

**T.C.  
SAKARYA UNIVERSITY  
MIDDLE EAST INSTITUTE**

**HISTORICAL ROOTS OF THE DEVELOPMENT OF THE  
OMBUDSMAN IN MODERN TURKEY: A SYNTHESIS OF THE  
OTTOMAN LEGACY AND EUROPEAN MODEL**

**MASTER'S THESIS**

**Nadia LAHDILI**

**Department: Middle Eastern Studies**

**Thesis Advisor: Assoc. Prof. Othman ALI**

**NOVEMBER – 2018**

## THESIS APPROVAL


This work headed “Historical Roots of the Development of the Ombudsman in Modern Turkey: A Synthesis of the Ottoman Legacy and European Model” which has been prepared by Nadia LAHDILI, is approved as a M.A thesis by our jury in majority vote.

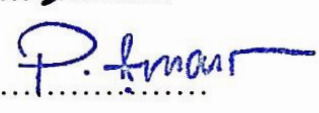
Date of Acceptance: 26/11/2018

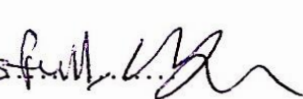
(Title, Name-Surname of Jury Member)

Opinion

Signature

Jury Member.. <sup>Doç</sup> Dr. Othman Ali: successful 

Jury Member.. Dr. Öğr. Üyesi Osama AMOUR..... successful 

Jury Member.. Dr. Öğr. Üyesi Mustafa YETİM, Successful 

Approval

I approve that the signatures above belong to the aforementioned teaching fellows.

26/11/2018



Assoc. Prof. Dr. Tuncay KARDAŞ

Institute Director

## DECLARATION

I hereby declare that this thesis fits the scientific standards of academic research and that the entire preparation of this thesis is my original work and free from the utilization of others' works unless there are similarities of direct quotes and scientific standards of references, which can never be changed. I also declare that this is the first time this thesis is presented as a master's thesis, and it has never been published as another thesis at this university or any other universities.



**Nadia LAHDILI**

**26.11.2018**



## ACKNOWLEDGEMENTS

First and foremost, we glorify God the almighty for His endless mercy on us, one of which has enabled me to successfully round off the efforts of writing this thesis. Alhamdulillah!

I am most indebted to my supervisor, Assoc. Prof. Othman ALI, whose enduring disposition, kindness, promptitude, thoroughness and friendship have facilitated the successful completion of this Master. I put on record and appreciate his detailed comments, useful suggestions and inspiring queries which have considerably improved this thesis. His brilliant grasp of the aim and content of this work led to his insightful input, and guidance which helped me a great deal. Despite his commitments, he took time to listen and attend to me whenever requested. The moral support he extended to me is in no doubt a boost that helped in building and writing the essence of this research work. I am also grateful to the academic staff and to my fellow colleagues at Middle East Institute (ORMER), Sakarya University, whose advice and cooperation contributed significantly to the outcome of this work. For me, reaching this important milestone could not have been possible without them, and I am very much thankful for all their endeavors in assisting me. And very importantly, I really want to express my most heartfelt gratitude to TÜBİTAK, for having supported me financially throughout the whole period of this Master. Words are not enough to thank them for having trusted me with their scholarship, and for their continuous commitment to research and education, especially for the benefit of foreign students in Turkey like us. I am looking forward one day to contribute back to TÜBİTAK and to Turkey, as much as they have taught me and cared about me.

Of course, this section cannot be complete without due thanks to my beloved parents and wonderful siblings, for their prayers, understanding and endurance while away. Their unconditional love and encouragements had uplifted my spirits at numerous moments of impasse. I have written every page of this thesis while having them in mind.

**Nadia LAHDILI**

**26.11.2018**

## TABLE OF CONTENTS

<b>THESIS APPROVAL</b> .....	i
<b>DECLARATION</b> .....	ii
<b>ACKNOWLEDGEMENTS</b> .....	iii
<b>TABLE OF CONTENTS</b> .....	iv
<b>LIST OF ABBREVIATIONS</b> .....	vi
<b>LIST OF TABLES</b> .....	vii
<b>LIST OF FIGURES</b> .....	viii
<b>ABSTRACT</b> .....	ix
<b>ÖZETİ</b> .....	x
<b>CHAPTER 1: INTRODUCTION</b> .....	1
1.1. Organization of the Study .....	1
1.2. Contribution of the Study .....	1
1.3. Background of the Study .....	2
1.4. Definition of Key Terms .....	4
1.5. Research Problem .....	9
1.6. Research Question .....	9
1.7. Research Methodology .....	9
1.8. Theoretical Framework .....	10
1.8.1 Empirical Institutionalism .....	12
1.8.2 Huntington's Components of Institutionalism .....	13
1.8.3 Why Institutionalization Matters? .....	16
<b>CHAPTER 2: THE OMBUDSMANSHIP:</b>	
<b>FROM AN IDEAL TO A CONSTRUCT</b> .....	19
2.1. Introduction .....	19
2.2. The Ombudsmanship: Historical Overview .....	19
2.3. <i>Justitieombudsman</i> : The Ottoman Roots of the Swedish Ombudsman Model .....	21
2.4. The Global Growth of the Ombudsman Institutions .....	22

2.5. The Grievance Redress System and the Judicial Court:	
Similarities and Differences .....	27
2.6. The United Nations' Role in the Institutionalization of the Ombudsman .....	28
2.7. The Ombudsman Models .....	31
2.8. The Ombudsman Typology .....	37
2.9. The Ombudsman Features .....	39
2.10. The European Union Ombudsman .....	40
2.10.1 The Legal Basis of the European Ombudsman .....	41
2.10.2 The Organizational Chart and Working	
Scopes of the European Ombudsman.....	43
<b>CHAPTER 3: <i>DIWAN AL-MAZALEM AND KAMU DENETÇİLİĞİ KURUMU:</i></b>	
<b>TURKEY'S EXPERIENCE IN THE OMBUDSMANSHIP .....</b>	<b>47</b>
3.1. Introduction .....	47
3.2. <i>Diwan Al-Mazalem</i> in the Islamic Dynasties .....	47
3.2.1 The Structure of <i>Diwan Al-Mazalem</i> .....	53
3.2.2 Duties of <i>Diwan Al-Mazalem</i> .....	55
3.2.3 The Authority of <i>Diwan Al-Mazalem</i> .....	56
3.3. The Ombudsman in the Contemporary Understanding: Case of Turkey .....	57
3.3.1 Human Rights Inquiry Commission.....	58
3.3.2 Public Auditorship Institution ( <i>Kamu Denetçiliği Kurumu</i> ) .....	59
3.3.2.1 The European Rapprochement and Harmonization Standards.....	60
3.3.2.2 The Constitutional Amendments and the Local Referendum .....	61
3.3.3 The Legal Basis of the KDK .....	63
3.3.4 The Organizational and Operating Charts of the KDK.....	65
3.3.5 Independence and the Working Scope of the KDK .....	68
<b>CHAPTER 4: FINDINGS AND CONCLUSION .....</b>	<b>71</b>
<b>BIBLIOGRAPHY.....</b>	<b>81</b>
<b>CURRICULUM VITAE .....</b>	<b>99</b>

## LIST OF ABBREVIATIONS

<b>ADR</b>	: Alternative Dispute Resolution
<b>EU</b>	: European Union
<b>ECHR</b>	: European Convention on Human Rights
<b>GNA</b>	: Grand National Assembly
<b>GRM</b>	: Grievance Redress Mechanism
<b>IBA</b>	: International Bar Association
<b>IIA</b>	: Institute of Internal Auditors
<b>JDP</b>	: Justice and Development Party
<b>KDK</b>	: <i>Kamu Denetçiliği Kurumu</i>
<b>LOI</b>	: Law on Ombudsman Institution
<b>MEA</b>	: Middle East and Africa
<b>NGOs</b>	: Nongovernmental Organizations
<b>OHCHR</b>	: United Nations Office of the High Commissioner for Human Rights
<b>RPPCILOI</b>	: Regulation on Procedures and Principles Concerning the Implementation of LOI
<b>TEU</b>	: Treaty on European Union
<b>TFEU</b>	: Treaty on the Functioning of the European Union
<b>UDHR</b>	: Universal Declaration of Human Rights
<b>UN</b>	: United Nations
<b>UNDP</b>	: United Nations Development Program

## LIST OF TABLES

<b>Table 1:</b> The Major Functions of an Auditing System .....	6
<b>Table 2:</b> The Legal Framework and Legislation of the KDK.....	63





## LIST OF FIGURES

<b>Figure 1:</b> Distinctive Characteristics of Different Types of Ombudsman Institutions..	33
<b>Figure 2:</b> The Organizational Chart of the European Ombudsman.....	43
<b>Figure 3:</b> The Organizational Chart of the KDK.....	65
<b>Figure 4:</b> The Ombudsman Operating Chart.....	67



**Title of the Thesis:** Historical Roots of the Development of the Ombudsman in Modern Turkey: A Synthesis of the Ottoman Legacy and European Model

**Author:** Nadia LAHDILI

**Supervisor:** Assoc. Prof. Othman ALI

**Acceptance Date:** 26 Nov 2018

**Nu. of pages:** 10 (pre text) + 99 (thesis)

**Department:** Middle Eastern Studies

From the beginning of the 1960s, there was a gradual understanding of the relevance of the ombudsman institution as an alternative mechanism to justice restoration that has taken a significant place in present-day societies. Attempts to institutionalize the ombudsman in Turkey go back to the 1970s, however, the process for its legalization came as part of internal and external factors. The internal factors include the legislative amendment and administrative reforms that the country has launched extensively as part of the modernization plan, while the external factor came in line with the European Union (EU) harmonization process. As part of the institutional amendments, *Kamu Denetçiliği Kurumu* (KDK) acquired a 'constitutional status'. The main aim of this research is to study the development of the ombudsman in modern Turkey. This research tries to answer the following question: How can we view the recent institutionalization of the ombudsman in modern Turkey: is it an adoption of the EU norms and practices for the mere sake of bureaucratic rapprochement, or an attempt to draw on Ottoman legacy being a pioneer of ombudsman, or a synthesis of both? A qualitative methodology was adopted to study the historical roots of the ombudsman institution. This study, divided into four chapters, looked into the main concepts adopted, discussed the theoretical approach, the different existing models of the ombudsman, and their development. It also discussed the EU ombudsman being one model of supranational ombudsman, and the KDK as an institutional classical model. The research also looked into the aspect of continuity and change by studying the ombudsman in its traditional and modern models; an analytical study of *Diwan Al-Mazalem* (Grievances Court) in its ancient and current forms was carried out. This research found that although the Orientalists' discussions associate the ombudsman to the early Scandinavian experience, grievances resolution system has been a far-reaching institution of the Islamic administration, and that the roots of the ombudsman is an 'ancient notion' that originated from *Diwan Al-Mazalem* and the Ottoman's Chief Justice model. The research argued that there are many factors affecting institutional attributes such as legal traditions, governance regime, economic development, social structure, etc. Hence, the functional model of the ombudsman should take into account the critical national infrastructure and distinct conditions of Turkey, internal and external dynamics as well.

