| 2 | Coalition of Federal Ombudsmen (COFO) | Exists to support, assist, advance, and edify those who serve federal government institutions as ombudsman; those institutions considering, developing, and hosting these programs; and those who benefit from these programs. |
| 3 | Association for Conflict Resolution (ACR): Ombuds Section | |
| 4 | Board of Certification for Certified Organizational Ombudsman Practitioners (CO-OP) | |
| 5 | National Long-Term Care Ombudsman Resource Center (NORC) | |
| 6 | Organization of News Ombudsmen | Dedicated to protecting and enhancing the quality of journalism by encouraging respectful and truthful discourse about journalism's practices and purposes. |

**Table 4:Other International Ombuds Associations**

| No | Name of Organization |
|---|---|
| | **Regional Associations for Organizational and Classical Ombuds** |
| **1** | California Caucus of College and University Ombudsman (Cal Caucus) |
| **2** | Southern California Ombuds Group |
| **3** | Ombuds of Texas |
| | |
| | **Related Dispute Resolution Associations** |
| **1** | American Bar Association (ABA): Dispute Resolution Section |
| **2** | American Bar Association (ABA): Aministrative Law Section |
| **3** | Institute for Collaborative Engagement (ICE) |
| **4** | Negotiation Center of Excellence |

Ombudsmen can be accredited as National Human Rights Institutions, provided that they meet certain criteria (independence, competence to check the compatibility of the law in force and future law with human rights, right to advise and control public agencies with regard to human rights, duty of enhancing human rights and cooperating with national and international organisations).[91]

Ombudsman system is being reorganizaed through the world everyday in a differenciating functions and with a growing body. For example, in Australia it is divided into the sectors as Telecommunications Industry Ombudsman, Banking and Financial Services Ombudsman, Energy and Water Ombudsman (N.S.W. and Victoria), Private Health Insurance Ombudsman, Public Transport Industry Ombudsman (Victoria), and, soon, a Postal Industry Ombudsman. In the last year alone, proposals have been made by parliamentary committees, political leaders and public commentators for the creation of an aviation ombudsman, children's ombudsman, small business ombudsman, aged-care ombudsman, media ombudsman, arts ombudsman, franchising ombudsman, and sports ombudsman.[92]

[91] Kucsko-Stadlmayor, p.9.
[92]John MCMİLLAN, **"The Ombudsman And The Rule Of Law"**, The Internatıonal Ombudsman Yearbook, Volume:8, 2004, p.8.

As a central office, we can talk about the classic Ombudsman model. In this context, parlieamentary Ombudsman is the most known central institutions in the countreis. In the same time national Ombudsmen can also be considered the another cetnral Ombudsman units.

As with other accountability institutions, ombudsmen were introduced in part to assist parliament in delivering its core functions [93] and by associating the ombudsman with parliament, the comparative weakness of the ombudsman is mitigated.[94]

The Parliamentary Ombudsman model, therefore, is a complex innovation in constitutional practice.To get the best out of the ombudsman, parliament is required both actively to support the office whilst at the same time scrutinizing its work.[95]

The commission for Local administration is made up of three separate ombudsmen, responsible for separate geographical locations between 2005 and 2009 all three ombudsmen were former chief executives of local authorities in England.[96]

The capacity for parliament to scrutinize the work of the ombudsman is one of the most important reasons for linking the ombudsman to parliament. Such oversight is ordinarily conducted through a select committee, with one of two dominant solutions being adopted: either a specific committee is established which has the ombudsman within its remit; or one or more parliamentary committees engage with ombudsman issues in an irregular fashion, largely driven by events.[97]

A basic task for all select committees in fulfilling the scrutiny function is to review the annual reports of the ombudsman, a process which varies in extent and intensity across the different ombudsman schemes. This will ordinarily involve a session in which the ombudsman attends and answers questions.[98]

importantly, the parliamentary Ombudsman model is not one of subservience; it is instead a sophisticated evolution of the classic tripartite separation of powers formation of the liberal democratic constitution which safeguards the ombudsman's autonomy and includes

[93]Buck, Kirkham and Thompson, p.157.
[94] Buck, Kirkham and Thompson, p.157.
[95] Buck, Kirkham and Thompson, p.160.
[96] Buck, Kirkham and Thompson, pp.167-168.
[97] Buck, Kirkham and Thompson, p.180.
[98] Buck, Kirkham and Thompson, p.181.

some essential conditions about the ombudsman's appointment and freedom to operate.[99]

When ombudsman practices are examined, we see the ombudsman is elected by the parliament to keep away bureaucrats' radius. There is no doubt that the ombudsman who is elected by parliament and gives report about its activities, keeps itself away from the effect of the executive power. But the doubts show up whether ombudsman who is elected by political party in power which has majority in parliament could avoid from the effect of the public administration.[100]

Firstly, it has to be noted that not all of the institutions examined in the study are officially named as "Ombudsman", despite their common structural characteristics. Despite these different designations, the duties and responsibilities of those institutions are directly comparable to those of the "ombudsman". This applies to the institutions of Sweden, Finland, Denmark, Norway, the United Kingdom, the Netherlands, Ireland, Malta, Bel- gium, Israel, as well as the European Ombudsman in certain translations. Other institutions, in their original language or in English translation, are qualified as Peoples Advocate (AL, HR; similar: Public Attorney-MK; Parliamentary Advocate-MD; Public Defender of Rights-CZ, SK; Volksanwalt-A; El Defensor del Pueblo-E; Difensore Civico – I), Médiateur (B, F, L), Provedor de Justiça (P), Raonador del Ciutadà (AND), Chancellor of Justice (EST, FIN), Parliamentary Commissioner (H, UA; similar: Commis- sioner for Civil Rights Protection-PL, Commissioner for Human Rights-AK, RUS, KZ), Human Rights Defender (AM), or even simply as "an offi- cial authorised by parliament" (Authorized Person of the Oliy Majlis for Human Rights-UZ).[101]

### 3.2 Regional and Local Offices

A number of the states have established parliamentary ombudsmen at a regional level. Partly these regional ombudsmen exist in addition to

[99] Buck, Kirkham and Thompson, p.187.

[100] Ali Fuat Gökçe, **"Publıc Audıtıng (Ombudsman) At Contemporary Publıc Admınıstratıon And Mılıtary Ombudsman Suggestıon For Turkey"**, The Joumal of Faculty of Economics and Administrative Sciences, Year.2012, Vol.17, No.2, p.206.

[101] Gabriele Kucsko-Stadlmayor (Ed.), **"The Legal Structures of Ombudsman-Institutions in Europe – Legal Comparative Analysis",** European Ombudsman-Institutions, 2008, p.6.

national institutions (A, B, BIH, DK, E, GB, SRB); partly national ombudsmen have not yet been established (CH, D, I) Sometimes special institutions may even exist at a municipal level (e.g. B-Gent, NL-Ams; CH-StZ). To some extent, these institutions have acted as role models for the establishment of national ombudsman-institutions in the particular state. In certain states that have not established regional ombudsmen, the respective national ombudsman has installed regional branch offices, also known as "regional representatives", "local representatives" or "delegates" (AZ: four, F: 292, GE: three, IL: one, KS: seven, MK: six, MD: three, PL: two, P: two, RO: fifteen, UZ: thirteen). Partly these offices are placed to cover the whole national territory (e.g. F, KS, RO, UZ), partly they are only found in remote areas (e.g. P: the Azores and Madeira).[102]

### 3.3 Appoinetment of Ombudsman

The ombudsmen are generally appointed by parliament or one of its chambers. Sometimes the appointment requires a qualified majority. Several countries provide for a right to proposals. In the Netherlands, for instance, an independent committee (composed of the Vice President of the State Council, the Chief Justice, and the Comptroller General of Finances) is entitled to nominate three candidates for election. In Greece, the conference of presidents of Parliament, rather than Parliament itself, is concerned with the appointment of Ombudsmen (with a majority of 4/5). The variety of types of appointment on the one hand expresses the independence of ombudsman institutions from the administrative branch, while on the other hand paying regard to its functional proximity to the legislative branch. In the United Kingdom the Queen as head of state is responsible for the appointment of Ombudsmen.[103]

For example, as the recent appointment of the Scottish Public Services Ombudsman (SPSO) demonstrates, there is no guarantee that Parliamentarians will not seek to control the process. In this instance, vested with the power to nominate the appointment, the selection panel for the SPSO was made up entirely of MSPs, leaving open the possibility that political considerations might have influenced the appointment process. In recent practice elsewhere there are good examples of a system being put in place by Parliament itself to guarantee that the process is

[102] Kucsko-Stadlmayor, p.17.
[103] Kucsko-Stadlmayor, p.12.

depoliticised. For instance, the appointment of the current Public Services Ombudsman for Wales (PSOW) was made after the Assembly recruited an expert panel to conduct the recruitment process and nominate a candidate. This Panel included only one Assembly Member. A similar process of contracting out the recruitment process was adopted by the Westminster Parliament's Speaker's Committee in the 2008 appointment of the Chairman of the Electoral Commission (Speaker's Committee 2008, pp. 4–5).[104]

### 3.4 Ombudsman for Non-State Organizations

As international organizations, MDBs historically have been accountable only to their member states and to the client states and private entides that contract with them. Communides and non-state actors that are adversely affected by MDB projects but lack a contractual relationship have been unable to adequately hold MDBs accountable. The recent development of Independent Accountability Mechanisms (IAMs) represents the attempt by MDBs to eliminate or reduce the accountability gap between MDBs and affected non-state individuals and groups.[105] In line with this reality, The World Bank was the first international organization to attempt to respond to this accountability gap.[106]

Becasue of the realities mentined above and seeing the benefits of ombudman system, not only public institutions but also some non-state institutions established the system in their administrative body. For example, in the finance system, the office of the Compliance Advisor/Ombudsman (CAO) of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) was established.[107]

The CAO office has three distinct roles:

(1) Ombudsman (taking a fiexible approach to resolve the issues of the affected person or group through dialogue, mediation, and setde- ment);

---

[104] Richard Kirkham, **"Implementing The Recommendations Of An Ombudsman ... Again"**, Journal of Social Welfare & Family Law Vol. 33, No. 1, March 2011, p.73.
[105] Saper, p.1280.
[106] Saper, p.1284.
[107] Saper, 1281.

(2) Compliance (auditing the IFC's and/or MIGA's performance to assess whether they are in line with their own environmental and social policies); and

(3) Advisory (advising the president and management of both institutions in dealing vwth particular issues and reviewing the environmental and so- cial policies, based on the lessons learned from the CAO's ex- perience in its other roles).[108]

As Ombudsman, it promotes information-sharing, joint fact-finding, and dialogue between affected people, the IFC/MIGA, and project companies.[109] In the other side, the second major strength of the CAO is its use of non-decisional participation in its Ombudsman role to allow requesters to play an active part in negotiating and solving their own problems.[110]

Ombudsman mechamism is not solely used in public sector, also benefited by the private sector. For example, World Bank CAO (Complaint/Advisory/Ombudsman Mechanism) was structured to follow up the complaints and to make advices to get better management in the system.

The CAO office has three distinct roles[111]: (1) Ombudsman (taking a fiexible approach to resolve the issues of the affected person or group through dialogue, mediation, and setde- ment); (2) Compliance (auditing the IFC's and/or MIGA's performance to assess whether they are in line with their own environmental and social policies); and (3) Advisory (advising the president and management of both institutions in dealing vwth particular issues and reviewing the environmental and so- cial policies, based on the lessons learned from the CAO's ex- perience in its other roles).

### 3.5 Budget Definition of Ombudsman

In order to ensure the efficiency of ombudsman-institutions and the independence of incumbents, the remuneration of ombudsmen is mostly

---

[108] Benjamin M. Saper, **"The International Einance Corporation's Compliance Advisor/Ombudsman (CAO): An Examination Of Accountability And Eeeectiveness From A Global Administrative Law Perspective**", Journal of International Law And Politics, Vol. 44, p.1296.
[109] Saper, p.1309.
[110] Saper, p.1312.
[111] Benjamin M. Saper,p.1296.

determined by law. According to Kusko-Stadlmayer findings, the salary of 29 out of the 44 examined national institutions is regulated in the ombudsman act or in other statutes. However, they do not explicitly mention specific amounts. Often, the calculation of the amount is based on the remuneration of other high-ranking state officials, primarily of high court judges, members of parliament or ministers.[112]

The budget of ombudsman-institutions is of central significance for their effective functioning and independence. They are generally funded by the state, but the modalities differ greatly throughout the various legal orders. In most cases, taking the institution's independence into account, it is provided that the ombudsman himself can make a proposal of budget, which can be directly submitted to parliament (e.g. DK, SLO, IL, KS, UA), the state president (e.g. BIH) or the minister of finance (e.g. A, LV).[113]

### 3.6 Control Function of Ombudsman

According to Kucsko-Stadlmayer, the standards of control are mainly based on three main issue: 1. Control on legal rules, 2. Principles of "good administration, 3. Human rights.[114]

It is virtually characteristic of ombudsmen to apply non-judicial standards, in addition to the legal order, in their investigation. This comprehensive competence is considered as correlative to their authorisation to create "soft" law that is not intended to be legally binding.[115]

Judiciary offices are in general out of ombudsman control. Meanwhile, when a complaint lacks subsidiarity, in a few state the ombudsman has authority to use power on judical bodaies. In this regard, ombudsmen in Sweden and Finland are even empowered to intervene in pending court proceedings and to influence the tenor of court decisions and resolutions. In the course of the investigation the ombudsman is entitled to personally contact the judges, to gather information on the substance and process of

[112] Kucsko-Stadlmayor, p.16.
[113] Kucsko-Stadlmayor, p.16.
[114] Kucsko-Stadlmayor, p.31.
[115] Kucsko-Stadlmayor, p.32.

proceedings, to impose penalties on them in case of lacking cooperation and to make recommendations concerning the tenors of their decisions.[116]

In the control method of ombudsman, there can be told about three approach. Firstly, the definition of "administration" varies in the different legal orders. In most cases the definition is primarily based upon an organisational approach. Accordingly, the competence of the ombudsmen refers to "organs/bodies of public administration as "state or gans/officials", "public/state authorities" or "government offices". Similarly the European Ombudsman is entrusted with the control of the activities of "Community institutions". By contrast, a rather functional approach is taken by submitting "public" or "state" administration as a whole to the ombudsman's control. The ombudsman's sphere of competence can thus additionally encompass bodies outside the administrative organisation, as far as they perform certain administrative tasks. Regardless of the chosen approach it is often provided that the activities of officials and other employees are subject to the ombudsman's control. If this is the case the ombudsman may also investigate non-official activities, especially private services as well as activities with mere supporting character. A third theory of control is based upon a kind of "schedule-system": those institutions subject to the ombudsmen's control are listed explicitly and examined.[117]

Ombudsman inspection is distinguishable among other forms of judicial inspecton for its structure and some properties. It takes its judicial property for the Office of Ombudsman is widely regulated on the laws and constitutions of countries. Ombudsman system which is widely applied to the areas like parliament, human rights, banking, energy, university, insurance, environment, labor relations, consumer relations, press, municipal corporation and armed forces in western countires, came into question in Turkey during the arguements about the preperation of

[116] Kucsko-Stadlmayor, p.26.
[117] Kucsko-Stadlmayor, p.22.

the Constitiution of 1982. (Abdioglu, 2007: 90; Birdiçli,2011:n6, 117;Özden, 2010:52-69).[118]

### 3.7 Complaints Appointments and Investigation Method of the Ombudsman

Michael Maurier states general and suplementary functions of the Ombudsman as follows[119]:

**General Functions of an Ombudsman:**

3.1 Controlling the administratibe bodies
3.2 Conflict-Solving
3.3 Mediation between state offices and citizens
3.4 Making advices to the government units

**The Supplementary Function**

4.1 To respond to the changing needs of societies
4.2 To solve the complaints as a result of maladministration
4.3 Solving problems stemmed from the strict applications of regulations because of the limits of the Rule of Law
4.4 Providing equity

In functional aspect, Reif mentions two main taypes or dealing area for an ombudsman: Internal corporate ombudsman and external corporate ombudsman. The first one looks at the internal issues like discussing problems, getting complaints from the employee, solving the problems acrossed. But external ombudsman deals with the complaint getting outside the offices and finding solutions to those problems stemmed the malaministraion of the state offices.[120]

As in the public ombudsman system, compliance getting procedures works the same way in private sector too. For exmaple, The CAO of The World Bank can use flexible methods to address issues from complaints, including facilitation and information sharing, joint fact-finding, dialogue and negotiation, and conciliation and mediation.[121]

Saper tells about three major role of CAO and expresses that if three procedural rights (transparency, non-decisional participation, and reason

[118] Gökçe, p.204.
[119] See Mauerer, pp.5-7.
[120] Reif, 2004, pp.51-52.
[121] Benjamin M. Saper,p.1299.

giving) are fully implemented within the CAO,this can lead to a nearly adequate level of responsiveness for adversely affected people.[122]

Those complaints are excluded which are directed at a third party or has no addressee at all.[123]Prevalently it is provided that complaints to the ombudsman must be subsidiary. As a consequence, a complaint is only admissible if there is no legal remedy available to proceed against the incriminated conduct and no appeal procedure is pending. [124] To understand and observe the procedures for complaint getting and investigations, let's consider Malta's applications.

Alongside independence, comprehensive powers of investigation are an essential cornerstone of the ability of the institution to fulfil a mandate to protect and promote human rights.[125]

The object of inventigation usually refers to state and regional organs and officials commonly called administration. The definition of 'administration' varies from country to country. The oversight of public administration does not necessarily imply that investigations are restricted to public entities. In some countries, the ombudsman is entitled to investigate private legal entities as far as they have public authority (private legal entities performing public tasks or public services). In other countries, only those private legal entities are subject to the ombudsman's supervision, which are to a certain extent controlled by the state (on account of held shares or explicit organizational regulations). For example, in Greece, this depends on whether the corporate management is appointed by the state; in Sweden, activities are supervised where the Government exercises 'decisive influence' through the agency of the enterprise; in Portugal, the relevant criterion is capital majority of the state. In Israel, all institutions are within the ombudsman's area of control if they administer state property or if the state holds shares in the company. The Lithuanian Parliamentary ombudsmen investigate complaints about bureaucratic intransigence and

[122] Saper, p.1324.
[123] Kucsko-Stadlmayor, p.19.
[124] Kucsko-Stadlmayor, p.20.
[125] Pegam, p.235.

abuses of office by public officials or other violations of human rights and freedoms in the sphere of public administration.[126]

As Abraham stated, complaints handle system should be changed to function properly for handling the complaints of changing demographic structure of the societies. The most striking of these demographic changes is the rapidly increasing number of older people, many of whom are increasingly entangled with state bureaucracy in later life and turn to the administrative justice system for help.[127]

Abraham tells about the conduct of 'own initiative' investigations. In many parts of the world, including Canada, Australia and Ireland, the ability of the Ombudsman to instigate an investigation without prior complaint from an individual is widespread. It has even been reported recently that ombudsmen in these countries cannot conceive of operating effectively without such a power.[128]
In Malta, the Ombudsman investigates written complaints against a public body. He may also conduct any investigation on his own initiative. According to the Ombudsman Act, any committee of the House of Representatives may at any time to refer for the Ombudsman's consideration matters that are within his or her jurisdiction. The Act also allows the Prime Minister at any time to refer to the Ombudsman for investigation and report any matter which the Prime Minister considers should be investigated by the Ombudsman.[129]
The complaint-handling role of the ombudsman is specified in all ombudsman legislations and in many circumstances the ombudsman will be the only viable redress mechanism left through which a citizen can pursue their grievance against a public body.[130]

From a rule of law perspective, complaint handling by the ombudsman bolsters the notion that government is bound by rules and that there can be an independent evaluation of whether there has been compliance with the rules. Government accountability and the right to complain go hand in hand.[131]

---

[126] Ziobiene, pp.35-36.
[127] Abraham, p.100.
[128] Abraham, p.99.
[129] For more information See Mifsud and Plaidy, pp.38-40.
[130] Buck, Kirkham and Thompson, p.91.
[131] McMillan, p.7.

But the complaint-handling role remains a central feature of the ombudsman enterprise, setting it apart from other accountability institutions. [132] The investigation of complaints includes inspecting documents, gathering evidence and information, and interviewing public officials and other individuals connected with the case under review. If considered necessary, meetings with complainants and on-site inspections are also held. Direct confrontation of the parties that are involved is avoided.

The Maltese Ombudsman seeks to keep the rules and formalities to a minimum so that the service offered will be as user-friendly as possible. Most complainants submit complaints in writing. Illiterate and inarticulate persons have their complaints written for them, usually by the Ombudsman's Public Relations Officer. Section 16(1) of the Ombudsman Act states that oral complaints are to be put in writing as soon as practical.

Once investigations are completed, a preliminary report is prepared containing information about the main thrust of the complaint, the facts as established by the investigations, the findings, the basis of the Ombudsman's considerations, as well as conclusions and recommendations. A copy of the preliminary report is sent either to the public body involved in the event that the complaint is considered to be justified and should be upheld or to the complainant if, in the alternative, the complaint is not upheld.

Formal regulations for the lodging of a complaint are provided very rarely. This corresponds to the basic idea of the ombudsman as an easily accessible institution. All of the examined states provide for complaints free of charge. Many laws stipulate that the complainant needs to be directly concerned or have a legitimate interest in the criticised occurrence (e.g. A, AL, B, E, F, GB, GR, H, IRL, IS, L, M, N). In other words, the sphere of the individual has to be touched in a disadvantageous way, legally or effectively.

In UK, The Law Commission's proposals also seek to help the ombudsman operate an efficient dispute resolution process by reducing

[132] Buck, Kirkham and Thompson, p.92.

the formality of the reporting requirements when a complaint is settled successfully. Under the Law Commission's proposals the ombudsman schemes of the PO, HSO and LGO would be updated in line with the PSOW scheme, to allow for the ombudsman to resolve complaints without the need for more formal investigations accompanied by reporting obligations. Such a move reflects the ability of ombudsmen to resolve many complaints through very simple means, such as a telephone call or a meeting with the public body concerned. Frequently, such contact is sufficient to encourage the public body to amend its position to the satisfaction of the complainant, rendering any further investigatory work superfluous for the purposes of securing redress.[133]

For UK case, we can say that The Law Commission has put forward proposals which would update the procedure for submitting complaints to an ombudsman (Law Commission 2010b, Part 4). It is proposed that the anomaly of the MP filter for the PO scheme should be downgraded to make it possible for complaints to be made direct to the ombudsman (Law Commission 2010b, para. 4.106). For similar reasons of improving access, a further proposal would allow the PO and Health Service Ombudsman (HSO) the discretion to accept oral complaints, as opposed to the current requirement for complaints to be made in writing (Law Commission 2010b, para. 4.91). This proposal mirrors more recent legislation for the Welsh and Scottish ombudsman schemes.[134]

In practice, the ombudsmen have worked effectively around existing legislation but it would make sense to update the law to ensure that it matches current understandings of the administrative justice system, as expressed in the idea of proportion dispute resolution (Department of Constitutional Affairs 2004). Under this concept, disputing parties should be encouraged to resolve their disputes in the forum most suited to their needs, with the assumption being that the restrictive formality and expense of judicial review proceedings, focused on narrow questions of law, should ordinarily be seen as the dispute resolution mechanism of last resort. The Law Commission's proposals are in line with this ideal, as it

[133] Kirkham, p.74.
[134] Kirkham, p.73.

argues that there should be ‘a general presumption in favour of a public services ombudsman being able to open a complaint’ (Law Commission 2010b, para. 4.42).[135]

Parlamentary and Healt Service Ombudsman ofUK express that he has developed a trilogy of principles in his office whic are respectively with Good Administration, Good Complaint Handling and Remedy. This trilogy of principles is intended to guide public authorities and to give more closely defined shape to the standards of performance in evaluating public service delivery.[136]

In UK, following a recent amendment to its powers, a sensible solution is provided for in the Local Government Ombudsman (LGO) scheme in which the ombudsman can investigate a matter that comes ‘to his attention during the course of an investigation’ if it appears that an injustice may have occurred.[137]

The public sector ombudsmen are for many users the final stage in the complaints ladder which begins with the first-instance decision-making department or agency itself and then may escalate either directly or, after an intermediate stage, to an ombudsman. The presumption is that citizens will not seek the ombudsman’s help until they have first raised their grievance with the public body that caused it. In particular, the continuing legacy created by this era is the expectation that every public body has its own structured complaints procedure and customer service standards.[138]

The courts can directly influence ombudsman investigations in three ways:[139]

Firstly, the courts in common law countries have taken the view that ombudsman reports are reviewable but at the same time have generally shown a healthy degree of respect towards their decision-making.

Secondly, on occasion parallel judicial proceedings can heavily influence the government’s response to an ombudsman investigation.

---

[135] Kirkham, p.73.
[136] Abraham, p.98.
[137] Buck, Kirkham and Thompson, p.126.
[138] Buck, Kirkham and Thompson, p.194.
[139] Buck, Kirkham and Thompson, p.216.

Thirdly, the courts can rule upon the legality of the government's response to an ombudsman report. it is this last form of judicial intervention that needs to be explored here as it has profound implications for the ombudsman's constitutional status.

The Ombudsman as a promoter of good administration by means of a sustained and determined drive to eradicate maladministration by public officials. In the Maltese context this has meant a regular flow of publications that provide assistance, guidance, and advice to those holding public office regarding their obligations towards citizens and towards the right of the community at large to good public administration.

The Ombudsman as an adviser on administrative matters. In his reports on cases that are brought to his attention, both those which are sustained and those which are not upheld, the Ombudsman generally pinpoints administrative shortcomings and other weaknesses that lie at the root of the cases under investigation and suggests how these problems are to be tackled with a view to ensuring that maladministration in the public service that causes frustration, grievance, and undue worry to citizens will be eliminated.

The Ombudsman as an adviser to the public at large seeking assistance in their day-to-day contacts with the intricate machinery of public administration. Since it is widely recognized that approaching the public administration may prove a daunting experience especially to those who, as a result of their educational or social background, are not familiar with the way in which the public sector operates, the ombudsman institution is meant to serve as a means of assistance to those who need to approach a government department or a public body on government-related issues or who feel that their entitlements are not being given to them in a proper way.

The Ombudsman as a guardian of the underprivileged. During the years that the institution has been in existence in Malta, the Ombudsman has built a reputation among the Maltese as a protector who looks after the needs of the vulnerable sections of society and who promotes administrative justice towards people who are otherwise likely to find themselves at a disadvantage in their contacts with government institutions.

The Ombudsman as a support to Parliament. Any committee of the parliament may at any time refer a petition to the Ombudsman for his consideration so that he may make any such report to the committee as he thinks fit. Also, Ombudsman Acts also enables the Prime Minister at any time to refer to the Ombudsman for investigation and report any matter, other than a matter which is subject to judicial proceedings, which the Prime Minister considers should be When any such matter is investigated, the Ombudsman shall report on the matter to the Prime Minister and make such report to Parliament on the matter as he thinks fit.[140]

For France case, a complainant cannot directly approach the Médiateur except to request a reform of the law. Otherwise, complainants are required first to bring their complaints to a Member of Parliament who has discretionary power to 66 decide whether to send the case to the Médiateur. The Member of Parliament may consider that the complaint is inadmissible. However, on the other hand, if he or she considers that a complaint is admissible, the Member of Parliament can then send the matter either directly to the Médiateur or to a délégué départemental. The latter may then either deal with the case directly or forward it to the Médiateur.[141]

The jurisdiction of the Médiateur is wide in the sense that the institution may receive complaints concerning the functioning of the central, regional, and local administrations, public organizations, and other agencies and authorities entrusted with a public service mission. This excludes parliamentary commissions and their services, the government, and other constitutional bodies. However, the actions of legal persons governed by private law and entrusted with the management of a public service, public undertakings, industrial and commercial public undertakings, and administrative public undertakings fall within the field of action of the Médiateur.[142]

[140] Mifsud and Plaidy, pp.60-63.
[141] Mifsu and Plaidy, p.47.
[142] Mifsu and Plaidy, pp.47-48.

## 3.8 Goals and Benefits

Ombudsmen, whether used in a public or private organization, are unique because not only can they resolve disputes outside of court, but they also can prevent disputes from occurring in the first place.[143] According to Spanheimer, there are a few benefits from using Ombudsman as followed: [144]

The use of an ombudsman allows organizations an opportunity to detect potential problems sooner, when the prospective negative impact is less severe. Indeed, an ombudsman facilitates "[t]hings get[ting] surfaced that wouldn't get surfaced any other way," and thus helps organizations using an ombudsman to avoid liability in countless areas of the law.

Second, in addition to resolving disputes more quickly than litigation, an ombudsman conserves an organization's resources because an ombudsman is much less costly than hiring outside counsel to investigate a dispute within the organization.

A third benefit the use of an ombudsman brings to an organization is a result of the fact that the organization's potential problems and disputes are resolved solely by the ombudsman, therefore allowing the managers and executives of the organization to exclusively concentrate on their primary goals of earning profits, organizational growth, and competing in the market place.'"

Finally, the implementation of an ombudsman benefits the employees of the organization because it provides them a neutral person to whom they can fully voice concerns in confidence."

Ombudsmanship has to be independent from the public admistration system as it is degigned to find solutions to the disputes that occur between the people and public offices and review their complaints about them as a mediator. In order to accomplish its interceding activity and to find acceptable solutions to the complaints of the people, it should be able to converse with the public office in question easily and without limitations and it should be able to examine any kind of document concerning the issue. Ombudsman is expected to share the results of his

[143] Spanheimer, pp.665-666.
[144] Spanheimer, p666-667.

inspections with the parties of the dispute and intercede between them. Ombudsman has to be a person trusted and respected by the people in order to be able to do the inspection and mediation tasks on a healthy basis.[145]

Ombudsman is to carry out the tasks he was assigned to. But the following questions rise in front of us: “By what kind of authorization ombudsman is to do his job of mediating between the paties and offering solutions to the problems, what is the limits of its area of inspection, will his advice on solution be taken into account by the public office, will any kind of legal action be taken against the public offices and their adminstrators that don’t take ombudsman’s advices, against those public offices and civil servants that don’t fulfil the advice of ombudsman, whether the pursuit of legal action will be carried out by ombudsman, the legislation or the admintration?” [146]

The Local Government Ombudsman's (LGO’s) business goals in 2008-09 included the following aspirations:[147]

To make decisions that are sound and justified.

- To provide customers with a service that meets their needs and reasonable expectations. To promote awareness, understanding and use of our services.
- To influence the improvement of local government through guidance and advice.
- To increase our efficient use of resources.

How does society detect and prevent misconduct, as well as settle disputes in educational, governmental, and private business institutions? The answer to this question for most of our nation's history was, and to a large degree continues to be, litigation through the courts." However, the use of the courts to quickly resolve disputes today is at best wishful thinking.[148]

In addition to the valuable benefit a corporation receives from the early detection of problems, an ombudsman also provides numerous other advantages as described below:[149]

---

[145] Gökçe, p.207.
[146] Gökçe, p.207.
[147] Buck, Kirkham and Thompson, p.105.
[148] Spanheimer, p.663.
[149] Spanheimer, pp.666-667.

First, as briefly mentioned earlier, an ombudsman allows an organization to avoid court. This route around litigation is a major reason why the use of ombudsmen has been found to be cost effective. This is due to the time and cost litigation imposes upon litigants. As compared to formal court proceedings, an ombudsman resolves disputes in significantly less time.

Second, in addition to resolving disputes more quickly than litigation, an ombudsman conserves an organization's resources because an ombudsman is much less costly than hiring outside counsel to investigate a dispute within the organization. Moreover, if an ombudsman prevents one key lawsuit from being filed against a large corporation or stops one controversial issue about the organization from being disseminated in the media, the ombudsman has more than justified the cost to that organization. In addition to saving litigation costs, there are enormous productivity and efficiency costs a large organization can incur by letting problems go unnoticed.

A third benefit the use of an ombudsman brings to an organization is a result of the fact that the organization's potential problems and disputes are resolved solely by the ombudsman, therefore allowing the managers and executives of the organization to exclusively concentrate on their primary goals of earning profits, organizational growth, and competing in the market place.

Finally, the implementation of an ombudsman benefits the employees of the organization because it provides them a neutral person to whom they can fully voice concerns in confidence.

Through the mechanism of the ombudsman, the notion is now embedded in Australia that people have a right to complain against government, to an independent agency, without hindrance or reprisal, and to have their complaint resolved on its merits according to the applicable rules and the evidence.[150]

In order to find and eliminate the resons which reduce the efficiency and productivity of sevices provided to people under public admintration, public admintration has to be inspected effectively. Inspection of public adminstration is mainly in the form of judicial inspection, political inspection, adminstrative inspection, public inspection, media inspection and international inspection. In addition to all these means of inspection,

[150] John MCMİLLAN, **"The Ombudsman And The Rule Of Law"**, The Internatıonal Ombudsman Yearbook, Volume:8, 2004, p.7.

Ombudsman is a contemporary form of inspection especially seen in western countries. [151]

### 3.9 Relationship Between Parliement and Ombudsman

Parliamentary ombudsman is not just as a tool of 'external' control of the administration but also an institutional mechanism for self-reflection in a liberal democratic state.[152]

In our day, ombudsmanship instution overreaches to being an instutition to which citizens may convey their complaints and may be able to solve the problems they faced in their relaitions with adminstration without applying to court. Besides this main function, ombudsmanship has become an instution which advises and mentors the public offices and public adminstrators on the ways of providing a public service, by this it has become an instutition which takes on the task of developing the public adminstration. In other words ombudsmanship in addition to protecting the citizens' rights and liberties against bad adminstration and from the abuse of rights; it has taken on tasks like developing adminstration- public relations, renewing amd sustaining the citizen's trust in the public adminstration and encouraging public services to be carried out in an efficient, qualified, transperent and people oriented way.[153]

Abraham mentions that the relationship between the Ombudsman and PASC (Public Administration Select Committe) has been a vital means of sustaining the effective collaboration between the Ombudsman and Parliament as a whole for UK, and of ensuring that the constitutional role of the Ombudsman has a clear focal point and is not confined simply to the laying of reports before Parliament.[154]

The chief purpose of the Ombudsman is to assist Parliament in holding the executive to account. The means of doing that, however, is by the investigation of citizens' complaints. That process entails a direct relationship with the complainant and establishes reciprocal responsibilities and obligations. The investigation of individual

---

[151] AIi Fuat GOKÇE, **"Publıc Auditing (Ombudsman) At Contemporary Public Administration And Military Ombudsman Suggestion For Turkey",** The Joumal of Faculty of Economics and Administrative Sciences, Y.2012, Vol.17, No.2, p.204.
[152] Ziobiene, p.34.
[153] Özer Köseoğlu, "**Avrupa Ombudsmanının Hukuki Statüsü, İşleyişi Ve Kurumsal Etkinliği"**, Sayıştay Dergisi, Sayı:79, Ekim-Aralık 2010, p.36.
[154] Abraham, p.97.

complaints is the primary activity of the Ombudsman and the means by which the Ombudsman exercises its constitutional role. The refinement of the MP filter is a necessary step towards the effective discharge of that function.[155]

### 3.10 Autorities and Responsibilites

Ombudsman has no sanction power. He is not authorized to take any binding decisions about the public offices or their personnel, to cancel adminstrative actions or to give an order to public offices. So ombudsman's decisions has no penal of adminstrative sanction on public offices. [156]

In many parts of the world, including Canada, Australia and Ireland, the ability of the Ombudsman to instigate an investigation without prior complaint from an individual is widespread. It has even been reported recently that ombudsmen in these countries cannot conceive of operating effectively without such a power.[157]

Abraham express the 'own initiative' for Ireland as a good news. Accoridng to him, the Ombudsman, Emily O'Reilly, closely in recent years, has been able to use her 'own initiative' powers to investigate concerns about the social care sector that, although not the subject of individual complaint, were well founded and open to public scrutiny. Although such powers must be framed carefully and used with discretion, he is convinced that they are likely to be an invaluable resource for any ombudsman who intends to reach out to the widest possible public and pursue the trail of social justice wherever it may lead.[158]

In this regard it should be pointed out that the Ombudsman Act does not grant the Ombudsman any executive power to ensure that his or her recommendations are implemented. Section 22(4) of the Act lays down the procedures that are to be followed in similar cases. It states that if, within a reasonable time after the Ombudsman's final report is made, no action is taken which seems to be adequate and appropriate to implement the recommendations, the Ombudsman may at his or her discretion send a copy of the report and recommendations to the Prime Minister. The

[155] Abraham, p.97.
[156] Gökçe, p.209.
[157] Abraham, p.99.
[158] Abraham, pp.99-100.

Ombudsman may also thereafter submit any such report on the issue to the House of Representatives as he or she thinks fit.[159]

The Law grants the Médiateur a limited range of power of inquiry to scrutinize a case in France. For instance, the Médiateur does not have the power to force a witness to come forward and testify in the way that a judge would do in court. However, the Law obliges Ministers and public authorities to collaborate with the Médiateur in the context of an investigation and to put their employees at 71 the disposal of the Médiateur. They shall send to the Médiateur the documents that he or she requests even when these are confidential. Exceptions are made for confidential documents on matters of national defence, state security, and external policy. Furthermore, the Law requires the Conseil d'État and the Court of Auditors to collaborate with the Médiateur by drafting the studies that he or she requests.[160]

The setting up of the institution of the Médiateur in France served not only to help administrative courts deal with an increasing number of complaints lodged by citizens against the administration but also to fill a gap. The need was felt to create an institution that could protect citizens against administrative unfairness in situations where administrative courts are not suitable forums for citizens to legitimately defend their rights. As a result, from a procedural perspective, legislation clearly distinguishes the institution of the Médiateur from the institution of administrative courts in order to make the former more easily accessible and more approachable by citizens. Besides the procedural differences existing in the conditions to lodge a complaint and the scope of power of each institution, the law has limited the powers of the Médiateur in relation to court proceedings.[161]

The control of administration is considered as the ombudsman's principal duty. Only the European Ombudsman is explicitly empowered to observe all activities carried out by Community institutions, including the legislation.[162]

In practice numerous grievances in the control of administration result from legal regulations. These regulations need to be executed by administrative organs and are binding on the ombudsman too. The ombudsman is only entitled to recommend their amendment pro futuro.

[159] Mifsu and Plaidy, p.40.
[160] Mifsu and Plaidy, p.48.
[161] Mifsu and Plaidy, p.54.
[162] Kucsko-Stadlmayer, p.30.

Many ombudsmen are expressly authorised to submit legislative proposals to parliament. Other institutions incorporate such recommendations into their activity reports or possible special reports- even in the absence of explicit authorisation.[163]

The Law Commission's proposals in UK represent the most concrete expression yet of the idea that the ombudsman's findings should be considered legally binding, unless the public body or complainant successfully challenges those findings by way of judicial review (Law Commission 2010b, para. 6.107). If disputes on malad of ombministration are to be taken seriously, therefore, the ombudsman's findings should be considered to be authoritative. If ombudsman's findings were binding, so the argument goes, then in future ombudsman disputes it would no longer be open to a public body to prevaricate through a political rejection of the ombudsman's findings.[164]

### 3.11 Relationship With Judiciary Institutions

In a democratic country, the constitutional principles of separation of powers and independence of the judiciary are fundamental. The majority of parliamentary ombuds- man institutions in Europe, including Lithuania, are not authorised to supervise the ju- diciary. The Assembly of the Council of Europe recommends that ombudsmen have at most strictly limited powers of supervision over the courts. If circumstances require any such role, it should be confined to ensuring the procedural efficiency and administrative propriety of the judicial system.[165]

### 3.12 Relationship With Administrative Justice

Ann Abraham crticize the present situation of administrative justice considering UK case. According to him, administrative justice is in a muddle, not just in any particular way but in general: a muddle for those who work in it and a muddle for those who have to use it. I say that for three main reasons. First, nobody can say definitely what administrative justice is about, whether it is just about courts and tribunals or whether it includes first- instance decision-making, ombudsmen and other complaint-handlers too. Second, nobody is very sure what administrative

[163] Kucsko-Stadlmayer, p.31.
[164] Kirkham, pp.77-78.
[165] Ziobiene, p.36. (See The Recommendations of the Parliamentary Assembly of the Council of Europe 'The Institution of Ombudsman', 1615 (2003), Para. 6.)

justice is for: is it just a question of 'fire-fighting', or is there scope for 'fire-watching' or 'fire-prevention' as well. Third, nobody knows where administrative justice belongs: after decades of homelessness it was finally offered shelter by the Administrative Justice and Tribunals Council (AJTC) in November 2007, but by November 2012 the AJTC itself will almost certainly be no more, and administrative justice will then have to make do with makeshift accommodation somewhere within the Ministry of Justice.[166]

Within this general sense of muddle, the world of the public sector ombudsmen occupies a special, and especially muddled, niche. It is a niche characterised by muddle about design, coverage and scope: muddle about design, in that the various public sector ombudsmen have different structures, powers and remit; about coverage, in that they operate within arbitrary and increasingly fluid boundaries, both sectoral and jurisdictional; and about scope, in that they span a broad range from 'maladministration' to 'service failure' and professional or 'clinical judgment'.[167]

From day to day the fact of this muddle is expressed by a lack of public awareness of what ombudsmen actually do, by the absence of coherent government policy, and by fragmentation of delivery that means in effect that the administrative justice 'system' remains a distant aspiration rather than a present reality.[168]

---

[166] Ann Abraham, **"Making Sense Of The Muddle: The Ombudsman And Administrative Justice, 2002–2011"**, Journal of Social Welfare and Family Law, Vol:34, No:1, March 2012, p.91.
[167] Abraham, pp.91-92.
[168] Abraham, p.92.

# 4 SYSTEM CODES OF OMBUDSMANSHIP IN TERMS OF ACCOUNTABILITY AND TRANCPARENCY (İsmail CERİTLİ)

In this part of the book, operational codes of Ombudsman to quarantie a well functioning system are handled and analyzed. In this frame, main principals of the Ombudsman are explained.[169]

After the persuation of American Bar Association (ABA) by the insistance of Professor Walter Gellhorn, ABA adopted a resolution calling on state and local governments to give support to the establishement of an ombudsman authorized to inquiere into all administrative action and to make public criticism. This resolution identifies 12 essential characteristics of an ombudsman as to be below[170]:

1) Authority of the Ombudsman to criticize all agencies, officials and public employees,
2) Independancy of Ombudsman,
3) Appointment by the executive with the confirmation of legislative body,
4) Independancy of the Ombudsman thgrough a long term, not less than five years,
5) A high salary equivalent to top officer.
6) Freedom of the Ombudsman to employ his own assisstants,
7) Freedom of the Ombudsman to investigate any act or failure.
8) Access of the Ombudsman to all public records,
9) Authority to enquire into legality, fairness, correctness of findings, motivation, adequacy of reasons, efficiency and procedural propriety of any action or inaction by any agency, official or public employee.
10) Discreationary power to determine what complaints to investigate and to determine what criticism to make or to publicize,
11) Opportunity for any agency, official or public employee criticized by the Ombudsman to have advance notice of the criticism and to publish with the criticism an answering statetment.
12) Immunity of the Ombudsman and his staff from civil liability on account of official action.

---

[169] To see some details please look at Charles L. Howard, **Organizational Ombudsman:Origins, Roles and Operations-A Leading Guide**, American Bar Assosiation, Chicago, 2010, pp.27-41.

[170] See Charles L. Howard, **Organizational Ombudsman:Origins, Roles and Operations-A Leading Guide**, American Bar Assosiation, Chicago, 2010, pp.7-8.

Starting from those definitions and approaches, we tried to codify the basic principals of an efficient Ombudsman system. These codes indeed might be considered as the lightening pathernsfor a well-functioning Ombudsman system.

### 4.1 Awareness

Making contact with the ombudsman is dependent on whether people are aware of the appropriate routes for complaint and the level of accessibility.[171]

The general public's awareness of the work of the ombudsman is a perennial concern for most offices around the world. The few awareness surveys that have been commissioned in the uK and elsewhere suggest that the ombudsman institution is not well known by the general public.[172]

From day to day the fact of this muddle is expressed by a lack of public awareness of what ombudsmen actually do, by the absence of coherent government policy, and by fragmentation of delivery that means in effect that the administrative justice 'system' remains a distant aspiration rather than a present reality.[173]

### 4.2 Accessibility

In Article 12 of GGC (EU Good Governance Code), it is mentined that the official shall be service-minded, correct, courteous, and accessible in relations with the public. When answering correspondence, telephone calls, and e-mails, the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked. If the official is not responsible for the matter concerned, he or she shall direct the citizen to the appropriate official.[174] In the same parallel, in Article 15, it is clarified that the complaints should not be lost during the buerocratic levels and it must be directed to the right point such as if a letter or a complaint to the institution is addressed or transmitted to a Directorate General, Directorate, or Unit which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of the institution.[175]

---

[171] Buck, Kirkham and Thompson, p.93.
[172] Buck, Kirkham and Thompson, p.94.
[173] Abraham, p.92.
[174] European Union, **The European Code of Good Administrative Behaviour**, p.16.
[175] European Union, **The European Code of Good Administrative Behaviour**, p.18.

Assuming a potential complainant is aware of an appropriate ombudsman body then gaining access to the ombudsman should not be difficult, albeit localized problems, such as inattentive staff or unhelpful literature, will occasionally still occur. Ombudsman schemes today aid the process of applying by making available information and application forms on the internet and offering a degree of assistance on the phone, with phone calls occasionally made available free of charge. It has also become the norm for information on ombudsmen to be made available in a range of languages.[176]

Technical advances have also played a part in the provision of a better service, with computer databases now regularly employed to track and inform the progress of complaints and to make links between investigations where possible. Websites for most ombudsmen have been revamped in recent years and are generally much more helpful and informative than they once were.[177]

### 4.3 Reliable Data Provision

To measure the success of the ombudsmen in making themselves known and available to potential complainants, it is useful to consider the statistical evidence about workloads and other matters contained in a variety of forms within their annual reports.[178]

### 4.4 Effectiveness

Statistics show that an ombudsman can effectively resolve disputes quickly and provide creative settlements that would not otherwise be possible through litigation, but before these benefits can be fully realized, a privilege for communications with an ombudsman must be granted to facilitate the effectiveness of the ombudsman process.[179]

Regarding Peruvian Human Right Ombudsman Institution, Pegram indicated that the more the system decentralized the higher the

[176]Buck, Kirkham and Thompson, p.98. (Nederland National Ombudsman and European Ombudsman web sites can be visited to see the application for accessibility)
[177] Buck, Kirkham and Thompson, p.102.
[178] Buck, Kirkham and Thompson, p.99.
[179] Spanheimer, p.688.

accessiveness of the citizens and the higher the complaints from the citizens.[180]

One of the most effective aspects of the relationship has been the intervention by PASC in those very few cases where the Executive has chosen to resist the findings of the Ombudsman. Whilst the Executive may quite lawfully choose not to comply with the Ombudsman's recommendations, it cannot simply wave aside the Ombudsman's findings without providing cogent reasons for its difference of opinion.[181]

As as result, if we want to summerize the discussion on the effectivenes of the system, it can admit that the Ombudsman effectiveness should meet two main criteria[182]:

- There should be a parallel between the standards for designing an ombudsman program and the dimensions along which an ombudsman program is evaluated.
- Any assessment of an ombudsman program ought to provide information that helps the ombudsman staff improve the quality of their work and the ombudsman's organization improve the effectiveness of its program.

Gadle declares that there are many motives for developing an ombudsman programs. Among the ones he has heard mentioned most frequently are: controlling the costs of conflict; reducing lawsuits or EEOcomplaints; improving morale among an organization's employees/members; a legally mandated need for an alternative dispute resolution program. In many instances an organization has decided it needed an ombudsman program after a major organizational crisis such as the revelation of undetected or overlooked major ethical violations[183].

---

[180] Thomas Pegram, **"Weak Institutions, Rights Claims and Pathways to Compliance:The Transformative Role of the Peruvian Human Rights Ombudsman"**, Oxford Development Studies, Vol. 39, No. 2, June 2011, p.233.
[181] Abraham, p.98.
[182] Howard Gadlin, **"Assessing Effectiveness in Ombudsman Programs",** Journal of the International Ombudsman Association, Volume 3, Number 1, 2010, p.24.
[183] Gadlin, p.25.

In the other side, Howard Gadlin steresses that the most discussions of Ombudsman effectiveness appear to ignore the core principles of neutrality, confidentiality and independence and they are not anchored in a consideration of the standards of practice.

"Over many years in the dispute resolution world I have seen a large number of reports claiming to demonstrate the effectiveness of ombudsman programs, mediation programs and integrated conflict management systems and not a single one of those reports was grounded in the standards of practice. Why is that? Is there a view that the SOPs are an essential or important part of the practice? Probably not. In fact, they may be rather unimportant to the organizational leadership, relegated to the arena of the Ombuds' preferred jargon. Instead, reports focus on matters such as the number of cases handled or persons seen, settlements rates, disputant satisfaction ratings, increases or decreases in the number of complaints filed, and most annoyingly, claims of savings in time and money"[184].

Ombudsman institution presents itself as "an option for correcting the mistakes of public administration, as it is for the citizens an experienced, neutral agent, whose activity requires no payments, no large periods of time and no direct conflict with the opposing side".[185]

## 4.5 Equity and Neutrality

An ombudsman is a neutral member of an organization who receives complaints from employees inside the organization, as well as third parties external to the organization, and attempts to resolve these complaints through various dispute resolution methods.[186]

In Artcile 5 of GGC (EU Good Governance Code), it is expressed that in dealing with requests from the public and in taking decisions, the official shall ensure that the principle of equality of treatment is respected.

---

[184] Gadlin, p.25.
[185] Jorge L. Maiorano, **"Ombudsman in Argentina"**, Drepturile Omului Journal, No. 2, 1992, p. 23.
[186] Ryan Spanheimer, **Justification For Creating An Ombudsman Privilege In Today's Society"**, Marquette Law Review, 2012, p.661.

Members of the public who are in the same situation shall be treated in a similar manner.[187]

The concept of equity was adopted by the Roman legal doctrine and later penetrated into the Continental European legal mindset, partly through the medium of ecclesiastic and natural judicial sources. The development of the rule of law and the constitutional state in the 19th century has lead to this idea largely being expelled from the doctrine of legal methodology to such an extent that it does not play a significant role in contemporary administrative law anymore. However, the notion of equity has been readopted, primarily by the French legal system, as a standard of control exercised by the ombudsman. "Équité" is explicitly provided as a standard of control for the Médiateurs in France, Luxembourg and Belgium.101 Correspondingly, in translation, "equity" applies to the ombudsmen of Macedonia, Slovenia and Montenegro and "Billigkeit" to the Swiss Ombudsmen of the Cantons of Zurich and Basel City. The Polish Ombudsman is authorised to apply the concept of "social justice".[188]

### 4.6 Confidentiality

Without a guarantee of confidentiality an ombudsman cannot function effectively because complainants will be hesitant to come forward with issues regarding the organization for fear of retaliation.[189]

Artcile 21 mentions that the official who deals with personal data concerning a citizen shall respect the privacy and the integrity of the individual in accordance with the provisions of Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.[190]

Among the principles promulgated by ombudsman associations that practicing ombudsmen are ethically required to abide by is

[187] European Union, **The European Code of Good Administrative Behaviour**, p.14.
[188] Kucsko-Stadlmayer, p.35.
[189] Spanheimer, p.661.
[190] European Union, **The European Code of Good Administrative Behaviour**, p.21.

confidentiality, or protection of complainant communications with an ombudsman. This protection is essential to the ombudsman dispute resolution process. In fact, courts have stated that "without confidentiality, the ombuds process would not work.".[191]

This belief in the significance of confidentiality of communications is illustrated by the first question almost all people who come to an ombudsman ask, "Is this discussion off the record? Anyone who comes to an ombudsman to voice his or her concerns finds security and confidence in the fact that reporting an issue to an ombudsman will be "off the record" and not later disclosed or used adversely because these patrons know the ombudsman has a duty under his or her standards of practice to keep the conversation confidential. The ability to have off the record, or confidential, communications not only provides a sense of security by knowing the conversation cannot be disclosed later or subsequently used adversely in formal proceedings, but also provides a safe route to raise concerns without the worry of retaliation in the present.[192]

While the focal point of this piece centers on the need for confidentiality from the perspective of the complainant who discloses information throu^ the ombudsman process, recognizing a privilege for communications with an ombudsman also necessitates that statements made to the ombudsman by the institution or organization with whom the complainant has an issue also remain confidential. Although the essential role confidentiality plays from the complainant's perspective is well-documented.[193]

The ombudsman process is exceedingly similar to, and rather frequently includes mediation. Mediation is a process whereby a neutral assists the parties to a dispute in reaching a settlement.Mediation does not need to be formally labeled as such and in fact there are no special requirements (except that usually the parties desire someone who is neutral to the dispute) that need to be met for one to qualify as a mediator.

[191] Spanheimer, p.670.
[192] Spanheimer, p.672.
[193] Spanheimer, p.672

Communications made during mediation are protected as privileged under federal law'^and a majority of states' laws, although the extent and scope of the protection varies.[194]

### 4.7 Human Rights Protection

In many European countries, the parliamentary ombudsman enjoys the right of permanent oversight over special institutions such as prisonson, children's homes, psychiatric hospitals, refugee camps and others. The monitoring of the human rights situation in these special institutions is essential and particularly important for the prevention of human rights violations.[195]

Almost all ombudsmen can examine the administration according to the standard of the entire legal order. It is beyond question that human rights are a part of this standard, provided that they are legally binding on the administrative organs. This applies primarily to those human rights and fundamental rights, which are codified in the particular state constitution and in the European Convention on Human Rights.[196]

The ombudsman institutions are very important institutional guarantees of human rights. First, any person can apply to an ombudsman institution. Because it is free of charge, and entails a short term of investigation and a 'soft' decision, every person is guaranteed to receive help. Second, the ombudsmen may 'softly' influence state and municipal institutions to respect the law and human rights. Third, the ombudsman is empowered to report to the Parliament on the need for legal amendments and improvements to the human rights situation in the country. [197] InTurkey also there were establised a few institutions or committees central and local level such as Presidancy of Human Right Institution, Ethical Board Institution in the central level and Human Right Committes in the proviences.

The classical ombudsman is found predominantly in North America, Commonwealth Caribbean nations and overseas territories, parts of

[194] Spanheimer, p.684.
[195] Ziobiene, p.35.
[196] Kucsko-Stadlmayer, p.36.
[197] Ziobiene, p.40.

Western Europe, and in a number of African, Asian, and Pacific states. Some of the jurisdictions with classical ombudsmen, particularly Commonwealth nations, also have separate human rights commissions.[198]

There is no uniform model for a human rights ombudsman. Human rights ombudsman institutions vary considerably in their structure functions, and powers, and these differences are often seen both intra- and inter-regionally. For example, except for Spain and Portugal, most Western European human rights ombudsman institutions more closely reflect the classical ombudsman model of investigation, recommendation, and reporting. In contrast, human rights ombudsman institutions in Latin America and Central and Eastern Europe typically have more extensive powers. Hybrid ombtidsman instittitions with human rights mandates in other parts of the world vary widely; some are limited to the classical powers, while others have expanded authority.[199]

A variety of forces, both legal and non-legal, have compelled the growth of human rights ombudsman institutions around the world, both in absolute terms and relative to the number of classical ombtidsman institutions. These forces include democratization and public institution-building initiatives; comparative law infiuences in particular regions or sub-regions; the need to conserve government resources; international initiatives to establish NHRIs; and pressure resulting from regional standards, U.N. standards, and treaty initiatives to establish domestic institutions for human rights protection.[200]

Pegram also concludes that the human rights ombudsman and human rights commission models are found most often in countries with hybrid or "pardy free" democratic regimes, while "the classical ombudsman continues to predominate in 'free' regimes, increasingly oper- ating in conjunction with a human rights commission model.[201]

---

[198] Reif, 2011, p.280.
[199] Reif, 2011, p.298.
[200] Reif, 2011, p.281.
[201] Reif, 2011, p.282 (quoted from Thomas PEGRAM, Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions, 32 HUM. RTS. Q. 729, 729 (2010).

In the late 1980s, as communist regimes imploded, Central and Eastern Eviropean nations began the process of nation-building. Western European, U.S., and indigenous models all infiuenced the shape and substance of their new constitutions and public institutions. Many adopted variants of the human rights ombudsman, albeit with differing powers and names. Poland was the first nation in the re- gion to establish a human rights ombudsman.[202]

In Hungary, a legislative proposal for an ombudsman was first put forth in 1988.[203] The Slovenian Human Rights Ombudsman legislation was passed in late 1993 and "modelled the duties and authorities of the ombudsman on a classical Scandinavian type of ombudsman, combining it with some provisions of the legislation in those European countries, which recently established such institutions (e.g. Netherlands, Spain).[204] The drafters of federal constitutional law on the commissioner for human rights in Russia also looked to the ombudsman institutions of Sweden and Great Britain.[205] The Russians were particularly influenced by ombudsman institutions in countries that had experienced or were experiencing a political transition; therefore special attention was paid to the experience of Poland, Slovenia, and post-Franco Spain, although the Russian model was adapted to fit its own particular environment.[206] It appears that the Swedish and Polish models were influential in the subsequent development of the Hungarian commissioners for human rights.

---

[202] Reif, 2011, p.286.

[203] Reif, 2011, p.287 (quoted from László Majtényi, On the History of Adopting the Institution of Ombudsman in Hungary, J. CONST. L. E. & CENT. EUR. 163,169 (1994)).

[204] Reif, 2011, p.287 (quoted from Ivan Bizjak, The Human Rights Ombudsman of Slovenia, in Human Rights Commissions And Ombudsman Offices: National Experiences Throughout The World, pp. 373, 373.).

[205] Reif, 2011, p.287 (quoted from Emma Gillian, The Human Rights Ombudsman in Russia: The Evolution of Horizon- tal Accountability, 32 HUM. RTS. Q. 575, 582 & n.3O (2010)).

[206] Reif, 2011, p.287 (quoted from Bill Bowring, Sergei Kovalyov: The First Russian Human Rights Ombudsmanand the Last?, in Rein Müllerson et al. eds., Constitutional Reform And Internaiıonal Law In Central And Eastern Europe pp.235, 240, 1998).

## 4.8 Timeness

The delays experienced by complainants in the processing of their complaints have in the past also proved to be a real problem. For example, in 1997-98 the average time for an investigation in the PO's office was 100 weeks (PO 1998, para. 1.10). Difficulties in this area can indicate problems in obtaining evidence from public authorities.

Public authorities sometimes delay any positive response to ombudsmen's reports for significant periods of time.[207]

Compared with the traditional slow pace at which the Maltese legal system operates, the Office of the Ombudsman is known to offer a speedy service to complainants and has gained a reputation throughout the country of resolving cases expeditiously and fairly. The Annual Report 2003 of the Office of the Ombudsman in fact states that while 595 complaints were completed during 2003, there were another 128 open complaints at the end of the year; of these, eighty-eight grievances (69%) were less than three months old, fifteen cases (12%) had been pending between four to six months, while only another fifteen cases had been open for more than six months.[208]

The prosecures should be sustained in a reasonable time limit. This is stated in Article 17 like that the official shall ensure that a decision on every request or complaint to the institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. If a request or a complaint to the institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author as soon as possible.[209]

## 4.9 Independency

Ombudsman institution is a public autonomous and independent one from any other public authority aimed to protect the rights and freedoms of citizens in their relations with public authorities.[210]

Establishing suitable arrangements to secure the independence of ombudsmen, therefore, is a vital component of ombudsman schemes.[211]

---

[207] Buck, Kirkham and Thompson, p.118.
[208] Mifsud and Plaidy, p.52.
[209] European Union, **The European Code of Good Administrative Behaviour**, p.19.
[210] I. Popescu-Slăniceanu and C. I. Enescu, **"A Comparatıve Analysıs Of The Romanıan And The European Ombudsmen"**, AGORA International Journal of Juridical Sciences, No. 1, 2013, pp.159.
[211] Buck, Kirkham and Thompson, p.162.

The Médiateur is therefore an independent authority and, as such, is neither under the hierarchy nor under the guardianship of the executive power. The holder of the post does not receive any instructions from any authority. Moreover, the Médiateur benefits from 60 statutory guarantees that ensure his independence vis-à-vis the executive power. the Médiateur cannot be a Member of Parliament and he or she cannot serve as a general or as a municipal advisor. Finally, the financial control on the budget of the Médiateur is exercised only by the Court of Auditors and not by the Ministry of Finance.[212]

In a general sense, the essential nature of independence to the legitimacy of ombudsman schemes is recognized around the world, although a weakness in some schemes is that this point is not specified in legislation.[213]

Regarding the statements mentioned above, we can say that the most significant one is the independence of the institution. Over the course of time, the parliamentary election of the ombudsman has become the primary decisive element for this independence.[214]

The recent Resolution 1615 (2003) of the Parliamentary Assembly of the Council of Europe under the title "The Institution of Ombudsman" emphatically underlines the relevance of independent ombudsmen for the protection of human rights and for the propagation of the principle of the rule of law: "Ombudsmen have a valuable role to play at all levels of public administration, and they report on their activities to the political bodies to whom they are accountable.[215]

Due to the ombudsman's limited powers the jurisdiction of the European Court of Human Rights (ECHR) does not recognise complaints brought to him as "effective remedy" in the sense of Article 13 ECHR.[216]

To be an evident for the independancy of the Ombudsman, in the Gabriele's search on ombudsman systems, she expresses that none of the

[212] Mifsud and Plaidy, p.46.
[213] Buck, Kirkham and Thompson, p.162.
[214] Kucsko-Stadlmayer, p.4.
[215] Kucsko-Stadlmayer, p.8.
[216] Kucsko-Stadlmayer, p.9.

examined institutions is bound to orders of administrative bodies or other public agencies.[217]

To ensure independence from the executive branch in particular, ombudsmen are regularly granted more or less close organisational relations to parliament, even in states which are not pronounced parliamentary democracies. In many cases these procedures require a higher quorum in order to keep political influence within a limit. Moreover, an additional regulation may stipulate that the ombudsman's term of office is independent from the term of office of parliament. This enables the institution to attain a certain degree of indepen- dence from parliament.[218]

The countries experiences showes us that the ombudsman is provided with economical and political independence. The most important incompatibilities refer to state positions, as well as membership and functions in a political party or trade union. Often, the ombudsman is prohibited from exercising any other professional function or salaried employment.[219]

### 4.10 Transparency and Accountability

The ombudsman as an institution reflects a commitment to the consolidation of the democratic system. It constitutes a mechanism of oversight, accountability and transparency, whose aim is to protect the citizens, combat maladministration (discrimination, violation of other human rights) and ensure the application of the rule of law.[220]

### 4.11 Good Administration and Corporate Governance

The criterion of "good administration" emanates from British law. It is either formulated positively as "good administration" (CZ, IS, LV, SLO), "fair administration" (GR) or "sound administration" (EST, IRL), or

[217] Kucsko-Stadlmayer, p.10.
[218] Kucsko-Stadşmayer, p.10.
[219] Kucsko-Stadlmayer, p.15.
[220] Ziobiene, p.41.

negatively as “maladministration” (GB, EU), or “bureaucracy” (LT). The substance of this criterion is rather indistinct.[221]

The principles of good administration are also applicable in cases where an agency has not violated the law. They concern any kind of adverse administrative behaviour, even if it is not legally defined or if a scope of discre- tion is provided (e.g. impolite behaviour towards parties, unnecessary delays of procedural steps, lack of cooperativeness).[222]

The principles have recently also been codified by Article 41 of the Charter of Fundamental Rights of the European Union (Proclaimed on 7. 12. 2000 in Nice, 2000/C 364/01). The article explicitly provides for a “right to good administration” and expressly articulates the main aspects of this right (the right of every person to have his or her affairs handled impartially, fairly and within a reasonable amount of time; the right to be heard, the right to have access to his or her file; the obligation of the administration to give reasons for its decisions).[223]

In the other side, Article 41 of the Charter of Fundamental Rights express that[224]:

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

[221] Kucsko-Stadlmayer, p.33.
[222] Kucsko-Stadlmayer, p.34.
[223] Kucsko-Stadlmayer, p.33-34.
[224] European Commission, **What can the European Ombudsman do for you?**, p.25.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Since its approval by the European Parliament in 2001, The European Code of Good Administrative Behaviour has become a vital instrument for putting the principle of good administration into practice. It helps individual citizens to understand and obtain their rights, and promotes the public interest in an open, efficient, and independent European administration.[225]

Even if so, considering EUGGC (EU Good Governance Code), the Ombudsman has no power to make legally binding decisions, nor is The European Code of Good Administrative Behaviour a legally binding instrument.[226]

The information provided by complaint-handling allows ombudsmen to direct their efforts to promote good administration, even on occasion acting as an early warning system of serious underlying problems with the inner workings of public bodies. complaint-handling also provides the basic experience and immediate contact with administrative activity that the ombudsman requires in order to lay claim to being an expert in the field of good administration.[227]

Whenever the Ombudsman finds out violations of legal rights and freedoms through administrative documents, it will require reform or revoke the administrative act concerned, the compensation and the restoration products for individuals injured in the previous situation. Consequently, the authorities concerned are required to take all measures to eliminate irregularities found, to repair the damage and to remove the causes that have generated or favored violation, informing all the formalities taken in this sense to the Ombudsman.[228]

---

[225] European Union, **The European Code of Good Administrative Behaviour**, Luxemburg, 2013, p.3.
[226] European Union, **The European Code of Good Administrative Behaviour**, p.6.
[227] Buck, Kirkham and Thompson, p.92.
[228] Slăniceanu and Enescu, p.160.