**Keywords:** *Diwan Al-Mazalem*, Institutionalism, *Kamu Denetçiliği Kurumu*, Modernization, Ombudsman.

**Tezin Başlığı:** Modern Türkiye'de Ombudsman'ın Gelişimindeki Tarihsel Kökenler: Osmanlı Mirası ve Avrupa Modelinin Bir Sentezi

**Tezin Yazarı:** Nadia LAHDILI

**Danışman:** Doç. Dr. Othman ALI

**Kabul Tarihi:** 26 Kasım 2018

**Sayfa Sayısı:** 10 (ön kısım) + 99 (tez)

**Anabilim Dalı:** Ortadoğu Çalışmaları

1960'ların başından itibaren, günümüz toplumlarında önemli bir yer edinmiş olan adalet restorasyonuna alternatif bir mekanizma olan ombudsman kurumuna kademeli ilgi anlayışı vardı. Türkiye'de ombudsmanı kurumsallaştırmaya yönelik girişimler 1970'lere kadar geri gitmektedir, ancak onun yasallaştırılma süreci iç ve dış faktörlerin bir parçası olarak ortaya çıkmıştır. İç faktörler, ülkenin modernizasyon planının bir parçası olarak geniş çapta başlattığı yasal değişiklik ve idari reformları içerirken, dış faktör Avrupa Birliği (AB) uyum süreci doğrultusunda geldi. Kurumsal düzenlemelerin bir parçası olarak Kamu Denetçiliği Kurumu (KDK) “anayasal statü” elde etti. Bu araştırmanın temel amacı, Türkiye'de ombudsmanın gelişimini incelemektir. Ombudsman kurumunun tarihi köklerini incelemek için nitel bir metodoloji benimsendi. Bu çalışma dört bölüme ayrılmıştır, benimsenen temel kavramlara bakış, teorik yaklaşım, ombudsmanın farklı mevcut modellerini ve gelişimini tartışmıştır. Ayrıca, AB ombudsmanının bir ulus üstü ombudsman modeli ve KDK'nın ise kurumsal bir klasik model olduğu tartışıldı. Araştırma aynı zamanda, ombudsmanı geleneksel ve modern modellerinde inceleyerek süreklilik ve değişim yönüne de baktı; Divan-ı Mezalim'in (Şikayet Mahkemesi) eski ve güncel biçimleri arasında analitik bir çalışma gerçekleştirdi. Her ne kadar Oryantalistlerin tartışmaları, ombudsmanı erken İskandinav deneyimine bağlasa da, bu araştırma, mağduriyet çözüm sisteminin, İslami yönetimin geniş kapsamlı bir kurumu olduğu ve ombudsman'ın kökenlerinin, Divan-ı Mezalim ve Osmanlı'nın Baş Yargı modelinden çıkan “eski bir kavram” olduğunu buldu. Araştırma, hukuki gelenekler, yönetim rejimi, ekonomik kalkınma, sosyal yapı vb. gibi kurumsal nitelikleri etkileyen birçok faktörün var olduğunu ileri sürmektedir. Bu nedenle, ombudsmanın işlevsel modeli, Türkiye'nin kritik ulusal altyapısını ve farklı koşullarını, iç ve dış dinamiklerini de kapsayacak şekilde dikkate alınmalıdır.

**Anahtar Kelimeler:** Divan-ı Mezalim, Kurumsalcılık, Kamu Denetçiliği Kurumu, Modernizasyon, Ombudsman.

# CHAPTER 1: INTRODUCTION

## 1.1. Organization of the Study

This study is divided into the following chapters:

**Chapter One:** It will introduce the research topic, research problem, and will discuss the conceptual framework by defining the concepts adopted in this study and the theoretical framework adopted i.e. institutional approach.

**Chapter Two:** It will explore the development of the ombudsman, the typologies and different models of this institution worldwide. This chapter will also cover the European ombudsman as one model of supranational ombudsman, its organizational chart and working scopes.

**Chapter Three:** It will look at the development of the ombudsman in modern Turkey; in here comes the historical approach to study *Diwan Al-Mazalem* (Grievances Court) in its ancient and modern foundations, in order to evaluate the aspects of continuity and change.

**Chapter Four:** It will conclude with an evaluation of the ombudsman vis-à-vis Turkey's experience.

## 1.2. Contribution of the Study

The purpose of this dissertation is to study the historical development of the ombudsman institution in modern Turkey. It aims to present this institution and its main characteristics according to official state documents and analyze them according to the contextual objectives of the study. The current dynamics require extensive researches on what kind of institutions and networks governments need to develop in order to respond to citizens' growing demands. Concepts such as ombudsmanship, good governance, public impact, national infrastructure, social innovation, digital citizenship, etc. constitute an inescapable reality governments are encountering in their national plans. The analytical examination of this institution is an attempt to approach the KDK's role vis-à-vis the institutional development. It also aims to be a reference, extremely relevant

to Middle Eastern and African (MEA) countries, in order to invest in the ombudsmanship practice. This can be achieved through ‘experience sharing, or ‘policy transfer’, while taking into account the distinctive capacities of MEA countries, and the impact of specific processes and institutional regulations on local actors’ approaches and attitudes adopted vis-à-vis their domestic milieu and degree of adjustment. At the academic level, this study aims to be a valuable contribution in the multidisciplinary scientific community. It also hopes to generate useful investigations, stimulate academic discussions, and encourage future researchers to work on issues related to the ombudsmanship.

### 1.3. Background of the Study

The national infrastructure of modern democracies consists of accountable and transparent institutions, networks, practices, and processes. These mechanisms are necessary to fulfill citizens’ demands, and to sustain state-citizen institutional framework. In the light of rising societal dynamics, modern state structures are getting more complex, while people’s expectations about the state’s role and service delivery are getting higher. With the technological advancements and institutional reforms, traditional methods of seeking justice have become insufficient, and the need to adopt approachable public institutions within the framework of respect for human rights, democracy, and transparency has become inevitable. The state-citizens relationship is governed by a number of institutions among which the ombudsman. This research studies the ombudsman, as one of the institutions that emerged from the need to supervise public sector, to mediate between the government and the citizens, and to defend people’s rights.

The opening sentence of the Victorian Ombudsman’s report<sup>1</sup> in July 2006 states: “A society’s level of civilization can be judged by how it treats people...the state owes a duty of care for their safety, security and well-being.”<sup>2</sup>

---

<sup>1</sup> The Victorian Ombudsman is an independent officer of the Parliament of Victoria based in Melbourne, and investigates complaints about state government departments, most statutory authorities and local government. The Victorian Ombudsman, About the Victorian Ombudsman, July 2006, <https://www.ombudsman.vic.gov.au/About/The-Victorian-Ombudsman> (Accessed 10 January 2017).

<sup>2</sup> John McMillan, The Role of the Ombudsman in Protecting Human Rights, **Conference on ‘Legislatures and the Protection of Human Rights’**, University of Melbourne, Faculty of Law, 21 July

“*Justitieombudsman*” refers to a ‘representative’, a ‘spokesman’, or an ‘officer’ who supervises grievances.<sup>3</sup> In the Germanic semantic, ‘om-buds-man’ means “the man about the fine”; an appointed man who collects ‘blood money’ from lawbreakers or during clans disputes.<sup>4</sup>

The ombudsman -a control and an accountability mechanism- came into institutionalization in the light of the evolutionary administrative systems, and the instrumentation of social rights in the welfare states.<sup>5</sup> Spellor attributes the emergence of the ombudsman to the mid-1980s, when democratic states began to adopt institutions with the intention of fighting against maladministration, corruption, and infringements of human rights.<sup>6</sup> Thus, adopting the ombudsman institution can be analyzed in the light of the operational mechanisms of institutional modernization vis-à-vis public administration deficiencies.<sup>7</sup>

The ombudsman is an autonomous body from the judiciary branch. It deals with complaints about corruption in the public service, mismanagement, maladministration, and power abuse.<sup>8</sup> The ombudsman, which was perceived as an exclusive Nordic institution, has gained since the 20<sup>th</sup> century international prominence. The spread of ombudsman offices throughout the world has made it a worldwide enterprise. The Swedish Constitution (1809) institutionalized “*Justitieombudsman*” to become an

---

2006, [http://www.ombudsman.gov.au/data/assets/pdf\\_file/0016/31093/21-July-2006-The-role-of-the-Ombudsman-in-protecting-human-rights.pdf](http://www.ombudsman.gov.au/data/assets/pdf_file/0016/31093/21-July-2006-The-role-of-the-Ombudsman-in-protecting-human-rights.pdf) (Accessed 10 January 2017), p.4.

<sup>3</sup> K. O Osakede and S.A Ijimakinwa, “The Role of Ombudsman as a Means of Citizen Redress in Nigeria,” **Review of Public Administration and Management**, Vol.3, No.6, (2014), pp.120-128.

<sup>4</sup> Shirley A. Wiegand, “A Just and Lasting Peace: Supplanting Mediation with the Ombuds Model,” **Ohio State Journal on Dispute Resolution**, Vol.12, No.1, (1996), p.97. And Mariteuw Chimere Diaw, *The Ombudsman Story: A Case Study in Public Oversight, Natural Justice and State Transformation*, August 2007,

[https://www.researchgate.net/publication/312341186\\_The\\_Ombudsman\\_story\\_A\\_case\\_study\\_in\\_public\\_oversight\\_natural\\_justice\\_and\\_State\\_transformation](https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation)(Accessed 10 January 2017), p.3. And Md. Nayem Alimul Hyder, “Scope and Challenges on Provisions regarding Ombudsman in Bangladesh,” **Law Journal**, (10 December 2004), <http://www.lawjournalbd.com/2014/12/scope-and-challenges-on-provisions-regarding-ombudsman-in-bangladesh/> (Accessed 10 January 2017).

<sup>5</sup> Elena Osipova, “Development and Progressive Institutionalization of the Ombudsman in the Russian Legal and Political System”, (PhD, University of Bologna, Law and Economics Department, 2013), p.34, [http://amsdottorato.unibo.it/5845/1/Osipova\\_Elena\\_tesi.pdf](http://amsdottorato.unibo.it/5845/1/Osipova_Elena_tesi.pdf) (Accessed 13 January 2017).

<sup>6</sup> Roy Gregory and Philip Giddings, “The Ombudsman Institution: Growth and Development,” in Roy Gregory and Philip Giddings (Ed.) **Righting Wrongs: The ombudsman in Six Continents**, Amsterdam: IOS Press, 2000, pp.1-20.

<sup>7</sup> Linda C. Reif, *Ombudsman, Good Governance and the International Human Rights System*, Leiden: Martinus Nijhoff, 2004.

<sup>8</sup> Roy Gregory and Philip Giddings, **The Ombudsman, the Citizen and Parliament: A History of the Office of the Parliamentary Commissioner for Administration and Health Service Commissioners**, London: Politico, 2002, p.7.

autonomous body and acting as the ‘parliament’s watchdog’. Even so, data shows that the framework of control institutions emerged before the 19<sup>th</sup> century. The ombudsman assists the parliament to hold the executive accountable, and through investigation of complaints, it exercises its constitutional role.<sup>9</sup> This institution does not act only as a mediator between the government and the citizens, but also as a practical mechanism adapting public administration to citizens’ demands. The evolution of the ombudsman is viewed as a functional mechanism in public management and social accountability system that involves economic, legal and democratic values, and a process based on legitimacy, political sustainability, civil liberties, and administrative justice.<sup>10</sup> In addition to that, the ombudsman remains a significant enterprise in the social accountability scheme, acting as a rational mechanism so as to promote horizontal accountability. Although the ombudsman carries different names in various countries such as Parliamentary Commissioner, Citizens’ Rights Advocate, Citizens’ Protector, Mediator, Civilian People’s Advocate, Civil Advocate, Justice Representative, etc., it mainly acts as citizens’ rights watchdog.<sup>11</sup> The ombudsman has made significant development, thus, expanding its scopes from administrative control and abuses of human rights, to improving the ‘way’ services are being delivered to the public.<sup>12</sup>

#### 1.4. Definition of Key Terms

a) **Ombudsman:** The International Bar Association (IBA) Resolution describes the ombudsman as: “*an official public authority set on constitutional basis, led by*

---

<sup>9</sup> Trevor Buck, Richard Kirkham and Brian Thompson, **The Ombudsman Enterprise and Social Justice**, Farnham: Ashgate, 2010.

<sup>10</sup> Juraj Nemec, Marta Orviska and Colin Lawson, “The Role of Accountability Arrangements in Social Innovations: Evidence from the UK and Slovakia,” **The NISPA Journal of Public Administration and Policy**, Vol.9, No.1, (2016), pp.73-96, <https://www.degruyter.com/view/j/nispa.2016.9.issue-1/nispa-2016-0004/nispa-2016-0004.xml> (Accessed 10 January 2017).

<sup>11</sup> Charles Ferris, Brian Goodman and Gordon Mayer, Brief on the Office of the Ombudsman, International Ombudsman Institute, September 1980, [http://www.theioi.org/downloads/epr4c/IOI%2520Canada\\_Occasional%2520Paper%252006\\_Charles%2520Ferris\\_Brief%2520on%2520the%2520Office%2520of%2520the%2520OM\\_EN\\_1980.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiT-YqOpOvdAhWthaYKHYf7ABoQFggdMAM&usq=AOvVaw3TrU6pU4BtYORxFrW6vBIj](http://www.theioi.org/downloads/epr4c/IOI%2520Canada_Occasional%2520Paper%252006_Charles%2520Ferris_Brief%2520on%2520the%2520Office%2520of%2520the%2520OM_EN_1980.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiT-YqOpOvdAhWthaYKHYf7ABoQFggdMAM&usq=AOvVaw3TrU6pU4BtYORxFrW6vBIj), p.2. And Lili Nabholz-Haidegger, The institution of Ombudsman, Parliamentary Assembly, Doc. 9878, 16 July 2003, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10235&lang=en> (Accessed 10 January 2017).