In the past, emphasis has usually fallen on the much-contested concept of 'maladministration'. Principles of good administration turn that preoccupation on its head and instead invite constructive reflection on something more purposive and positive, namely the features of a system of administration that might be called 'good'.[229]

Abraham mentions about a triology of principles for a good govermance concerned respectively with Good Administration, Good Complaint Handling and Remedy. This trilogy of principles is intended to guide public authorities and to give more closely defined shape to the standards of performance for evaluating public service delivery.[230]

There are now a great many independent statutory agencies that perform an important accountability and integrity function in the legal system. The list includes auditors-general, ombudsmen, administrative tribunals, independent crime commissions, privacy commissioners, information commissioners, human rights and anti-discrimination commissions, public service standards commissioners, and inspectors-general of taxation, security intelligence, and military discipline. The function they discharge embraces legal compliance, good decision-making, and improved public administration.[231]

Good administration constitutes an essential feature of a culture of service to citizens. An institution which has adopted such a culture will recognise that relations with citizens are part of its core business. It will encourage its staff not only to respect individual rights, but also to be polite, helpful, and cooperative in dealing with citizens, to be willing to explain their activities, give reasons for their actions, and accept public scrutiny of their conduct.[232]

To be a constructural base for a well functioning public governance system, the World Bank has designed its approaches about pubblic governance issues as shown below[233]:

**1.Process of selecting, monitoring replacing governments**
Associated Measurement Concepts:

[229] Abraham, p.96.
[230] Abraham, p.98.
[231] McMillan, p.18.
[232] European Union, **The European Ombudsman's Guide to Complaints**, p.13.
[233] Zafar Iqbal and Mervyn K. Lewis, **An Islamic Perspective on Governance**, Edward Elker Publishing Limited, Cheltenham-United Kingdom, 2009, p.3.

a) Voice and external accountability through citizen's feedback, democratic institutions and competativness
b) Political stability, lack of violance, crime and terrorism

**2.The capacity to formulate and implement around policies and delivered public services**

Associated Measurement Concepts:
a) Government effectivenes including quality and policy making, bureaucracy and public service delivery
b) Lack of regulatory burden

**3.Respect of citizens and state of institutions that governs economic and social interactions among them**

Associated Measurement Concepts:
a) Rule of law (protection including property rights, judiciary and independancy)
b) Control of corruption.

European Ombudsman P. Nikiforos Diamandouros tells about five main principles of public services as mentined below[234]:

1.Commitment to the European Union and its citizens,
2.Integrity,
3.Objectivity,
4.Respect for others,
5.Transparency.

A governance agenda or stage items for decision-making in an good governance environment would focus on[235]:

a) The distribution of decision-making responsibilities among different participants in the organization,
b) Rules of procedures for making decisions,
c) The degree of imvolvement in decisions,
d) The structure thgrough which the goals and objectives are set,
e) The means of attaining those objectives and
f) Review and monitoring performance.

[234] See European Union, **Public Service Principles for the EU Civil Service**, Strasbourg, 2012.
[235] Iqbal and Lewis, p.12.

UN-HABITAT is developing indicators of good governance, to help cities identify the state of urban governance in their administration and to develop strategies for improving residents' quality of life and access to decision-making. The global Good Urban Governance Index (UGI) uses existing urban indicators both to enable international comparisons of urban governance, and to help city administrations develop tools to increase transparency, promote participation, eliminate slums and secure tenure for the urban poor. The index is built on the four axes outlined:

- effectiveness: e.g. efficiency in financial management, delivery of services and responsiveness to citizens' concerns;
- equity: e.g. including unbiased access to the basic necessities of urban life, and pro-poor policy for vulnerable populations;
- participation: e.g. through strong local representative democracies, free and fair municipal elections, and participatory decision-making processes;

accountability: e.g. transparency in operation of local government, responsiveness to central government and citizens, and promotion of integrity.

### 4.12 Reporting

The Law Commission in UK proposes that the PO, HSO and LGO schemes be amended to allow for three distinct types of report. These would be a 'short-form report', 'report' and 'special report'. With a 'short-form report', the ombudsman would detail in brief the findings of an investigation and, if necessary, any recommendations made. This form of report would be used in relatively straightforward investigations in which either the complainant has not suffered hardship or injustice or where the recommendations have already been accepted by the public body involved. The 'report' would presumably be used in situations where the ombudsman needed to exert some pressure on the public body and/or there was a wider public interest in the issue. Under this more burdensome process, the report would be distributed more widely and the public body would be required to give details, within a certain period of time, of its response. Finally, the 'special report' would be reserved for

those occasions when the ombudsman is dissatisfied with some element of the public body's response to his/her investigation.[236]

### 4.13 Public Relations and Democratization

Reports to parliament are regularly connected with the publication of the ombudsman's work, whereby also his recommendations in specific cases are made public. Almost all ombudsmen in countries make their entire report or parts of it accessible on their websites. This should render the activities of the ombudsmen transparent to the general public and provides them with extensive discretionary power. Irrespective of this, the ombudsmen attach great importance to active public relations for the efficiency of their institution. This especially applies to their regular presence on the internet and in the mass media, papers, radio, television), which fulfil an important democratic function of control ("fourth power"). The public denunciation and analysing of grievances, on the one hand, imposes pressure on the administration, which has both a repressive and a preventive effect. On the other hand, the ombudsman's activity is made public among all classes of population. In Austria, the introduction of a regular television show for the Ombudsman in 2002 has lead to a 64% increase in the submission of complaints.[237].

Many national ombudsmen indicated that they hold consultation days in different parts of the country for the purpose of enforcing their profile in the regions, irrespectively of the existence of regional ombudsmen (A, AL, AM, AZ, D, EST, GE, GR, H, IRL, KZ, LT, M, MD, SK, SLO, UZ). Some- times these consultation days are held by the ombudsmen themselves, some- times by their assistants. The information given by the institutions with re- spect to the frequency of these consultation days differs greatly. Some om- budsmen hold meetings "very often" (AZ), others only visit the different re- gions once a month (SLO) or "at least once a year" (AL). Only some states indicate a definite frequency of consultation days (e.g. SK). The ombudsmen often announce the dates of the regional consultation days on their homepage. This allows for coordination between national and regional/municipal ombudsmen in

[236] Kirkham, p.75.
[237] Kucsko-Stadlmayer, p.49-50.

order to avoid conflicts of competence in advance and to share the use of infrastructure.[238]

[238] Kucsko-Stadlmayer, p.18.

# 5 NEDERLAND'S OMBUDSMAN SYSTEM AS A MODEL APPLICATION (İsmail CERİTLİ and Ayhan Nuri YILMAZ)

## 5.1 Institutional History

In 1801, a 'National Syndicate' was established and worked until 1805, which was charged to observe the activities of the government officies in the same way as the National Ombudsman does.

But the present model of the National Ombudsman was structured under the concept and principals of the Danish Ombudsman Office (established in 1955) and the British Parliamentary Commissionar for Administration (established in 1967).

The idea of appointing a national ombudsman in the Nederlands was first emerged in 1960s. In 1969, the government published a policy doceument on the issue. A draft legislation establishing an office of 2Investigations Commissioner' was submitted to the Parliament in 1976. The name 'National Ombudsman' was introduced in an amendment agreed in 1980.

The National Ombudsman Act (Wet Nationale Ombudsman) entered into force on january 1982. As the last main development, the 'National Ombudsman has been enshrined in the Dutch Constitution since 25 March 1999.[239]

## 5.2 Regulations on the Ombudsman Offices

In the Nederlands, the National Ombudsman is organized at central level and serves to slove the complaints against administrative bodies of the government, provinces, municipalities, water bıards and bodies.Besides this authority of the National Ombudsman, it is always possible to set up local ombudsman offices. But the availability of an local ombudsman is not an obstacle for citizens to apply to the National Ombudsman in any case.

[239] For more see **Institution, Task and Procedures of The National Ombudsman of the Nederlands**, Publication of National Ombudsman of the Nederlands, Hague-Nederland, , February 2008, pp.4-5.

### 5.2.1 Regulations on National Ombudsman Institution

There are mainly three law acts related with the National Ombudsman organizational structure, tasks and processes (complaint handling and problem solving) as explained in the following sub sections.

#### *5.2.1.1 The Nederlands' Constitution*

In the constitution, Article 78a mentions the status of the National Ombudsman. In the first part, the investigation authortiy of the Ombudsman is defined.The appointment, resignment or retirement procedures of the Ombudsman are declared in the second part.[240]

According to the Constitution, the National Ombudsman and a Deputy Ombudsman are appointed by the Lower House of the States General for a certain time. Legal status is desgined by the National Ombudsman Act.

#### *5.2.1.2 The National Ombudsman Act*

The Act is composed of 4 chapters and 20 sections.

The First Chapter is on definitions and scope; The Second Chapter declares all the ascpets of the status of the National Ombudsman benenning from the appointment and also explains the working resignment and retirement condisions of the Ombudsman. Investigation task of the Ombudsman is determined and expressed in the Fourth Chapter. In the last chapter, some provisional conditions are taken in hand.[241]

### 5.2.2 Regulations on Local Ombudsman Offices

At local level, the Ombudsman offices are independantly established without any relations with the National Ombudsman. The decision for establishing an ombudsman office and general mandates are defined by the related Municipal Board. But even if it enter into power with the approval of the Municipal Board, it works with a fully independentaspect.

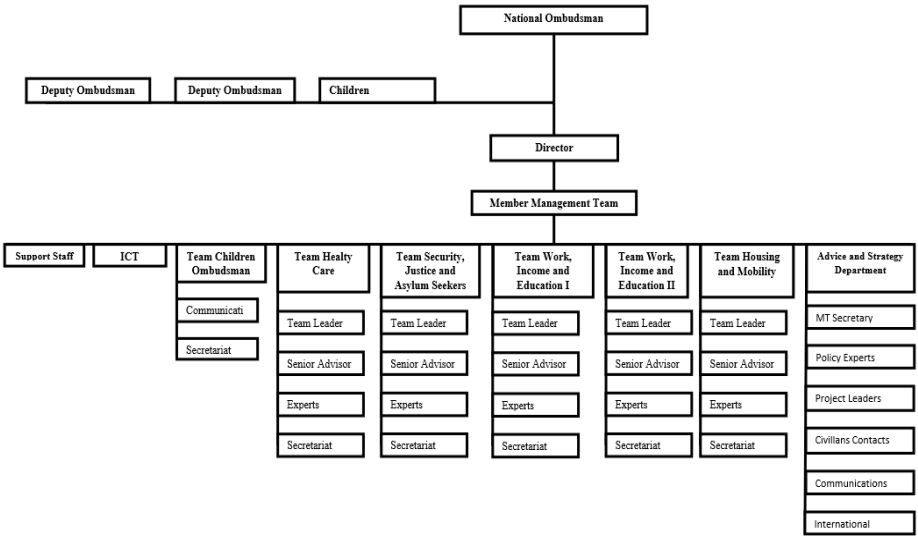
---

[240]Institution, Task and Procedures of The National Ombudsman of the Nederlands, p.33.

[241] For more information, see Institution, Task and Procedures of The National Ombudsman of the Nederlands, pp.33-38.

When we needed to know some details on the local offices and asked to Mr. Alex Brenninkmeijer about the institonal and organizational relations between local ombudsman offices and the National Ombudsman, he mentined that there was not any direct tie between those offices. He also expressed that, taking Rotterdam Ombudsman as an example, is selected by Rotterdam Municipal Board and the regaulations prepared by the local ombudsman office enter into force after the approval of the Municipal Board. But, as Mr. Alex declared, if the municipality can not afford to establish an ombudsman office, they have a possibility to support themin solving the problems between the public and local administratibe bodies.

## 5.3 The Organizational Structure of The National Ombudsman




**Source:** The organizational chart of the Nederland National Ombudsman Office was delivered to Mr.Ismail CERITLI by The National Ombudsman Mr.Alexander BRENNINKMEIJER when an interview with him was realised on 14th of August 2013.

**Figure 1:The Organization Chart of The Nederland National Ombudsman Office**

## 5.4 The Tasks and Juristiction of TheNational Ombudsman

The essential duty of the national ombudsman is inquiring the activities of administrative authorities and considering suitability of them. A public servant exercise shall be deemed to be an action of the administrative authority. Government minister, administrative authorities charged with duties relating to police and other administrative authorities which involve the autonomous administrative authorities. [242]

The National Ombudsman has jurisdiction over actions of government ministers and administrative authorities which have been responsible with the duties of the police since 1th January 1982. [243] At the same time

[242] De Nationale Ombudsman, p.14-15
[243] De Nationale Ombudsman, p. 14

the authorities such as provinces, municipalities and water boards, autonomous administrative authorities etc. which have not superior-subordinate relationship with ministers and the bodies founded under the Joint Arrangement Act. [244] The actions of subnational governments are not involved National Ombudsman jurisdiction and some of authorities have been excluded by order in council.[245]

Legislature, Two House of Parliament, Judiciary, Council of State and the Court of Audit are not subjected to National Ombudsman's jurisdiction owing to the fact that these are not regarded as administrative authorities. [246]

Few of petitions received by Ombudsman are found to be inadmissible because being outside of the jurisdiction him/her. In this case the petitioners can get information about the reason of rejection and alternative remedies.[247]

The jurisdiction of Ombudsman contains the attitude how they conduct the public tasks which is limited with the definition in Section 1/1 and Section 9/22.[248] According to Section 9/22 of Act, the jurisdiction of the Ombudsman can not encompass the investigation fields bellowed:[249]

- ✓ General policy of Government and related executive authority,
- ✓ Generally binding regulations,
- ✓ The actions related to a complaint or an application which is in juridical process or pending complaint in respect of said action, with the exception of action consisted of failure to give a decision on time,
- ✓ The complaint which has been judged before an administrative court,

[244] De Nationale Ombudsman, p. 14
[245] De Nationale Ombudsman, p. 14
[246]De Nationale Ombudsman, p. 15
[247]De Nationale Ombudsman, p. 15
[248]De Nationale Ombudsman, p. 15
[249]De Nationale Ombudsman, p.39

- ✓ The actions derived from the proceedings which are constituted by the juridical body or appeal court rather than administrative court,
- ✓ The actions subjected to jurisdiction of the courts.

If ombudsman receives a petition which is under the judicial process, he/she should forward the petition to the proper judicial body.[250] As a principle the jurisdiction of the Ombudsman is confined to the administrative daily actions of the government.[251]

## 5.5 The Complaint Procedures

The complaint procedure is put in action through by petition and national ombudsman's initiative. [252] Any person who has been acted towards him or another person by administrative authority in a particular matter has the right to petition to National Ombudsman (General Administrative Law Act, Section 9-18). According to Section 9-20, subsection 1, the petitioner firstly should submit his/her compliant to related administration which acted towards him/her.[253]

The petition must be signed and involve these elements[254]

- ✓ Petitioner's name and address
- ✓ Application date
- ✓ The definition of administration's action
- ✓ Information about responsible person
- ✓ Reasons of complaint
- ✓ Information about the application which had submitted to related administrative authority and the results of this authority's investigation.

Section 9:26 of the General Administrative Law Act provides that the National Ombudsman have authority to initiate the investigation ex

[250]De Nationale Ombudsman, p. 16
[251]De Nationale Ombudsman, p. 16
[252]De Nationale Ombudsman, p. 13
[253]De Nationale Ombudsman, p. 13
[254]De Nationale Ombudsman, p. 13,14

officio. This can be done both as an extension of investigations into specific cases or as a separate investigation in its own right.[255]

The role and day-to-day work of the National Ombudsman is fairly ambiguous in the minds of the public, which leads to an increase in the number of people who write petitions for their complaints that The National Ombudsman has no power to investigate. To be able to clarify the role and domain of the National Ombudsman, there are a number of means to access the general public: a website, brochures, telephone hotline and an information desk in the premise of the National Ombudsman. All these efforts are aimed at making the National Ombudsman more approachable to the general public. [256]

A citizen who wants to raise a complaint about an action is expected to write a petition. Receiving this petition, the National Ombudsman first decides whether he has jurisdiction under the General Administrative Law Act and then decide whether the petition is admissible based on the following criteria:[257]

- The petition should be manifestly founded.
- The interest of the petitioner and the seriousness of the action should be manifestly sufficient.
- The petitioner should be the person related to whom the action took place.
- In general, in case of a previous objection or application for judicial review lodged against the action in question, the investigation is not pursued.
- The complaint should first be communicated to the appropriate administrative authority or public servant.
- The application should be made in one year period after the action in question took place.

[255]De Nationale Ombudsman, p.14
[256]De Nationale Ombudsman, p.19
[257]De Nationale Ombudsman, p. 20

- Whether there is an on-going or completed investigation on the relevant complaint by an independent complaints body.
- Whether a parliamentary committee has dealt with the petition.

The National Ombudsman adopts two approaches to investigate the petitions: the intervention method and the investigation of the action of the relevant administrative authority and its staff. [258]

### 5.6 The Decisional Prodecures

Decisional process involves the intervention method. The intervention method is relatively more simple and used in most cases. It enables to resolve the problem quickly in non-complex cases. In this method, the National Ombudsman informs the relevant administrative authority about the complaint with a view to seeking a prospect of solution. In response to the information, the relevant administrative authority generally clarifies the matter or promise action. In this case, the National Ombudsman will no longer see the investigation necessary. However, even the National Ombudsman decides to discontinue the investigation, he can later decide to start an investigation. [259]

Alternately, the National Ombudsman may decide to investigate the complaint in relatively more complex cases, which is much more time-consuming, rather than applying to the intervention method.[260] First, a summary of the complaint is outlined based on the petition. The petitioner is notified that the complaint is under investigation and hence, he/she has been given the opportunity to comment. In the meantime, a summary of the complaint and the petition itself are sent to the relevant administrative authority and if known, to the official the complaint is about and allowed four weeks to respond. During the investigation, both parties are kept informed of the statements of each other and the information collected. In case of any contradiction in the statements, the

[258]De Nationale Ombudsman, p.21
[259]De Nationale Ombudsman, p.21
[260]De Nationale Ombudsman, p.22

National Ombudsman writes a report anyway, passing no judgement on the propriety of the action. [261]

Among the statutory powers of investigation of the National Ombudsman, there are the power to conduct on-site investigations, and the power to summon the administrative authority, the petitioner, witnesses and experts. [262] The administrative authority is obliged to supply any information requested and allow the National Ombudsman to all places for investigation, including the information classified as confidential. [263]

At the end of the investigation, a report of the investigation findings is written to be sent to the petitioner, the administrative authority and where appropriate, to the official whose action is under investigation. On the completion of the report, the parties are allowed two weeks time to comment on the report and the report is modified accordingly. [264]

In some cases, the administrative authority may resort to satisfying the petitioner which may end up with the discontinuation of the investigation without issuing a report. The investigation process is followed by an anonymous report including the findings and the final decision based on the findings.[265]

This report is sent to the petitioner, the administrative authority in question and where appropriate, to the official the complaint is about. [266]

Based on the account of findings, the National Ombudsman formulates a decision on the report regarding the propriety of the action under investigation. In addition, the report identifies the responsible department of the administrative authority or the official and is concluded with

[261]De Nationale Ombudsman, p. 22
[262]De Nationale Ombudsman, p. 22
[263]De Nationale Ombudsman, p.23
[264]De Nationale Ombudsman, p. 23
[265]De Nationale Ombudsman, p. 23
[266]De Nationale Ombudsman, p. 24

naming the administrative authority bearing the formal responsibility for the relevant conduct. The report may also include recommendations. [267]

The National Ombudsman's decisions are not as strictly binding as court judgements, which makes the quality of his work more important. The more founded the reasons underlying the decision are and the more persuasive the decision is, the more likely the outcomes of the investigation will be taken seriously.[268]

In deciding the propriety of a conduct, the National Ombudsman refers to a list of standards of proper conduct that translates the general criteria of proper conduct into a set of specific standards for the action of the government. These specific standards provide a basis for the reasons given for the decisions and enables uniformity in the way he National ombudsman takes his decisions and in their formulation. As required by the General Administrative Law Act, the National Ombudsman states in his reports the standards of proper conduct that have been used to asses the action concerned. [269]

### 5.6.1 The Ombudsquadrant

It refers to an important tool used in assessing the action of the authority concerned and is used alongside the standards of proper conduct. The ombudsquadrant focuses on the relationship between the proper conduct and lawfulness Based on 'dual concern modern' proposed by sociologists, it reveals how concern about a participant's own outcomes relates to concern about those of the other party and is used to analyse the styles of negotiation and conflict.[270]

[267]De Nationale Ombudsman, p. 25
[268]De Nationale Ombudsman, p. 26
[269]De Nationale Ombudsman, p.26
[270]De Nationale Ombudsman, p.28

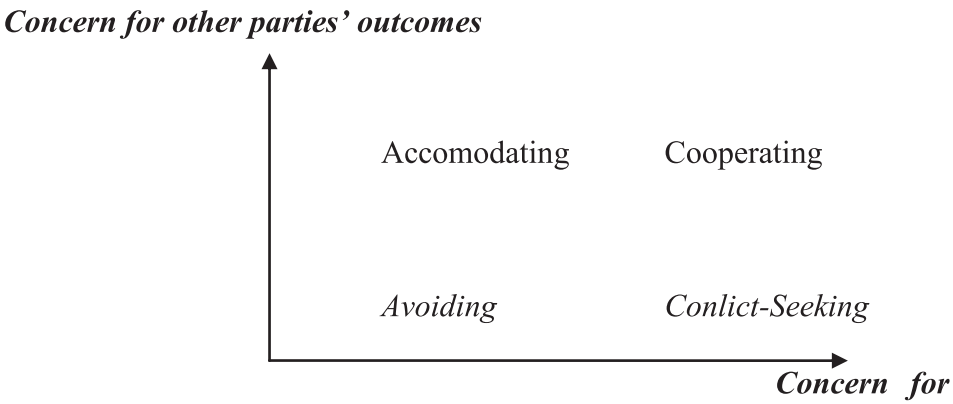



**Figure 2: Expected Atittudes Acording to The Concern Directions**

As the figure below indicates, the horizontal axis shows concern for own outcomes while the vertical axis shows concern for those of other parties.

According to the model, there are four basic positions: avoiding behaviour (those attaches little value to achieving any outcomes of neither side), conflict-seeking behaviour (those attaching a lot of value achieving its own outcomes and little to achieving those of the other side), accommodating behaviour (those attaching a lot of value to achieving the outcomes of the other party but little to its own), cooperating behaviour (those attaching equal value to achieving both sets of outcomes). [271]

The figure below expresses the message of this dual concern model translated into the work of the National Ombudsman and shows the concepts of 'proper conduct' and 'lawfulness' in relation to each other.[272]

[271]De Nationale Ombudsman, p.29
[272]De Nationale Ombudsman, p.29

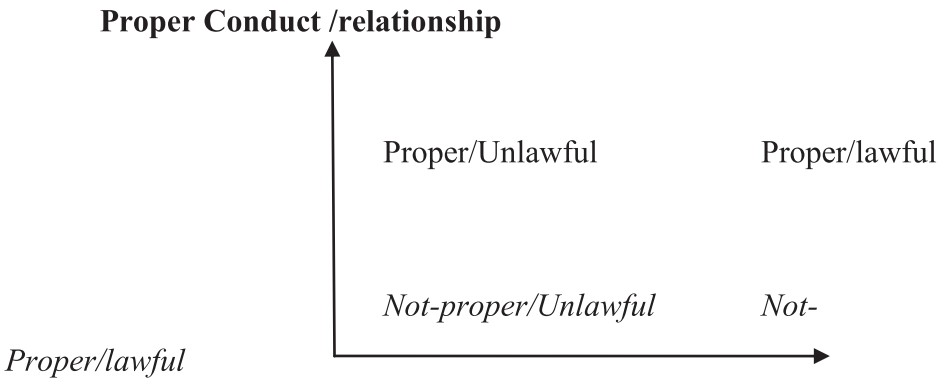



**Figure 3: The Concepts of 'Proper Conduct' and 'Lawfulness' in Relation to Each Other**

### 5.6.2 Problems encountered in the actions of government[273]

The National Ombudsman reveals the most frequently encountered problems in his investigations based on the statistics on the application of the standards of proper conduct. These are;

- Delays in dealing with individual cases
- Individuals are not informed properly on their rights and obligations and the progress of their cases.
- The officials do not comply with the generally binding regulations.
- The officials disregard principles of reasonableness and proportionality.
- The administrative authorities lack of administrative accuracy.
- Individuals are subject to discourteous and unhelpful treatment.

[273]De Nationale Ombudsman, p.30

## 5.7 The Effect of The National Ombudsman on The Government and Recommandations

The National Ombudsman's work may prove effective even before the announcement and institution of an investigation. When the National Ombudsman decides to start an investigation about a conduct, this initiative is has echoes on the public, especially on the senior officials and even on the politicians. In such cases, the administrative authority in question takes step to settle down the problem. In this way, both the time waste is prevented and the organisation learns from the incident. [274]

However, in some cases, the administrative authority concerned takes no steps even when the National Ombudsman decides that the action was not proper. Therefore, the Ombudsman may resort to issuing recommendations with a view to resolving the case or having a beneficial effect on the authority's operations.[275]

In addition, there are some structural benefits of the National Ombudsman's work on the administrative authorities concerned. The problems encountered or pattern of problem signalled by the Ombudsman may urge authorities to modify their administrative procedures or existing roles. As an example of a preventive effect of the Ombudsman, authorities may adopt the practice of sending a notice ad interim to inform individual that it will take time to deal with his/her letter.[276]

[274]De Nationale Ombudsman, p.31
[275]De Nationale Ombudsman, p. 31
[276]De Nationale Ombudsman, p.32

## 5.8 An Interview with Nederland's Ombudsman Alex BRENNINKMEIJER on Ombudsman Mechanism, Functions and Benefits at National Level in Holland

1. **Mr. Ceritli:**
   What would you say briefly about the history of the establishment of Holland's Ombudsman system?

   **Mr. Brenninkmeijer:**
   The discussion on establishing a National Ombudsman was started around 1969. Initially it was supposed to be a "Commissioner of Investigations". After long debates in Parliament, the name was changed in favour of the term National Ombudsman. The model on which the present Dutch system is based, is that of the Danish Parliamentary Ombudsman (established in 1955). This model is followed almost throughout the world. In most cases with a single person as ombudsman.

2. **Mr. Ceritli:**
   What would you tell about the regulations related with Ombudsman system and itsauthority and responsibilities?

   **Mr. Brenninkmeijer:**
   The National Ombudsman Act (Wet Nationale Ombudsman) became law on 4 February 1981 and the institution came into operation in 1982. In the beginning part of the Act, it is stated that:
   "...that the need exists for special provision for investigating the way in which the government has acted in a particular matter towards the individual citizen and that it is desirable in this connection to proceed to the establishment of the office of National Ombudsman..."
   On 25 March 1999, the National Ombudsman was put into the Dutch Constitution. Later a new section 78a was added which put the National Ombudsman in Chapter 4 of the Dutch Constitution. The first paragraph of article 78a states that:
   "The National Ombudsman shall investigate, on request on or of his own accord, actions taken by central government administrative authorities designed by or pursuant to Act of Parliament."

On the basis of this, the Ombudsman has the power to investigate administrative bodies after receivingcitizens' complaints or on his own initiative.



**Picture 1: A Picture from The Interview with Mr. Alex Brenninkmeijer (National Ombudsman of Nederland)**

3. **Mr. I.Ceritli:**
How was the shape of the system at the beginning and what is the organizational structure at the present situation?

**Mr. A. Brenninkmeijer:**
In the beginning, the National Ombudsman Office had around 30 staff and hadlimited powers compared to the present situation. For instance in the past the municipalities fell outside the competence of the Ombudsman. Now there are 170 staff and I can investigate complaints about almost all administrative authorities. In addition, the methods used for investigations have widened. Via an informal procedure we seek quick solutions and

these days we even try to finalise complaints immediately through telephone calls in one day.
The structure of the organisation used to be adapted to the public authorities we were dealing with. So there were teams for ministries, police, etc. These days the organisation is more structured around themes, and tries to follow the problems people actually meet in their dealings with the public authorities. In short we changed from focusing on the public administration to an organisation focused on citizens and trying to find quick custom made solution to their problems.

4. **Mr. Ceritli:**
If you dont mind, would you give some information about the staff structure and budget?

**Mr. Brenninkmeijer:**
As I mentioned before, we have 170 staff. Most of them are lawyers with a university degree, but we also have sociologist, psychologists, etc.
Our budget for 2013 is 12 million Euro and is defined independently. The budget is approved by Parliament. The budget depends on the number of cases received each year. We have had our internal procedure analysed by an independent institution that has based the costs of these investigations on the actual work. As a result we are able to show Parliament what budget is needed.

5. **Mr. Ceritli:**
What is the role of the Ombudsman in administrative relations with other institutes?

**Mr. Brenninkmeijer:**
The institution of National Ombudsman was established in order to give individuals an opportunity to place complaints about the practices of government before an independent and expert body. In this respect, the National Ombudsman can also contribute to the quality of government by providing feedback as to how the authorities are performing their tasks.
Section 9:18 of General Administrative Law Act states that 'Any person has the right to petition the National Ombudsman in writing to investigate the way in which and administrative

authority has acted towards him or another person in a particular matter'.
As a result, we can say that the main role of the Ombudsman is to get and solve the citizens' complaints stemmed from the administrative bodies' applications and to provide good governance.

6. **Mr. Ceritli:**
How is the relation between Constitutional Board, government, courts and administrative bodies in investigating and resulting the complaints? Do you think that the Ombudsman system has an importance in achieving corporate government in central and local level?

**Mr. Brenninkmeijer:**
There is not actually any intervention between the responsibilities of those judiciary or administrative institutions.
Subsection 1 of Section 9:20 of the General Administrative Law Act tells that the petitioner must first have submitted the complaints to the relevant administrative authority, body or public servant.
If the complainantdid not get any response from his/her complaint matter, or is not happy with the outcome of the complaint handling by the administrative authority, he/she can apply to the Ombudsman. However if a citizen is able to put his case before a judge, the National Ombudsman will refer the complainant to the court and not start any investigation.
In general according to the definition in section 1:1 of the General Administrative Law Act, the legislature, the two Houses of Parliament, the judiciary, the Council of State and the Court of Audit are outside the jurisdiction of the National Ombudsman.

7. **Mr. Ceritli:**
Are your judgement and decisions regarded as advisory or enforcement by the institutes in Nederland? Or what is the situation?

**Mr. Brenninkmeijer:**
A decision on a complaint is advisory rather than enforceable. Although we do have far reaching investigative power our decision cannot be executed. Our power lies purely in being

persuasive. Therefore our investigations need to be thorough and the conclusion inevitable. In this way you build up your authority. You convince people that what you advice is the right way. The media are very helpful in attaining this position of authority. And moreover the ombudsman needs to be independent and completely impartial. Only then will people believe his decisions are good. So an Ombudsman should not be afraid to sometimes have a confrontation with the public administration or the government. That is his role. If something is wrong, he should put his finger on it and speak out. An independent and impartial ombudsman will do so.

8. **Mr. Ceritli:**
How is the effectiveness of the national and local level ombudsman regarding the redress capacity to the public complaints?Would you give soma data on the size of the complaints the latest year in Nederland? What are the complaint types and counts?

**Mr. Brenninkmeijer:**
Approximately 15.000complaints were submitted to the Ombudsman in 2012. In general, 67% of the complaints are about work and income. For example the way have been treated when receiving unemployment benefits or otherwise. When we want to look at the distribution of complaints according to the subjects, we see that 23% of the complaints is on bureaucratic difficulties, 21% on complexity of legislations, 19% lack of empathy, 10% bother about allowances, 9% on income cuts, 9% on poor communication, 6% on careless management of information and 3% on digitalisation.

9. **Mr. Ceritli:**
Have you ever think that the Ombudsman system is unnecessary and unusual in answering to the public complaints and solving the problems effectively?

**Mr. Brenninkmeijer:**
Well in an ideal world there would not need to be an ombudsman, but this is not an ideal world. So I am convinced that the Ombudsman has a very important role in solving problems and in providing good governance for citizens.

10. **Mr. Ceritli:**
If we ask about the basic systemic necessities for an effectively functioning of an ombudsman system, what would you express as the main principals?

**Mr. Brenninkmeijer:**
I can say that there are many principals but I would like to mention the priorities as independency, visibility, transparency, accountability and good relations with media to reach the citizens easily.

11. **Mr. Ceritli:**
Turkish Ombudsman (Public Audit Institute) was established in 2012. That means it is very new in Turkey. What would you advice for Turkish Ombudsman to shape and to developa more effective and functional institute in the future of Turkey?

**Mr. Brenninkmeijer:**
Being close to citizens and listening to them is very important. The most significant principle I think is you duty as an ombudsman to produce effective, fast and satisfactory solutions for citizens. Making sure that personal information is carefully dealt with by the Ombudsman Office and reliability in the eye of the citizens are other crucial aspects of a well-functioning Ombudsman system.

## 5.9 An Interview with Rotterdam Ombudsman Mrs. Anne Mieke ZWANEVELD on Ombudsman Mechanism, Functions and Benefits at Local Level in Holland

1. **Mr. Ceritli:**
   What would you say about the history of the establishment of Holland's Ombusdman system at local level in general? When was it started and How?

   **Mrs. Zwaneveld:**
   The Rotterdam Ombudsman was put into power in 1983 after the National Ombudsman was set up in 1982. Before that, there were some local level bodies resembling ombudsman for to solve the problems lived between municipality and public.
2. **Mr. Ceritli:**
   If you dont mind, would you give some information about the staff structure and budget of your office?

   **Mrs. Zwaneveld:**
   We are serving with 13 staff personnel and the budget is defined according to work load and unit budget allocation by inhabitant numbers.

3. **Mr. Ceritli:**
   What are the duties and responsibilites? What would you say about the autority and power of the Rotterdam Ombusdman?

   **Mrs. Zwaneveld:**
   Rotterdam Ombudsman is responsible on the issues related with the Rotterdam Municipality affairs or with those which are the institutional bodies tied to the Municipality. Or sometimes, if the complaint is about some private sectors which are paid for the services to the citizens, in that case the Ombudsman has also power to investigate those enterpreneurships.
   The Rotterdam Ombudsman is selected among the aplliers by the Municipality Board for six years.




**Picture 2: A Picture from The Interview with Mrs. Anne Mieke ZWANEVELD (Rotterdam Local Ombudsman)**

4. **Mr. Ceritli:**
   What is your role regarding the judiciary and administrative bodies in your region regarding complaint handling and sloving the problems?

   **Mrs. Zwaneveld:**
   The Ombudsman is always independant from any administrative bodies at local level. It's decisions are not compalsory but advisory against the institutes. The complaints must be first apllied to the related local administrations. If the complaintment can not get any result from the administrative body, then he/she has a possibility to submit the complaint matter to the Rotterdam Ombudsman. Besides, the complaint has always chance to go to the judiciary bodies.

5. **Mr. Ceritli:**
What can you say about the regulations related with Rotterdam Ombudsman?

**Mrs. Zwaneveld:**
We must behave considering the Constitutional mandates, the general principals expressed in National Ombudsman Law and General Administrative Law. In addition, we have an instruction approved by the Municipal Board. We realize our duties and responsibilities according to the rules of the local regulatory instruction.

6. **Mr. Ceritli:**
Do you think that the Ombudsman system has an importance in achieving corporate and accountable government in local level?

**Mrs. Zwaneveld:**
The Ombudsman's main mission is to solve the problem in a mutual understanding between the sides. The most beneficiary way of getting the result is the satisfaction of both sides. In this regard, we try to play an agent role and try to produce a win-win situation. During the processes, off course we must collabotare with administrative bodies so that it makes a contribution in providing good governance practices at local level. The accountability is the direct rule for a well functionaing investigation procedure. By this way, the local government have to behave in an accountable vision inevitably. We can say that, accountability is somehow a direct outcome in an environment in which ombudsman system is available.

7. **Mr. Ceritli:**
How is the effectiveness of the your office with respect to the redress capacity to the public complaints?

**Mrs. Zwaneveld:**
All the citizens have a chance to apply us when they live any problem with local administrative bodies. In the same time, there are already a few complaint handling methods functioning. Filling the complaint forms and sending them to the Office center, applying by online forms and telephone calls are the different

application ways for complaints. In addition, people also can directly come to the Office center and make their submit.

8. **Mr. Ceritli:**
If we ask about the basic systemic necessities for an effectively functioning of an local level ombudsman system, what would you express as the main principals?

**Mrs. Zwaneveld:**
Independancy, being near to the citizens, listening the citizens, producing satisfied results, reaching all the documents, opennes and transparency are the significant princaipals for a good working ombudsman system.

9. **Mr. Ceritli:**
Turkish Ombudsman (Public Audit Institute) was established in 2012. That means it is very new in Turkey. What would you advice for Turkish Ombudsman to shape and to develope a more effective and functional institute in the future of Turkey in general? Also what would you say about the local level ombudsman offices?

**Mrs. Zwaneveld:**
As I mentioned before, being close is crucial at local level. People can have possibility for easy acces to the ombudsman. So, the new institute should be better to provide good connection between it's own organizational body and to set up concrete links with the administrative bodies. Independancy, good governance, trasparency, accountability, solution-focused attitute, satisfaction of the publics, secrecy of personel information, confidence, effectiveness and efficiency, non-bureucratic way are the main principals coming to the front in first sight.

# 6 ESTABLISHMENT AND PROGRESSES OF OMBUDSMAN SYSTEM IN TURKEY (Abdurrahman EREN)

## 6.1 History

The roots of Ombudsman institution are originated from the Ottoman "Kadıûl-Kudat" institution[277]. Within "Kadıûl-Kudat" institution, Cadis used to exercise an authority similar to administrative jurisdiction, and examine and conclude the operations, actions, attitudes and manners of the government, particularly the sultan, by the complaints of citizens. King of Sweden Charles 12th examined this institution between 1709 – 1714 when he visited the Ottoman Empire, and established it under the name of "ombudsman" in 1809 when he returned to his country. Swedish implementation was a model to other European countries[278]. There are Turkish words correspondent to "ombudsman" such as ""halk denetçisi" (community auditor), "kamu denetçisi" (public auditor), "kamu hakemi" (public arbitrator), "arabulucu" (arbitrageur), "halk avukatı" (community advocate), "yurttaş sözcüsü" (citizens' spokesman) in Turkey. The legislator preferred the term "Public Auditorship Institution" as the equivalent word to "ombudsman"[279].

---

[277] This fact is stated in the General Preamble of the Law on Public Auditorship Institution. See Grand National Assembly of Turkey, 24th Legislative Session, 2nd Legislative Year, Law Draft Concerning Public Auditorship Institution and Reports of European Union Commission of Harmonization and Constitutional Committee (1/626), p.5.

[278] Influenced by the Swedish model, Finland (1919), Denmark (1955), Norway (1962), New Zealand (1962), United Kingdom (1967), Canada (1967), Tanzania (1968), Puerto Rico (1977), Australia (1977), France (1973), Portugal (1975), Austria (1977), Spain (1981) and the Netherlands (1981) established ombudsman institutions initially. There are various ombudsmen in around 140 countries today. See Victor O. Ayeni, "Ombudsman as a Human Rights Institutions: A New Face of a Global Expansion", p. 3.; also see http://www.law.ualberta.ca/centres/ioi/About-the-I.O.I./History-and-Development. php, 07.01.2014.

[279] Different terms are used for naming ombudsman in many countries. It is named "Defensor del Pueblo" in Spanish speaking countries (Spain, Argentina, Peru, Colombia); "Parliamentary Commissioner for Administration" in Sri Lanka and United Kingdom; "Mêdiateur de la Rêpublique" in France, Gabon, Mauritania, Senegal; "Public Protector" in South Africa; "Protectuer du Citoyen" in Quêbec; "Volksanwaltschalft" in Austria; "Public Complains Commission" in Nigeria; "Provedor de Justiça" in Portugal; "Difensore Civico" in Italy; "Investigator-General" in Zambia; "Citizen's Aide" in Lowa; "Wafaqi Mohtasib" in Pakistan; "Lok Ayukta" in

While Western legal system and institutions were taken as examples beginning from the shift from the Ottomans to Republic of Turkey, ombudsman was added to agenda in Turkey once again as late as 1990s. This can be explained with the fact that ombudsman had not been a common institution model in the world until 1990s. While there were 21 national, 6 local or regional ombudsmen in the world until 1983, this number is around 140 today[280]. First studies for establishing the Public Auditorship Institution were started by The Ministry of Justice in November 24, 1997, in accordance with The Seventh and the Eighth Five-year Development Plans[281]. The first concrete step on this subject was the "Law Draft on Public Auditorship Institution", which was prepared by the Ministry of Justice and issued by the cabinet to the Grand National Assembly of Turkey in 11.23.2005[282].

The first draft was accepted as "Law Draft on Public Auditorship Institution", law no. 5521 by Grand National Assembly of Turkey in June 15, 2006. However, the president of the era vetoed the draft on the grounds that the institution did not have a constitutional basis in July 1, 2006. The unchanged draft referred back to the Assembly was accepted in the Plenary Session of the Assembly in October 28, 2006. Not

---

India. See http://www.law.ualberta. ca/centres/ioi/About-the-I.O.I./History-and-Development.php, 07.01.2014.

[280] Out of 140 countries having ombudsmen, 34 countries are located in Africa, 13 in Asia, 9 in the Pacific, 29 in the Caribbean and Latin America, 53 in Europe and 2 in North America. See http://www.law.ualberta.ca/centres/ioi/About-the-I.O.I./History-and- Deve- lopment.php, 07.01.2014.

[281] Law Drafts for two institutions were also prepared in coordination with the Ministry of Justice during DSP-MHP-ANAP Coalition. (Law Drafts on Citizen Spokesmanship and Public Auditorship Institution). See Grand National Assembly of Turkey, 24th Legislative Session, 2nd Legislative Year, Law Draft on Public Auditorship Institution and Reports of European Union Commission of Harmonization and Constitutional Committee (1/626), p.12.

[282] The draft was assigned to The Planning and Budget Commission as the primary commission, and Justice, Constitution and European Union Harmonization Commissions as secondary commissions in 12.21.2005. European Union Harmonization Commission started negotiating the draft in 01.19.2006, and a sub-commission was established in order to inquire the accordance of the draft to EU acquis in 01.19.2006. The sub-commission prepared and issued their report to EU Harmonization Commission. EU Harmonization Commission adopted the report in 02.16.2006. See EU Harmonization Commission of Grand National Assembly of Turkey, Report of EU Harmonization Commission of Grand National Assembly of Turkey, 2006, p. 1-14.

authorized to veto for the second time, the President of the Republic approved law no. 5521 for the Law Draft on Public Auditorship Institution and the law was published in the official gazette in October 13, 2006.

Law suits for the stay of execution were filed in the Constitutional Court by President of the Republic and 123 Deputies separately. The Constitutional Court granted a motion for stay of execution by common consent in 10.27.2006[283]. The Constitutional Court dismissed the law with prejudice for the Public Auditorship Institution did not have a constitutional basis in 2008. The Court provided the following justification for annulment:

*"According to the 123rd article of the constitution, it is not possible for an institution required to rank among central administrative or decentralized institutions within the administrative organisation to be established apart from "Administration" and to be bound to "Legislation", in defiance of the principles of central administration and decentralization."*[284]

Considering the provisions stated in the annulment of the Constitutional Court, law no. 5982 for the Law on Amending Certain Articles of The Constitution of The Republic of Turkey and law no. 74 of the Constitution were amended. By the amendment, it was resolved that the procedures and principles concerning the establishment, duties, operation, processes consequent to examinations of the Public Auditorship Institution and the qualifications, election and personal rights of Public Auditors would be constituted by law.

Aforementioned amendment of the Constitution was accepted by the referendum held in 9/12/2010 and went into operation by the publication of the absolute results in the official gazette no. 27708, dated 9/23/2010. The main opposition party filed an annulment suit in 2010 against the

[283] Constitutional Court decision dated 10.27.2006 and numbered P. 2006/140, D. 2006/33

[284] Constitutional Court decision dated 12.25.2008 and numbered P. 2006/140, D. 2008/185

regulation. Their justifications of annulment were based on these two provisions[285]:

- Binding an administrative institution in charge of reviewing complaints to the Chairmanship of Grand National Assembly of Turkey means that legislation precedes execution in terms of the functions of the institution. It is clear that this does not comply with separation of powers, one of the primary principles of the 2nd Article of the Constitution, listed among the characteristics of a Republic.
- The method stated in aforementioned fifth article procures that the majority party in the Grand National Assembly of Turkey becomes completely decretive for the election of the Chief Public Auditor.

Overruling the plea of annulment, Constitutional Court primarily indicated that ombudsman is one of the basic institutions of European democracies:

*"In this context, the ombudsman or public auditorship institution, which strengthens the state of law by its basic function of pellucidity public administration and contributing to paying respect to basic rights of individuals, have become one of the basic institutions of European democracies.*[286]*"*

Constitutional Court does not have the authority for a limine reviewing of a constitutional amendment according to Turkish Constitution. Still, the court follows "unofferability" of amending the principals listed in the first three articles of the Constitution, and cancels laws, regarding amendments of other articles that result in the amendment of an article of the first three articles as adjective provisions. In this sense, a regulation concerning the existence of public auditorship

[285] Constitutional Court decision dated 07.07.2010 and numbered P. 2006/49, D. 2010/87

[286] Constitutional Court decision dated 07.07.2010 with Principle number 2010/49, Decision Number 2010/87

institution can only be cancelled in case of being inconsistent to the principle of "state of law". Hence, it is stated in the court decision that:

*"It is understood that public auditorship, which is an independent institution in charge of inspecting complaints of citizens concerning the operations of authorities using public force, aims for examining the received complaints in terms of their accordance with laws and justice, reporting the results to concerned institutions, and ensuring necessary precautions. It cannot be concluded that the establishment of such an institution annihilates or reduces the state of law by hollowing it out."*[287]

Constitutional Court responded as follows to the claims that ombudsman institution was contrary to the principal of separation of powers:

*"It is out of question that the establishment of a new mechanism, which will provide the reconciliation of administrative processes to law by extending the existent reviewing authority for politics, to annihilate or reduce the separation of powers by hollowing them out.*

*The principal of separation of powers means the division of labour and the modern collaboration among governmental bodies, and are based on these bodies correlatively balancing each other. Execution being audited by legislation implies the concretizing of this principle. Hence, the establishment of public auditorship institution is not contrary to the principal of separation of powers"*[288]

Lastly, the court concluded that "It cannot be stated that the selected preference within this provision annihilates the principal of separation of powers, as any preference of various election method is at the sole discretion authority of the institutive government"[289].

[287] Constitutional Court decision dated 07.07.2010 with Principle number 2010/49, Decision Number 2010/87
[288] Constitutional Court decision dated 07.07.2010 with Principle number 2010/49, Decision Number 2010/87
[289] Constitutional Court decision dated 07.07.2010 with Principle number 2010/49, Decision Number 2010/87

Constitutional Court did not accept the claims that the constitutional regulations concerning Public Auditorship Institution were contrary to the Constitution. Then, the Law on Public Auditorship Institution dated 6/14/2012 with law no. 6328 was published in the official gazette dated 06/29/2012. Thus, the Public Auditorship Institution was officially established.

The process of the European Union played an important role in the establishment of the Public Auditorship Institution. Within the frame of "Enhancing Efficiency of Public Services" of the Seventh and the Eighth Five-year Development Plans, it was estimated that a Public Auditing (Ombudsman) system, which were existent in the EU and most of its member countries and attended to public complaints, would be established in Turkey. It was expressed that a public auditorship institution functioning within the scope of satisfying political criteria would be established in Turkey National Program for Adopting the Acquis of European Union 2008 by the representatives of the Ministry of European Union. It was also expressed that the absence of ombudsman system was stated as a deficiency in the development reports of the 23rd section concerning "Jurisdiction and Fundamental Rights" of the National Program by the European Commission. EU suggested "Further endeavoring for the establishment of Public Auditorship Institution" in Development Report of Turkey 2010. Furthermore, it is advised to establish Public Auditorship against corruption in the Penal Code Contract for Fighting Corruption no. 173, which was opened for approval and signature by the European Commission[290].

## 6.2 Formation of the Public Auditorship Institution

Formation characteristics of institutions can be analyzed in various terms. First of all, it is possible to evaluate the preferred model. Then, the legal characteristic of the institution can be emphasized. The legal basis of the institution is important for its formation. Election, appointment, assurance of duty, working methods and institutional

[290] Grand National Assembly of Turkey, 24th Legislative Session, 2nd Legislative Year, Law Draft Concerning Public Auditorship Institution and Reports of European Union Commission of Harmonization and Constitutional Committee (1/626), p.13.

infrastructure of institution members can be reviewed in terms of the formation characteristics.

### 6.2.1 Structure of Institutional Model

Different institutional models can be discussed in terms of the formation and functions of Ombudsman. There are many factors affecting countries' preference of models. Legal traditions, state and government regimes, level of economic development are determinants for institutional preferences. A certain model cannot be imposed on states by discriminating these differences according to international law. Instead of stereotyping the implementations, attempts are made in order to set standards required to be considered as minimum. It was stated in Vienna Declaration and Action Plan accepted after the World Conference 1993 that it was necessary to "recognize the right of every government to choose the most suitable frame concerning national institutions according to its own needs"[291].

"Functional and historical approaches" are generally used for institutional modeling. While formations, duties and authorities of institutions are noted in the functional approach, legal traditions of countries are regarded in the historical approach. Institutions can be established with one member or multiple members, as well as on a universal, regional, national or local level in terms of formation[292]. Ombudsman can be separated as conventional ombudsman, hybrid ombudsman and specialized ombudsman according to its function[293]. In

---

[291] General Assembly, World Conference on Human Rights, Vienna Declaration and Prog- ramme of Action, GA/CONF/157/23, July 12, 1993, Section I, p. 36.

[292] UN General Assembly established the United Nations Ombudsman Office with decision no. 62/228 in February 6, 2008. See http://www.un.org/en/ombudsman/help.shtml, 22.07.2012.; European Union established the European Ombudsman Bureau in 1993 and appointed the first ombudsman in 1995. See http://www.ombudsman.europa.eu/resources/ strategy.faces#hl1, 23.07.2012.; There are local ombudsmen in Flanders, Wallonia, French Community in Belgium; in all states of Germany, in sub-regions of Spain and Italy, in two sub regions of Austria, in England, Scotland and Wales regions in United Kingdom, in four cantons of Switzerland. See http://www.ombudsman.europa.eu/atyourservice/regionalom-budsmen.faces, 23.07.2012.

[293] Abdurrahman Eren, National Human Rights Institutions, Comment Principles of Conformity with International Standards, XII Levha Publications, Istanbul 2012, p. 36-37.

regard to legal traditions, Nordic (Norway), Hispanic (Spanish), Francophone (French) and Anglofon/Commonwealth (British Commonwealth of Nations) models are existent[294].

The first implementation of Ombudsman institution is the Swedish model "Ombudsman of Parliament". Named as conventional ombudsman, this model consists of independent and unbiased person or persons who audit the accordance of administrations to law directly or upon complaints, appointed by the Parliament, heads of state, or governments[295]. Audits of administration are conducted within the scope of maladministration. Ombudsmen are not granted special authority in the field of human rights. This model is common in West-Nordic Countries without administrative jurisdiction such as Denmark, Norway, Iceland. Named as the hybrid model and common in Hispanic countries, particularly Spain, "Defensor del Pueblo" (defender/advocate of the people) model assemble the audit of administration and human rights under the roof of a single institution[296]. Another model, The Specialized

[294] See United Nations General Assembly, The Role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, A/RES/63/169, 20 March 2009; A/RES/63/172, 20 March 2009; A/RES/64/161, 12 March 2010.; For the separation according to traditions, see International Council on Human Rights Policy, Assessing the Effectiveness of National Human Rights Institutions, Versoix, Switzerland, 2005, p. 5-6.

[295] In Sweden, the first country to implement ombudsman, the Parliament used to appoint 1 ombudsman until 1915, and the ombudsman's authority was to audit the military and civil administrations' accordance to law. Number of ombudsman was raised to two so that one audited military bureaucracywhile the other audited civil bureaucracy between1915-1968. After 1976, this number was raised to four. See http://www.jo.se/Page.aspx?MenuId=20&MainmenuId=12&Object Class=DynamX_Documents&Language=en, 30.09.2010.

[296] Defensor del Pueblo model institutions were established in Colombia (1991), Peru (1993), Argentina (1994), Panama (1997), Bolivia (1998) and Ecuador (1998) respectively. This model was also preferred by Central and Eastern European countries in transitional stages towards democracy in 1990s. Thus, similar institutions were established in Poland (1987), Croatia (1992), Slovenia (1995), Bosnia-Herzegovina (1995), Hungary (1995), Russia (1997), Romania (1997), Georgia (1998), Armenia (1998). While Defensor del Pueblo is the common name generally, the name of this institution is Defensor de los Habitantes in Costa Rica, Comisionada Nacional de Derechos Humanos in Honduras and Mexico. For a study on Ombudsman institutions in Latin America, see Gonzalo Elizondo and Irene Aguilar, "The Ombudsman Institution in Latin America: Minimum Standards for its Existence", National Human Rights

Ombudsman model operates in special fields such as equality, discrimination, children's rights, unlike public sector ombudsman. For example, The Swedish Children's Ombudsman operates in Sweden, along with the Parliament Ombudsman[297].

Public Auditorship Institution established in Turkey is an example of conventional ombudsman which is centralized with general authorization and multiple members. Turkey preferred a single and central structural model which is suitable for unitary state, instead of "multiple institutions model" comprising local levels[298]. In terms of the number of members, Turkish Ombudsman is a multiple member model with 6 members. According to the 4/3rd article of Institutional Law, "One chief auditor and five auditors and Secretary General and other personnel do duty in the institution"[299].

When its functions are analyzed, it can be said that it is similar to the conventional ombudsman of Sweden, not to the hybrid ombudsman of Spain. Although the institution is authorized to review complaints concerning human rights, it can be seen that its authority is very limited with regard to Paris Principles. Hence, "The institution is in charge of auditing and investigating any type of actions, operations, attitudes and manners of administrations in terms of their accordance to laws and justice, and making suggestions to administrations upon complaints concerning the operation of administrations, within a justice perception

---

Institutions, Articles and working papers, Edited by Birgit Lindsnaes, Lone Lindholt, Kristine Yigen, The Danish Centre for Human Rights, p. 209-222.

[297] The Swedish Children's Ombudsman was established by a law in 1993. The ombudsman is appointed by the government for a duty period of 6 years. The main duty of the ombudsman is to develop and protect the rights listed in UN Children's Rights Contract. See http://www.barnom- budsmannen.se/Adfinity.aspx?pageid=85, 23.07.2012.

[298] Plurinational states as federative or regional states prefer "Multiply institution" model instead of "single institution" model. In this context, a centralized national institution on a federal level can be existent as well as a separate national institution per federal state. For example, there is The Indian National Human Rights Commission in India, despite the existence of national institutions in each federal state. There are also three different national institutions in North Ireland, Scotland and England in the United Kingdom, having a quiasi-federal system. See Eren, op. cit. p. 57

[299] It was estimated that the institution would consist of one chief auditor and 10 auditors in the first draft.

based on human rights", according to the 5th article of Institution Law, regulating duties of the institution. As is seen in this regulation, the main function of the institution is to audit administration in terms of good administration. "Justice Perception based on human rights" is a secondary function within these limits of audit.

### 6.2.2 Legal Characteristics

Institutions operating on a national level are generally separated as state or non-state actors. In this context, structures such as parliament, parliamentary commissions, general administrative institutions dependent to execution, inspectorship, courts of jurisdiction are accepted as governmental institutions. On the other hand, associations, foundations, political parties, unions, media, individual groups are specified as non-state actors (non-governmental organizations). Some institutions are considered as hybrid quasi-governmental institutions between aforementioned two structures[300].

Public Auditorship Institution (ombudsman) is a public legal entity in terms of legal characteristics. According to 4/1st Article of the Institution Law, "Public Auditorship Institution, which is dependent to the Speakership of Grand National Assembly of Turkey, possessing public legal entity and special budget, with headquarters in Ankara in order to conduct the duties defined by this law".

The institution was linked to legislation, instead of its more common form of being linked to execution. The preamble of the article states that "Considering its duties such as impartiality, independency, non-acceptance of mandates and prescriptions, possessing the authority to demand any type of information and documents, and its appointed authorities relevant to aforementioned duties, the institution is estimated to be dependent to the Speakership of Grand National Assembly of Turkey and to possess public legal entity and special budget". As is seen, the institution was established dependent to the Speakership of Grand

[300] In "Performance and Legitimacy: International Human Rights Institutions", a study dated 2003 on Human Rights Policies, the International Council stated that national human rights institutions are "quiasi-governmental" institutions within the "hybrid" category. See International Council on Human Rights Policy, Performance&Legitimacy: National Human Rights Institutions, 2004, p. 3.

National Assembly of Turkey, possessing the assurances of independency and impartiality, apart from the hierarchy of general administration.

The establishment of Public Auditorship Institution dependent to Speakership of Grand National Assembly of Turkey was criticized in terms of being contrary to the principle of separation of powers[301]. Opposition party litigated to Constitutional Court, claiming that the provision was contrary to the principle of separation of powers. The Constitutional Court expressed that there are more than one model for implementing the principle of separation of powers, and overruled the claim by the following preamble:

*"On the other hand, one of the basic functions of parliaments is to audit the executive organ in parliamentary systems. Hence, aforementioned auditing methods are defined in 98th, 99th and 100th articles of the constitution. The executive organ does not only consist of political execution comprising the President of Republic and the Cabinet, and administration is a part of execution in broad terms. It is out of question that the establishment of a new mechanism, which will provide the reconciliation of administrative procedures to law by extending the existent reviewing authority for politics, to annihilate or reduce the separation of powers by hollowing them out"*[302].

Governmental institutions operate in three statuses in Turkey; "dependent, related, and associative". While some institutions are dependent to legislation, some are dependent to execution. Public Auditorship Institution is an institution having a "special budget" within

[301] The establishment of the institution dependent to Speakership of Grand National Assembly of Turkey was criticized by the opposition party and it was stated in the appeal of contradiction to the Constitution that "Binding an administrative institution in charge of reviewing complaints to the Chairmanship of Grand National Assembly of Turkey means that legislation precedes execution in terms of the functions of the institution. It is clear that this does not comply with separation of powers, one of the primary principles of the 2nd Article of the Constitution, listed among the characteristics of a Republic". See Constitutional Court decision dated 07.07.2010 with Principle number 2010/49, Decision Number 2010/87.

[302] Constitutional Court decision dated 07.07.2010 with Principle number 2010/49, Decision Number 2010/87.

the Administrative Organization of Speakership of Grand National Assembly of Turkey. In this context, the institution is administratively and financially autonomous, even though it seems to be dependent to the Speakership of Grand National Assembly of Turkey. In this sense, it is different from public administrations within the scope of "general budget". As institutions dependent to central government, they are not administratively and financially autonomous. For example, Directorate of Religious Affairs is dependent to Prime Ministry as a public administration with general budget. But, this institution is not administratively and financially autonomous.

Considering the administrative and financial autonomy of Public Auditorship, the institution "may resemble institutions specified as "independent regulatory agencies"[303]. Regulating and auditing arenas called delicate sectors of institutional life necessitated a new administrative structuring model dissimilar to conventional administrative institutions. Generally, the function of these institutions is to regulate, monitor, audit public and private activities of certain sectors, and to prevent and impose sanctions for contrary actions and cases[304]. In this sense, Public Auditorship Institution is a public authority with administrative and financial autonomy, auditing administration in terms of "good administration"[305]. Still, while the institution has "audit" jurisdiction, it does not have "regulation" and "sanction" jurisdictions. In this sense, the institution is separate from independent administrative authorities.

### 6.2.3 Legal Basis of the Institution

Legal basis of Ombudsmen is essential for their autonomy. It is important for autonomy that the legal institution is established either by a

[303] Independent Administrative Authorities, Lütfi Duran, "Türkiye'de Bağımsız İdari Otoriteler", Amme İdaresi Magazine, Vol. 30, Issue 1, March 1997; Turgut Tan, "Bağımsız İdari Otoriteler", Devletin Düzenleyici Rolü, (Coordinator: İzak Atiyas), TESEV Publications No:19, Istanbul 2000,; Helene Pauliat, "Karşılaştırmalı Hukukta Bağımsız İdari Otoriteler" (Translation: Mahmut Göçer), Bağımsız İdari Otoriteler, (Editor: İ.Kaboğlu), Alkım Publications, İstanbul 1998.

[304] Lütfi Duran, "Türkiye'de Bağımsız İdari Otoriteler", Amme İdaresi Magazine, Vol. 30, Issue 1, March 1997, p.4

[305] Independent Administrative Authorities are named as "Quasi nongovernmental organizations" in the UK.

legislation procedure or a regulatory procedure by administration. From this point of view, it is accepted as a requirement of a strong institutional structure that the institutions are established on a constitutional basis and regulated by law. Establishment on a constitutional basis is important for the legitimacy, independence, stability and permanency of institutions. The difficulty to amend constitutional regulations requiring a stronger reconciliation is considered important for the democratic legitimacy of institutions[306].

Establishment on a constitutional basis is the common implementation for Ombudsman institutions. Establishment of ombudsmen in Sweden and human rights ombudsmen in Spain within the frame of certain legal traditions was influential for constitution-based Ombudsman model to become widespread in Latin American and Western European countries, following this tradition. While Defensor del Pueblo model of Latin American countries is mostly established on a constitutional basis, there are also institutions established by enactment. Accordingly, Ombudsman institutions are formed on a constitutional basis in Argentina, Bolivia, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Venezuela. On the other hand, Ombudsmen are founded by enactment are existent in Ecuador, Costa Rica and Panama[307].

It is seen that some Ombudsman institutions on a constitutional basis are established based on peace treaties under the guidance of UN after inner conflicts. After the peace negotiations conducted by the United Nations, it was adjudged to establish Procurador para la Defensa de los Derechos Humanos in 1992 in El Salvador, and the Human Rights Ombudsman by Dayton and Paris Agreements in 1995 and a national institution by Sierra Leone Peace Agreement in 1999 in Bosnia-

[306] Eren, op. cit., p. 171-173.
[307] Gonzalo Elizondo and Irene Aguilar, "The Ombudsman Institutions in Latin America: Minimum Standards for its Existence", National Human Rights Institutions, Articles and Working Papers, Edited by Birgit Lindsnaes, Lone Lindholt, Kristine Yigen, The Danish Centre for Human Rights, Denmark 2001, p. 211.

Herzegovina[308]. Similarly, Procurador de los Derechos Humanos/PDH (Procurator of Human Rights), which was established in 1987, was reinforced with the peace treaty of 1996[309].

Ombudsman model established on a constitutional basis was preferred in the majority of African countries. These countries are Botswana (Ombudsman), Burkina Faso (Mediatuer), Djibouti (Mediatuer), Gabon (Mediatuer), Lesotho (Ombudsman), Madagascar (Defensor del Peoblo), Malawi (Ombudsman), Moritania (Mediatuer), Mairitus (Ombudsman), Nambia (Ombudsman), Switzerland (Ombudsman), Zimbabwe (Ombudsman)[310].

In order to approve that Ombudsman institutions are of a national institution model in accordance to Paris Principles, ICC accreditation initially evaluates whether the institutions are based on a legal basis or not. According to the 10th article with the sideheading of"Application for Accreditation Procedure" of ICC Regulations, the first documents requested from the institutions which want to apply for accreditation proving the accordance to Paris Principles are "certificates of formation". According to the first sub clause of the article, NHRIs are required to submit "copies of legal or other official or published documents showing their formation or jurisdiction" [311]. In this context, regarding the formation on constitutional or legal basis as the best implementation, the Subcommittee considers decision of Parliament or decree of Presidency as acceptable, but not adequate. It considers institutions established by administrative regulation as contrary to Paris Principles.

As is analyzed in the historical process above, Public Auditorship Institution was attempted to be established on a legal basis for the first time in 2006. However, the Constitutional Court cancelled the law due to

[308] Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection", Harvard Human Rights Journal, Vol.13, 2000, p.13-14.
[309] International Council on Human Rights Policy, Performans & Legitimacy: National Human Rights Institutions, 2004, p.60.
[310] See . Linda C. Reif, a.g.e. p.61.
[311] Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Statute, 30 June 2008, a. 10.

Herzegovina[308]. Similarly, Procurador de los Derechos Humanos/PDH (Procurator of Human Rights), which was established in 1987, was reinforced with the peace treaty of 1996[309].

Ombudsman model established on a constitutional basis was preferred in the majority of African countries. These countries are Botswana (Ombudsman), Burkina Faso (Mediatuer), Djibouti (Mediatuer), Gabon (Mediatuer), Lesotho (Ombudsman), Madagascar (Defensor del Peoblo), Malawi (Ombudsman), Moritania (Mediatuer), Mairitus (Ombudsman), Nambia (Ombudsman), Switzerland (Ombudsman), Zimbabwe (Ombudsman)[310].

In order to approve that Ombudsman institutions are of a national institution model in accordance to Paris Principles, ICC accreditation initially evaluates whether the institutions are based on a legal basis or not. According to the 10th article with the sideheading of"Application for Accreditation Procedure" of ICC Regulations, the first documents requested from the institutions which want to apply for accreditation proving the accordance to Paris Principles are "certificates of formation". According to the first sub clause of the article, NHRIs are required to submit "copies of legal or other official or published documents showing their formation or jurisdiction" [311]. In this context, regarding the formation on constitutional or legal basis as the best implementation, the Subcommittee considers decision of Parliament or decree of Presidency as acceptable, but not adequate. It considers institutions established by administrative regulation as contrary to Paris Principles.

As is analyzed in the historical process above, Public Auditorship Institution was attempted to be established on a legal basis for the first time in 2006. However, the Constitutional Court cancelled the law due to

[308] Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection", Harvard Human Rights Journal, Vol.13, 2000, p.13-14.
[309] International Council on Human Rights Policy, Performans & Legitimacy: National Human Rights Institutions, 2004, p.60.
[310] See . Linda C. Reif, a.g.e. p.61.
[311] Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Statute, 30 June 2008, a. 10.