<sup>12</sup> Philip Giddings, Vladimir Sladeczek and Laura Diez Bueso, “The Ombudsman and Human Rights,” in Roy Gregory and Philip Giddings (Ed.) **Righting Wrongs: The Ombudsman in Six Continents**, Amsterdam: IOS Press, 2000.

*trustworthy public officers accountable to the legislature, and has the power to investigate grievances on abuses of administrative power and maladministration, propose conflict resolution mechanisms, provide recommendations, and issue reports.*<sup>13</sup> Outspread in importance and utility, the ombudsman has become a measurement of civil rights protection, supremacy of law, administrative justice, and good governance, hence, synonymous to accountable, responsive, and transparent administration.<sup>14</sup> According to Efe and Demirci, the ombudsman emerged as a rational and effective institution to correct the weaknesses of the audit systems,<sup>15</sup> and to serve the people in a non-bureaucratic, low-cost, simple, direct, and quick way.<sup>16</sup> However, in certain instances, the ombudsman is restricted by legal considerations and economic limitations.<sup>17</sup>

**b) Auditing:** It is a reliable mechanism used by public or private sectors to control systems, and to make bodies answerable to the public. It is described as: *“Evaluation or examination of systems, operations and activities of a specific entity, to ascertain they are executed or they function within the framework of certain budget, objectives, rules and requirements.”*<sup>18</sup> This mechanism provides unbiased and efficient evaluation, and assessment of policies and assets in the public sector.<sup>19</sup> Accordingly, public and private institutions use auditing as a rational mechanism within the framework of social responsibility and integrity to evaluate their operations,<sup>20</sup> and besides, it targets public

---

<sup>13</sup> Ferris, Goodman and Mayer, Brief on the Office of the Ombudsman, p.2. And Dean M. Gottehrer, Fundamental Elements of an Effective Ombudsman Institution, International Ombudsman Institution, 2009,

[http://www.theioi.org/downloads/934ch/Stockholm%20Conference\\_15.%20Plenary%20Session%20II\\_Deaf%20Gottehrer.pdf](http://www.theioi.org/downloads/934ch/Stockholm%20Conference_15.%20Plenary%20Session%20II_Deaf%20Gottehrer.pdf). (Accessed 10 January 2017).

<sup>14</sup> Reif, The International Ombudsman Yearbook: 2002, p.55.

<sup>15</sup> The authors identified four main audit systems, which are judicial, administrative, political, and public.

<sup>16</sup> Haydar Efe and Murat Demirci, “The Concept of the Ombudsman and Expectations from the Ombudsman Institution in Turkey,” **Sayıştay Dergisi**, Issue.90, (2013), pp.49-72.

<sup>17</sup> Ferris, Goodman and Mayer, Brief on the Office of the Ombudsman, pp.11-17.

<sup>18</sup> Management Study Guide, Importance of Audit in Public Sector Organizations, (n.d),

<http://www.managementstudyguide.com/importance-of-audit-in-public-sector-organizations.htm> (Accessed 1 June 2017). And Maria Conceição da Costa Marques, The Role of Auditing in the Public System, Hamilton: University of Waikato, 2005, <https://www.mngt.waikato.ac.nz/ejrot/cmsconference/2005/proceedings/criticalaccounting/DaConceicao.pdf> (Accessed 1 June 2017).

<sup>19</sup> The Institute of Internal Auditors, **Supplemental Guidance: The Role of Auditing in Public Sector Governance** (2<sup>nd</sup> Ed.), Florida: IIA, January 2012, [https://na.theiia.org/standards-guidance/Public%20Documents/Public\\_Sector\\_Governance1\\_1\\_1\\_.pdf](https://na.theiia.org/standards-guidance/Public%20Documents/Public_Sector_Governance1_1_1_.pdf) (Accessed 1 June 2017), p.5.

<sup>20</sup> Dalia Daujotaite and Danute Adomaviciute, “The Role and Impact of Performance Audit in Public Governance in Empirical Studies,” in Mehmet Huseyin Bilgin, Hakan Danis, Ender Demir and Ugur Can



resources to reduce bureaucratic shortcoming and abuse of administrative power.<sup>21</sup> Auditing improves governance and institutional performance, helps people to resolve their complaints and hold public and private bodies answerable, and encourages civil servants to adopt good administration practices.<sup>22</sup> According to the institute of internal auditors, a public auditor has three main functions: oversight, insight, and foresight.<sup>23</sup>

**Table 1**  
**The Major Functions of an Auditing System**

Function	Issues to Answer
Oversight	<p>Is the policy being implemented as supposed?</p> <p>Are the public bodies performing their tasks as supposed?</p> <p>Are the control mechanisms being implemented adequately?</p>
Insight	Does auditing help officials evaluate programs, policies, operations, and outcomes?
Foresight	What are the challenges and drawbacks detected?

**Source:** Mehmet Huseyin Bilgin, Hakan Danis, Ender Demir and Ugur Can, *Empirical Studies on Economics of Innovation, Public Economics and Management*, 2017, p.33.

The above table shows that auditing serves as an apparatus to oversight, insight, and foresight organizations' working environment. It provides policy directions on how to manage resources, and works on functional policy recommendations and solutions that can be adopted by the organizations involved in order to improve their work methods.

**c) Good Governance:** The concepts of 'responsible governance' and 'good governance' have extensively become prevalent since the 20<sup>th</sup> century among states and

---

(Ed.) **Empirical Studies on Economics of Innovation, Public Economics and Management**, Istanbul: Springer, 2017, pp.29-45.

<sup>21</sup> Management Study Guide, Importance of Audit in Public Sector Organizations, (n.d), <http://www.managementstudyguide.com/importance-of-audit-in-public-sector-organizations.htm> (Accessed 1 June 2017).

<sup>22</sup> Ibid.

<sup>23</sup> The Institute of Internal Auditors, **Supplemental Guidance: The Role of Auditing**, p.5.

non-states actors.<sup>24</sup> Good governance is the opposite of bad governance, both in theory and practice. Governance, in general, includes set of rules and practices to direct effectively the way organizations work.<sup>25</sup> The eight main characteristics of good governance are participation, rule of law, transparency, responsiveness, equity, inclusiveness, and consensus-oriented.<sup>26</sup> Being a fundamental component in policy agendas to fight against corruption and mismanagement, good governance serves as a barometer to measure justice and inclusion in democratic societies, and a remedy adopted for wise responses to current and future societal transformations.<sup>27</sup>

**d) Maladministration:** Maladministration is becoming a popular issue in global governance. This concept has been particularly cited in the legislation, academia, and political settings of France and the Anglophone countries.<sup>28</sup> According to the European ombudsman, maladministration happens when institutions fail to work in line with a defined code of conduct, set of rules, and principles.<sup>29</sup> It occurs when bureaucracies: lack control, act inadequately, incompetently or unfairly, deliver poor services, fail to deal efficiently with the tasks under their mandate or oriented irrationally to serve the people. In general, maladministration is linked to misuse of administrative powers.<sup>30</sup> Seneviratne defines maladministration in a broader way that encompasses, besides what was mentioned, small and minor issues, such as losing a file or a document, human errors, and mistakes that jeopardize the public service.<sup>31</sup> In this complex frame, maladministration takes extensive forms of institutional dysfunctionality, abuse of administrative power, unfairness, discrimination, favoritism, incompetence, dereliction,

---

<sup>24</sup> United Nations Economic and Social Commission for Asia and the Pacific, *What is Good Governance?* Bangkok: UNESCAP, (n.d), <http://www.unescap.org/sites/default/files/good-governance.pdf> (Accessed 17 March 2017).

<sup>25</sup> British and Irish Ombudsman Association, *Guide to Principles of Good Complaint Handling. Firm on Principles, Flexible on Process*, London: The British Library, 2007, <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf> (Accessed 17 March 2017), p.4.

<sup>26</sup> *What is Good Governance?* UNESCAP.

<sup>27</sup> *Ibid.*

<sup>28</sup> Enrique Múgica Herzog, *The Book of the Ombudsman*, Madrid: Defensor del pueblo, 2015, [https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/The\\_book\\_DP\\_Ingles.pdf](https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/The_book_DP_Ingles.pdf) (Accessed 20 January 2017), p.183.

<sup>29</sup> Mariteuw Chimère Diaw, *Ombudsmen, People's Defenders and Mediators: Independence and Administrative Justice in State Transformation*, Overseas Development Institute, Verifor, Comparative Case Study 7, January 2008, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4478.pdf> (Accessed 15 January 2017), p.7.

<sup>30</sup> Herzog, *The Book of the Ombudsman*, p.184.

<sup>31</sup> Mary Seneviratne, **Ombudsmen: Public services and Administration Justice**, London: Butterworths LexisNexis, 2002, pp.41-42.

red tape, misinformation, refusal to provide information, etc. However, it is argued that public officials' inability to address and tackle these problems is undeniably a radical form of maladministration.<sup>32</sup> It is the officers' duty to identify and resolve these matters. In view of that, periodic check-ups have been identified as a useful mechanism to correct maladministration, to reform public service, and to improve organizational effectiveness. For this purpose, establishing an outside oversight and accountability system such as the ombudsman, independent and autonomous, is extremely relevant to fulfill this purpose.<sup>33</sup>

e) **Europeanization:**<sup>34</sup> It is: "*the re-contextualizing, re-orientation, or re-shaping of domestic politics and local governance to be in line with policies, preferences, and practices of the EU governance system.*"<sup>35</sup> It processes, constructs, and institutionalizes both conventional and non-conventional EU policy structures, rules, norms, and procedures, which are consolidated in the EU policy-making.<sup>36</sup> Europeanization, when associated with democratization, remains a normative concept, because it is analyzed within a legalistic framework.<sup>37</sup>

Europeanization can occur through three homogenizing apparatuses. First is the institutional compliance mechanism i.e. 'goodness of fit',<sup>38</sup> which means that institutions have to explicitly comply with the European norms and policies when a specific model is prescribed and adopted at the local level. Second is the dynamic domestic opportunity structures, and it measures the degree of adaptability of local actors and national institutions to policy constraints.<sup>39</sup> Third is farming domestic beliefs and expectations by altering the cognitive inputs of domestic actors such as socialization processes and policy perspectives. This can take place through 'policy

---

<sup>32</sup> Herzog, *The Book of the Ombudsman*, p.183.

<sup>33</sup> *Ibid*, p.184.

<sup>34</sup> In the Turkish context, this concept means the EU harmonization and accession process.

<sup>35</sup> Yeşeren Eliçine, "The Europeanization of Turkey: Reform in Local Governments," **International Journal of Economic and Administrative Studies**, Vol.4, No.7, (2011), p.104.

<sup>36</sup> *Ibid*.

<sup>37</sup> Tanja A. Börzel and Digdem Soyaltin, *Europeanization in Turkey. Stretching a Concept to its Limits?* KFG Working Paper No.36, Berlin: University of Freie, February 2012, [http://www.polsoz.fu-berlin.de/en/v/transformeurope/publications/working\\_paper/wp/wp36/WP\\_36\\_Boerzel\\_Soyaltin.pdf](http://www.polsoz.fu-berlin.de/en/v/transformeurope/publications/working_paper/wp/wp36/WP_36_Boerzel_Soyaltin.pdf) (Accessed 28 March 2017), p.6.

<sup>38</sup> This term is proposed by Claudio M. Radaelli, "The Europeanization of Public Policy," in Kevin Featherstone and Claudio M. Radaelli (Ed.) **The Politics of Europeanization**, Oxford: Oxford University Press, 2003, pp.27-56.

<sup>39</sup> The ability to respond to policy constraints depends on policy preferences and the willingness of public actors to accept changes.

transfer' such as directives to countries that 'wish to adopt' the European model.<sup>40</sup> The impact of these processes varies according to the institutional regulations, and to the approaches and attitudes adopted by the local actors vis-à-vis their domestic context and degree of adjustment to the European requirements.<sup>41</sup>

### **1.5. Research Problem**

This research states that public administration and management in Turkey experienced bureaucratic transformations. Since the fall of the Ottoman Empire, the Republic of Turkey underwent economic, political, judicial and administrative reforms. One of the major administrative reforms was the adoption of the ombudsman institution known in Turkish as *Kamu Denetçiliği Kurumu (KDK)*. In 2012, the Law on Ombudsman Law (LOI) was adopted, and an Ankara-based special budget and legal body attached to Turkey's Grand National Assembly (GNA) became operational. The purpose was to handle cases related to public complains or grievances on maladministration, and to improve public administration in Turkey. This institutional reform is approached through the lens of Turkey's EU harmonization strategy, and institutional reforms.

### **1.6. Research Question**

This study aims to examine the historical development of the ombudsman in modern Turkey, taking into account the aspects of continuity and change. It tries to answer the following: How can we view the recent institutionalization of the ombudsman in modern Turkey; is it an adoption of the EU norms and practices for the mere sake of bureaucratic rapprochement, or an attempt to draw on Ottoman legacy being a pioneer of ombudsman, or a synthesis of both?

### **1.7. Research Methodology**

This research is a qualitative study, based on primary and secondary data. The research methodology will help to find whether our resources answer the research question. The

---

<sup>40</sup> Christoph Knill, *The Europeanization of National Administrations*, Cambridge: Cambridge University Press, 2001, pp.214-215.

<sup>41</sup> Eliçine, *The Europeanization of Turkey: Reform in Local Governments*.

study will be desk-work and literature review. The primary data consist of the ombudsman stakeholders' statements and speeches, official reports and documentations, and legal texts. The secondary data consist of academic journals, articles, books, official websites, internet sources, etc. Regular visits to national libraries to collect related information and data relevant to the study are planned for this purpose. As the main purpose of this study is to trace the development of the ombudsman in modern Turkey, a historical approach is used. This research follows the ethical code of research i.e. objectivity.

### 1.8. Theoretical Framework

This study adopts the empirical approach to institutionalism as proposed by Samuel Huntington, to answer the research question.<sup>42</sup> This framework is based on his work titled, "*Political Order in Changing Societies*", first published in 1968; a seminal work in social sciences that remains extremely relevant to study contemporary political institutions. Huntington found that social modernization leads emerging societies to become more complex and disordered, and that violence is likely to happen if this process is detached from political and institutional modernization process.<sup>43</sup> In dynamic societies, both political organizations and public policies are necessary to organize communities,<sup>44</sup> similarly, policy structures become relevant means to resolve disputes and maintain order in political communities.<sup>45</sup> In this regard, Huntington differentiated between simple<sup>46</sup> and complex<sup>47</sup> political communities.<sup>48</sup>

Having this in mind, Huntington observed a negative relationship between social forces, mobility, and political institutionalization. Low social mobility and political

---

<sup>42</sup> Among Huntington's contributions to political sciences' studies is the concept of gradualism. He concluded that a 'sudden' political liberalization is a threat to emerging societies.

<sup>43</sup> A process producing political institutions capable of managing modernization.

<sup>44</sup> Samuel Huntington, **Political Order in Changing Societies**, 7<sup>th</sup> printing, London: Yale University Press, 1973, [https://projects.iq.harvard.edu/gov2126/files/huntington\\_political\\_order\\_changing\\_soc.pdf](https://projects.iq.harvard.edu/gov2126/files/huntington_political_order_changing_soc.pdf) , p.11.

<sup>45</sup> Huntington, **Political Order**, pp.8-9.

<sup>46</sup> Simple political communities refer to homogeneous societies with ethnic homogeneity, and basic socio-political structures.

<sup>47</sup> Heterogeneous societies raise more need for political institutions to maintain order and stability.

<sup>48</sup> The 'art of association' maintains legitimacy, and enables complex societies to organize themselves into cohesive political structures.

participation are explained by high institutionalization, and vice versa.<sup>49</sup> This correlation affects both political stability and societal order.<sup>50</sup> To Huntington, political organizations have to be adopted at a ‘matching pace’ of social and economic transitions.<sup>51</sup>

The sustainability of national infrastructure of any government depends on the existence, effectiveness, and integrity of its institutions and networks. Likewise, the ‘art of association’ has to sustain the values that societies uphold. The Arab uprisings (2011), in the context of the geopolitical turmoil, happened as an inevitable consequence of a critical agent-principle relationship. It is contended that many of these states struggle (d) with inefficient judicial, legislative, and executive systems.<sup>52</sup> These uprisings highlight two things: First, the importance of linking the legitimacy of political institutions with the waves of democratic transformation, and that all political systems are concerned with the issue of legitimacy. Second, the lack of transparent check mechanisms for which the role of oversight institutions was underestimated. States were reluctant to adopt oversight institutions such as the ombudsman for institutional reforms. For such reason, functional systems monitored by independent institutions need to be set up, in order to fight against maladministration, corruption, clientelism, and human rights abuse. Socio-economic reforms are requisites for political transition. According to Huntington, there exists a correlation between economic progress and political stability.<sup>53</sup> The existence of a legitimate political system is necessary for economic and social development. Likewise, the relationship between these two variables is pertinent to understand the factors that consolidate democracy.

This study argues that although citizens are empowered with ‘the right to complain’, and to fill for judicial proceedings on abuse of administrative power, in many cases,

---

<sup>49</sup> Samuel Huntington, “Political Development and Political Decay,” *World Politics*, Vol.3, No.17, (1965), pp.386-430.

<sup>50</sup> Huntington, *Political Order*, p.11.

<sup>51</sup> *Ibid*, p.5.

<sup>52</sup> Crystal Douglas, Andrea Fischer, Kim Fletcher, Amanda Guidero, Marcus Marktanner, Luc Noiset, and Maureen Wilson, *The Arab Uprisings: Causes, Consequences and Perspectives*, Kennesaw: Kennesaw State University, March 2014, [http://icat.kennesaw.edu/docs/pubs/RK\\_Final\\_Paper.pdf](http://icat.kennesaw.edu/docs/pubs/RK_Final_Paper.pdf) (Accessed 20 June 2017).

<sup>53</sup> Huntington, *Political Order*, p.6.

they have restricted access to administrative courts due to social, financial, cultural or psychological obstacles, or due to absence of ‘grievance culture’.<sup>54</sup>

### 1.8.1 Empirical Institutionalism

a) **Institutions:** In public administration studies, institutions are synonymous to order, organization, regulation, etc. They set the functions and conducts of policy actors in the decision-making process.<sup>55</sup> Scott defines institutions as:

“They are social structures that have attained a high degree of resilience. They are composed of cultural-cognitive, normative, and regulative elements that, together with associated activities, provide stability and meaning to social life... have moral and structural dimensions. They operate at different levels of jurisdiction, from global to localized interpersonal dimensions. They imply stability, but are subject to incremental and discontinuous change processes.”<sup>56</sup>

Institutions are dynamic entities that represent the ‘collective interest’, and translate political mobilization of policy stakeholders.<sup>57</sup> To Huntington, institutions emerged as synergies of social forces and perpetual practices.<sup>58</sup> Political institutions, being an effect of perplex social forces, remain functional platforms to create rational behavior as they define ‘public interest’.<sup>59</sup> In order to build public trust,<sup>60</sup> institutionalization of policy behavior requires consistency and persistence. Nevertheless, Huntington observed that the relationship among different political institutions is comparatively negative, on account of societal dynamics. This finding might be justified by two factors: First, the dysfunction within these institutions in modernizing societies. Second, the incoherence of structures to sustain these institutions and that, consequently, hinder development.

b) **Institutionalism:** It is defined as the study of institutional effects. Institutionalism analyzes the aspects of social structures, stability, and order in societal life. Emmergut argues that institutions emerging from subjective and irrational aspects

---

<sup>54</sup> Osipova, Development and Progressive Institutionalization, p.35.

<sup>55</sup> Sven Steinmo, “What is Historical Institutionalism?” in Donatella Della Porta and Michael Keating (Ed.) **Approaches in the Social Sciences**, Cambridge: Cambridge University Press, 2008.

<sup>56</sup> Richard Scott, **Institutions and Organization: Ideas, Interests, and Identities** (4<sup>th</sup> Ed.), California: Sage, 2013, p.33.

<sup>57</sup> Edwin Amenta and Kelly M. Ramsey, “Institutional Theory,” in Kevin T. Leicht and J. Craig Jenkins (Ed.) **Handbook of Politics, State and Society in Global Perspective**, Iowa: Springer, 2010, p.16.

<sup>58</sup> Huntington, **Political Order**, p.11.

<sup>59</sup> Ibid, pp.24-25.

<sup>60</sup> As political institutions are evolving constructs, morality -defined through the lens of trust- holds this construct.

engender unpredicted outcomes on human nature and public entities. For this reason, institutionalists emphasize that formal norms and procedures play a significant role in defining and predicting behavior.<sup>61</sup> In other words, institutions build set of rules and routines, and structure human behavior at both micro and macro levels. This framework is also relevant to analyze adaptability in terms of time and place, and to explain the variables behind institutional change.<sup>62</sup> The literature of institutional theorists studies the variables and schemes of political organizations,<sup>63</sup> and the influence of political actors and formal structures within local and global milieus.<sup>64</sup> Institutionalists reached the conclusion that policy inputs and outputs dependent much on ‘how political systems are formed’. In addition, empirical institutionalists study the impact of institutions on policy-making and political order. Huntington argues for the importance of formal government institutions, and for sustaining structures that form civil societies in order to build stable and progressive democracies.<sup>65</sup> Empirical institutionalists contend that citizens’ behavior in a given institution is both exogenous and a reaction to ‘assumed’ opportunities and constraints.<sup>66</sup> Accordingly, institutions are rational when they manage policy constraints. These entities construct political identities, influence collective interests, and shape political realities as they depend -in their influence and durability- on policy norms at the micro (individual) and the macro (organizational) levels.<sup>67</sup> Hence, institutions such as the ombudsman are not only considered formal organizations, but also a ‘bridge’ founded to link between the agent and the principle.

### **1.8.2 Huntington’s Components of Institutionalism**

Political communities in heterogeneous societies, according to Huntington, depend on the institutionalization and the procedural capacity of organizations. These institutions

---

<sup>61</sup> Ellen M. Immergut. *Institution, Institutionalism*, Berlin: Humboldt University, 2010, <https://www.sowi.hu-berlin.de/de/lehrbereiche/comppol/publ/pdfs/Immergut2011.pdf> (Accessed 20 June 2017).

<sup>62</sup> W. Richard Scott, “Institutional theory: Contributing to a Theoretical Research Program,” in Kent G. Smith, and Michael A. Hitt (Ed.) **Great Minds in Management: The Process of Theory Development**, Oxford: Oxford University Press, 2004, pp.408-414.

<sup>63</sup> Steinmo, What is Historical Institutionalism? p.159.

<sup>64</sup> Amenta and Ramsey, *Institutional Theory*, p.16.

<sup>65</sup> Guy B. Peters, *Institutional Theory: Problems and Prospects*, Vienna: Political Science Series, 2000, [https://www.ihs.ac.at/publications/pol/pw\\_69.pdf](https://www.ihs.ac.at/publications/pol/pw_69.pdf) (Accessed 15 January 2017), pp.5-15.

<sup>66</sup> *Ibid*, pp.2-4.

<sup>67</sup> Amenta and Ramsey, *Institutional Theory*, p.17.



are more effective and stable when more people are behaving rationally within politically organized entities. There are four variables to assess the institutionalization of political systems. They are adaptability, complexity, autonomy, and coherence.<sup>68</sup>

**a) Adaptability versus Rigidity:** Adaptability is an institutional characteristic that organizations develop as a function of time and environment. Institutions are adaptable when they are able to handle environment's challenges in the long-run. According to Huntington's study, young organizations are less institutionalized and more rigid compared to old ones.<sup>69</sup> However, older organizations can be rigid if they fail to function in evolving environments and develop dynamic and innovative solutions to policy problems. Huntington provided three ways to measure the organizations' age. First is the chronology of an institution or a procedure. The persistence of an institution or procedure depends on the level of its institutionalization; the longer an organization operates, the more likely it will survive in the future, because it has attained a high institutionalization level.<sup>70</sup> Therefore, the chronological age implies both existence and continuity. Second is the 'generational age'.<sup>71</sup> As long as long the first generation of the organization and set of procedures continue to operate,<sup>72</sup> its ability to adapt to new working environment is bound.<sup>73</sup> Highly institutionalized organizations are adaptive entities that are able to overcome power-transfer crisis when the succession and leadership rotation involve replacing officers by other ones with expertise and knowledge, and when this process does not affect organizations' performance and policy orientation.<sup>74</sup> Third is the functional adaptability to measure organizations' evolution.<sup>75</sup> According to the functional approach, institutions exist to fulfill specific functions. However, institutions become dysfunctional when functions for which they were created cease to exist. For this reason, institutions have to become multifunctional by adopting different functions i.e. multifunctional, or otherwise they will

---

<sup>68</sup> Huntington, **Political Order**, p.12.