Financial autonomy means having sufficient financial resources, and controlling and managing these resources. Financial autonomy does not restrain the accountability of institutions. Another important matter for institutional independency is to whom the institution is accountable. In modern democracies, accountability is a counter-balance factor for not transforming independency to arbitrariness. One of the basic aspects of good governance is accountability[313]. In democratic states of law, it is essential that all institutions are accountable for their activities. The accountability of institutions consists of many matters such as how or to whom the institution accounts for.

Accountability, which is one of the basic components of good governance, is separated into two categories; formal and informal accountabilities. Public units providing ad hoc or periodical information to another authority for which they are accountable for their actions within legal framework is called "formal accountability", while providing information to public opinion about their operations are called "informal accountability"[314]. Formal accountability means that institutions present reports on their activities to the parliament or another similar institution. It is expected to regularize subjects as detailed as possible in the founding laws of institutions, such as; how frequently the institutions will report, whether they will present ad hoc or special reports, subjects of reports, and procedures of analyzing reports. Public accountability is that the ombudsmen evaluate their own activities and prepare reports on their

---

be seen in Portugal. According to Portugal's Law on Ombudsman, it is stated under the heading of "autonomy" that "Ombudsman acts on his/her own initiative without being subjected to the Constitution or estimated administrative or legal lawsuits". See Statute of the Portuguese Ombudsman, Law No. 9/91, Lisbon 2007, a. 4.

[313] In England, Nolan Committee Standards in Public Life specified 7 principles effective for all committees. These are selflessness, integrity, objectivity, accountability, openness, honesty and leadership. See Equality of Human Rights Commission, Corporate Governance Code of Practice and Conduct for the Chair and Committee Members of the Equality and Human Rights Commission, 5 May 2009, Appendix I, Nolan Committee Standards in Public Life, p. 26.

[314] "6 Principles of Good Governance", which are effective for all institutions, was defined in England. Here, it was stated that it was necessary to "understand the relationship between formal and informal accountabilities". See Equality of Human Rights Commission, Corporate Governance Code of Practice and Conduct for the Chair and Committee Members of the Equality and Human Rights Commission, 5 May 2009, Appendix II, Six Principles of Good Governance, p. 27.

results, and that all official reports of the institution are open to the examination and evaluation of public opinion[315].

One of the best examples of the aforementioned implementation is Defensor del Pueblo model of Ombudsman in Spain. According to 32nd article of the Spanish Law on Ombudsman dated April 6, 1981 no. 3, "Ombudsman should inform the Parliament by presenting annual report on undertaken activities in time of ordinary meeting". According to the second subclause, "Ombudsman should render account by clearly defining the number and types of registered complaints, rejections and their reasons, enquiries and their results, and advices and suggestions accepted by public administrations in the annual report". Another subject regulated by the law is the negotiation procedure of the report. According to the law, "Ombudsman makes the oral presentation of the report in the general meetings of both houses. Parliamentary groups can take the floor for expressing their opinions"[316].

According to the 1st article of The Turkish Public Auditorship Institution, "Public Auditorship Institution is established for forming an independent and effective complaint mechanism for the operation of public services, and for auditing, investigating and making suggestions for any type of actions, operations, attitudes and actions of administrations in terms of their accordance to laws and justice, within a justice perception based on human rights". According to the 4th article of the law, "Public Auditorship Institution, which is dependent to the Speakership of Grand National Assembly of Turkey, possessing public legal entity and special budget, is established with headquarters in Ankara in order to conduct the duties defined by this law". As is seen, the independency, financial and operational autonomy are openly recognized by the founding law.

In addition to the general provisions above, it is stated in the 12th article of the law with "Independency and impartiality" sideheading that

[315] A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, New York and Geneva, 1995, p. 138.
[316] Defensor del Pueblo, Organic Act Regarding the Ombudsman, 3/1981, Official Gazette number 109 dated May 7th, 1981, a. 32-33.

“No organs, authorities, offices or individuals can issue orders or instructions to, or circularize, advise or indoctrinate Chief auditor and auditors concerning their duties. Chief auditors and auditors are obliged to act in accordance with the principal of impartiality while fulfilling their duties”.

The subject of the accountability of the institution is clearly defined by the founding law. According to this, the institution prepares a report involving conducted activities and proposals, and presents it to the Petition Committee of Grand National Assembly of Turkey and the Joint Committee, which is formed by the members of Human Rights Examination Committee, in the end of each calendar year. The commission negotiates the report within two months excluding cessation and recession periods, summarizes it including their comments and opinions, and sends the final report to the Chairmanship for being presented to the General Assembly. The General Assembly urgently negotiates the Commission’s report (a.22/1). Annual report of the institution is also released to the public by means of being published in the official gazette (a.22/2). The institution can announce subjects to the public anytime without waiting for the annual report, if it considers the subjects to be beneficial when announced (22/3). The Chief auditor or another auditor assigned by the Chief auditor are authorized for making statements on the activities of institution (a.22/3).

The institution’s sources of income are also secured by the founding law. Accordingly, The institution’s incomes are treasury grants and other incomes from the budget of Grand National Assembly of Turkey. Expenses concerning the execution of duties within the scope of this law are paid from the institutional budget (a.29).

### 6.2.5 Candidacy and Election

Candidacy and election procedures in Ombudsman institutions are basic components of the independency of institutions. In this sense, it is considered important that the formation processes of the institutions are consultative, inclusive and transparent. Moreover, pluralist representation in administration is important for independency. However, pluralist administration is not a commonly preferred method for Ombudsman

institutions. Instead, the method of "effective collaboration" with civil society and other institutions is preferred. In this context, it is a method to establish "consultancy committees" and conduct "regular consultancy meetings". Pluralism is also an elaborated subject for forming the personnel of the institution. Paying regard to gender equalization is sought particularly

#### 6.2.5.1.1 Characteristics of the Chief Auditor and Auditors

Expertise, qualification, experience, high ethical values, impartiality and independency are generally among the necessary characteristics for Ombudsman candidates. Particularly, the reputable status of the ombudsman candidate in society is determinant in terms of the efficiency and independency of the institution [317]. Along with the positive characteristics, there are requirements such as not being a member of a political party, or not being sentenced to certain crimes (disgraceful offences) among unacceptable characteristics[318].

In Turkey, the characteristics of Chief Auditors and auditors are specified in the Public Auditorship Institution Law. According to the 10th article with "The Characteristics of Chief Auditors and Auditors" sideheading, the following conditions are required for being selected as a Chief Auditor and Auditor:

a) Being a Turkish citizen.
b) Being fifty years old for Chief Auditor, and forty years old for auditor on the date of election.

[317] For example, according to the Polish Law on Ombudsman, "Poland citizens with exquisite legal knowledge, occupational experience, who are highly prestigious by personal ethical values and social sensibility, can become Ombudsmen. The Ombudsman Act, 15 June 1987, a.2.; According to the Portuguese Law on Ombudsman, "Citizens having the capacity to be selected for Parliament membership with a good reputation in honesty and independency can be appointed". Statute of the Portuguese Ombudsman, Lisbon, 2007, p.5/2.

[318] According to the Albanian Law on Ombudsman, "Albanian citizens with knowledge and experience on human rights and freedoms and the field of law, who has not been sentenced with any crime and who is not a member of the Parliament can be selected as People's Advocate. Law of the People's Advocate and Excerpts from other Law Defining the Right and Duties of the People's Advocate, Law No. 9389, 12.05.2005, a.3.

c) Having a sc.b. degree from faculties preferably on law, political sciences, economics and administrative sciences, economics and business administration, or from inland and outland high education institutions which are accepted as equivalents.
d) Having minimum ten years of experience in public agencies and institutions, international institutions, occupational institutions having the characteristics of public agencies, or the private sector.
e) Not being banned from public rights.
f) Not being a member of a political party on the date of application.
g) Not being sentenced due to first and second sections of the second book of Turkish Penal Code, offences against security of the state, offences against the constitutional order and its operation, offences against national defense, offences against secrets of the state, offences of espionage and offences against relationships with foreign states, or defalcation, corruption, bribe, theft, fraud, forgery, abuse of confidence, fraudulent bankruptcy, collusive tendering to auction or execution, laundering of assets grown out of illicit, and smuggling, even if the periods defined in the 53rd article of Turkish Penal Code dated 9/26/2004 and numbered 5237 are lapsed, or the certain party is sentenced to prison by voluntary offense or pardoned, or it is adjourned to announce the verdict later.

Some of the characteristics sought by the law are applicable to anyone assigned to public institutions. These are nationality, not being banned from public rights and sentenced with certain offences. On the other hand, the conditions of 10 years of experience, high age limit and degree from certain universities are intrinsic to ombudsman institution.

The age limit is defined as 50 for Chief auditors, while it is 40 for auditors. The age limit for chief auditors is higher than the required age for being President of the Republic. The age limit for auditors is the same with the President of the Republic. While the age limit for being a member of the parliament is 25, setting a higher age limit for ombudsmen can be explained with the importance attached to experience and knowledge conditions. In the preamble of the article of the law, it is stated that “Other precedent laws of the world are noted while setting the

age limit". For example, the age limit is 40 for Ukrainian Ombudsman, while it is 25 for Armenian Ombudsman[319].

#### *6.2.5.2 Election and Appointment*

Election and appointment for Ombudsman institutions are mostly conducted by legislative organs. Two of the distinguished subjects in election and appointment are "conciliation" and "qualified majority". Conciliation is provided by forming a "Joint Committee" within the Parliament for selecting and evaluating the candidates. During the ballots in the Parliament, election by qualified majority is regarded important, thus, two thirds or three fives majority is sought.

In the example of Spain, Congress and Senate members form a "Joint Committee" in order to determine the candidates. The Joint Committee evaluates the candidature applications that are open to anyone, and then presents the determined candidates to both wings of the Parliament. Primarily, the Congress takes a vote within 10 days. The candidate who receives 3/5 majority of the Congress is then approved by the Senate. Here, the candidate selected by the same majority within 20 days becomes an ombudsman. If the majority cannot be constituted, the Joint Committee gathers once again within a month and determines another candidate. In the second ballot, it is enough to receive the votes of simple majority for the candidate receiving the votes of 3/5 majority in the Congress. Actualized by the signatures of the Heads of the Congress and the Senate, the appointment is published in the official gazette[320].

---

[319] According to the Ukrainian Law on Ombudsman, it is stated that "A Ukrainian citizen, who is 40 years old on the date of election and a resident in Ukraine for the last five years, has good command of governmental language with high ethical quality and experience in the field of human rights, can be appointed to Representative (ombudsman) office. See On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No. 776/97, 23 December 1997, a. 5.; According to the Armenian Law on Ombudsman, "Any Armenian citizen who is 25 years old, has a high reputation within the society and is a resident in Armenia for the last five years, can be appointed as an Defender (ombudsman). See Law of RA on the Human Rights Defender, 01.01.2004, latest amendment, 01.06.2006, a. 3.

[320] Defensor del Pueblo, Organic Act Regarding The Ombudsman, Act No. 3/1981, a. 2-4.

In the example of Austria, Austria Ombudsman Council, which was established on a constitutional basis in 1977, consists of three persons selected by the Parliament for a period of 6 years. The candidates are nominated by the first three major parties of the Parliament. Elected candidates begin their duties after they are affirmed by the President of the Republic[321]. Established by the law dated June 22, 2004, Human Rights Ombudsman of Bosnia and Herzegovina consists of three persons. Ombudsmen are appointed by the 2/3 majority of both wings of the Parliament and approved by the Head of the State. Elected Ombudsmen remains in charge for 5 years and can be elected again[322].

Sometimes qualified majority within the Parliament is sought for nominating the candidates. In the example of Armenia, candidates of Human Rights Defender of Armenia are nominated by the 1/5 members of the Parliament and elected by the 3/5 majority[323]. Similarly, Ombudsman (Ukrainian Parliament Commissioner for Human Rights) candidates are nominated by the Head of the Parliament and at least ¼ of the members of the Parliament and the candidate receiving votes of the majority in the election held within 20 days is elected in Ukraine[324].

In Turkey, ombudsmen are elected by the Grand National Assembly of Turkey. This authority is not shared with other organs. Candidates apply to the Speakership of Grand National Assembly of Turkey. In case the terms of office of the Chief Auditor or auditors are over for any reason ninety days before the expiration date, the situation is reported to the Speakership by the institution within fifteen days beginning from the expiration date (a.11/1). The persons, who meet the candidateship conditions and want to become candidates for nomination, apply to the Speakership within the application period announced by the Speakership of Grand National Assembly of Turkey (a.11/2).

---

[321] Austrian Federal Constitution, Chapter 8, a. 148/g

[322] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 22 June 2004, a. 8-11.

[323] Law of RA on the Human Rights Defender, 01.01.2004, Latest amendment, 01.06.2006, a. 2-3.

[324] 7 On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No. 776/97, 23 December 1997, a. 5-6.

The Joint Committee, formed by the members of the Petition Committee of Grand National Assembly of Turkey and the Human Rights Examination Committee, determines three candidates among the candidates for nomination of Chief Auditor within fifteen days beginning from the expiration date of application and notifies the Speakership for the purpose of submitting to the General Assembly (a.11/3). The General Assembly starts electing Chief Auditors within fifteen days beginning from the date of notification. The Chief Auditor is selected by a secret ballot (a.11/4).

The Chief Auditor is elected by two thirds majority of the total member number. If the majority cannot be constituted in the first ballot, they proceed to the second ballot. In the second ballot, two thirds majority of the total member number is also sought for. If the two thirds majorities cannot be constituted in the second ballot, they proceed to the third ballot and the candidate receiving the votes of the simple majority is taken as elected. If the simple majority cannot be constituted in the third ballot, the fourth ballot is held between the two candidates receiving the highest number of votes in the previous ballot. In the fourth ballot, the candidate receiving the highest number of votes on the condition of quorum is elected (a.11/5).

The subcommittee formed by the Joint Committee determines the number of candidates, which is three times the number of auditors to be selected, among the candidates for nomination within fifteen days beginning from the expiration date of application, and submits them to the Committee. The Committee holds the elections for auditors in the following fifteen days. The auditors are selected by two thirds majority of the total member number. If the majority cannot be constituted in the first ballot, they proceed to the second ballot. In the second ballot, two thirds majority of the total member number is also sought for. If the two thirds majorities cannot be constituted in the second ballot, they proceed to the third ballot and the candidate receiving the votes of the simple majority is taken as elected. If the simple majority cannot be constituted in the third ballot, another election is held among the number of candidates receiving the highest number of votes, which is two times the number of auditors to be selected. In the fourth ballot, the candidate

receiving the highest number of votes on the condition of quorum is elected. In case of electing more than one auditor, split tickets are prepared for the candidates. The votes are cast by marking the specified area in front of the names of candidates. Votes more than the numbers of auditors to be elected are declared null and void (a.11/6).

The elections are completed in ninety days at the latest beginning from the date when the institution submits to the Speakership (a.11/7). Durations defined in this article are not valid during cessation and recession periods (a.11/8). Before starting their duties, the Chief Auditor takes an oath in the General Assembly, while auditors take the same oath in the Committee: "I swear on my honour and on my life that I will do my duty with a perception of complete impartiality, honesty, justice and equity." (a.13/1).

### 6.2.6 Assurances of Duty

In order to secure the independency of ombudsmen, subjects of renewable full-time term of office, assurance against removal, immunities and duty incoherency are regulated in the founding laws of the institutions.

#### *6.2.6.1 Term of Office*

Ombudsmen's terms of office should be tenure, full-time and renewable. Generally, terms of office of the members of Ombudsman institutions vary between 4 and 6 years. For example, full-time and renewable terms of office are regulated as 4 years in Portugal, 5 years in Spain, Armenia, Ukraine and Bosnia-Herzegovina, and 6 years in Austria[325].

Chief Auditor's and auditors' terms of office are four years in Turkey. Terms of office for Chief Auditors and auditors elected for the office of resigning Chief Auditors or auditors for any reason such as resignation, death or removal are also four years. A person who is assigned for Chief auditor or auditor for one term can be elected Chief auditor or auditor only for a second term (a.14/1-3).

[325] Eren, op. cit. p. 254.

The persons elected as Chief Auditor or auditors are discharged from their former duties during the terms of office. In case of expiration of duty, resignation application or expiration of terms of duty for any reason except losing conditions of official duty, the persons elected as Chief Auditor or auditor are appointed to a position suitable to their acquired rights within thirty days by authorities with appointment jurisdiction if they apply for their former agencies within thirty days. When their term of duty is over, former Supreme Court members elected for auditorship return to their former duty of membership of Supreme Court and are allocated to the first vacant position, without requiring any procedure or condition of vacant position. While conducting the aforementioned appointment, Chief auditors' or auditors' terms of office in the institution are evaluated as spent for duties requiring the payment of supreme judge indemnity for authorities and judges who are elected after they begin receiving the supreme judge indemnity. These conditions are applicable to the personnel from universities, without prejudice to the provisions of entitlement for academic titles. Due to the expiration of terms of duty until they are appointed to a position suitable to their acquired rights, the institution continues paying former monthly wages, social rights and aids to former Chief auditors and auditors. The institution ceases rendering payments to the persons appointed to positions suitable to their acquired rights, dating from the date of appointment (a.14/4).

#### *6.2.6.2 Removal from Duty and Expiration of Duty*

Another assurance of duty is the method of "being removed from duty". Arbitrarily removing ombudsmen or forcing them to resign does not comply with the independency. Hence, it is expected to bring objective criteria in the founding law in terms of removal from duty. When we consider the examples of comparative law, it can be seen that the reasons of removal are defined by law. Particularly, the conditions of "ipso facto expiration of duty" and "removal from duty" are defined separately.

For example, People's Advocate can be removed from duty in case he/she receives a sentence by court decision, becomes physically or mentally out of commission, acts contrary to the prohibition of political

and commercial activities, or does not hold office for more than three months in Albania. Proposal of 1/3 members and decision of 3/5 majority of the Parliament are required for removing People's Advocate from duty. On the other hand, the duty expires ipso facto in case of resignation, expiration of term of duty or death. The new election is held within one month from expiration of term of duty or removal from duty. The most senior commissioner fulfils the duty until the new auditor is elected or in case of being out of commission. The ombudsman whose term of duty is expired can return to his/her former duty[326]. Similarly, ombudsmen can be removed from duty by the proposal of the Speaker or 35 members of the Parliament and votes of 3/5 members of the Parliament in Poland, in case they reject doing their duty, become continuously out of commission medically, or act contrary to their oaths[327].

"Removal from duty and expiration of duty" are also regulated by the founding law of ombudsman in Turkey. According to this, in case the election qualifications of Chief Auditors or auditors turn out to be invalid or are lost after being elected, General Assembly decides on Chief Auditor's removal from duty without negotiation, while the Committee decides on auditor's removal from duty, after the Committee identifies the situation. The titles of Chief Auditor and auditor are terminated as soon as the final verdict about a Chief Auditor who is definitively sentenced or restricted for an offence which inhibits being elected is submitted to the General Assembly, and the final verdict about an auditor is submitted to the Committee (a.15).

#### *6.2.6.3 Immunities*

One of the most important assurances of duty for providing independency and efficiency of ombudsmen is "immunity". Ombudsmen should not be concerned about any prosecution while fulfilling their duties. Generally, ombudsmen are bestowed the right of immunity of Parliament members or judges.

[326] 6 Law on the People's Advocate and Excerpts from other Law Defining the Rights and Duties of People's Advocate, Law No. 8454, a. 7-9, 11.
[327] Act on the Human Rights Defender, 15 July 1987, a. 7.

For example, according to the Spanish Law on Ombudsman, "The ombudsman benefits from immunity, he/she cannot be arrested, cannot be subjected to disciplinary proceedings, cannot be penalized, inquired or put on trial due to expressing opinions during fulfilling his/her duty, or due to activities within the scope of his/her duty". Thus, the ombudsman is held responsible only against the Parliament and wanted to be protected from the pressure of governments. This strengthens ombudsman's function of independent audit[328]. According to the 61/3rd article of the Albanian Constitution, it is stated that the ombudsman benefits from immunity just like a judge of the Supreme Court. Furthermore, it is stated in the implementation law that "People's Advocate benefits from the immunity of Judges of the Supreme Court. His/her emolument is equal to the emolument of the Head of the Supreme Court"[329].

According to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina, the Ombudsman does not receive orders from nobody. Each ombudsman is uninstructable by any public authority within the framework of its constitutional and legal jurisdiction. Each ombudsman acts independently pursuant to the institution's own measures. The ombudsman cannot be subjected to proceedings, cannot be inquired, taken into custody or arrested due to his/her expressed opinions or decisions while exercising his/her authority within the scope of duty. In other cases, he/she cannot be taken into custody or arrested except being caught in the act of an offence requiring a prison sentence more than 5 years. The decisions of inquiring, arresting or referring an ombudsman to court regarding a penal offence can only be given by both wings of the Parliament for an offence requiring a prison sentence more than 5 years. A similar immunity is granted to the personnel of the

[328] Defensor del Pueblo, Organic Act Regarding the Ombudsman, 3/1981, Official Gazette number 109 dated May 7th, 1981, a. 6.

[329] Law on the People's Advocate and Excerpts from other Law Defining the Rights and Duties of People's Advocate, Law No. 8454, a. 6.

institution and it is stated that they will not be subjected to proceedings due to their opinions and activities within the scope of their duties[330].

It is stated in the Armenian implementation that the Ombudsman cannot be subjected to a penal or financial inquiry due to his/her actions and expressed opinions including the ones within the Parliament in the scope of duties. However, expressions taken as "aspersion and offence" are out of the scope. The ombudsman cannot be engaged in a lawsuit or arrested or subjected to administrative damages without the consent of the Assembly. In this case, the Parliament should be notified urgently[331].

According to the Portuguese Law on Ombudsman, "The Ombudsman cannot be subjected to civil or penal responsibility due to his/her advices, opinions and remarks which are expressed during performing the duties. The ombudsman cannot be taken into custody or arrested without the consent of the Parliament, except being sentenced to a penal offence of more than three years or being caught on the act. In case the ombudsman is subjected to criminal proceedings or accused of an offense, the Parliament decides whether the office of the ombudsman will be suspended or not during prosecutions, except the cases concerning offences requiring more than three years of penalty". Moreover, their prerogatives are equal to a minister in terms of office and emolument[332].

Criminal prosecution and inquirement methods concerning Chief Auditors and auditors are regulated by the founding law in Turkey. In case it is claimed that Chief Auditors and auditors commit an offense due to their duties, the ability to prosecute and inquire them is subject to the consent of the Speaker of the Grand National Assembly of Turkey. The resort of objection regarding the decision of consent is the relevant office of the State Council (m.31/1). The inquirement about Chief auditors and auditors is conducted by the Supreme Court of Appeals Prosecutor. The public law suit is tried by the relevant penal chamber of the Court of

[330] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, 22 June 2004, a. 15-16.
[331] Law of RA on the Human Rights Defender, 21.10.2003, a. 19.
[332] Statute of Portuguese Ombudsman, 2007, a. 8.

Appeals. The resort of appeal is the General Assembly of Criminal Matters of the Court of Appeal (a.31/2). Law on Judging Officials and Other Public Servants numbered 4483 and dated 12/2/1999 is applicable for situations for which there are no provisions in this article. The cases of being caught on the act concerning the offences within the jurisdiction of the high penal courts are subject to general provisions (a.31/3-4).

Criminal prosecution and inquirement methods concerning Secretary General and other personnel are regulated by the 32nd article of the law. In case it is claimed that the Secretary General, experts or assistant experts of public auditorship commit an offense due to their duties, the ability to prosecute and inquire them is subject to the consent of the Chief Auditor. The resort of objection regarding the decision of consent is Ankara Regional Administrative Court. The inquirement about Secretary General, experts or assistant experts of public auditorship, or other personnel is conducted by the Supreme Court of Appeals Prosecutor of the place of offence or another Supreme Court of Appeals Prosecutor assigned by the former. The public law suit is tried by the court of the same place. Law on Judging Officials and Other Public Servants is applicable for situations for which there are no provisions in this article. The cases of being caught on the act concerning the offences within the jurisdiction of the high penal courts are subject to general provisions.

#### *6.2.6.4 Incompatible Duties*

In order to provide an effective audit for the ombudsmen in charge of auditing public administrations, certain incompatibilities are regulated. Ombudsmen cannot be affiliated with these affairs during their terms of duty, and can be removed from duty in case of acting contrary to this.

According to Spanish Law on Ombudsman, “Ombudsman office does not comply with any elected duties, any positions or activities involving political propaganda, any ongoing duties of public administration, any membership of political parties, any administrative positions in political parties, unions, associations, foundations or companies, or occupations of judge or prosecutor, or activities of self-

employment, commerce or business". It is also stated in the law that "the ombudsman should resign from his/her incompatible position 10 days before the date of appointment and taking the office. Otherwise, the appointment is cancelled. If the incompatibility comes to light during duty, the ombudsman should resign on the date of occurrence"[333].

According to Portuguese Law on Ombudsman, "Ombudsmen are equal to appointed judges in terms of incompatibilities. The ombudsman cannot hold a position in political parties or associations, or participate in political activities" [334] . According to Ukrainian Representative (ombudsman) Law, "The ombudsman cannot be assigned to representative duties, cannot take office in any other organs of the state, local administrative organs, associations, companies, or institutions, regardless of being paid or not. He/she can only participate in educative, scientific and creative activities. Ombudsman cannot be a member of any political parties. The ombudsman should resign from his/her incompatible position within the first 10 days from the date of appointment[335].

According to the Law on Ombudsman of Bosnia and Herzegovina, "The Ombudsman office does not comply with any representative duties, any political activities, propaganda or duties, any offices of the state, membership of political parties, administration or participation in terms of political parties, associations, unions, foundations, religion congregations, occupation of judgeship, or taking office in any commercial and other duties. The ombudsman can return to his/her former office in case of being a former public officer after his/her term of duty is expired. The ombudsman should resign from aforementioned positions within the first 10 days from the date of appointment. If he/she is affiliated with these, his/her duty is over[336]. According to the Armenian implementation, "The defender cannot take

[333] Organic Act Regarding the Ombudsman, Act No. 3/1981, a. 7.
[334] Statute of Portuguese Ombudsman, 2007, a. 11.
[335] On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, a. 8.
[336] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, 22 June 2004, m. 17.

charge in any offices of the state or any other paid employment. Scientific, pedagogical and creative activities are regarded exceptional. He/she cannot be a member of any political parties, candidate for elections, or participate in electional campaigns. He/she should resign from aforementioned positions within the first 14 days from the date of appointment"[337].

In Turkey, Chief Auditors, auditors, Secretary General, experts and assistant experts of public auditorship and other personnel cannot be members of political parties, cannot act in favour of or to the detriment of any political parties, persons or groups, cannot discriminate between languages, races, genders, political ideologies, philosophical beliefs, religions and sects while fulfilling their duties; they cannot disclose or use occupational or commercial secrets they learn in any manners for their duty in favour of themselves or others, even if they secede from duty (a.30/1).

Chief Auditors, auditors, Secretary General, experts and assistant experts of public auditorship cannot review the complaints of themselves, their spouses, relatives of blood and marriage up to third degree (including third degree). Chief Auditors, auditors, Secretary General, experts and assistant experts of public auditorship and other personnel cannot take any other official or private office, or engage in trade during their duties. These provisions of the article are not applicable in case of participating in scientific publications, attending national and international congresses, conferences or similar meetings to which they are invited in concern with their duties and occupations, membership of associations, and collaborating in non-profit cooperatives (m.30/2-3).

### 6.2.7 Institutional Infrastructure

Ombudsman institutions are expected to have sufficient "financial resources", "personnel" and "facilities" for performing their activities independently and efficiently.

[337] Law of RA on the Human Rights Defender, 21.10.2003, a.4.

#### *6.2.7.1 Financial Resources*

One of the basic conditions of "functional efficiency" is that ombudsman institutions have "sufficient financial resources" for performing their activities properly. Trainings, promotions, researches, publications, regular visits, relationships with national and international organizations and reports are activities requiring certain expenditures. The annual budget of institutions should be sufficient enough to employ an adequate number of personnel and to perform their activities tenably, progressively and independently. Moreover, financial resources should be sufficient for providing emoluments proper for the positions of ombudsmen and institutional personnel. At this point, it is important to provide "financial autonomy" for ombudsman institutions, making them possess independent budgets on the basis of absolute administration and control.

The budgets of ombudsman institutions are covered by the Parliament and include factors providing the independent performance of activities. For example, according to the Albanian Law on Ombudsman, "Financial resources of People's Advocate are provided by privately allocated governmental budget on his/her behalf by the relevant item. Draft of the budget is submitted to the Permanent Committee of Economic, Financial and Corporatization Affairs of the Parliament by People's Advocate. People's Advocate plans his/her expenditures according to the applicable law. Financial records of the Bureau of People's Advocate are subject to audit by High State Control". It is stated in another article that "People's Advocate can receive monetary or in kind donations. These donations cannot include conditions that may influence the independency, impartiality and constitutional basis of the activities of People's Advocate. Donations are announced and registered into the records kept for this purpose in the Bureau of People's Advocate[338]. According to the Spanish Law on Ombudsman, "Financial resources required for the activities of the institution are provided by an item of the budget of the Parliament"[339]. In Portugal, "Allocation of the budget of the Bureau of Ombudsman is included in the budget of the

[338] Law on the People's Advocate, No. 8454, 4.2.1999, a. 36-37.
[339] Organic Act Regarding the Ombudsman, Act No. 3/1981, a.37.

Parliament. Ombudsman has the same provinces with a minister in terms of the objectives of the expenditure authorization"[340]. According to the Ukrainian Ombudsman Law, "Financial resources of the Representative for his/her activities are provided by the Ukrainian State Budget annually. The Representative prepares the budget according to the institution's expenditures and submits it to the Ukrainian Parliament[341].

According to the 4th article of the founding law on Public Auditorship Institution of Turkey, it is expressed that the institution possesses a "special budget". Besides, according to the 29th article with the "Budget" sideheading, "The incomes of the institution are: a) Treasury grants from the budget of the Grand National Assembly of Turkey. b) Other incomes. (2) Expenditures concerning the fulfillment of the duties within the scope of this Law are covered by the institution's budget".

Furthermore, according to the 16th article with the "Financial and social rights of Chief Auditor and auditor" sideheading, "A monthly emolument amounting to the financial rights of the undersecretary of the Prime Ministry is paid to the Chief Auditor; and a monthly emolument amounting to the financial rights of the assistant undersecretary of the Prime Ministry is paid to the auditor, including any type of payment. The emoluments provided for under secretary and assistant undersecretary of the Prime Ministry, which are not subject to taxes and deductions, are not subject to taxes and deductions according to this law. Pursuant to the Law on State Officials No. 657 dated 7/14/1965 and other regulations, Chief Auditor takes advantage of the social rights and aids of the undersecretary of the Prime Ministry, and auditor takes advantage of the social rights and aids of the assistant undersecretary of the Prime Ministry, in the framework of the same terms and conditions".

As is seen, a financial resource involving regularity is legally secured for the Public Auditorship Institution to perform its activities independently. Public opinion may doubt the independency and

[340] Statute of the Portuguese Ombudsman, 2007, a. 43.
[341] On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No. 776/97, 23 December 1997, a.12.

reliability of the institutions which do not possess financial resources sufficient for conducting their activities. Hence, the state allocates a regular and legal resource to the institution. On the other hand, it is possible that the institution obtains financial resources from other channels by the statement of "other incomes". However, institutions cannot receive the financial resources from external sources in the place of the primary resource provided by states. It is particularly important that the donations should not influence the independency of the institution.

#### *6.2.7.2 Personnel*

The status of the personnel is important for the independency and efficiency of Ombudsman institutions. It is important for independency to grant the authorization for electing and appointing their own personnel to the institution, and to limit the number of support personnel from other institutions; while it is important for efficiency to employ qualified personnel. Along with paying regard to gender equality, expertise, experience, sensibility, honesty, moral courage and team cohesion are prominent among the characteristics of the personnel. The factors of personnel employing procedures, their authorizations and restrictions, the number of support personnel, and duties of the support personnel are significant.

Recognized as national institutions with A status, ombudsmen of Spain, Albania[342], Bosnia-Herzegovina, Portugal[343], and Armenia[344] are authorized to appoint their institutional personnel. While granting the

[342] According to the applicable law, "Personnel of the Bureau of People's Advocate should consist of the members of public offices of the Republic of Albania. People's Advocate plans the structure and organizational scheme of the Bureau of People's Advocate". See Law on the People's Advocate, No. 8454, 4.2.1999, a.35.

[343] According to the Law on Ombudsman "Ombudsman Bureau is formed for providing direct personnel aid. Bureau personnel consists of Bureau Chairman, three assistants and four personnel secretaries. Bureau personnel is appointed and removed by the ombudsman without constraints". See Statute of Portuguese Ombudsman, 2007, a. 10, 41.

[344] According to the Law on Ombudsman, "The Defender employs personnel for performing his/her duties. Defender's personnel provide legal, organizational, analyzer, informational and other types of support for Defender's activities". See Law of RA on the Human Rights Defender, 21.10.2003. a. 23.

authorization to appoint and remove personnel unrestrainedly to the ombudsman, it is stressed that the appointments can be conducted within "budget limitations". For example, according to the Bosnia-Herzegovina Law on Ombudsman, "The institution can employ personnel and appoint consultants and assistants without constraints and as needed, within its internal regulative rules and budget limitations. Institutional personnel is appointed and removed by the institution"[345]. Similarly, it is stated in the Spanish Law on Ombudsman that "The ombudsman can appoint the number of consultants required for his duty, within internal regulative rules and budget"[346].