<sup>69</sup> *Ibid*, p.13.

<sup>70</sup> *Ibid*, p.13.

<sup>71</sup> *Ibid*, pp.14-15.

<sup>72</sup> There is a difference between replacement and shift, because the latter implies a 'radical change' of leadership with different organizational experiences.

<sup>73</sup> Huntington, **Political Order**, p.14.

<sup>74</sup> *Ibid*, pp.14-15.

<sup>75</sup> *Ibid*, p.15.

disintegrate.<sup>76</sup> According to Huntington, institutions will survive if they develop the ability to adjust to environment and institutional changes, hence, maintain the *raison d'être*.

**b) Complexity versus Simplicity:** Complexity is studied within the framework of hierarchies and roles of an organization's apparatuses. Huntington is a strong proponent of the idea "*complexity produces stability*";<sup>77</sup> hand in hand, there exists a positive correlation between complexity and achieving optimal institutionalization.<sup>78</sup> Multi-purposed organizations have higher capacity to adjust, when compared with organizations with one purpose.<sup>79</sup> Huntington identified two types of organizations: complex traditional organizations and simple ones. The former can adapt to potential changes in modern environment. To elaborate on this idea, he provided the case of Japan, and 'how simplex institutions were adjusted to cope with modernization' in the wake of Meiji Reform.<sup>80</sup> He concluded that multifunctional political systems are likely to adapt to 'changing orders' as they prepare public servants to tasks of high(er) level of expertise.<sup>81</sup>

**c) Autonomy versus Subordination:** This institutional feature studies the distinctions among institutional structures, and their relationship vis-à-vis social forces. Within this framework, political institutionalization goes beyond mere structures to achieve public interest.<sup>82</sup> Integrity is a comparative concept, used in institutional approach, to analyze institutions' autonomy vis-à-vis extraneous influences.<sup>83</sup> Huntington linked autonomy to corruption. To him, corrupt institutions are subordinate -by nature- and vulnerable to external channels of influence. In order to maintain system's autonomy, mechanisms that target the impact of outside forces or unexpected attitudes have to be adopted and sustained. Likewise, the core requires the leadership of experienced and accountable officers. Therefore, autonomy is substantial to maintain institutional integrity, and to prevent the influence of extraneous forces. In the context

---

<sup>76</sup> Ibid, p.15.

<sup>77</sup> Huntington quoted the work of classical political theorists such as Plato, Aristotle, Polybius and Cicero who have discussed the concept of stability. Huntington, **Political Order**, pp.19-20.

<sup>78</sup> Ibid, pp.17-18.

<sup>79</sup> Ibid, p.18.

<sup>80</sup> Ibid, p.18.

<sup>81</sup> Ibid, pp.18-19.

<sup>82</sup> Ibid, p.20.

<sup>83</sup> Ibid, p.20.

of this study, the ombudsman is an autonomous redress and investigation institution that possesses the capacity to respond to citizens' complainants with no extraneous influences, and acts with the intention to establish administrative justice and prevent irrational use of administrative powers.<sup>84</sup>

**d) Coherence versus Disunity:** Besides the above institutional characteristics, highly institutionalized organizations are more integrated and coherent, while disintegrated organizations are less institutionalized and more vulnerable to internal and external constraints. Likewise, there exists a correlation between coherence and autonomy. According to Huntington, institutions acquire institutional consistency through a distinctive '*esprit*' and 'style'.<sup>85</sup> On the other hand, a sudden, or an irrational expansion in the organizations' leadership and functional aspects affect their coherence. Huntington stated that Ottoman institutions maintained coherence because highly disciplined and experienced civil servants managed them.<sup>86</sup> Having said that, coherence is not relative to the number of civil servants but to other qualitative aspects such as coordination, efficiency, sense of unity, self-regulations, defined organizational structures, functional scopes, and consistent work ethics that target public interest.<sup>87</sup>

### 1.8.3 Why Institutionalization Matters?

Institutionalization is a fundamental, an interconnected, and a holistic process that involves knowledge, information, education, democratization, communication, and participation.<sup>88</sup> This research states that when institutions achieve optimal level of institutionalization and policy actors acquire adaptability to evolving policy structures,<sup>89</sup> societies achieve welfare.<sup>90</sup> Taking the example of Japan into account, Huntington argued that institutionalization does not only involve formal organizational settings, but also adaptability to modernity in transitional societies.<sup>91</sup> Likewise, Pye identified that

---

<sup>84</sup> Parliamentary Assembly, The institution of Ombudsman, Resolution 1615, 8 September 2008, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17133&lang=en> (Accessed 10 February 2017).

<sup>85</sup> Huntington, **Political Order**, p.22.

<sup>86</sup> *Ibid*, pp.22-23.

<sup>87</sup> Walter Lippmann, **The Public Philosophy**, Boston: Little Brown, 1995, p.42.

<sup>88</sup> Daniel Lerner, **The Passing of Traditional Society**, Glencoe: Free Press, 1958, p.438.

<sup>89</sup> Carl Joachim Friedrich, **Man and His Government**, New York: McGraw-Hill, 1963, p.150.

<sup>90</sup> Huntington, **Political Order**, p.24.

<sup>91</sup> *Ibid*, p.31.

the obstacle to democratization lies in societies' failure to develop rational and coherent institutions. He states: "*the ultimate test of modernization is the ability to establish and maintain complex, but flexible organizational norms.*"<sup>92</sup> Institutionalization also matters for social mobilization. The ability to establish rational, autonomous, and adaptive organizations is a challenge contemporary societies encounter in their national infrastructures. Furthermore, institutions are relevant to states' modernization and democratization process when they carry within their paradigms moral values such as administrative justice, public accountability, and legitimacy. These apparatuses form attitudes, values, expectations, and expend social knowledge.<sup>93</sup> This research argues that alternative mechanisms to justice restoration such as the ombudsman, irrespective of their focus, will fulfill a functional aspect that targets social and administrative justice, and in democratic societies, serve the public interest with defined scopes and purposes.

---

<sup>92</sup> Lucian Pye, "Armies in the Process of Modernization," in John Asher Johnson (Ed.) **The Role of the Military in Underdeveloped Countries**, Princeton: Princeton University, 1962, pp.38-51.

<sup>93</sup> Huntington, **Political Order**, pp.32-33.



## CHAPTER 2: THE OMBUDSMANSHIP: FROM AN IDEAL TO A CONSTRUCT

### 2.1. Introduction

The history of the ombudsman is not confined to solely adopting an institution, but to understanding the foundations, dynamics and processes of development, variations, and reforms that set up this organization. This chapter explores the historical development of the ombudsman, the role of the United Nations (UN) in the institutionalization of the ombudsman, and the main similarities and differences between the judicial and grievances courts. It also discusses the features, different models and typologies of this institution, as well, addresses the EU ombudsman as a supranational model, its legal basis, organizational chart, and working scopes.

### 2.2. The Ombudsmanship: Historical Overview

Many countries have amended the laws to expand the ombudsman's institutional powers.<sup>94</sup> This institution operates as a bridge between the state (rights providers) and the people (rights holders).

Lang stated that paradigms of representation for protection of citizens' rights, and attempts to establish justice and improve governance have crossed the local borders throughout time. She writes:

“Bells and drums were an important part of the early legends of citizen grievance systems leading an audial tool relevant to the concept of citizen's appeals. Grievance bells have existed in the 3<sup>rd</sup> and 4<sup>th</sup> centuries in Chinese history, Japanese culture in 647, the Khitan Empire in 1039, Islamic writings in the 11<sup>th</sup> century, Indian civilization in the 12<sup>th</sup> century in Siam, and Europe in the 13<sup>th</sup> century.”<sup>95</sup>

---

<sup>94</sup> Herzog, *The Book of the Ombudsman*, p.186.

<sup>95</sup> McKenna Lang, “A Western King and an Ancient Notion: Reflections on the Origins of Ombudsmanship” *Journal of Conflictology*, Vol.2, No.2, (2011), [https://www.taosinstitute.net/Websites/taos/files/Content/5693950/Lang\\_Journal\\_of\\_Conflictology\\_Article\\_2011.pdf](https://www.taosinstitute.net/Websites/taos/files/Content/5693950/Lang_Journal_of_Conflictology_Article_2011.pdf) (Accessed 11 January 2017), p.57. And Edward A. Kracke, “Early Visions of Justice for the Humble in East and West,” *Journal of American Oriental Society*, Vol.96. No.4, (1976), pp.492-498.

According to the Korean national archives of the Joseon dynasty (1392–1910), King Taejong ordered to place drums, to be accessible to the public for complaints.<sup>96</sup> Citizens (elites and ordinary people) were empowered with the ‘right to use drums’<sup>97</sup> to complaint about misconducts, or to alert the King of plausible threats nearby the royal palace.<sup>98</sup> The Roman Empire had two censors<sup>99</sup> to scrutinize administrative actions, and to hear complaints on reported transgressions.<sup>100</sup> In 1722, The Russian Czar Peter the Great assigned ‘Procurator General’ to enforce the laws and protect people’s rights.<sup>101</sup> According to Howard, the ombudsman model was adopted during Sweden’s turmoil<sup>102</sup> by Charles XII<sup>103</sup> when he was in exile after being defeated to Russia.<sup>104</sup> Confronted with declining sovereignty, the Monarch urged public servants for institutional reforms.<sup>105</sup> One of these reforms was ‘to establish a transparent and responsive government’.<sup>106</sup> According to Lang, the radical reforms included the following domains: international politics e.g. diplomacy and trade; internal politics e.g. military defense, and national economy; and monitoring.<sup>107</sup> Every expedition was led by an ‘ombudsrad’;<sup>108</sup> he was assigned to coordinate with local institutions on matters of

---

<sup>96</sup> Lang, A Western King and an Ancient Notion, p.57.

<sup>97</sup> *Sinmun* ‘go literally means drum in Korean. It existed to sustain the petition system. Lang, A Western King and an Ancient Notion, p.57. And Hyonsuk Cho, “Feeling Power in Early Choson Korea: Popular Grievances, Royal Rage, and the Problem of Human Sentiments,” **The Journal of Korean Studies**, Vol.20, No.1, (2015).

<sup>98</sup> Lang, A Western King and an Ancient Notion, p.57. And Woo-Keun Han, **The History of Korea**, Honolulu: University Press of Hawaii, 1980.

<sup>99</sup> Magistrates appointed for a defined term.

<sup>100</sup> Lang, A Western King and an Ancient Notion. And Charles L. Howard, *The Organizational Ombudsman: Origins, Roles, and Operations: A Legal Guide*, Chicago: American Bar Association, 2010, p.2.

<sup>101</sup> Kent D. Anderson, *The Ombudsman as an Administrative Remedy*, Alberta: The International Ombudsman Institute, 1987, [http://www.theioi.org/downloads/d9154/IOI%20Canada\\_Occasional%20Paper%2041\\_Kent%20Anderson\\_OM%20as%20an%20administrative%20remedy\\_1987.pdf](http://www.theioi.org/downloads/d9154/IOI%20Canada_Occasional%20Paper%2041_Kent%20Anderson_OM%20as%20an%20administrative%20remedy_1987.pdf). (Accessed 25 February 2017).

<sup>102</sup> This included poverty, famine, scarcity of resources, corruption, war, etc. (See Lang, A Western King and an Ancient Notion, pp.59-60).

<sup>103</sup> It is one of the strongest institutions by the Swedish legal order. A resolution to appoint an observer ‘Högste Ombudsmannen’ was passed. In 1809, the ombudsman became a constitutional institution based on constitutional amendments. It is one of the strongest institutions in the Swedish legal order. (See Lang, A Western King and an Ancient Notion, pp. 58-62).

<sup>104</sup> Lang, A Western King and an Ancient Notion, p.59. And Howard, **The Organizational Ombudsman**, p.3.

<sup>105</sup> The King passed a resolution on 26 October 1713 to set up the ‘Highest Ombudsman’ replicated from the office of ‘Chief Justice’ that was created to supervise the Islamic law in the Ottoman governance. (See Lang, A Western King and an Ancient Notion, p.60).

<sup>106</sup> Lang, A Western King and an Ancient Notion, p.60.

<sup>107</sup> *Ibid*, pp.56-65.

<sup>108</sup> The word ‘ombudsrad’ refers to the mediator between the ruler and the citizens. (See Lang, A Western King and an Ancient Notion, p. 60).

public interest,<sup>109</sup> and discussed with the Monarch the national budget.<sup>110</sup> The Monarch appointed a trustworthy and independent officer<sup>111</sup> to check on public services, to observe whether public policies were executed, and to supervise government branches.<sup>112</sup> Undeniably, the Chancellor of Justice (1713) has laid the foundation of the investigation architecture in modern Sweden.<sup>113</sup> Although the ombudsman had no political authority, it was empowered to act as citizens' defender in cases of neglect and rights' violations.<sup>114</sup> The office also aimed at improving and strengthening the parliamentary regime, and at supporting the supremacy of law and good governance practices.<sup>115</sup> Withal, Lang argued that the ombudsman emerged as result of dysfunctional governance, and an effective remedy to maladministration.<sup>116</sup>

### 2.3. *Justitieombudsman*: The Ottoman Roots of the Swedish Ombudsman Model

Although the majority of ombudsing literature considers the Swedish ombudsman model as the genesis of modern paradigms,<sup>117</sup> the ombudsmanship practice finds its roots in the Ottoman Empire three centuries ago.<sup>118</sup> '*Qadi al-Qudat*' (head of jurists), headed by a jurist, was an Ottoman institution that was created to monitor the fulfilment of Islamic laws in the public sphere. Based on the Monarch's observations, the Chancellor of Justice was created in Sweden with autonomous powers to supervise

---

<sup>109</sup> Ibid, pp.60-61.

<sup>110</sup> Lang, A Western King and an Ancient Notion, p.60.

<sup>111</sup> In other resources, he is known as 'Majesty's Supreme Ombudsman', or 'The King's Highest Authorized Person'.

<sup>112</sup> Diaw, The Ombudsman Story: A Case Study, p.3. And Lang, A Western King and an Ancient Notion, p.57.

<sup>113</sup> Diaw, Ombudsmen, People's Defenders and Mediators.

<sup>114</sup> Lang, A Western King and an Ancient Notion, p.61. And Wiegand, A Just and Lasting Peace, p.137.

<sup>115</sup> Osipova, Development and Progressive Institutionalization, p.32.

<sup>116</sup> Lang, A Western King and an Ancient Notion, p.61.

<sup>117</sup> Ibid, pp.56-65.

<sup>118</sup> Servet Alyanak, "The New Institution on Protection of Fundamental Rights: Turkish Ombudsman Institution," **Ankara Review of European Studies**, Vol.14, No.1, (2015), pp.1-29.

Diaw, The Ombudsman Story: A Case Study, pp.3-4.

Hasan Tahsin Fendođlu, "Public Auditorship (Ombudsmanship) and Right to Constitutional Complaint to the Constitutional Court," **Review of Ankara Bar**, Issue.4, (2013), pp.23-49.

Howard, **The Organizational Ombudsman**, pp.1-10.

Yasin Kurban, "From *Diwan Al-Mazalem* to the Ombudsmanship: Historical Background of the Ombudsmanship," **Journal of EKEV Academy**, Issue.52, (2012), p.93.

Zehra Odyakmaz, "Identification of Ombudsman Institution and Evaluating Some Articles of the Law n.6328," **Journal of Turkey Academy of Justice**, Vol.4, No.14, (2013), pp.1-85.



public officers.<sup>119</sup> The Ottoman Sultan welcomed Charles XII to his royal palace based in Bender.<sup>120</sup> The Monarch observed that the Sultan had a close adviser who receives people's grievances.<sup>121</sup> It is reported: "*King Charles XII [ruling from far away] signed a series of administrative reforms which included a decree for the Högste Ombudsmannen in October 1713, to make sure that state officers were acting in accordance with laws and regulations.*"<sup>122</sup> Riksdag (currently the National Legislature and the Supreme Decision Maker) appointed the Chancellor of Justice after the death of Charles XII.<sup>123</sup> The laws supervision and their implementation [in the public sphere] was delegated to several parliamentary commissioners (*Ombudsmän*).<sup>124</sup> Similarly, ombudsmen of diverse scopes were recommended to maintain institutional focus.<sup>125</sup> However, the consolidation of these institutions occurred in 1968.<sup>126</sup>

#### 2.4. The Global Growth of the Ombudsman Institutions

Over the past century, the ombudsman institutions spread from Europe to other countries across the world. Today, they exist in more than 125 countries with multiple typologies,<sup>127</sup> and focus.<sup>128</sup> Thence, this research argues that the analytical framework traces variations in the powers, functions and organizational activities of different

---

<sup>119</sup> Lang, A Western King and an Ancient Notion, p.57. And Silay, A Comparative Examination, pp.17-21.

<sup>120</sup> Alyanak, The New Institution on Protection of Fundamental Rights, p.3. And **Hurriyet Daily News**, "Swedish Embassy Honors Ottoman Idea of Ombudsman on 300<sup>th</sup> Anniversary", 25 October 2013, <http://www.hurriyetdailynews.com/swedish-embassy-honors-ottoman-idea-of-ombudsman-on-300th-anniversary-56869> (Accessed 15 January 2017).

<sup>121</sup> Alyanak, The New Institution on Protection of Fundamental Rights, p.3. And Diaw, The Ombudsman Story: A Case Study, pp. 3-4. According to Toronto's Ombudsman resources, when King Charles XII was in exile after the Battle of Poltava in Russia, he came upon Caliph Umar's concept of *Qadi al-Qudat*. The *qadi* administered the law in the Ottoman State. (See Ismail Ceretli, Abdurrahman Eren and Ayhan Nuri Yilmaz, "Ombudsman in the World System and a Case Study: The Netherlands' Experiences and Turkey's Situation", Bartın University Publications No.16, 2015), <http://acikerisim.bartın.edu.tr:8080/xmlui/handle/11772/185> (Accessed 12 February 2018), p.100.

<sup>122</sup> Lang, A Western King and an Ancient Notion, p.57.

<sup>123</sup> Ibid, pp.58-63. And Yunus Emre Silay, "A Comparative Examination between the Ombudsman Institutions of the EU, the UK, the Sweden and the Turkey", (**Master**, University of Westminster, 2013), [http://www.jeanmonnet.org.tr/Portals/0/scholars\\_database\\_thesis/yunus\\_emre\\_silay\\_tez.pdf](http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/yunus_emre_silay_tez.pdf) (Accessed 2 January 2017).

<sup>124</sup> Ibid.

<sup>125</sup> Herzog, The Book of the Ombudsman, p.185.

<sup>126</sup> Ibid, p.185.

<sup>127</sup> Silay, A Comparative Examination, p.5.

<sup>128</sup> Osipova, Development and Progressive Institutionalization, p.34.

ombudsman institutions.<sup>129</sup> There was a gradual -yet a significant- evolution in the foundations, structures and policy impacts of the ombudsman. The modern stream started with Scandinavian countries namely Sweden, Finland, Denmark and Norway, between the period of 1889 and 1963.<sup>130</sup> In Sweden, the ombudsman exercises control over public servants and brings them to court, while in Denmark and Finland, it acts within ‘soft decrees’ for administrative control.<sup>131</sup> Accordingly, the ombudsman represents the public interest, recommends, reports, and makes flexible actions. As a citizens’ representative, the ombudsman makes people less vulnerable to administrative pitfalls and injustice.<sup>132</sup> China was the first Asian country to develop the ombudsman institution known as ‘*Control Yuan*’.<sup>133</sup> A regional diffusion of the Commonwealth network emerged from 1966 to the late 1970s. Similarly, France, Spain, and Portugal adopted the ombudsman system in the late 1970s, while Tanzania, Mauritius, Zambia, and Nigeria were the first African countries to set up ombudsmen. In the 1980s, fifteen countries from South America and Eastern Europe formed ombudsman offices.<sup>134</sup> In the 1990s and 2000s, there was a ‘horizontal globalization’ of the ombudsman movement;<sup>135</sup> democratized political system emerged, globalized agendas and reforms were initiated in the developing world. Accordingly, the foundation of the European ombudsman institutions in the Eastern bloc of Europe was based on the European Convention on Human Rights (ECHR).<sup>136</sup> The new institution was titled ‘Human Rights

---

<sup>129</sup> Silay, A Comparative Examination, p.6.

<sup>130</sup> Ferris, Goodman and Mayer, Brief on the Office of the Ombudsman, pp.7-9.

<sup>131</sup> Ibid, p.6.

<sup>132</sup> Ibid, p.6. And Marten Oosting, “Essential Elements of Ombudsmanship,” in Linda C. Reif (Ed.) **The Ombudsman Concept**, Edmonton: University of Alberta, 1995, p.14.

<sup>133</sup> Further information on the Control Yuan is available on <https://www.cy.gov.tw/ct.asp?xItem=6036&CtNode=989&mp=21> (Accessed 7 June 2017).

<sup>134</sup> Between 1970 and 1980, there was a ‘growing public consciousness’ of the human rights abuses by authoritarian and military dictatorships. (See Diaw, Ombudsmen, People’s Defenders and Mediators, pp.2-3. And Herzog, The Book of the Ombudsman, pp.188-190).

<sup>135</sup> Diaw, The Ombudsman Story: A Case Study, pp. 8-9.

<sup>136</sup> Silay, A Comparative Examination, p.6. And Parliamentary Assembly, Impact of the European Convention on Human Rights in States Parties: Selected Examples, Council of Europe, 8 January 2016, <https://www.coe.int/bg/web/execution/-/the-impact-of-the-european-convention-on-human-rights?desktop=true> (Accessed 7 June 2017). And Gabriele Kucsko-Stadlmayer, The Spread of the Ombudsman Idea in Europe, 12 June 2009, [http://www.theioi.org/downloads/34chi/Stockholm%20Conference\\_25.%20Back%20to%20the%20Roots\\_Gabriele%20Kucsko%20Stadlmayer.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjrstn-95LeAhWLh6YKHZh4DfsQFggUMAA&usg=AOvVaw0mqjKZS141S9ypRkwbAmdI](http://www.theioi.org/downloads/34chi/Stockholm%20Conference_25.%20Back%20to%20the%20Roots_Gabriele%20Kucsko%20Stadlmayer.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjrstn-95LeAhWLh6YKHZh4DfsQFggUMAA&usg=AOvVaw0mqjKZS141S9ypRkwbAmdI) (Accessed 7 June 2017), pp.8-10.

Ombudsman’ or ‘Hybrid Ombudsman’; an innovation upon the classical ombudsman.<sup>137</sup> Its mandate included further powers vis-à-vis human rights protection.<sup>138</sup>

During the 1950s and 60s, the ombudsman engendered political, social and economic implications in contemporary societies. Abedin described the international magnitude of this institution as ‘Ombudsmania’, ‘Ombudsman explosion’, or ‘Ombudsman tsunami’.<sup>139</sup> Remac argued that in the 1960s, the world started gradually to discover the powers and ‘soft-law character’ of the ombudsman institution, while in the 1990s, after the fall of the totalitarian regimes, the ‘real ombudsmania’ extensively emerged with more authority and power.<sup>140</sup> Likewise, the emerging ombudsmania is also explained by administrative justice, regime legitimacy, democratization, good governance, social innovation, and political values, which constitute the nexus of the state architecture.<sup>141</sup> Notwithstanding, even with this rapid spread, not all countries incorporated the ombudsman into their national infrastructures due to financial, ideological or political factors. Giving this relative preparedness, the ombudsman had limited status. It is viewed as a ‘hindrance’ to be recognized as an ‘equal partner’ for public administration.<sup>142</sup> Hitherto, demands for transparency, efficiency, good governance, and administrative justice urged many states to establish ombudsman institutions, so to meet administrative and legal challenges.<sup>143</sup> Diaw writes: “*The ombudsman is part of a broader development to institute transparency, administrative justice and respect for human rights... a building block in a broader system of checks and balances to which*

---

<sup>137</sup> Silay, A Comparative Examination, p.6. And Gabriel Kucsko-Stadlmayer, European Ombudsman Institutions: A comparative legal analysis regarding the multifaceted realization of an idea, New York: Springer Wien, 2008, p.3.