Legal status of the personnel of Ombudsman institutions vary from country to country. In Spain, "Employees in the service of Ombudsman are accepted to be personnel of the Parliament during their terms of duty" [347]. In Portugal, "Applicable rules of appointment, emolument and assurance responsibilities for personnel of ministries are also applicable for Ombudsman personnel"[348]. Ombudsman personnel are regarded as public officers in Albania, Bosnia-Herzegovina, Spain and Portugal, while it is stated in Armenia that "Defender's personnel is not a public officer and works under contract"[349].

The assurance of returning to former duty is regulated for the personnel of public officer status after the expiration of the term of duty. In Spain, it is stated that "Former public officer positions and all relevant rights of ombudsman personnel are conserved until the end of the term of duty"[350]. Similarly, it is stated that "The assurance of returning to former duty is provided for personnel, who used to be a public officer before working for the institution, in the end of the term of duty within the institution" in Bosnia-Herzegovina[351].

---

[345] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, 22 June2004, a. 37-38.
[346] Organic Act Regarding the Ombudsman, No. 3, 1987, a. 34-36.
[347] Organic Act Regarding the Ombudsman, No. 3, 1987, a. 34-36.
[348] See Statute of Portuguese Ombudsman, 2007, a. 10, 41.
[349] Law of RA on the Human Rights Defender, 21.10.2003. a. 23.
[350] Organic Act Regarding the Ombudsman, No. 3, 1987, a. 34-36.
[351] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, 22 June 2004, m. 37-38.

The “Fourth Section” of the founding law on Public Auditorship Institution includes provisions concerning the personnel. According to the 4th article of the law, “The institution consists of Chief Auditorship and Secretary General. One Chief Auditor, five auditors, secretary general and other personnel work in the institution”. “Appointment of personnel” is regulated by the 24th article of the law. According to this, “Secretary General is appointed among persons having a minimum four-year degree in higher education institutions, 10 years of experience in duties subject to the Law on Government Officials, and meeting the conditions of the 48th article of the same law, by the Chief Auditor. (2) Other personnel are appointed by the Chief Auditor”. 25th and 26th articles of the law regulate the methods of appointing experts and assistant experts of Public auditorship.

According to the 27th article regulating the financial and social rights of the personnel, “Law on Public Officers is applicable to the personnel of the institution for situations for which there are no provisions in this article. (2) Provisions concerning financial and social rights and aids, which are applicable to general managers of Prime Ministry, are applicable to the Secretary General. (3) Provisions concerning financial and social rights and aids, which are applicable to experts of Prime Ministry, assistant experts of Prime Ministry, and positions with the same title and status, are respectively applicable for experts of Public Auditorship, assistant experts of Public Auditorship, and other personnel of the institution. The emoluments paid to precedent personnel of Prime Ministry, which are not subject to taxes and other deductions, are not subject to taxes and other deductions, according to this article”.

The 28$^{th}$ article regulates the methods of assigning support personnel from public agencies and institutions. According to this, (amendment: article 12/7/2013-6495\54) Personnel of public administrations, social security institutions, local administrations and dependent administrations, unions of local administrations, circulating capital institutions, foundations established by laws, institutions possessing public legal entities, institutions with more than 50% of publicly owned capital, government business enterprises and dependent

partnerships and institutions within the scope of central administration, and judges and prosecutors can take office in the institution, provided that they give consent. The number of the personnel assigned as stated above cannot be more than 20% of the number of Public Auditorship Experts, and their terms of duty cannot exceed 2 years. However, this term can be extended by one-year periods if necessary. Relevant demands of the institution are satisfied by relevant agencies and institutions within 10 business days. The personnel assigned as stated above are taken as salaried and granted leave of absence by their institutions. The personnel's connection with his/her official post and personal rights are sustained during leave of absence, and these periods are counted for the personnel's promotion and retirement, and they are promoted within the term of duty without requiring any other procedure. The terms of duty of these personnel are taken as spent in their own institutions".

As is seen, the Public Auditorship Institution is authorized for selecting and appointing its personnel, and the number of the support personnel is limited.

#### *6.2.7.3 Facilities: Accessibility*

One of the important factors of institutional infrastructure is to have sufficient facilities. Here, two factors are prominent. The first one is that the institution has a "headquarter" for performing activities independently and efficiently, and the second one is that it has "regional and local offices" for facilitating the "accessibility" of the institution. It is important to be geographically and physically accessible for all components including disabled persons. Central location of the offices is a facilitating factor of accessibility, particularly for deprived, disabled and old people. Internal layout of the building should be suitable for the access of sensitive groups, and means for reporting complaints easily should be available within the building. Any type of communicative instruments should be used for facilitating the accessibility. In this

context, internet, free telephone lines, and mobile bus bureaus or personnel are considered to be the best implementations[352].

Spain consists of 17 autonomous regions and each region has its own parliament and government. Certain autonomous regions (Andalucia, Catalonia, Basque) have their own Defensor del Pueblo (ombudsman). However, Defensor del Pueblo established on a national level is authorized in the whole country, including the autonomous regions [353] . It is stated in the Albanian implementation with the"Appointment of Local Representative" heading that "People's Advocate can appoint a local representative for a particular subject and for a certain period if he/she considers necessary. Local authorities provide an operational office and necessary conditions for the representative in order to perform the duties estimated by the law. The local representative receives an emolument from the budget of People's Advocate[354]. The implementation of appointing local representatives is also regulated by the Polish Law on Ombudsman. It is stated in the law that "The Defender can appoint a local representative by the consent of the Assembly"[355].

According to the 4th article of the Law on Public Auditorship, headquarter of the institution is located in Ankara. The institution can open bureaus where it considers necessary.

### 6.2.8 Working Procedures and Principals

Ombudsmen should be authorized to determine their working means and methods as a part of their "functional autonomy". Subjects concerning working methods can be collected under two headings. The first one is the subject of "regular meetings" conducted by national institutions, and the second one is "working groups" which are suggested to be established within the structure of institutions. Three subjects are prominent for regular meetings of institutions. These are the place and

[352] Amnesty International's recommendations on national human rights institutions, 1 October 2001, p.22-23, p.9.
[353] International Council on Human Rights Policy, Performance & Legitimacy : National Human Rights Institutions, 2004, p.85.
[354] Law on the People's Advocate, No. 8454, 4.2.1999, a.32.
[355] The Ombudsman Act on the Human Rights Defender, 15 July 1987, a. 22.

intervals of meetings; the authority of calling meetings; and the minimum number for meeting and decision-making. The place and intervals of meetings are left to the discretion of institutions in many countries. While both the place and the intervals of meeting are left to the discretion of the institution in some countries, a minimum time for conducting meetings is specified in certain countries.

Public Auditorship Institution of Turkey consists of Chief Auditorship and Secretary General. One Chief Auditor, five auditors, secretary general and other personnel work in the institution (a.4)[356]. Chief Auditorship consists of Chief Auditor and auditors. The institution is managed and represented by the Chief Auditor (a.6). According to the 8th article of the Law on Public Auditorship Institution with the "Working Principles" side heading, "Chief Auditor ensures the collaboration between auditors and supervises their coordinative operation. (2) Auditors work on the subjects or fields to which they are assigned by the Chief Auditor by themselves, and present their proposals to the Chief Auditor. (3) The institution pursues the usage of electronic environment and communicative instruments for its activities. (4) Principles concerning the subjects or fields to which auditors are assigned by the Chief Auditor, and the division of labour between auditors are defined by the regulations".

#### *6.2.8.1 Duties and Authorizations of Chief Auditors and Auditors*

Duties and Authorizations of Chief Auditors are listed in the 7th article of the Institutional Law[357], and they are specified separately in the 40th article of the Regulations on Working Procedures and Principals of

[356] While 10 auditors were estimated in the first text, the number was decreased to 5 afterwards.

[357] ARTICLE 7 – (1) Duties of Chief Auditors are as follows: a) Examining and researching complaints received by the institution, and suggesting proposals to administrations. b) Preparing the regulations regarding the implementation of this law. c) Preparing the annual report. d) Preparing exclusive reports on subjects considered necessary without waiting for the annual report. e) Announcing the reports to the public. f) Determining the auditor who will substitute for the Chief Auditor in his/her absence. g) Regulating division of labour between auditors provided that one auditor is assigned to women's and children's rights. h) Appointing Secretary General and other personnel. i) Performing other statutory duties.

the Institution. According to this, duties and authorizations of Chief Auditors are as follows:

- ✓ Managing and representing the institution.
- ✓ Examining and researching complaints received by the institution, and suggesting proposals to administrations.
- ✓ Ensuring the collaboration between auditors and supervising their coordinative operation.
- ✓ Resolving emerging uncertainties concerning the scope of the tasks of auditors.
- ✓ Regulating division of labour between auditors, provided that one auditor is assigned to women's and children's rights, and amending them when necessary.
- ✓ Concluding complaint applications in person when he/she considers necessary.
- ✓ Preparing the regulations regarding the implementation of this law, and amending them when necessary.
- ✓ Preparing the annual report and presenting it to the Committee.
- ✓ Preparing exclusive reports on subjects considered necessary without waiting for the annual report.
- ✓ Announcing the reports to the public.
- ✓ Making statements about the activities of the institution.
- ✓ Determining the auditor who will substitute for the Chief Auditor in his/her absence.
- ✓ Appointing Secretary General and other personnel.
- ✓ Granting permit for penal inquirement and prosecution in case it is claimed that Secretary General, experts or assistant experts commit offence due to their duties.
- ✓ Assigning expert witnesses, hearing witnesses and relevant persons.
- ✓ Requesting personnel of public agencies and institutions to be temporarily assigned for necessary occupations or subjects.
- ✓ Demanding information and documents from administration in terms of the subjects of examination and research.

- ✓ Examining or assigning an auditor for examining the information and documents qualified as secret of the state in terms of the subjects of examination and research on-site.
- ✓ Conducting on-site examinations and researches within the scope of the 22nd article.
- ✓ Requesting relevant resort to conduct investigations on people not providing demanded information and documents.
- ✓ Deciding to open bureaus where it is considered necessary.
- ✓ Conducting operations concerning international collaboration in terms of the institution's scope of duties.
- ✓ Performing other statutory duties.

Duties and Authorizations of auditors are specified in the 41st article of the Regulations on Working Procedures and Principals of the Institution. According to this, duties and authorizations of Auditors are as follows:

- ✓ Examining and researching complaints concerning the subjects and fields to which they are assigned, and suggesting proposals to Chief Auditor.
- ✓ Demanding information and documents from administration in terms of the subjects of examination and research.
- ✓ Requesting relevant resort to conduct investigations on persons not providing demanded information and documents.
- ✓ Preparing exclusive reports on subjects considered necessary, and presenting them to Chief Auditor.
- ✓ Making statements about the activities of the institution in case of being assigned by Chief Auditor.
- ✓ Assigning expert witnesses, hearing witnesses and relevant persons.
- ✓ Examining the information and documents qualified as secret of the state in terms of the subjects of examination and research on-site, in case of being assigned by Chief Auditor.
- ✓ Conducting on-site examinations and researches within the scope of the 22nd article.
- ✓ Substituting for Chief Auditor in his/her absence.
- ✓ Aiding Chief Auditor to perform the statutory duties.
- ✓ Performing other duties assigned by Chief Auditor.

#### *6.2.8.2 Secretary General, Experts and Assistant Experts*

Secretary General carries out the administrative and financial affairs and secretariat services of the institution. Secretary General and other administrative personnel work in the Office of Secretary General. The duties of Secretary General are listed as follows in 42nd article of the regulation:

- ✓ Conducting clerical affairs of the institution.
- ✓ Conducting registration procedures of complaint applications.
- ✓ Conducting studies concerning human resources planning and personnel policy of the institution, suggesting proposals to Chief Auditor for developing personnel system.
- ✓ Providing the administration of the personnel of Secretary General.
- ✓ Conducting personnel affairs, and activities of health and social services of institution personnel.
- ✓ Performing appointment, transfer and promotion procedures of institution personnel.
- ✓ Preparing, implementing and evaluating the training plan of the institution.
- ✓ Assigning institution personnel for attending in-service trainings, courses and similar places, and conducting procedures concerning the payment of financial rights.
- ✓ Conducting the procedures of leave of absence and retirement of institution personnel.
- ✓ Performing archive services of the institution.
- ✓ Regulating and conducting general document activities.
- ✓ Providing automation for and archiving decisions and reports.
- ✓ According to Law on Public Financial Administration and Control no. 5018 dated 12/10/2003, and Law on Public Financial Administration and Control no. 5436 dated 12/22/2005, and the 15th article of the Law on Amendment of Certain Laws and Statutory Decrees and other regulations, performing the duties assigned to financial services and strategy development units.
- ✓ Conducting procedures concerning the estates and assets of the institution within the framework of relevant regulations.

- ✓ Informing Chief Auditor on the subject of budget expenditures.
- ✓ Ensuring the use of informatics system for the subject of the institution's scope of duty, following the developments of information systems and automations.
- ✓ Conducting the studies of preparing information architecture of the institution, and setting, updating and archiving the databases of the institution.
- ✓ Planning and performing civil defense and mobilization services of the institution.
- ✓ Conducting press and public relations and promotion activities of the institution.
- ✓ Regulating affairs of protocol.
- ✓ Conducting administrative, financial and technical affairs of the institution.
- ✓ Performing other duties assigned by law or Chief Auditor.

Experts and assistant experts perform duties assigned by Chief Auditor of auditors. Experts and assistant experts fulfil duties defined in the Regulation of Public Auditorship Expertise for conducting the essential services of the institution (a.43).

#### *6.2.8.3 Affairs and fields subject to division of labour*

Affairs and fields subject to division of labour among auditors are specified one by one. According to this; Human Rights, Women's and children's Rights, Disability Rights, Protection of family, Social services, Education and training, youth and sports, Science, arts, culture and tourism, Justice, national defence and security, Health, Population, citizenship, refugee and asylum-seeker rights, Public personnel regime, Proprietary rights, Economy, revenue and taxes, Energy, industry, customs and commerce, Labour and social security, Forestry, water, environment and urbanization, Transport, press and communication, Food, agriculture and livestock, Services provided by local administrations, other affairs and fields (a.44).

Affairs and fields for which auditors are in charge are defined by regulation by the Chief Auditor. Chief Auditor ensures the collaboration between auditors and supervises their coordinative operation (a.44/2-3).

Principles of division of labour are defined in the 45th article of the regulation. According to this, it is necessary to protect the scope of auditors' experience and expertise, to note the number of complaints and periodical complaint intensity, and to assign one auditor to similar affairs.

#### *6.2.8.4 Working principles of chief auditors and auditors*

According to the 46th article of the regulation, auditors work on the subjects and fields to which they are assigned by Chief auditor by themselves, and submit their decisions to Chief auditor. In case the Chief auditor is convinced that there are no other subjects requiring examination and research, or after concluding the complaint application if he/she considers necessary, Chief auditor informs both the complainant and the relevant resort about the decision (a.46/1).

In case the subject of complaint is within the scope of duty of more than one auditors, the complaint application can be assigned to one auditor or more than one auditors by the Chief auditor for examination and research. If the subject of complaint is assigned to more than one auditors for examination and research, auditors work on the subject by themselves and present their decisions to the Chief auditor (Sa.46/2).

Auditors can conduct their examination and research concerning the complaint application with working groups dependent to themselves. Necessary number of experts, assistant experts and experts responsible for coordination can be assigned to the working group. Chief auditor, auditors and Secretary General cannot discriminate between languages, races, genders, political ideologies, philosophical beliefs, religions and sects while performing their duties. Chief auditor, auditors and Secretary General cannot reveal occupational or commercial secrets which they learn due to their duties, or use them in favour of themselves or others, even if they are seceded from duty. Chief auditor, auditors and Secretary General cannot take any other official or private office, or engage in trade during their duties. These provisions of the article are not applicable in case of participating in scientific publications, attending national and international congresses, conferences or similar meetings to which they

are invited in concern with their duties and occupations, membership of associations, and collaborating in non-profit cooperatives (Sa.46/3-6).

### 6.3 Duties and Authorizations of the Public Auditorship Institution

As analyzed above, conventional ombudsman institutions are established for auditing the accordance of administration to law on behalf of the Parliament. Hence, the conventional model does not involve authorizations peculiar to the affairs of human rights. The ombudsmen, which are recognized as national human rights institutions and authorized for the affairs of human rights, are subject to limited authorization.

As stated clearly in the Paris Principles, the authorizations of national human rights institutions should include the joint function of "protecting and developing" as broadly as possible. In this context, consultancy, suggestions, visits collaboration with international offices, training and raising awareness, and promotion authorities are as important as auditing violations of human rights. However, the authorization of status A Ombudsman institutions in accordance with the Paris Principles are limited to solely auditing administrations in terms of human rights. For example, no other authorizations are defined for developing human rights in national institutions of status A, such as Spain, Albania, Armenia, Portugal and Bosnia-Herzegovina[358].

Even if the extent of the authorizations are beyond auditing to a degree in some ombudsman institutions, it still does not include authorization "in the broadest sense" anticipated by Paris Principles. For example, the Ukrainian Ombudsman institution is authorized to provide support for legislation procedure, develop international collaboration, and raise the awareness of the public, as well as preventing violation of rights and auditing[359].

---

[358] Eren, op. cit. , p.307.

[359] According to the 3rd article of the Ukrainian Law on Human Rights Ombudsman, it is stated that "The Parliamentary audit conducted by the Representative aims for protecting human and citizen rights and freedoms declared by the Constitution, laws and international agreements of Ukraine; protecting and respecting human and citizen rights and freedoms via the institutions defined by the 2nd article of the law; preventing violations of human rights and facilitating the development of these rights; facilitating the legislation process concerning human rights and freedoms in accordance with the

Public Auditorship Institution is established as a conventional ombudsman, instead of a human rights ombudsman. Hence, according to the 1st article of the founding law with the "Purpose" sideheading,

"The purpose of this law is to establish the Public Auditorship Institution for auditing and investigating any type of actions, operations, attitudes and actions of administrations in terms of their accordance to laws and justice, and making suggestions to administrations upon complaints concerning the operation of administrations, within a justice perception based on human rights, by forming an independent and efficient complaint mechanism for the operation of public services".

As is seen, the purpose is to "form an independent and efficient complaint mechanism for the operation of public services". Instead of being authorized in the field of human rights in the broadest sense, it is charged with auditing "any type of actions, operations, attitudes and actions of administrations ... within a justice perception based on human rights" restrictedly[360]. The reason why the institution is not authorized in the field of human rights in the broadest sense is that "the Human Rights Institution of Turkey" is established as an institution with general authorization.

Duties of the institution are defined in the 4th article of the Regulation of Working Procedures and Principals. According to this, the institution examines, investigates and makes suggestions for complaints concerning the actions, operations, attitudes and manners of public administrations and social security institutions within the scope of central

---

international standards of the Constitution and human rights; enabling international collaboration for protecting human and citizen rights and freedoms; preventing any kind of discrimination in the field of the implementation of rights and freedoms; promoting legal information among the society and protecting confidential information of individuals". See On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, a. 3

[360] It is stated in the first draft prepared by the Ministry of Justice that the purpose of the law is "to establish Public Auditorship Institution for reviewing complaints on the operation of administrations and making suggestions". The subject of "respecting human rights" was not included to the purposes in the first version of the draft. The purpose article of the draft was amended on the stage of examination by Commissions, in line with the reports of the EU Harmonization Commission and the Planning and Budget Commission.

administration, local administrations and dependent administrations, unions of local administration, circulating capital institutions, foundations established by laws, institutions possessing public legal entities, institutions with more than 50% of publicly owned capital and dependent partnerships and institutions, occupational institutions qualified as public institutions, and private judicial legal entities which meet a common, perpetual and public need and conduct public services under administrative regulations, audit and supervision (Sa.4/1).

However, complaints on the procedures conducted singly by the President of the Republic and decisions and prescriptions officially signed by the President of the Republic, Procedures concerning the implementation of legislative prerogative, Decisions concerning the implementation of juridical prerogative, merely military activities of Turkish Armed Forces, are out of the scope of duty of the institution (Sa.4/2).

Complaints on conflicts which are concluded or being tried by Juridical organs are not reviewed by the institution. Reapplied complaints, which are formerly concluded or being tried, with the same reasons, subject and parties are not reviewed by the institution. Complaints that does not involve a certain subject are not reviewed by the institution (Sa.5).

The institution accepted the principals to follow with “the principals of good governance”. According to this, the institution audits whether the administration displays operations, actions, attitudes and manners in accordance with good governance principals such as lawfulness, prevention of discrimination, moderateness, prevention of authorization abuse, equality, impartiality, honesty, politeness, transparency, accountability, accordance to rightful expectations, protection of acquired rights, right to be heard, right of defence, right to information, making decisions within a reasonable time, ensuring that the decisions are justified, showing the means of application against decisions, submitting decisions without delay, and protection of personal data, and follows the principals of good governance (SA.6).

### 6.3.1 Complaint Mechanism

The authorization of Ombudsman institutions for reviewing complaints is quasi-judicial. The concept of quasi-judicial means that authorizations, which are similar to jurisdiction, are used by other offices apart from judicial offices[361]. The fact that the authority of ombudsmen for reviewing violation of rights differs from jurisdiction and reviews of non-governmental organizations leads to being described as "quasi-judicial".

Ombudsmen possess judicial authorities, which are held in case of any investigation or examination, such as reviewing information and documents, intercepting individuals, examining on-site and inviting individuals, demanding information and documents from institutions. However, they are not authorized for directly forcing or restricting the freedom of individuals, unlike jurisdiction. Institutions can only use the authority of forcing with the support of jurisdiction and necessary administrative offices. Similarly, institutions cannot make exactly conclusive decisions for solving conflicts in consequence of examinations. Decisions of institutions include reconciliation, suggestion, proposal and information. Hence, decisions of institutions do not constitute any impediment for relevant persons to resort to jurisdiction or an administrative application mechanism. Decisions of institutions may stimulate the offices which will conclude the conflict with decisive judgment, and be subjects of evaluation for these offices. Thus, the abilities used by institutions are called "judicial-like" authorities.

The judiciary-like authorities of the institutions distinguish their examinations from voluntary examinations of non-governmental organizations. Origin of the examination authority of institutions is law. Hence, they exercise an authority originating from Law. In this sense, they are backed by a public force support. They can review information and documents, intercept individuals and visits places at will within the scope of the authorization by law. They can pay announced or unannounced visits. On the other hand, the authorities of non-

[361] Lone Lindholt and Fergus Kerrigan, "General Aspects of Quasi-Judicial Competence of National Human Rights Institutions", p. 92, s.5.2.1.

governmental organizations originate from the regulations prepared by themselves. In this sense, they do not possess any authorization for forcing persons or institutions[362].

#### *6.3.1.1 Right to Petition*

Natural and legal entities, whose interests are violated by any kind of actions, operations, attitudes and manners of administration, are entitled to the "right to petition". However, it is stated that "in case the complaint is aimed at human rights, basic rights and freedoms, women's rights, children's rights, and general subjects involving the public, violation of interests is not sought for" (Sa.7)

6.3.1.1.1 The condition of violation of interests

Although the condition of "**violation of interests**" is not stated in the law, it is specified by the Regulation. This situation should be accepted as a "regulation" even if it suggests the probability that the Regulation is inconsistent with law. As the right to petition involves violation of interests by its very nature, it is normal to seek for violation of interests except derogations defined by law. So, the statement of this condition by the Regulation should be accepted as "concretization" instead of inconsistency. For cases that violation of interests is not sought for, violation of rights "attributable" to the administration should be considered adequate.

Thus, according to the 34th article of European Convention on Human Rights, the person who is the "victim" is entitled to the right of individual communication. In the 41st article of the convention, the right of compensation is granted to the person who sustains an "injury". The European Court of Human Rights considers that any influence on "legal interests" of a person is sufficient for his/her acknowledgement as a victim, while it seeks for the "emergence of physical and spiritual injury" of a person for demanding compensation. The court considers a person, whose interest is influenced by a violation of a right actually and indeed, as "direct victim", and a person whose personal interest is influenced by

[362]Eren, a.g.e. s.400-401.

a violation that will absolutely occur in the future or that has occurred, as "indirect victim"[363]

Situations in which violation of interests are not inquired are defined in the Regulation. However, the listed concepts are so broad that it can be accepted to exercise the right to petition without requiring any violation of interests. Furthermore, using the expression of "basic rights and freedoms" after using the term of "human rights" is another contradiction. The concept of basic rights is not separate from the category of human rights. The expressions of "women's rights, children's rights" do not bear a meaning beyond repetition. In the article, the statement of "General subjects involving the public" does not seem to comply with the "principle of definitiveness" of the law. Hence, it is necessary that the situations in which violation of interests are not inquired should be set forth more concretely in the Regulation.

Another inconsistence concerning the right to petition is that applications cannot be made "without exhausting administrative remedies", while situations in which violation of interests are not inquired are defined broadly. So, will it be necessary to exhaust administrative remedies in case of situations in which violation of interests are not inquired? If the answer is yes, how will administrative remedies be exhausted without violation of interests? As is seen, the regulation on exceptions concerning violation of interests is not sufficiently clear.

It is essential to obtain the consent of the victim for applications not requiring violation of interests. However, applications are accepted in case it is impossible to obtain this consent or there are rightful reasons for not granting consent. Particularly, in case the victim openly rejects the application and objects an application made on his/her behalf, these are acknowledged as a clear ground of objection. In case the victim is a

[363] For example, if an inconsistent law has not yet been implemented to the person, but it is certain that it will be implemented and that it will influence the interests of the person, or as in the case of violation of the right to life, the spouse, children, mother and father of the violated person are acknowledged as victims. For the concept of victim, see Rogge, "The 'Victim' Requirement in Article 25 of the European Convention on Human Rights", p.541.

member of sensitive groups or in case of systematical violation of rights, the consent of victims is not required to proceed with the inquirement. For example, according to the Albanian Law on Ombudsman, Defender does not seek for the consent of victim when the injured is a child, disabled person, or rights of extensive sector of society, in an inquirement opened by the will of the defender[364].

It should not be significant that the victim is a foreigner, stateless, immigrant or refugee. For example, according to the Ukrainian Law on Ombudsman, "Citizens of Ukraine, foreigners, stateless persons and their representatives" can apply to the Ombudsman[365]. Thus, it should not make any difference if the person who exercises the right to personal communication is a citizen, or resident of a city of the country, or foreign. According to the Bosnia-Herzegovinian Law on Ombudsman, "Any natural or legal entity with a legitimate claim of interest can apply to the institution without limitations. Nationality, citizenship, residence, gender, minority, ethnicity, religion, legal incapacity, or any kind of retention does not restrict the right to petition to the institution"[366]. Hence, there are no restrictions for applying to the Public Auditorship Institution. It is stated in the Regulation of the institution that "foreigners can apply with their passport numbers, nationality and identification number if available" (S.a.11/c). Moreover, it is stated that "the institution takes necessary measures for enabling disabled persons to apply for complaints" (S.a.15/1).

#### 6.3.1.1.2 Persons Possessing the Right to Petition

Persons possessing the right to petition are stated as "natural and legal entities". However, it is not clear whether public legal entities can apply or not. There are not any direct explanations on whether public legal entities can apply or not in the Law and Regulation. While the application methods of natural and legal entities are defined by the Regulation, we can conclude that public legal entities are not entitled for this right, as there are no explanatory regulations about public legal

[364] Law on People's Advocate, a. 13.
[365] Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No.776/97, 23 December 1997.
[366] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, a.18/1.

entities. According to the Spanish Law on Ombudsman, "No administrative offices can apply to the Ombudsman about a complaint concerning any affair within the scope of their own authority"[367]. As is seen, the right to petition is only limited for affairs which can be concluded within the scope of public offices' authority.

The European Court of Human Rights uses "the criterion of taking advantage of the privilege of exercising public authority" for separating public legal entities and non-governmental organizations. In this sense, associations, foundations, unions, political parties, aid organizations and commercial corporations are recognized as non-governmental organizations and entitled to the right to petition for vindicating their own rights. In the implementation of the European Court of Human Rights, the right to petition is vested to non-governmental organizations for protecting their personal rights, not for protecting the rights of their members[368]. There are not any clear regulations concerning the conditions of application for the Public Auditorship Institution. Presumably, applications can be made concerning general subjects, apart from the interest of legal entities of private law within the extent of "general subjects involving the public", according to the interpretation of the concept of violation of interests.

Legal entities are entitled to the right to petition to the Armenian Ombudsman Institution, as well as individuals. According to the Law, a legal entity can apply in case a violation includes natural entities (e.g. partners, shareholders and members), who are participants of a legal entity, or the rights and freedoms of their incumbents, or in case the rights of a legal entity are violated, or the violation includes a potential threat. Similarly, representatives, family members and inheritors can apply to the Defender for protecting the rights of other persons.

[367] The Organic Act regarding Ombudsman, a.10.

[368] For example, the European Commission of Human Rights rejected an application by the union of teachers on the grounds that the legal regulation of the grievance was concerning teachers, not the union. In the case, the union applied to the Commission for considering the legal regulation obliging teachers to reside in the place of duty was contrary to the right to freely choose the place of residence, estimated by the 2nd article of the 4th protocol. See Gölcüklü/Gözübüyük, Avrupa İnsan Hakları Sözleşmesi ve Uygulaması, p.38.

Governmental and local administrative organs are not entitled to the right of petition to the Defender, except for the institutions of curatorship and guardianship. State officials are entitled to the right of petition to the Defender only for protecting his/her own rights as a natural person[369]. As is seen, public officers can apply for protecting their personal rights as an individual or non-governmental organizations of which they are members can apply on their behalf, while public legal entities are not entitled to the right to petition in the Armenian implementation.

Applications on behalf of individual groups without legal entity are accepted as well. For example, according to the 34th article of the European Convention on Human Rights, "Any natural person, non-governmental organization or individual group, who claims to be a victim of violation of the rights declared by this convention and its protocols by the high parties, can apply to the court". For enabling one member of the group to make an application on behalf of the group, it is required that other group members are violated under the same or similar conditions. It is required to define group members, explain the violation towards the group, and include considered solutions in applications on behalf of a group. For example, applicants of Albanian Ombudsman institution are defined as "any individual, individual group and non-governmental organizations"[370].

Convention on The Elimination of All Forms of Discrimination against Disabled People among Americans is a good example of the meaning of individual groups. According to the V. article of the Convention, "Within the bounds of accordance to their municipal laws, State Parties provide the participation of representatives of unions of disabled persons, non-governmental organization operating in this field, or disabled persons in case of the non-existence of these unions, for developing and implementing this Convention, and evaluating the precautions and policies that are conducted". As understood by the

[369] Law of RA on the Human Rights Defender, a. 8/2-5.
[370] The text of the article is as follows: "Any individual, individual group and non-governmental organization is entitled to the rights of filing or reporting complaints to People's Advocate and demanding his/her interference for concluding violation of rights and freedoms". See Law on the People's Advocate, a.12.

writing manner of the article, disabled persons can be represented by non-governmental organizations, as well as they can act as a "disabled individual group" when these types of organizations are absent. The same result is effective for other individual groups, such as women, children, immigrants, refugees and minorities.

Applications of certain persons on behalf of groups are accepted for applications on behalf of individual groups. Complaint applications to the Public Auditorship Institution can be made by legal representatives or guardians in Turkey. It is obligatory to submit a valid authorization document or certification of evidence concerning representation or guardianship for complaints registered by legal representative or guardian (S.a.11/1).

#### *6.3.1.2 Subjects of Application and Exceptions*

According to Classical liberal perception, state is the only one responsible for violations of human rights. In this context, is liable to negative obligations such as preventing violations, and to positive obligations such as preventing violations among other entities. But, the violations among private individuals which are not attributable to the state cannot be accepted as violations of human rights. Hence, state is responsible for violation of human rights in terms of its institutions and personnel, while it is only responsible for the actions of individuals and institutions in charge of public services on behalf of the state in terms of private individuals. The state cannot be discharged from responsibility by assigning its responsibility emerging from human rights to a private organization[371].

In the implementation, the auditing authorities of ombudsmen are restricted in terms of certain public institutions for reasonslikefair trial or national security, and in terms of violations by private individuals within the framework of the conventional approach. In this context, authorities of reviewing complaints against the operations of heads of states and parliaments, adjudications, and actions and operations of certain units of security are restricted. In the example of the Albanian Law on

[371] Eren, op. cit., p.412.

Ombudsman, the Presidentof the Republic, Prime Minister, laws, military orders of armed forces, adjudications are not within the scope of duty of People's Advocate. However, People's Advocate can accept complaints, claims and reports arising from administrative operation of jurisdiction and juridical methods[372].

It is essential to bestow the right to petition for the actions and operations of all units dependent to the government and public officers[373]. For example, according to the Spanish Law on Ombudsman, "The Ombudsman is authorized to inquire the activities of ministers, administrative offices, public officers and any individual acting on behalf of public administration". Autonomous administrations are included in the scope of authority of the Ombudsman in Spain[374]. Among private individuals, only "the individuals acting on behalf of public administration" are within the scope of inquirement.

In the example of Portugal, administrative institutions are included in the scope of authority of the Ombudsman, while foreign institutions, the legislative organ and autonomous governments are not included. In the 22nd article of the Portuguese Law on Ombudsman with the "Restrictions" sideheading, it is stated that "Foreign institutions, Regional Legislative Assemblies, Governments of Autonomous Regions are not subject to the examination and audit of the Ombudsman, except for the Administrative activities and the activities exercised under the control of Administration[375].

Thus, the European Union Ombudsman was established in 1997 for reviewing complaints of maladministration occurring in the institutions and organs of the European Union, pursuant to the Maastricht

---

[372] See Law on People's Advocate, a.25.

[373] International Council of Human Rights Policies declared in the study named the Evaluation of the Efficiency of National Human Rights Institutions that "None of the public units should be omitted from the audit function of national institutions. Particularly, law enforcement agencies such as police, military, intelligence services and other security services should be subject to the audit of institutions. See International Council on Human Rights Policy, Assessing the Effecti- veness of National Human Rights Institutions, p. 19

[374] The Organic Act regarding Ombudsman, a.9/2, a. 12/1.

[375] The Statute of the Portuguese Ombudsman, a.22/2-3.

Agreement. The European Ombudsman can make applications against all institutions and organs of the union including the European Commission, European Council, European Parliament and Court of Justice of the European Communities. Only the juridical functions of the Court of Justice are out of the scope of audit[376].

Judicial institutions and procedures should not categorically be omitted from the institutions' authority to review complaints. National institutions accept judicial complaints, but refer them to judicial institutions in the implementation. In Spain, the Ombudsman refers the complaint to public prosecutors for necessary proceeding when he/she receives a complaint on the operation of jurisdiction. The Ombudsman also refers the application to the General Council of Jurisdiction and includes the case in the annual report. The Ombudsman does not review complaints which are submitted to the jurisdiction. If a claim or application is submitted to a general court or the Constitutional Court, the newly started investigation is suspended. However, this does not pose an impediment for inquiring the general issues of the complaint[377]. In Bosnia-Herzegovina, the Ombudsman can examine the malfunctions of the jurisdiction system. But, he/she cannot interfere in the adjudications[378].

In the Portuguese implementation, the complaints received by the Ombudsman on the operation of jurisdiction are examined by judicial supreme boards. According to the Law on Ombudsman, "Complaints on judicial activities which fall within the remit of the Ombudsman by definition are addressed by High Judicial Council, the High Council of Republic Prosecution and the High Council of the Administrative and Fiscal Courts"[379]. Thus, the Ombudsman is authorized to refer judicial

[376] According to the 43rd article of the European Union Charter of Fundamental Rights, "All citizens of the Union, or natural or legal entities who are residents of a member country or have registered addresses in a member country can apply to Union Ombudsman for malfunction cases encountered in the activities of the institutions and organs of the Union, except for the Trial Court of Justice acting within the framework of its judicial duties".
[377] The Organic Act regarding Ombudsman, a.13., a.17/2.
[378] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, a. 2-4.
[379] The Statute of the Portuguese Ombudsman, a.22/2-3.

activities within the remit of his/her authority to the aforementioned councils and to pursue their results.

A mutual balance between freedoms of human rights and security is pursued. National security is accepted as a legitimate objective for restricting human rights. Hence, the authorization of national institutions for the examination of complaints is imposed restrictions on various levels in terms of intelligence and security agencies. In Spain, the Ombudsman is declared authorized concerning the rights defined in the I. Section of the Constitution without damaging military hierarchy[380]. A similar provision can be found in the law on Bosnia-Herzegovina Ombudsman Institution[381].

According to the Law on the Public Auditorship Institution of Turkey, the institution audits "any kind of actions, operations, attitudes and manners, upon complaints on the operation of administration". The law defines the concept of "administration" as follows:

"Public administrations and social security institutions within the scope of central administration, local administrations and dependent administrations, unions of local administration, circulating capital institutions, foundations established by laws, institutions possessing public legal entities, government business enterprises, institutions with more than 50% of publicly owned capital and dependent partnerships and institutions, occupational institutions qualified as public institutions, and private judicial legal entities who conduct public services" (a.3/1-e).

After listing the administrative institutions to be audited, the omitted institutions from audit are defined in the law. According to this, a) procedures conducted singly by the President of the Republic and decisions and prescriptions officially signed by the President of the Republic, b) Procedures concerning the implementation of legislative prerogative, c) Decisions concerning the implementation of juridical prerogative, d) merely military activities of Turkish Armed Forces, are out of the remit of the institution. Furthermore, according to the 5th

[380] The Organic Act regarding Ombudsman, a.14.
[381] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, a. 2-4.

article of the Regulation of Institution with the "Complaint application not to be reviewed by the Institution" heading, "The Complaints on conflicts which are concluded or being tried by juridical organs are not reviewed by the institution".

The responsibility of private individuals and institutions on the field of human rights has become prominent particularly with the privatization of public services in the recent years. Today, private companies operate in the fields of health, education, water, electricity, transportation and particularly communication. In this context, it gained importance that private enterprises adopt a service manner respecting human rights. As stated above, the Public Auditorship Institution can only audit "private judicial legal entities who conduct public services" in terms of the private sector. The authority to examine other violations of private sector falls out of the remit of the institution. However, it cannot be stated that this situation poses a deficiency in the implementation, considering the existence of the Human Rights Institution of Turkey in Turkey.

#### *6.3.1.3 Procedure of Application*

Complaint applications are submitted to the institution by petition in Turkish language. However, complainant's application in any other language with which he/she expresses himself/herself more efficiently may be accepted if the institution determines it to be legitimate and reasonable (a.8/1). As is seen, it is possible to apply to the institution with a language other than the official language of Turkish and it is stated that the case "may be accepted if the institution determines it to be legitimate and reasonable". This criterion invests a very broad discretional power to the institution.

Places and means of application to the institution are defined widely. According to this, complaint petitions can be submitted to the Institution or its offices by hand, e-mail or fax. The petitions can also be submitted via the electronic system formed by the institution. Moreover, the petitions can also be submitted through governorships in cities and district governorships in districts by hand or mail. Governorships and district governorships send the complaint petition and its annexes if

available directly to the institution within three business days, after registering them by appointing the date and number. Complaint petitions sent by fax or e-mail are considered invalid if the original petitions are not submitted to the institution within fifteen days. Applications made by registered e-mail do not require this condition (a.8/2-3).

Means of applying to the institution are enabled by form prepared by the institution, or verbal or written application without the form. The complaint petition is submitted by filling up Complaint Petition Form for Natural Entities and Complaint Petition Form for Legal Entities.The complaint can be submitted without using the forms provided that obligatory information and documents defined by the Regulation are available. In case of a legitimate reason, verbal complaint applications are also accepted by helping the complainant for filling up the form in the place of application (S.a.9/1).

Complaint applications should be written or filled up legibly and clearly. Information and documents concerning the subject of complaint is added to the application if available. No fees are collected for any reason from the complaint application. If the complainant is a natural entity, he/she should specify; Name, surname and signature, citizenship identification number for citizens of the Republic of Turkey, Passport number, nationality and identification number if available for foreigners, Permanent residence or business address subject to notices, Administration of complaint, subject of complaint and claim, Application date to the administration and reply date of the administration, E-mail address, telephone and fax numbers subject to notices if available (S.a.9/2).

If the complainant is a legal entity, he/she should specify; his/her title, permanent residence address subject to notices, name, surname, signature, and e-mail address, telephone and fax numbers of the authorized person subject to notices if available, administration of complaint, subject of complaint and claim, application date to the administration and reply date of the administration, the original or verified copy of certificate of authority of the authorized person, and number of central legal entity if available (S.a.10).

Complaint petition submitted to or received by the institution is registered by appointing date and number, and proof of receipt is given for complaints submitted by hand. The date of complaint is the date when the petition is submitted to the Institution, its offices, governorships or district governorships, the date when mail, e-mail or fax is received by the Institution, the date when the complaint petition submitted by electronic environment is received by the electronic system of the Institution (S.a.14). The complaint application is kept confidential upon the request of the complainant (S.a.16).

#### *6.3.1.4 Exhausting administrative remedies*

In order to apply to the Institution for complaints, administrative remedies estimated by the Law on Administrative Judgment Procedures no. 2577 dated 1/6/1982 should be exhausted. Applying to administrative offices is a precondition for performing a procedure or activity which can be the subject of an administrative trial. Removal, retracting, amendment of the administrative procedure or exercise of a new procedure should be requested from higher authority, or the office conducting the procedure in the absence of higher authority, within the term of litigation. Obligatory administrative remedies defined by private laws should be exhausted for applying to the Institution for complaints. The complainant should apply to the relevant administration for the exercise of the right within one year from the date of written or other types of notification of the administrative action, and five years from the date of the action in any case (S.a.12).

The Institution may accept complaints without requiring the exhaustion of administrative remedies in case of situations with the probability of damages which are hard to compensate or irrecoverable. Exhausting administrative remedies is not conditional for the attitude and manners of the institution. Complaints can be directly submitted to the Institution for the operations of the administration which are defined as mandatory by the laws (S.a.12).

Complaint application can be submitted to the Institution within six months from the date of notification of the administration's reply, or from the end of sixty days in case the administration does not reply

within this period. For the attitudes and manners of the administration, and for the operations of the administration which are defined as mandatory by the laws, complaint applications can be submitted to the Institution within six months from the date of occurrence or being known, or the date of notification of the action (S.a.13). The complaint application made within the term of litigation, suspends the ongoing term of litigation (S.a.17).

Complaint applications can be submitted to the Institution for any actions, operations, attitudes and manners which exhausted administrative remedies within the last six months before the date of 3/29/2013, when the institution started receiving complaints, on the condition that the conditions of application defined by this Regulation are satisfied. For the complaint applications regarding local administrations, their dependent administrations and unions, administrative remedies should be exhausted within the last six months before the date of 3/29/2013 (S.Temporary a.1).

#### *6.3.1.5 Examination and Inquiry Procedures for Complaints*

The complaints received by the Public Auditorship are subject to "preliminary examination". "Complaint application bureau" was established for this end. The Bureau consists of necessary number of personnel appointed by the Chief auditor. The Complaint Bureau registers and appoints numbers to complaint applications received by the Institution and conducts filing procedures. Then, the Bureau sends the complaint application to the distribution bureau. The Distribution Bureau consists of necessary number or experts, assistant experts, and other personnel appointed by the Chief auditor. The Distribution Bureau sends the complaint application to relevant auditors in accordance with the principles of division of labour. Experts and assistant experts assigned to the distribution bureau conduct by turns the sending of the complaint application to relevant auditors in accordance with the principles of division of labour. Uncertainties on the subject that the complaint falls into the remit of which auditor are resolved by the Chief auditor or an auditor assigned by the Chief auditor (S.a.18).

The complaint application is subject to preliminary examination before proceeding to examination and inquiry. The complaint application is examined for deciding whether it falls into the remit of the Institution, whether it is submitted within the defined term, whether the reasons, subject and parties are the same for complaint applications being examined and inquired by the Institution, whether the reasons, subject and parties are the same for complaint applications concluded by the Institution, whether it is being tried by judicial organs or involves conflicts concluded by judicial organs, whether administrative remedies are exhausted, whether the application is in Turkish language, whether it involves a certain subject, whether the information required by the complaint application is provided, and whether it involves violation of interests (S.a.19).

In case the complaint application does not satisfy the conditions of preliminary examination, it is rendered to be non-reviewable. The complainant is notified by this decision, and the term of litigation, which is suspended by the notification, is resumed. Complaint applications submitted without exhausting administrative remedies are rendered to be referred to the relevant administration. The complainant is notified by this decision. The date of complaint to the Institution is regarded as the application date to the relevant administration. When the Institution sends the complaint application to the relevant administration, another complaint application can be submitted to the Institution within six months from the date of notification of the administration's reply, or from the end of sixty days in case the administration does not reply within this period. Another complaint application can be submitted to the Institution, provided that deficiencies are overcome, in line with the decision of non-reviewability. If the complaint application satisfies the conditions of preliminary examination, the institution proceeds to the stage of examination and inquiry (S.a.20).

The subjects of examination and inquiry are defined in the broadest sense. Accordingly, any kind of actions, operations, attitudes and manners of administrations are examined and inquired in terms of their accordance with laws and justice and the principles of good governance, within a justice perception based on human rights (S.a.22/1).

The complaint application is examined and inquired by Chief Auditor, auditor, or assigned experts and assistant experts. Complaint applications with similar properties concerning the same reason and subject may be jointly examined. In case the subject of the complaint concerns human rights, basic rights and freedoms, or women's and children's rights, on-site examination and inquiry may be conducted[382]. For complaints on general subjects involving the public, on-site examination and inquiry may be conducted upon the request of the complainant or the administration of complaint. Relevant administrations and authorities are obliged to provide any type of convenience for this end (S.a.22/2-4).

It is expected from examinations conducted by Ombudsmen to contribute to the solution of problems rapidly and without being subject to detailed rules of procedures. For example, according to the Portuguese Law on Ombudsman, "Investigation includes request of information, inspection, examination, inquiry and other necessary methods. The investigation is conducted rapidly and informally, without conflicting the rights and freedoms of citizens and being subject to rules of procedure concerning collection of evidence"[383].

#### 6.3.1.5.1 Authorization of requesting and examining information and documents

Clear definition of authorization of requesting and examining information and documents by founding laws is important because it prevents uncertainties and delays regarding the procedure. In Turkey, Chief auditor or auditor can request information and documents concerning the subject of examination and inquiry from relevant

[382] Ombudsman Institutions should be authorized to conduct on-site examinations, as well as requesting information and documents from relevant administrations. For example, according to the Albanian Law on People's Advocate, People's Advocate can conduct on-site examinations when he/she decides to make an independent inquiry. In this context, he/she can enter all public institutions for examining all actions and documents concerning the case. People's Advocate can demand explanation from all central and local organs, and take all documents and materials concerning the case. He/she can interrogate anyone involved with the subject of inquiry, or invite anyone to his bureau. He/she can request expert opinion. He can determine the time limit concerning aforementioned demands. See Law on People's Advocate, a.18-19.

[383] Statute of the Portuguese Ombudsman, a.25-26.

administration. The administration immediately sends the requested information and documents by e-mail to the e-mail address of the Institution, and sends the original documents within thirty days from the date of notification of the request. The relevant resort opens an investigation upon the application of Chief auditor or auditor against entities who fail to provide requested information and documents, or provide them with deficiency. The relevant resort informs the Institution about the procedures concerning the investigation and the result of the inquiry (S.a.23/1).

In case of failing to provide the requested information and documents, Ombudsmen can exercise the authority for requesting investigation against those concerned, as well as estimating penal sanctions. For example, according to the Spanish Law on Ombudsman, in case concerned public officer or his/her superior rejects or fails to send the inception report, it may be evaluated as a hostile attitude inhibiting the work of the Ombudsman. In such a case, the Ombudsman may immediately announce the situation to the public, and notifies the Parliament by including the situation within the exclusive or general report[384]. According to the Spanish Ombudsman Law, the Ombudsman notifies the responsible public officer and his/her hierarchical superior of abuse, arbitrariness, discrimination, incorrectness, omission and negligence that become evident as a result of the inquiry, with his/her suggestions, for taking their opinions. In case of insisting on inhibiting the work of Ombudsman or taking a hostile attitude, The Ombudsman notifies the Parliament with an exclusive report or within the general report. If the subjects, that become evident as a result of the inquiry, involves an element of crime, the Ombudsman notifies the Ministry of Justice. The Minister of Justice may impel prosecutors after receiving necessary information. The Ombudsman can file a law suit against all responsible without asserting a written claim in advance[385].

In the Armenian implementation, the officers of organs of the state and local administrations convey the information and documents

[384] The Organic Act regarding Ombudsman, a.18.
[385] The Organic Act regarding Ombudsman, a.23-26.

required for the examination of the complaint within the scope of their authorities to the Defender, without restrictions and free of charge. Officers should send the requested documents within 30 days as long as they do not set a post date. The Defender takes advantage of the right of "urgent acceptation" in relevant public agencies and institutions while performing his/her duty[386].

According to the Ukrainian Law on Ombudsman, competent bodies of the state, local government organs, associations, enterprises, institutions organizations and their officers are obliged to collaborate with the Representative. These institutions are obliged to provide access to all papers and documents, information and disclosures for the Representative within the extent of laws concerning the state, military and civil secrets. Avoiding collaboration with or unlawful interference to the Representative requires liability within the limits of the law[387].

In Turkey, Chief auditor or auditors can assign an expert witness among experts in their fields, in case of situations requiring special or technical knowledge regarding the subject of examination and inquiry (S.a.24/1)

6.3.1.5.2 Examination of confidential documents

One of the subjects of the examination of information and documents requiring special regulation is the "examination of confidential documents". The authorization of inquiry of institutions should not be inhibited completely in terms of confidential and private documents. Countries follow procedures suitable to their conditions from implementation.

There is a clear regulation in the Spanish Law on Ombudsman. According to this, the Ombudsman can request all documents which he/she considers necessary, including confidential documents, from public officers. In case of rejection of providing confidential documents, the Cabinet resolves the case and informs the Ombudsman by a

[386] Law of RA on the Human Rights Defender, a.12.
[387] Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No.776/97, 23 December 1997, a.22.
Law on the Human Rights Ombudsman of Bosnia and Herzegovina, a. 28.

document. Inquiries are conducted in strict confidence in terms of the information on individuals and public officers. Necessary precautions are taken for protecting confidential information. The Ombudsman makes statements in his/her report, considering these factors. If the Ombudsman fails to receive a document for confidentiality reasons, he/she notifies the Commission responsible for the activities of the Ombudsman within the Parliament of the situation[388].

According to the Bosnia-Herzegovinian Law on Ombudsman, the Ombudsman can request all documents which he/she considers necessary, including private and confidential documents, from relevant officers for conducting the inquiry. In this case, the Ombudsman displays the necessary sensitivity for the documents and does not announce them to the public. He/she takes special protective measures concerning the documents accepted as private or confidential. If the Ombudsman considers a document, which is accepted as private or confidential and not provided by the relevant governmental institution, of the upmost important, he/she proposes relevant suggestions to the Head of Bosnia-Herzegovina[389].

According to the Ukrainian Law on Ombudsman, the Ombudsman is authorized to read all documents of organs of the state, local administration organs, enterprises, institutions, and organizations, including confidential documents, and all documents of investigative organs, including cases which are submitted to the jurisdiction. Information on civil, military and state secrets are accessed within the frame of special provisions concerning the subject. It is stated under the heading of "Duties of the Representative" that, "The Representative is obliged to comply with the Constitution and laws, and duly perform his duty. He/she has the duty to keep the confidential information which he/she obtains within the scope of duty, even if his/her term of duty expires. In case of releasing this information, he becomes liable for this

[388] The Organic Act regarding Ombudsman, a.22.
[389] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, a. 28.

action. The Representative cannot release personal information stated in the application petitions without the consent of the person[390].

In Turkey, information and documents considered as secret of the state or commercial secret may not be provided by means of the reasons clearly explained by the supreme office or board of competent authorities. However, information and documents regarded as secret of the state can be examined on-site by the Chief auditor or an auditor assigned by the Chief auditor. Information and documents regarded as secret of the state cannot be released or included in the decision (S.a.23/2).

6.3.1.5.3 Hearing Witnesses and Relevant Persons

One of the authorities that national institutions should possess for the examination and inquiry of violations of rights is the authority of summoning relevant persons with an invitation and hearing them. This authorization should include requesting individuals to appear in the designated place and date, summoning for sworn statements, and certain sanctions in case of avoiding from giving statements. It is essential that the expenditures of individuals are covered by institutions in case they are summoned by institutions for hearing. Furthermore, the confidentiality of obtained information and security of individuals are important issues.

In Turkey, Chief auditor or auditors can render decisions to hear witnesses or relevant persons, concerning the subject of examination and inquiry. Witnesses and relevant persons are heard by the Chief auditor, auditors or experts. Witnesses and relevant persons can be heard via visual and audible communication techniques. Hearing witnesses and relevant persons is conducted at the place, on the date and by the method defined by the Chief auditor or auditor, according to the nature of the complaint application. The witness is made to take an oath as follows; “I swear on my honour and I swear on my life that I will tell the truth about what I know”. The statements of the witness or relevant person are recorded in the minutes, and the minutes is signed by the owner and

[390] Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No.776/97, 23 December 1997, a.13/5-14.

receiver of the statement. The witness or relevant person receives payment pursuant to the provisions of Travel Expense Law no. 6245 dated 2/10/1954 (S.a.25).

The Public Auditorship Institution concludes the examination and inquiry in six months the latest. In case the examination and inquiry is not concluded within the aforementioned period, the examination and inquiry continue by notifying the complainant of the reason of non-conclusion and the fact that the term of litigation has begun (S.a.36).

The Institution notifies the relevant resort and the complainant of its decisions. Advisory decisions concerning private judicial legal entities conducting public services may be submitted to the ministry or public agency and institution liable for auditing and supervision (S.a.37).

6.3.1.5.4 Decisions of requesting temporary measures

As decisions of requesting temporary measures mostly emerge from the urgency of the situation, all information and documents concerning the urgency of the matter should be provided for institutions in relevant applications. When based on international implementations, “urgency”, “imminent and clear irreparable damages” and “existence of prima facie factors manifesting the contradiction to human rights” should be taken into consideration for rendering a decision of taking temporary measures.

Hence, the aforementioned authority is clearly regulated by the laws of many national human rights institutions. According to the Bosnia-Herzegovinian Law on Ombudsman, the Ombudsman may recommend the authorized organ of the government to suspend the implementation of relevant measures until the end of a 10-day period, if he/she believes that the implementation of the decision of the administration will result in the emergence of irreparable damages, during the investigation. The relevant office may reject the recommendation by written document defining the reason of rejection within three days after receiving the recommendation. If the actions and procedures which are the subject of the decision are not yet promulgated,

it is considered obligatory to follow the Ombudsman's recommendation[391].

#### *6.3.1.6 Types of Decisions to Be Taken in Consequence of Examination and Inquiry*

Ombudsmen cannot cancel, amend or abolish administrative decisions and procedures causing violation in consequence of investigations. He/she can only make suggestions to the relevant offices.

For example, according to the Portuguese Law on Ombudsman, the Ombudsman is not authorized to cancel, amend or abolish the decisions of public administrations. His/her interventions does not suspend the durations concerning any administrative or judicial application. In the Portuguese implementation, the method to follow against the suggestions and recommendations of the institution is clearly regulated under the heading of "Recommendations". According to this, the recommendations of the Ombudsman are presented to the organ possessing the authority of remedying the unlawful action or situation. The organ receiving the recommendations notifies the Ombudsman of its opinions on the subject within 60 days from the date of decision. In case of disagreement with the recommendation, the reply should be in due form with justification. When the recommendations are not followed or requested aid is not provided, the Ombudsman notifies the higher authorized office of the matter. If the executive organ of a local council does not follow the Ombudsman's recommendations, he/she notifies its liable assembly. If an administration objects the recommendations of the Ombudsman or rejects the requested collaboration, the Ombudsman notifies the Parliament of the matter. The relevant organ and public officers are notified of the decisions of the Ombudsman, and the complainant is also notified in case the decision originates from a complaint[392].

The actions of relevant institutions against suggestions and recommendations are also clearly regulated in the Spanish implementation. In this context, the Ombudsman can make suggestions

[391] Law on the Human Rights Ombudsman of Bosnia and Herzegovina, a.23-24.
[392] Statute of the Portuguese Ombudsman, a.38.

or recommendations to public officers and authorities, remind them of their legal duties, and give them advices for taking new precautions during investigations. For all these cases, aforementioned offices and officers are obliged to reply the Ombudsman by written document within one month the latest. If the relevant public offices do not take the necessary actions and notify the Ombudsman by written document after a reasonable time from the date of recommendation, the Ombudsman notifies the Minister liable for the unit, the highest authorized office of the unit, of the matter. If the necessary steps are not taken therein, the Ombudsman prepares an exclusive report, stating the names of the liable persons, or gives wide coverage to the matter within the general report[393] .

In case the violation emerges from a legal regulation, the institutions make suggestions to the offices authorized to amend the law. According to the Albanian Law on People's Advocate, suggestions are made to the offices authorized to propose laws for amending or abolishing the relevant law, if the violation emerges from laws. In case the administrative offices do not take notice of the suggestions concerning subsidiary procedures for amending and developing them within 30 days, it is estimated that the administrative operations violating basic rights and freedoms should be suspended. In case of not amending the law, the right to file an annulment action to the Constitutional Court against laws is granted, as analyzed below[394].

In the Portuguese Law on Ombudsman, it is stated under the heading of "referring to other offices" that "The Ombudsman refers the complaint to the authorized offices in case he/she considers a judicial or administrative resolution, which is especially formed by law and enjoyed by the complainant, as necessary". Irrespective of this provision, the Ombudsman can inform the complainant about applicable judicial resolutions any time[395].

[393] The Organic Act regarding Ombudsman, a.28-30.
[394] Law on People's Advocate, a.24.
[395] Statute of the Portuguese Ombudsman, a.32.

The rights of litigation or intervening lawsuits concerning subjects of the violation of human rights are granted to Ombudsmen. According to the Ukrainian Law on Ombudsman, the Representative can attend to all judicial trials, including closed sessions. The Representative can litigate for protecting the rights of entities who are unable to litigate for protecting their rights due to health issues or other reasonable causes, or participate in trials in person or through a person he/she assigns, pursuant to the situations and procedures estimated by the law[396].

Several national human rights institutions are granted the right of litigating to Constitutional Courts against legal regulations constituting a basis for the violation of human rights. In the 134th article of the Albanian Constitution, "People's Advocate" is listed among the ones possessing the right of litigating to Constitutional Courts. In the second subclause of the article, it is stated that he/she can only apply for matters of his/her interests. In the Constitutional Court decision no. 49 dated 07.31.2000 and the 134/2nd subclause of People's Advocate, it is stated that People's Advocate can litigate to the Constitutional Court in case of violations of rights ascertained by his/her inquiries or violation of Constitutional regulations concerning People's Advocate. Thus, the right of individual communication to the Constitutional Court is bestowed, in case of both the violation of rights and freedoms of individuals by public administrations, and violation of the rights of People's Advocate[397]. According to the Portuguese Law on Ombudsman, the Ombudsman may request the declaration of the unconstitutionality or repugnance of any legal regulation, or identification of the unconstitutionality resulting from negligence of legislation[398].

---

[396] Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No.776/97, 23 December 1997, a. 13/9-10.

[397] Other entities possessing the right of litigating to Constitutional Courts are listed as follows in the Constitution: "President of the Republic, Prime Minister, at least one fives of the members of the Parliament, the Chairman of High State Control, every court for the second paragraph of the 145th article of the Constitution, People's Advocate, local governmental organs, organs of regional unions, political parties and other unions and individuals". See Albanian Constitution, a. 134/1.

[398] Statute of the Portuguese Ombudsman, a.20/3-4.

In Ukraine, two types of rights of litigating to the Constitutional Court are granted to the Representative. The first one is for the annulment of regulations contrary to human rights, and the second one is for the interpretation of the provisions of the Constitution and laws. According to this, the right of litigating to the Constitutional Court is granted for contradicting provisions concerning human rights among the Constitution, enactments of the Parliament, operations of the Head of the State, regulations by the Ukrainian Cabinet, and operations on the assemblies of Autonomous Republics, and for official interpretation of the Ukrainian Constitution and Laws[399].

Public Auditorship Institution of Turkey renders judgments of advisory decisions, rejection decisions, or decisions of non-prosecution in consequence of examination and inquiry concerning complaint applications (S.a.31). In case of reaching the conclusion that the complaint is not rightful in consequence of examination and inquiry, rejection decisions are made (S.a.33). In case the complaint application is rejected by the Institution, the suspended time of litigation is resumed beginning from the date of notification of the justified rejection decision to the relevant person (S.a.38/1).

In case of reaching the conclusion that the complaint is rightful in consequence of examination and inquiry, “advisory decisions” are made. Advisory decision may include; acceptance of wrongful behaviour, compensation for damages, taking actions and proceedings, amendment of regulations, retraction, annulment, amendment or correction of actions, correction of implementation, reconciliation, taking measures or other advisory decisions. In case the relevant resort does not consider the established action, taken measure or advised resolution as applicable in line with the recommendation, it notifies the Institution of its justification within thirty days (S.a.32). If the relevant resort does not establish any operation or do an act within thirty days upon the recommendation of the Institution, suspended time of litigation is resumed (S.a.38/2).

[399] Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, No.776/97, 23 December 1997, a.13/3.

The Institution renders a decision of "non-prosecution" in case of waive of application by complainant, death of natural entity and expiration of legal entity, fulfillment of the claim of complaint by the relevant administration, litigation for the matter of complaint during examination and inquiry, and termination of examination and inquiry by the Institution (S.a.34). If the Institution decides on non-prosecution, suspended term of litigation is resumed beginning from the date of notification of the decision to the relevant person (S.a.38/3).

In case of waive of application by complainant, death of natural entity and expiration of legal entity, and fulfillment of the claim of complaint by the relevant administration, examination and inquiry may continue if the subject of complaint involves human rights, basic rights and freedoms, women's rights, children's rights and general subjects involving the public (S.a.30).

If the Institution fails to complete the examination and inquiry within six months from the date of complaint application, the complainant is notified of the situation with its justification. Suspended term of litigation is resumed beginning from the date of notification (S.a.38/4). Chief Auditorship can conduct examination and inquiry on the complaint again, in case of the emergence of information and documents which may influence the result after the decision (S.a.39).

### 6.3.2 Other Duties

Ombudsman institutions have the functions of preparing reports on the activities of administrations, collaboration with national and international unions, informing and promoting, as well as its main duty of auditing administrations in terms of good governance.

1.3.2.1.1 Preparing Reports

Ombudsman institutions can submit "annual reports" concerning their activities, and "exclusive reports" in times and situations considered suitable. General reports are submitted to relevant offices and the public opinion periodically, concerning annual activities of the institutions. Exclusive reports can be in the form of "audit reports", which are prepared in consequence of examinations and inquiries conducted by

institutions peculiar to a certain subject, or "shadow reports", which are prepared in parallel with obligatory state reports within the scope of contracts of which states are parties.

When we look at the comparative law, it can be seen that the date of submittal of annual reports are mostly the first quarter of the following year. For example, it is indicated to be "the first quarter of the year" in Ukraine and Armenia, and April in Albania[400]. Exclusive reports can be prepared upon the institution's own request or requests of relevant ministers, members of the Parliament and the Speaker of the Parliament "anytime". For example, according to the 27th article of the Albanian Law on People's Advocate, under the heading of "Reports exclusive to the Parliament", "People's Advocate can submit reports to the Assembly by his/her own will or upon the written request of the Speaker of the Parliament or a group of members of the Parliament, in addition to general reports"[401]. We can observe an example of urgent and significant situations in the Armenian Law on Ombudsman. It is stated in the Law that "The Defender can submit exclusive reports in case the violation of human rights is clear or collective and causes wide social reaction"[402].

An important subject concerning reports is the elements included in the context of reports. For annual reports, it is underlined that all activities conducted for a year and matters concerning the expenditures of the institution are particularly required to be included in the reports. The subject of expenditures is considered important especially for accountability. The subjects of negotiation of suggestions, opinions and recommendations included in the reports by the Parliament and relevant offices, and announcing them to the public afterwards, are also accentuated. For example, according to the Albanian Law on Ombudsman, under the heading of "Report to the Assembly", "People's Advocate submits an annual report to the Assembly for negotiating in the

[400] Law on the People Advocate, a.26.
[401] Law on the People Advocate, a.27.
[402] Law of RA on the Human Rights Defender, a. 17.

general assembly. Copies of the report are sent to the President of the Republic and Prime Minister"[403].

Generally, it is estimated that the reports of Ombudsman institutions are published in the official publication of the Parliament. For example, according to the Portuguese Law on Ombudsman, it is stated that "The Ombudsman annually submits a report concerning performed activities, received complaints and obtained results to the Parliament and the report is published in the official magazine of the Parliament. In case the Ombudsman considers necessary or is requested, he/she can participate in the studies of Parliamentary Commissions for subjects involving his/her own authority"[404]. According to the Ukrainian Law on Ombudsman, "The Parliament makes a decision about the annual and exclusive reports submitted by the Representative. As soon as the Parliament makes decision, the reports are published in the official publication of the Parliament"[405].

It is an important matter for declaring the reports to the public that private and confidential information of individuals should not be released. For example, in Spain with the heading of "Declarations and Communications", "The Ombudsman informs relevant parties of exercised activities, results of investigations, and replies of administrations. However, private and confidential information are not included to these informing"[406].