<sup>138</sup> Silay, A Comparative Examination, p.6.

<sup>139</sup> Najmul Abedin, “Conceptual or Functional Diversity of the Ombudsman Institution: Classification,” **Administration and Society**, Vol.43, No.8, (2011), p.898. And Silay, A Comparative Examination, p.7.

<sup>140</sup> Remac and Wiegand stated that the ombudsperson can only use the persuasive powers i.e. inter-alia. These powers are not binding in any form. They are accepted because of the status, working space, and public acceptance. Wiegand, A Just and Lasting Peace, p.120. And Milan Remac, “Standards of Ombudsman Recognition: A New Normative Concept?” **Utrecht Law Review**, Vol.9, No.3, (2013), pp.62-78.

<sup>141</sup> Osipova, Development and Progressive Institutionalization, p.37.

<sup>142</sup> McMillan. The Role of the Ombudsman in Protecting Human Rights, p.4. And Nicholas Barry and Tom Campbell, “Towards a Democratic Bill of Rights,” **Australian Journal of Political Science**, Vol.46, No.1, (March 2011), pp.71-86.

<sup>143</sup> Sumit and Oshoneesh Waghmare, Institution of Ombudsman -A Legislative and Judicial Outlook, **Academike**, October 2015, <https://www.lawctopus.com/academike/institution-ombudsman-legislative-judicial-outlook/> (Accessed 17 January 2017), p.22. And The Victorian Ombudsman, About the Victorian Ombudsman, <https://www.ombudsman.vic.gov.au/About/The-Victorian-Ombudsman> (Accessed 10 January 2017).

*institutions and decentralization processes contribute significantly.*"<sup>144</sup> Besides being a public consultation body, the ombudsman provides an autonomous assessment to executive bodies.<sup>145</sup> The adoption and institutionalization of the ombudsman at the constitutional and legislative levels shaped the modern understanding of the state-citizens interaction, and reassessed the state machinery vis-à-vis democratic structures.<sup>146</sup> Osipova states that the ombudsman -within the scope of its dispositive power and functions- is both 'a rational institution set to protect individual rights, and an apparatus to improve the government's eminence'.<sup>147</sup> It also provides within its competence, individual or general guidance to improve administrative services.<sup>148</sup>

That being said, there are two main factors behind the institutionalization of the ombudsman. The first factor is the 'reactive' evolving administrative activities and power delegations, while the second one is the 'proactive' need for civil rights defense mechanisms, due to power delegation, and highly regulated bureaucracies.<sup>149</sup> Likewise, the dynamics of contemporary societies initiated the development of institutions that would link rights to duties, and citizens to state. Likewise, Osipova found that there are other factors behind the rise of the ombudsman vis-à-vis contemporary understanding of administrative justice. These factors are: First are the rampant human rights violations, discrimination, tyranny, oppression, and genocides. Second are the two world wars and their brutal consequences on physical and psychological aspects, European reconstruction plan, and other political events e.g. the Cold War, the fall of Berlin Wall, etc. Part of the reconstruction project was to 'instrumentalize' human rights protection, and adopt policy settings in order to make governments approachable and civil servants accountable.<sup>150</sup> Third is the technical and technological innovations, economic liberalism, and shift towards service provision and citizen-oriented management. These have all revolutionized social life and shaped people's behavior.<sup>151</sup> Thus, the absence of

---

<sup>144</sup> Diaw, *Ombudsmen, People's Defenders and Mediators*, p.7.

<sup>145</sup> Katrine Del Villar, *Who guards the guardians? Recent Developments Concerning the Jurisdiction and Accountability of Ombudsmen*, AIAL Forum, Issue.36, 2 November 2002, <http://classic.austlii.edu.au/au/journals/AIAdminLawF/2003/3.pdf> (Accessed 3 February 2017), pp.25-44.

<sup>146</sup> Osipova, *Development and Progressive Institutionalization*.

<sup>147</sup> *Ibid*, p.5.

<sup>148</sup> Alyanak, *The New Institution on Protection of Fundamental Rights*, p.63.

<sup>149</sup> Anne Peters, "The European Ombudsman and the European Constitution," **Common Market Law Review**, Vol.42, No.3, (2005), p.699.

<sup>150</sup> Herzog, *The Book of the Ombudsman*, p.186.

<sup>151</sup> Osipova, *Development and Progressive Institutionalization*, p.34.

an ombudsman clearly underestimated the right to complain against wrongdoings, and to pursue fair and transparent conduct. McMillan states: “*the right to complain, when securely embedded in the legal system, is certainly one of the most important human rights achievements that that free societies should work for.*”<sup>152</sup>

In a public survey conducted by Australia’s Commonwealth Ombudsman on ‘what people would do about unsolved complaints with government bodies’, close to 60% of the respondents stated that ‘they will reach out to their representatives or the ombudsman to complain about administrative injustice’, while less than 5% would approach a lawyer.<sup>153</sup> The results shown that the ombudsman came in the top of complaint resolution and oversight bodies.<sup>154</sup> Among the factors that explain citizens’ behavior are public awareness, and accessibility and ease to make complaints. Besides, as governments’ functions substantially continue to expand in multiplicity and complexity, new mechanisms for citizens’ rights protection were essential.<sup>155</sup> McMillan who described the ombudsman as ‘the fourth branch of government’ i.e. integrity branch,<sup>156</sup> states that the rise of this institution in emerging democracies reflects the policy goal of stakeholders to set modern organizations that will solve complaints with innovative and accountable arrangements.<sup>157</sup> Taking into consideration the global development of the ombudsman, it remains one of the fastest rising Grievance Redress Mechanism (GRM) institutions promoted nowadays.

Overall, the ombudsman is an integral part of civic societies, and a rational mechanism - both in intent and structure- set to defend civil rights, to evaluate civil services, to institutionalize administrative justice and wise governance, and to fight against

---

<sup>152</sup> McMillan, *The Role of the Ombudsman in Protecting Human Rights*, p.3.

<sup>153</sup> *The Victorian Ombudsman, About the Victorian Ombudsman.* And McMillan, *The Role of the Ombudsman in Protecting Human Rights*, p.3.

<sup>154</sup> *Ibid*, pp.3-4. And Colin Neave, *Complaint Management by Government Agencies: an Investigation into the Management of Complaints by Commonwealth and Act Government*, Commonwealth Ombudsman, October 2014, [http://www.ombudsman.gov.au/data/assets/pdf\\_file/0011/30017/October-2014-Complaint-management-by-government-agencies.pdf](http://www.ombudsman.gov.au/data/assets/pdf_file/0011/30017/October-2014-Complaint-management-by-government-agencies.pdf) (Accessed 15 January 2017). And *Challenges of the Commonwealth Ombudsman*, University of Sydney, [sydney.edu.au/lec/Admin%20Law%20Teaching%20Notes\\_Ombudsman.docx](http://sydney.edu.au/lec/Admin%20Law%20Teaching%20Notes_Ombudsman.docx) (Accessed 17 January 2017).

<sup>155</sup> McMillan, *The Role of the Ombudsman in Protecting Human Rights*.

<sup>156</sup> *Ibid*. And *Challenges of the Commonwealth Ombudsman*, University of Sydney.

<sup>157</sup> McMillan, *The Role of the Ombudsman in Protecting Human Rights*, p.3.

nepotism.<sup>158</sup> It, thus, remains a multi-functional mechanism to guide, to educate, to inform citizens, and to assist them in resolve grievances' process.<sup>159</sup>

## 2.5. The Grievance Redress System and the Judicial Court: Similarities and Differences

The grievance redress system i.e. the ombudsman and the judicial court share similar powers such as:<sup>160</sup>

- Conducting formal investigations;
- Requiring documents to be formed, and evidences to be provided; and
- Requiring witnesses to attend and be examined, in some instances, under oath.

However, there are important distinctions between the two. Although the ombudsman scrutinizes administrative decisions and conducts investigations, its deliberations are not binding because it acts based on 'soft-decree', and its decisions are not reviewable.<sup>161</sup> On the other hand, judicial courts decide whether people have suffered unlawful act. The courts are mainly concerned with the legality of an action or decision, while the ombudsman does not have the authority to determine whether the law has been breached or not, nor does it involve lawyers or legal actions, as it fulfills an inquisitorial task.<sup>162</sup> Yet, the ombudsman generally proceeds more informally than the judicial court. Unlike the adversarial model of a court, the ombudsman uses inquisitorial methods and provides advisory services to the people. Although the ombudsman is not a substitute or a surrogate court, it still offers an alternative system of justice.<sup>163</sup>

---

<sup>158</sup> Osipova, Development and Progressive Institutionalization, p.38.

<sup>159</sup> Wiegand, A Just and Lasting Peace, p.121.

<sup>160</sup> Alexandros Tsadiras, "Navigating Through the Clashing Rocks: The Admissibility Conditions and the Grounds for Inquiry into Complaints by the European Ombudsman," **Yearbook of European Law**, Vol.26, No.1, (2007), pp.157–192.

<sup>161</sup> Michael Harris and Martin Partington, **Administrative Justice in the 21<sup>st</sup> Century**, Oxford: Hart Publishing, 1999, pp.138-139.

<sup>162</sup> Remac, Standards of Ombudsman Recognition, pp.75-77.

<sup>163</sup> Michael Everett, A Public Service Ombudsman for the UK, London: The House of Commons Library, 12 August 2016, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7587> (Accessed 20 January 2017), p.5

## 2.6. The United Nations' Role in the Institutionalization of the Ombudsman

The Universal Declaration of Human Rights (UDHR) is a fundamental document on human rights that promotes freedom and equality in dignity and rights among people.<sup>164</sup> The UN adopts a 'human right-centric' framework.<sup>165</sup> Its fundamental mission is to safeguard human rights without discrimination or distinction among people.<sup>166</sup> The organization is committed to institutionalize these rights,<sup>167</sup> and calls states for policy reforms in this regard.<sup>168</sup> Human rights commissions and ombudsman institutions perform parallel role in democratic systems;<sup>169</sup> they are adopted to protect people's rights and improve governance.<sup>170</sup> Nevertheless, the UN has limited capability to investigate on violations of human rights on micro/ individual base. For this reasons, there was a need for 'delegation of responsibility' to the above-mentioned institutions at the domestic level.<sup>171</sup> That being said, the technical implementation depends on states' mechanisms, and the extent of recognition, observance and protection of civil rights. This recognition shall come from the state's 'sense of responsibility', while the explicit denial to recognize, to observe, to promote, and to protect civil rights and freedoms arise in anti-democratic political regimes.<sup>172</sup>

The UN adopted three mechanisms to fulfill its mission: study, examination, and recommendation. The General Assembly urged states to disseminate the declaration texts in educational institutions and forums in order to raise public awareness, and provided assistance to states in need for capacity building.<sup>173</sup> In this regard, the promotion and protection of human rights and freedoms is an ongoing process. The UN Commission on Human Rights receives regular reports to evaluate the status of human

---

<sup>164</sup> Herzog, *The Book of the Ombudsman*, p.182.

<sup>165</sup> Mihir Kanade, *The Multicultural Trading System and Human Rights: A Governance Space Theory on Linkages*, London: Routledge, 2017, pp.7-10.

<sup>166</sup> Herzog, *The Book of the Ombudsman*, pp.181-182. And Osipova, *Development and Progressive Institutionalization*.

<sup>167</sup> Osipova, *Development and Progressive Institutionalization*, p.17.

<sup>168</sup> Herzog, *The Book of the Ombudsman*, p.181.

<sup>169</sup> Osipova, *Development and Progressive Institutionalization*, p.19.

<sup>170</sup> *Ibid*, p.17.

<sup>171</sup> Herzog, *The Book of the Ombudsman*. And Osipova, *Development and Progressive Institutionalization*.

<sup>172</sup> Osipova, *Development and Progressive Institutionalization*, pp.18-19.

<sup>173</sup> *Ibid*.

rights worldwide.<sup>174</sup> In 1946, the UN organized a seminar on the ‘guidelines, directions, and operations of the human rights and freedoms institutions within states’ capacity’.<sup>175</sup>

The roadmap stated that these institutions have to be:<sup>176</sup>

- An informative reference on human rights issues for states and citizens; and
- A platform to instruct the public opinion, to educate citizens on human rights, to promote public awareness, and to provide recommendations on matters of public or specific concern where governments may want some reference or advice.