Public Auditorship Institution of Turkey prepares an annual report covering conducted activities and recommendations of each calendar year. The report is submitted to the Commission until the last day of January of the following year. The Commission negotiates the report within two months excluding cessation and recession periods, summarizes it including their comments and opinions, and sends the final report to the Speakership of the Grand National Assembly of Turkey for being presented to the General Assembly. The General Assembly

[403] Law on the People Advocate, a.26.
[404] Statute of the Portuguese Ombudsman, a. 23.
[405] The Authorized Human Rights Representative of the Verkhovna Rada of Ukraine,a.18.
[406] The Organic Act regarding Ombudsman, a.31.

urgently negotiates the Commission's report. Annual report of the institution is also released to the public by means of being published in the official gazette. The institution can prepare exclusive reports on subjects considered necessary without waiting for the annual report. The institution can announce subjects to the public anytime without waiting for the annual report, if it considers the subjects to be beneficial when announced (S.a.48).

As is seen, the Public Auditorship Institution is authorized for all matters concerning the reports.

#### *6.3.2.1 International Collaboration*

In the international system, one of the human rights obligations of a state is "collaboration with human rights mechanisms". This collaboration includes sending reports required to be prepared for contracts to which the state is a party, taking the recommendations and observations of organs of contract or authorities of non-contractual control mechanisms into consideration, facilitating the entrance of the authorities to the country, and providing any kind of convenience during their visits, in the first place. Furthermore, providing the necessary financial backings for supporting the operations of international human rights mechanisms[407].

Ombudsman institutions are regarded as a "bridge" of human rights between civil society and government, and government and international organizations. Hence, the institutions should be explicitly granted the authority of collaborating with non-governmental organizations, other national institutions and international organizations. Thus, the Public Auditorship Institution of Turkey can become a member of international organizations, concerning its scope of duty. The Institution participates in collaborative operations with these organizations, facilitates the coordination, and conducts joint projects in collaboration with international organizations and their representatives when necessary (S.a.50).

[407] Eren, op. cit., p. 359.

The essential roles of ombudsman institutions in the collaboration with international organizations are "providing independent information" and "following suggestions" about countries. For enabling international collaboration, particularly ombudsmen institutions are requested to play an active role for providing "contribution to preparing state reports" obliged to be submitted for contracts, preparing "independent reports" on the contractual obligations of states, "participating in the meetings" of international control mechanisms, and "monitoring the implementation" of the decisions made by these organs. It cannot be stated that the relevant authorizations of the Public Auditorship Institution of Turkey are strongly existent in the founding law. One reason for this is that the Human Rights Institution of Turkey is authorized particularly for this subject.

For example, according to the 29th article of the Albanian Law on People's Advocate, it is stated that "People's Advocate can aid, provide insight and make suggestions for writing documents and report drafts prepared by the State of Albania on human rights and freedoms in the Republic of Albania"[408]. With a similar regulation in the Ukrainian Law on People's Representative, it is indicated that "The Representative contributes to the preparation of reports which Ukraine is obliged to prepare within the frame of international contracts"[409].

#### *6.3.2.2 Informing and Promoting*

Promotion of Ombudsman institutions is important for accessibility and efficiency of the institutions. The institutions should be granted the authorization to "address the public directly or via press for announcing opinions and recommendations" for their promotion. The Chief auditor or the auditor assigned by the Chief auditor is authorized to make statements about the activities of the Public Auditorship Institution (S.a.49). Decisions and reports of the institution may be published on the official website or other means, provided that there are no legal barriers and personal data are protected (S.a.52).

[408] Law on the People Advocate, a.29.
[409] On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine, a.19.

In order to make their existence known society, Ombudsmaninstitutions needs to attract attention by intervening in incidents concerning human rights, to which the society is sensitive, timely and when needed. It is an important matter for the promotion of the institution to make the society feel that it has significant functions concerning human rights. Reliability of national institutions increases as the society observes their efficiency on matters of human rights, and the institutions gain prestige in the public eye.

The personnel assigned to complaint application bureaus of the Public Auditorship Institution are obliged to inform natural and legal entities for exercising their rights within the limits of the Law. Informing may be done by telephone. The Institution can perform any kind of promotion activities concerning application procedures and principles. The promotion may be in various languages (S.a.51).

# APPENDIXES:

## Appendix 1: The Main Ombudsman Institutes of the Countries by Establishment Date

| Country | Name Of Institution | Establishment Year |
|---|---|---|
| Finland (Parl) | Eduskunnan oikeusasiamies – Parliamentary Ombudsman | 1920 |
| Former Yugoslavian Republic of Macedonia | Naroden Pravobranitel – Ombudsman | 1997 |
| Israel | Mevaker HaMedina – Netziv Tlunot HaTzibur – State Comptroller and Ombudsman | 1971 |
| Latvia | Tiesībsargs – Legal Protection | 1995 |
| Albania | People's Advocate | 2000 |
| Andorra | Institució del Raonador del Ciutadà – Citizen's Advocate | 1997 |
| Armenia | Human Rights Defender of the Republic of Armenia | 2004 |
| Austria | Volksanwaltschaft – Austrian Ombudsman Board | 1977 |
| Azerbaijan | AzΩrbaycan Respublikasının İnsan Hüquqları üzrΩ MüvΩkkili – Commissioner for Human Rights | 2002 |
| Belgium | College van de federale ombudsmannen – Collège des médiateurs fédéraux – College of the Federal Ombudsmen | 1995 |
| Bosnia and Herzegovina (HR) | Ombudsman za ljudska prava Bosne i Hercegovine – Human Rights Ombudsman of Bosnia and Herzegovina | 1996 |
| Bulgaria | Ϝhɛʅɜłhɚɧ ɧɚ Ɋɟɪʅɛɥɢɤɚ Ɛ̃ɴɥɜɚɪɢɹ – Ombudsman of the Republic of Bulgaria | 2005 |
| Croatia | Pučki pravobranitelj – Ombudsman | 1994 |
| Cyprus | Office of the Commissioner for Administration (Ombudsman) | 1991 |
| Czech Republic | Veřejný ochránce práv – Public Defender of Rights | 2000 |

| | | |
|---|---|---|
| Denmark | Folketingets Ombudsmand – Parliamentary Commissioner for Civil and Military Administration in Denmark | 1955 |
| Estonia | Õiguskantsler – Chancellor of Justice | 1999 |
| European Union (EU) | Europäischer Bürgerbeauftrager – European Ombudsman | 1993 |
| France | Médiateur de la République – Mediator of the Republic | 1973 |
| Georgia | Sakhalkho damtsvelis aparati – Public Defender of Georgia | 1998 |
| Germany (Pet) | Petitionsausschuss des Bundestages – Petitions Committee | 1949 |
| Greece | Greek Ombudsman | 1995 |
| Hungary | Állampolgári Jogok Országgülési Biztosa' – Parliamentary Commissioner for Civil Rights | 1995 |
| Iceland – ..... 1988 | Umboðsmaður Alþingis – Office of the Ombudsman | 1988 |
| Ireland | Oifig an Ombudsmain – Office of the Ombudsman | 1984 |
| Kazakhstan | Commissioner for Human Rights of the Republic of Kasachstan | 2002 |
| Kyrgyzstan | Ombudsman (Akyakatchy) | 2002 |
| Latvia | Latvian National Human Rights Office and essentially modified in 2007 | 2007 |
| Liechtenstein | Beratungs- and Beschwerdestelle – Office of Advice and Complaints | 1976 |
| Lithuania | Seimo kontrolierių įstatymą, – Seimas Ombuds- men's office of the Republic of Lithuana | 1995 |
| Luxembourg | Médiateur du Grand-Duché de Luxembourg – Ombudsman | 2004 |
| Malta | Office of the Ombudsman | 1995 |
| Moldova | Avocatii parlamentari – Centrul Pentru Drepturile Omului Din Republic of Moldova – Centre for Human Rights of Moldova – Parliamentary Advocates | 1998 |
| Montenegro | Zaštitnik ljudskih prava i sloboda u Republici Crnoj Gori – Protector of Human Rights and Freedoms | 2003 |

| | | |
|---|---|---|
| Netherlands (Nat) | Nationale ombudsman – National Ombudsman | 1982 |
| Norway | Sivilombudsmannen – Parliamentary Ombudsman for Public Administration | 1963 |
| Poland | Commissioner for Civil Rights Protection | 1987 |
| Portugal | Ombudsman | 1976 |
| Romania | Advocatul Poporului – People's Advocate | 1997 |
| Russian Federation | Commissioner for Human Rights in the Russian Federation | 1998 |
| Serbia | Protector of Citizens (Civic Defender) | 2007 |
| Slovakia | Public Defender of Rights | 2002 |
| Slovenia | Varuh človekovih pravic – Human Rights Ombudsman of the Republic of Slovenia | 1995 |
| Spain (Nat) | Ombudsman | 1981 |
| Sweden | Parliamentary Ombudsmen | 1809 |
| Turkey (Parl) | Kamu Denetçiliği Kurumu-Public Audit Institution | 2012 |
| Ukraine | Ukrainian Parliament Commissioner for Human Rights | 1997 |
| United Kingdom (Parl) | Parliamentary and Health Service Ombudsman | 1967 |
| Uzbekistan | Oliy Majlisi Vakil – Authorized Person of the Oliy Majlis for Human Rights | 1995 |

**Source:** Gabriele Kucsko-Stadlmayer, **"The Legal Structures of Ombudsman-Institutions in Europe-Legal Comparative Analysis"**, European Ombudsman-Institutions, Ed. Gabriele Kucsko-Stadlmayer, 2008, pp.449-454.

**Appendix 2: Institutions with Special Mandates**

| Countrıes | Name of The Instıtutıon | Establıshment Year |
|---|---|---|
| Belgium (Pen) | Service de Médiation Pensions – Ombudsservice for Pension Matters | 1999 |
| France (Child) | Défenseur des enfants – Defender of the Children | 2000 |
| Germany (Mil) | Der Wehrbeauftragte des Deutschen Bundestages – Parliamentary Commissioner for the Armed Forces | 1959 |
| Hungary (Dat) | Adatvédelmi Biztos – Parliamentary Com- missioner for Data Protection and Freedom of Information | 1995 |
| Hungary (Min) | Nemzeti és Etnikai Kisebbségi Jogok Biztosa – Parliamentary Commissioner for the National and Ethnic Minorities Rights | 1995 |
| Ireland (Child) | Ombudsman for Children | 2002 |
| Lithuania (Child) | Vaiko teisių apsaugos kontrolieriaus įstaiga – Controller for the Protection of the Rights of the Child | 2000 |
| Lithuania (Equal) | Lygių galimybių kontrolieriaus tarnyba – Equal Opportunities Ombudsperson | 1999 |
| Norway (Mil) | Stortingets Ombudsmann for Forsvaret/for Sivile Vernepliktigte – Parliamentary Ombudsman for the Armed Forces | 1952 |
| Poland (Child) | Rzecznik Praw Dziecka – Commissioner for the Rights of the Child | 2000 |

**Source:** Gabriele Kucsko-Stadlmayer, **"The Legal Structures of Ombudsman-Institutions in Europe – Legal Comparative Analysis"**, European Ombudsman-Institutions (Ed. Gabriele Kucsko-Stadlmayer), 2008, p.449-454.

## Appendix 3:Reional Ombudsman Offices in Europe Zone

| Country | Region | The City of Office | Web Site Address |
|---|---|---|---|
| Belgium | Flanders | Brussel | http://www.vlaamseombudsdienst.be |
| | Wallonia | Namur | http://mediateur.wallonie.be |
| | French Community | Bruxelles | http://www.mediateurcf.be |
| | German-speaking Community | Eupen | http://dg-ombudsmann.be |
| Germany | Baden-Württemberg | Stuttgart | http://www.landtag-bw.de |
| | Bavaria | München | http://www.bayern.landtag.de |
| | Berlin | Berlin-Mitte | http://www.parlament-berlin.de |
| | Brandenburg | Potsdam | http://www.landtag.brandenburg.de |
| | Bremen | Bremen | http://www.bremische-buergerschaft.de |
| | Hamburg | Hamburg | http://www.hamburg.de/buergerschaft |
| | Hesse | Wiesbaden | http://www.landtag.hessen.de |
| | Mecklenburg-Vorpommern | Schwerin | http://www.landtag-mv.de |
| | Mecklenburg-Vorpommern | Schwerin | http://www.buergerbeauftragter-mv.de |
| | Lower Saxony | Hannover | http://www.landtag-niedersachsen.de |
| | North Rhine-Westphalia | Düsseldorf | http://www.landtag.nrw.de |
| | Rhineland-Palatinate | Mainz | http://www.landtag.rlp.de |

| | | | |
|---|---|---|---|
| | Rhineland-Palatinate | Mainz | http://www.derbuergerbeauftragte.rlp.de |
| | Saarland | Saarbrücken | http://www.landtag-saar.de |
| | Saxony | Dresden | http://www.landtag.sachsen.de |
| | Saxony-Anhalt | Magdeburg | http://www.landtag.sachsen-anhalt.de |
| | Schleswig-Holstein | Kiel | http://www.sh-landtag.de |
| | Thuringia | Erfurt | http://www.thueringer-landtag.de, http://www.bueb.thueringen.de |
| **Spain** | Andalucía | Sevilla | http://www.defensor-and.es |
| | Aragón | Zaragoza | http://www.eljusticiadearagon.com |
| | Asturias | Oviedo | http://www.procuradorageneral.es |
| | Canary Islands | Santa Cruz de La Palma | http://www.diputadodelcomun.com |
| | Castilla y León | León | http://www.procuradordelcomun.org |
| | Catalonia | Barcelona | http://www.sindic.cat |
| | Galicia | Santiago de Compostela | http://www.valedordopobo.com |
| | La Rioja | Logroño | http://www.defensoradelarioja.com |
| | Murcia | Murciarm.es | http://www.defensor- |
| | Navarra | Pamplona | http://defensornavarra.com |
| | Basque Country | Vitoria-Gasteiz | http://www.ararteko.net |
| | Valencia | Alicante | http://www.elsindic.com |
| **Italy** | Abruzzo | l'Aquila | http://www.difensorecivicoabruzzo.it |
| | Basilicata | Potenza | http://www.consiglio.basilicata.it/difensore_civico/dif_civico.asp |

| | | | |
|---|---|---|---|
| | Bolzano | Bolzano | http://www.difesacivica-bz.org |
| | Campania | Napoli | http://www.consiglio.regione.campania.it/crc/servlet/DifensoreCivico.jsp |
| | Emilia-Romagna | Bologna | http://www.regione.emilia-romagna.it |
| | Lazio | Roma | http://www.consiglio.regione.lazio.it/consiglioweb/argomento.php?vms=111&vmf=20 |
| | Liguria | Genova | http://www.regione.liguria.it/argomenti/consiglio/difensore-civico.html |
| | Lombardy | Milano | http://www.difensorecivico.lombardia.it |
| | Marches | Ancona | http://www.consiglio.marche.it/difensore_civico |
| | Piedmont | Torino | http://www.consiglioregionale.piemonte.it/organismi/dif_civico/index.htm |
| | Sardinia | Cagliari | http://consiglio.regione.sardegna.it/difciv00.asp |
| | Tuscany | Firenze | http://www.difensorecivicotoscana.it |
| | Trento | Trento | http://www.consiglio.provincia.tn.it/consiglio/difensore_civico.it.asp |
| | Aosta Valley | Aosta | http://www.consiglio.regione.vda.it/difensore_civico/default_i.asp |
| | Veneto | Mestre | Venezia, http://www.difensorecivico.veneto.it |
| **Austria** | Tyrol | Innsbruck | http://www.tirol.gv.at/landesvolksanwalt |
| | * For the seven other federal states of Austria, the National Ombudsman Board functions as the regional ombudsman. | | |
| | Vorarlberg | Bregenz | http://www.landesvolksanwalt.at |

| | | | |
|---|---|---|---|
| **United Kingdom** | England | London | http://www.lgo.org.uk |
| | Scotland | Edinburgh | http://www.spso.org.uk |
| | Wales | Pencoed | http://www.ombudsman-wales.org.uk |
| | Gibraltar | Gibraltar | http://www.ombudsman.org.gi |
| **Switzerland** | Basel-Country | Liestal | http://www.baselland.ch/Ombudsman.273535.0.html |
| | Basel-City | Basel | http://www.ombudsstelle.bs.ch |
| | Vaud | Lausanne | http://www.vd.ch/mediationadministrative |
| | Zug | Zug | http://www.ombudsstelle-zug.ch |
| | Zürich | Zürich | http://www.ombudsmann.zh.ch |

**Source:** Adapted using the data from http://www.ombudsman.europa.eu/en/home.faces, 28.07.2013.

# Appendix 4: Complaint Form of European Ombudsman

The European Ombudsman

## COMPLAINT ABOUT MALADMINISTRATION

Please read the section entitled 'How to complain' before filling out this complaint form.
Please continue on a separate sheet if necessary and enclose all the documents necessary to support your complaint.

1

First name: .....

Surname: .....

On behalf of (if applicable): .....

Address line 1: .....

Address line 2: .....

Town/City: .....

County/State/Province: .....

Postcode: .....

Country: .....

Tel.: .....

Fax: .....

E-mail: .....

2

Against which European Union (EU) institution or body do you wish to complain?

- European Parliament
- Council of the European Union
- European Commission
- Court of Justice of the European Communities (*)
- European Court of Auditors
- European Economic and Social Committee
- Committee of the Regions of the European Union
- European Investment Bank
- European Central Bank
- European Personnel Selection Office (EPSO)
- European Anti-Fraud Office (OLAF)
- European Police Office (Europol)
- Other Union body (please specify)

(*) Except in its judicial role.

3

What is the decision or matter about which you complain? When did you become aware of it?

4

What do you consider that the EU institution or body has done wrong?

5 What, in your view, should the institution or body do to put things right?

6 Have you already contacted the EU institution or body concerned in order to obtain redress?

- Yes (please specify)
- No

7 If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

- Yes (please specify)
- No

8 Has the object of your complaint already been settled by a court or is it pending before a court?

- Yes (please specify)
- No

9 Please select **one** of the following two options **after having read the information in the box below**:

- Please treat my complaint publicly
- I require that my complaint be treated confidentially

10 Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

- Yes
- No

Date and signature:

Complaints to the European Ombudsman (and any annexed documents) are normally dealt with publicly.

'Dealing publicly' with a complaint means that any member of the public may have access to the complaint and its annexes. If the Ombudsman opens an inquiry, the opinion of the institution or body concerned on the complaint, any observations on the opinion made by the complainant, as well as other documents mentioned in Article 14 of the Implementing Provisions (available on the Ombudsman's website) are public documents to which any member of the public may have access on request. The Ombudsman's decisions on complaints are published on his website with the complainant's name removed. Some are also published in full, or in summary form, in hard copy and electronic formats. These publications do not include the complainant's name or address.

A complainant has the right to request that his or her complaint be dealt with confidentially. If confidentiality is requested, there is no public access to the complaint or to the other documents mentioned above. However, even a confidential complaint must be sent to the Union institution or body concerned, if the Ombudsman begins an inquiry. The Ombudsman's decisions on confidential complaints are published on his website, after the removal of any information which could lead to the identification of the complainant. This information is also removed if the decision is published in full, or in summary form, in a hard copy or electronic format.

Complaints to the Ombudsman may contain personal data relating to the complainant, or to a third party. The processing of personal data by the European Ombudsman is governed by Regulation (EC) No 45/2001 [1]. Unless the complainant requests confidentiality, he or she is understood to consent for the purposes of Article 5 (d) of Regulation (EC) No 45/2001 to the Ombudsman dealing publicly with any personal data which the complaint may contain.

[1] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

The European Ombudsman — 1 Avenue du Président Robert Schuman — B.P. 403 — FR- 67001 Strasbourg Cedex — France

## REFERENCES


AIi Fuat GOKÇE, **"Publıc Auditing (Ombudsman) At Contemporary Public Administration And Military Ombudsman Suggestion For Turkey",** The Joumal of Faculty of Economics and Administrative Sciences, Y.2012, Vol.17, No.2, pp.203-227.

Ann ABRAHAM, **"Making Sense Of The Muddle: The Ombudsman And Administrative Justice, 2002–2011"**, Journal of Social Welfare and Family Law, Vol:34, No:1, March 2012, pp.91-103.

Benjamin M. SAPER, **"The International Einance Corporation's Compliance Advisor/Ombudsman (CAO): An Examination Of Accountability And Eeeectiveness From A Global Administrative Law Perspective**", Journal of International Law And Politics, Vol. 44, pp.1279-1328.

Carl A. Auerbach, **"When Americans Complain, by Walter Gellhorn; Ombudsman and Others: Citizen's Protectors in Nine Countries, by Walter Gellhorn,",** Indiana Law Journal, Volume 43, Issue.2, 1968, pp.498-516.

Charles L. Howard, **Organizational Ombudsman:Origins, Roles and Operations-A Leading Guide**, American Bar Assosiation, Chicago, 2010.

Edita ZIOBIENE, **"Reform of The Ombudsman Institutiin In Lıthuania"**, Jurisprudence, Mykolas Romeris University, Faculty of Law, Department of Constitutional Law, 15 March, 2010, pp.29-42.

Eurepoen Union, **Problems With the EU? Who Can Help You?**, Luxemburg, 2011.

European Commission, **What can the European Ombudsman do for you?**, Belgium, 2008.

European Union, **Public Service Principles for the EU Civil Service**, Strasbourg, 2012.

European Union, **The European Code of Good Administrative Behaviour**, Luxemburg, 2013.

European Union, **The European Ombudsman's Guide to Complaints**, Germany, 2011.

Gabriele KUCSKO-STADLMAYER (Ed.), **" European Ombudsman-Institutions: The Legal Structures of Ombudsman-Institutions in Europe-Legal Comparative Analysis**, SpringerWienNewyork Publishing, Wien, 2008.

Gabriele KUCSKO-STADLMAYER (Ed.), "**The Legal Structures of Ombudsman-Institutions in Europe – Legal Comparative Analysis",** European Ombudsman-Institutions, 2008, p.6.

Haydar EFE, **"Avrupa Ombudsmanı'nın AB İçinde İyi Yönetim, Hukukun Üstünlüğü ve İnsan Haklarını Koruyucu Rolü"**, Avrupa Çalışmaları Dergisi, Volume:19, No:2, 2011, pp.1-29.

Howard GADLIN, **"Assessing Effectiveness in Ombudsman Programs",** Journal of the International Ombudsman Association, Volume 3, Number 1, 2010, pp.24-27.

I. Popescu-Slăniceanu, C. I. Enescu, **"A Comparatıve Analysıs Of The Romanıan And The European Ombudsmen"**, AGORA International Journal of Juridical Sciences, No. 1, 2013, pp.157-162.

Ivan MIFSUD and Cécile PLAİDY, "**The Roles of Admınıstratıve Courts and Ombudsmen In France and Malta: A Revıew of Two Contrastıng Systems"**, **"**, The Internatıonal Ombudsman Yearbook (Ed. Linda C. REIF), Volume:8, 2004, p.38.

John MCMİLLAN, **"The Ombudsman And The Rule Of Law"**, The Internatıonal Ombudsman Yearbook, Volume:8, 2004, p.8.

Jorge L. Maiorano, **"Ombudsman in Argentina**", Drepturile Omului Journal, No. 2, 1992, p. 23.

Linda C. REIF, **"Transplantation And Adaptation: The Evolution Of The Human Rights Ombudsman"**, Boston College Third World Law Journal, Vol.31, 2011, pp.269-310.

Linda C. Reif, **TheOmbudsman Good Governance and International Human Rights System**, Martinus Nijhoff Publshers, Leiden-Nederland, 2004.

Michael Mauerer, **Equity-The Supplementary Function Of The Ombudsman**, Occasional Paper #55, September 1996.

Özer KÖSEOĞLU, "**Avrupa Ombudsmanının Hukuki Statüsü, İşleyişi Ve Kurumsal Etkinliği"**, Sayıştay Dergisi, Sayı:79, Ekim-Aralık 2010, pp.31-62.

Par-Anne Jigenius, **King Karl XII and His High Ombudsman**, 28.05.2008, http://newsombudsmen.org/events/conferences/2008-conference/high-ombudsman, 25.07.2013.

Richard KIRKHAM, **"Implementing The Recommendations Of An Ombudsman ... Again"**, Journal of Social Welfare & Family Law Vol. 33, No. 1, March 2011, pp.71–83.

Ryan SPANHEIMER, **Justification For Creating An Ombudsman Privilege In Today's Society"**, Marquette Law Review, 2012, pp.659-688.

Stella Ladi, **"Policy Change And Soft Europeanization: The Transfer Of The Ombudsman Institution To Greece, Cyprus And Malta"**, Journal of Public Administration, Vol. 89, No. 4, 2011 pp.1643-1663.

Stephen Mackenney and Lars Fallberg**, Protecting Petients' Right: A comperative Study of the Ombudsman in the Health Care**, Radcliffe Medical Pres Ltd., Abingdon-UK, 2004.

Thomas Pegram, **"Weak Institutions, Rights Claims and Pathways to Compliance:The Transformative Role of the Peruvian Human Rights Ombudsman"**, Oxford Development Studies, Vol. 39, No. 2, June 2011, pp.229-251.

Zafar Iqbal and Mervyn K. Lewis, **An Islamic Perspective on Governance**, Edward Elker Publishing Limited, Cheltenham-United Kingdom, 2009.

European Committe, **The European Ombudsman: Origins, Establishment, Evolution**, Office for Official Publications of the European Communities, Luxembourg, 2005.

Official Journal of European Comminities, No C329, 6.12.1993, pp.138-141.

European Union, European Ombudsman Annual Report 2012, Luxemburg, 27 May 2013.

European Union, European Ombudsman Overview 2012, Luxemburg, 27 May 2013.

The International Ombudsman Association, Standards Of Practıce, Rev. 10/9.

The International Ombudsman Association, Code of Ethics, Rev. 1/7.

International Ombudsman Institute, **Wellington Declaration**, Wellington-New Zealand, 13th November 2012.

The National Ombudsman of the Nederlands, **Institution, Task and Procedures of The National Ombudsman of the Nederlands**, Hague-Nederland, , February 2008.

A. Şeref Gözübüyük- Feyyaz Gölcüklü, **Avrupa İnsan Hakları Sözleşmesi ve Uygulaması,** Avrupa İnsan Hakları Mahkemesi İnceleme ve Yargılama Yöntemi, Seçkin, 2013, pp. 578.

Abdurrahman Eren, **Ulusal İnsan Hakları Kurumları**, **Uluslararası Standartlara Uygunluğun Yorum İlkeleri**, Oniki Levha Publications, İstanbul, 2012, pp.517.

**Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Statute**, 30 July 2008.

Austrian Federal Constitution, **Federal Constitutional Law, Ombudsman Board (Chapter VII)**, Original version: Federal Law Gazette No. 1/1930, Date of the version: 1 January 2014.

**Authorized Human Rights Representative of the Verkhovna Rada of Ukraine**, No.776/97, Dated 23 December 1997.

**Constitutional Court**, Decision dated 25 December 2008 and Principle Number 2006/140, Decision Number 2008/185.

**Constitutional Court**, Decision dated 27 October 2006, Principle Number 2006/140, Decision Number 2006/33.

**Constitutional Court**, Decision dated 7 July 2010, Principle number 2010/49, Decision Number 2010/87.

Equality of Human Rights Commission, **Corporate Governance Code of Practice and Conduct for the Chair and Committee**

**Members of the Equality and Human Rights Commission**, Issue 2, 5 May 2009 (Approved by Board), Appendix I, Nolan Committee Standards in Public Life (The Seven Principles of Public Life), Director of Corporate Law and Governance, pp. 164.

Equality of Human Rights Commission, **Corporate Governance Code of Practice and Conduct for the Chair and Committee Members of the Equality and Human Rights Commission**, 5 May 2009 (Approved by Board), Appendix II, Six Principles of Good Governance, Director of Corporate Law and Governance, pp. 164.

EU Harmonization Commission of Grand National Assembly of Turkey, 24th Legislative Session, 2nd Legislative Year, **EU Harmonization Commission Report about Draft Articles on Ombudsman**, Docked No. 1/626, Decree No. 16, 31.05.2012.

EU Harmonization Commission of Grand National Assembly of Turkey,22th Legislative Session, **EU Harmonization Commission Report about Draft Articles on Ombudsman,** Docked No. 1/1158, Decree No.7, 16.02. 2006.

General Assembly, World Conference on Human Rights, **Vienna Declaration and Programme of Action,** A/CONF.157/23, Dated 12 July 1993.

Gonzalo Elizondo and Irene Aguilar, "The Ombudsman Institutions in Latin America: Minimum Standards for its Existence", **National Human Rights Institutions, Articles and Working Papers** (Ed. by Birgit Lindsnaes, Lone Lindholt, Kristine Yigen), The Danish Centre for Human Rights, Denmark 2001, pp. 211-222.

Helene Pauliat, "Karşılaştırmalı Hukukta Bağımsız İdari Otoriteler" (Translated by: Mahmut Göçer), **Bağımsız İdari Otoriteler**, (Ed. by: İ.Kaboğlu), Alkım Publications, İstanbul 1998, pp.6-70.

International Council on Human Rights Policy, **Assessing the Effectiveness of National Human Rights Institutions**, Versoix, Switzerland, 2005.

International Council on Human Rights Policy, **Performance & Legitimacy : National Human Rights Institutions,** Second Edition, France, 2004.

Kersten Rogge, "The 'Victim' Requirement in Article 25 of the European Convention on Human Rights", in ***Protecting Human Rights: The European Dimension*** *–Studies in Hanour of G.J. Wiarda (*Ed. By Franz Matscher-Herbert Petzhold), Köln/Berlin, 2nd ed., 1990, pp. 539-545.

**Law of RA on the Human Rights Defender**, Adopted Date 21 October 2003, Signed Date 19 November 2003, latest amendment 01.06.2006.

**Law on the Human Rights Ombudsman of Bosnia and Herzegovina**, Official Gazette of Bosnia and Herzegovina 22 January 2004.

Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection", **Harvard Human Rights Journal**, Vol.13, 2000, pp. 1-69.

Lone Lindholt and Fergus Kerrigan, "General Aspects of Quasi-Judicial Competence of National Human Rights Institutions", **National Human Rights Institutions: Articles and Working Papers** (Ed. by Birgit Lindsnaes, Lone Lindholt, Kristine Yigen), The Danish Centre for Human Rights, Denmark, 2001, pp. 91-110.

Lütfi Duran, "Türkiye'de Bağımsız İdari Otoriteler", **Amme İdaresi Dergisi**, Vol. 30, Issue 1, March 1997, pp.3-10.

National Human Rights Institutions, **A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights**, Professional Training Series No. 4, New York and Geneva, 1995.

National Human Rights Institutions, **Amnesty International's recommendations for effective protection and promotion of human rights**, Amnesty International, October 2001.

**Organic Act Regarding the Ombudsman**, Defensor del Pueblo, 3/1981, April 6, Official Gazette number 109 dated May 7th, 1981.

Republic of Albania People's Advocate**, Law of the People's Advocate and Excerpts from other Law Defining the Right and Duties of the People's Advocate**, Law No. 9398, Dated 12.05.2005.

**Statute of the Portuguese Ombudsman**, Law No. 9/91, (Ed. by Provedoria de Justiça – Divisão de Documentação), Lisbon 2007.

The Assembly of The Republic of Albania, **Law on the People's Advocate and Excerpts from other Law Defining the Rights and Duties of People's Advocate**, Law No. 8454, Dated 4 February 1999.

The Ombudsman Act, **The Act on the Human Rights Defender**, Dated 15 July 1987.

The Albanian Parliament, **Albanian Constitution**, Dated 21 October 1998.

The Ukrainian Model of Ombudsman, **On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine**, No. 776/97, Dated 23 December 1997.

Turgut Tan, "Bağımsız İdari Otoriteler", **Devletin Düzenleyici Rolü**, (Coordinator: İzak Atiyas), TESEV Publications No:19, Istanbul 2000, pp.115-133.

United Nations General Assembly, **The Role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights**, A/RES/63/169, 20 March 2009; A/RES/63/172, 20 March 2009; A/RES/64/161, 12 March 2010.

Victor O. Ayeni, "Ombudsman as Human Rights Institutions: The New Face of a Global Expansion", **International Ombudsman Institute, Conference Papers,** June 10, Stockholm, 2009.

**Internet Sources:**

http://www.ombudsman.europa.eu/resources/code.faces#/page/3

http://www.ombudsman.sk.ca/info/the-history-of-the-ombudsman, 25.07.2013.

http://www.ombudstoronto.ca/history-ombudsman, 25.07.2013.

http://www.ibanet.org/About_the_IBA/About_the_IBA.aspx.

http://www.ombudsassociation.org.

http://www.theioi.org.

http://www.ombudsman.europa.eu/en/home.faces.

http://www.ombudsassociation.org/resources/ombudsman-and-adr-links/links-ombudsman-and-other-alternative-dispute-resolution-adr.

http://prejury.law.ualberta.ca/centres/ioi/About-the-I.O.I./History-and-Development.php

http://www.barnombudsmannen.se/

http://www.jo.se/en/

http://www.ombudsman.europa.eu/atyourservice/regionalom-%20budsmen.faces, (date accessed 23.07.2012)

http://www.ombudsman.europa.eu/resources/%20strategy.faces#hl1