The roadmap suggested that the institutional framework of these institutions have to be inclusive so to represent states’ differing infrastructures and make people active participants in the decision-making process vis-à-vis human rights issues, and to be accessible so to remain of direct and easy access at local or regional levels, and of impartial assistance and reliable consultancy to any citizen.<sup>177</sup>

By the 1980s, there was a growing interest and global spread of these institutions.<sup>178</sup> In 1991, the first ‘International Workshop on National Institutions for the Promotion and Protection of Human Rights’ contributed to set the working principles and ‘status’ of human rights national institutions.<sup>179</sup> A while later, the UN adopted ‘the Paris Principles’ on the institutional framework. According to Herzog, the scope and mandate expanded to include:<sup>180</sup>

- Proposing, reporting, recommending, and supplying states and national assemblies with policy documentations on human rights;
- Contributing in the preparation, conduction, and submission of consistent policy reports and programs;
- Coordinating the regulations with the international human rights bodies and instruments where states are part of, and initiating policy endorsement; and

---

<sup>174</sup> National Institutions for the Promotion and Protection of Human Rights, Fact Sheet No.19, The Office of the United Nations High Commissioner for Human Rights, Geneva: United Nations, 1993, <http://www.ohchr.org/Documents/Publications/FactSheet19en.pdf> (Accessed 20 January 2017).

<sup>175</sup> Herzog, *The Book of the Ombudsman*, pp.182-183. And *National Institutions for the Promotion and Protection of Human Rights*.

<sup>176</sup> Herzog, *The Book of the Ombudsman*, pp.182-185.

<sup>177</sup> *Ibid*, p.182.

<sup>178</sup> *Ibid*, p.182.

<sup>179</sup> *Ibid*, p.182. And *National Institutions for the Promotion and Protection of Human Rights*.

<sup>180</sup> Herzog, *The Book of the Ombudsman*, pp.182-185.



- Assisting policy makers, and collaborating with the international and local organizations, and other states' institutions working on human rights issues.<sup>181</sup>

Herzog argued that the policy process and states' legislative systems influence the working structures of human rights institutions, likewise, the institutional framework is contextual as it differs from one country to another.<sup>182</sup> To address this issue, the 'World Conference on Human Rights' was organized, and a declaration was adopted in 1993.<sup>183</sup> The conference recognized the right of each state to adopt the model of national institution that is suitable to its domestic patterns and dynamics.<sup>184</sup>

Resolution 64 of the Commission on Human Rights states:<sup>185</sup> *"it is only transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, that is the foundation on which good governance rests, and that such a foundation is a sine qua non for the promotion of human rights."*<sup>186</sup>

Resolution 73 of the Commission calls for: *"further progressive development within the UN human rights machinery' of 'third generation rights' or 'right to solidarity' for them to be able to respond to the increasing challenges of international cooperation in this field."*<sup>187</sup>

The UN technical support and dynamic contribution in supporting human rights national institutions have actively encouraged state actors to set up specialized bodies. This can

---

<sup>181</sup> Ibid, p.182.

<sup>182</sup> Ibid, p.182.

<sup>183</sup> Ibid, p.182. And The Office of the United Nations High Commissioner for Human Rights, Vienna Declaration and Program of Action, Geneva: United Nations, 25 June 1993, <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf> (Accessed 2 February 2017).

<sup>184</sup> Herzog, The Book of the Ombudsman, p.182.

<sup>185</sup> Osipova, Development and Progressive Institutionalization, p.19. And The Office of the United Nations High Commissioner for Human Rights, Good Governance and Human Rights, Geneva: United Nations, 2007, <https://www.ohchr.org/Documents/Publications/GoodGovernance.pdf> (Accessed 2 February 2017).

<sup>186</sup> Osipova, Development and Progressive Institutionalization, p.19. And United Nations Office of the High Commissioner for Human Rights & United Nations Development Program, Seminar on Good Governance Practices for the Promotion of Human Rights, Seoul: United Nations, 15-16 September 2004, <https://www2.ohchr.org/english/issues/development/governance/compilation/docs/backgroundnote.pdf> (Accessed 4 February 2017). And Bernard Modho, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Human Rights Council, 4 March 2008, [http://www.ohchr.org/Documents/Issues/Development/IEDebt/DraftGuidelinesonFD\\_HR.pdf](http://www.ohchr.org/Documents/Issues/Development/IEDebt/DraftGuidelinesonFD_HR.pdf) (Accessed 4 February 2017).

<sup>187</sup> Osipova, Development and Progressive Institutionalization, p.18. Bertie G. Ramcharan, **The Protection Roles of the UN Human Rights Special Procedures**, Leiden: Martinus Nijhoff, 2009, p.123. And Human Rights Council, Resolution 6/3, Human rights and international solidarity, [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_3.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_3.pdf) (Accessed 3 February 2017).

be measured by states' policy reforms and institutionalization of the ombudsman in the national infrastructure.<sup>188</sup> This goes hand in hand with the main idea that governments need to work on national bodies i.e. grievances systems where citizens can complain in cases of civil rights violations and power abuse.<sup>189</sup> By the 20<sup>th</sup> century, developed and developing countries endorsed institutional reforms, and adopted complaints and grievances institutions in the national and local administrations.<sup>190</sup> These bodies have become relevant to understand how governments handle grievances, and their degree of influence. They have become rational institutions, in nature and scope, adjusted in line with national and domestic aspects [taking into account distinct cultural contexts].<sup>191</sup> Moreover, the complaint and grievance mechanisms serve two important purposes. First, they serve as 'warning mechanisms' which supply organizations with necessary information about human rights status, which consequently help in developing -during problem solving process- appropriate policy responses, approaches and practices. Second, these institutions serve as direct 'restitution mechanisms' to resolve grievance and build peaceful problem resolutions.<sup>192</sup> In addition, the ombudsman is legally entitled to propose a reform or correct an administrative dysfunction when necessary.

## 2.7. The Ombudsman Models<sup>193</sup>

The growth of the ombudsman institutions throughout the world came gradually with progressive phases, waves and approaches vis-à-vis autonomy, transparency, and integrity. Lang stated that the evolution of the ombudsman institutions provides contextual understanding on 'how historical and cross-cultural aspects influence the

---

<sup>188</sup> Herzog, *The Book of the Ombudsman*, p.186.

<sup>189</sup> Silay, *A Comparative Examination*.

<sup>190</sup> Najmul Abedin, "A Critical and Argumentative Study of the Development and Performance of the Ombudsman Institution in a Small Multiracial Society: The Republic of Trinidad and Tobago," **Public Organization Review**, Vol.13, No.3, (September 2013), pp.262-264.

<sup>191</sup> Silay, *A Comparative Examination*.

<sup>192</sup> Duncan French and Richard Kirkham, "Complaint and Grievance Mechanisms in International Law: One Piece of the Accountability Jigsaw?" **New Zealand Yearbook of International Law**, Vol.7, (2009), p.180.

<sup>193</sup> Reif studied other types of the ombudsman such as classical ombudsman, hybrid ombudsman, department ombudsman, hybrid public/private ombudsman, and international ombudsman, etc. The classifications are contextual and change from one country to another. (See Reif, **Ombudsman, Good Governance**, pp.25-26).

institutional, legislative and executive branches of governments'.<sup>194</sup> Despite attempts to organize the ombudsman institutions into single waves or models, it is common to observe a wide-ranging formation, variation, and transformation of these institutions.<sup>195</sup>

Diamandouros argued that the organizational foundations of the ombudsman are classified into three main historical waves. The first wave comprises the classical Swedish and Finnish ombudsmen or 'classical ombudsman of the liberal democracies'. The second wave includes ombudsmen models that deal with maladministration and administrative power abuse. The third wave involves ombudsmen in transitory regimes or new democracies that emerged as a result of political transformations.<sup>196</sup> Likewise, Diamandouros identified four dimensions of an effective ombudsman: First, it should be based on impartial institutional system. Second, it should be rational, integral and trustworthy. Third, it should conduct efficient work and propose effectual resolutions, and fourth, it must be autonomous from other government branches.<sup>197</sup>

Accordingly, the ombudsman's mandate at regional or local levels lies on the powers of persuasion and recommendation, and means to achieve its functions; it may be of general or specific purpose, and depends on the legal texts, to conduct investigations on abuse of administrative power, and to protect human rights.<sup>198</sup> This research covers six models, and describes the distinctive characteristics of each model.<sup>199</sup>

---

<sup>194</sup> Osipova, Development and Progressive Institutionalization. And Lang, A Western King and an Ancient Notion, p.63.

<sup>195</sup> Alyanak, The New Institution on Protection of Fundamental Rights, pp.2-27. And Remac, Standards of Ombudsman Recognition, pp.62-78.

<sup>196</sup> Nikiforos P. Diamandouros, Speech during the Session of Legality and Good Administration: is there a Difference? Luxembourg: Office for Official Publications of the European Communities, 15 October 2007, <https://www.ombudsman.europa.eu/speeches/en/2007-10-15.htm> (Accessed 2 April 2017), p.2.

<sup>197</sup> Silay, A Comparative Examination, 24-25. And Nikiforos P. Diamandouros, **The European Ombudsman: Origins, Establishment, Evolution**, Luxembourg: Office for Official Publications of the European Communities, 2005. And Nikiforos P. Diamandouros, "The European Ombudsman and Good Administration Post-Lisbon," in Diamond Ashiagbor, Nicola Countouris and Ioannis Lianos (Ed.) **The European Union after the Treaty of Lisbon**. Cambridge: Cambridge University Press, 2012, pp.210-226.

<sup>198</sup> Herzog, The Book of the Ombudsman, pp.191-192.

<sup>199</sup> Diaw, Ombudsmen, People's Defenders and Mediators, p.2.

The legal framework and mandate of the ombudsman: Is there a constitutional text to establish the ombudsman? What is the institutional nature of the institution? Does the scope of investigation cover national or local bodies?
The degree it plays in defending and promoting human rights: Is it important or marginal?
The government branch responsible for electing the ombudsman: Is it the legislative or executive branch?
The extent of separation and autonomy of the term of office from the term of legislature.
The channel complaints are being received: directly, from the people, or indirectly, through a MP.

**Figure 1:** Distinctive Characteristics of Different Types of the Ombudsman Institutions

**Source:** Enrique Múgica Herzog, *The Book of the Ombudsman, defensor del pueblo*, 2015, [https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/The\\_book\\_DP\\_Ingles.pdf](https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/The_book_DP_Ingles.pdf), p.190.

a) **General Ombudsman<sup>200</sup>:** It is an independent institution led by a chief ombudsman appointed by the parliament or general assembly. Its term of office is defined by the legislative, and its mandate and powers are stipulated in state's constitution.<sup>201</sup> The classical ombudsman's purpose fulfills the IBA definition, and has two fundamental purposes: to promote and protect people's rights, and to oversee administration within the national scope. It works based on direct complaints received directly from citizens, or conducts investigations based on self-initiative. The classical ombudsman uses the powers of persuading and assistance, proposes recommendations, and rejects coercive and unobstructed powers to control civil servants' conduct.<sup>202</sup>

<sup>200</sup> Some other resources refer to this model as the classical ombudsman, or institutional ombudsman.

<sup>201</sup> Herzog, *The Book of the Ombudsman*, p.190.

<sup>202</sup> Vahap Atilla Oğuşgil, "Ombudsman Institutions in the Candidate Countries on the Road to EU Membership: a Comparative View," **Eastern Journal of European Studies**, Vol.6, No.1, (June 2015), pp.31-48. And Linda C. Reif, "Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman," **Boston College Third World Law Journal**, Vol.31, No.2, (2011), p.270.

According to the modern approach, there are three types of general ombudsman: the basic or classical model, the rule of law model, and the human rights model.<sup>203</sup> The classical model is divided into ‘Legal Based Model’ and ‘Human Rights Model’ vested with additional authority.<sup>204</sup> The general ombudsman was adopted initially by Scandinavian countries, and became later operational in Western Europe and Latin America (see previous discussion on the institution’s global growth).<sup>205</sup>

**b) Mediator:** This ombudsman model is known in French as *‘le médiateur’*, and exists in France and other Francophone countries such as Senegal, Gabon and Canada.<sup>206</sup> *Le Médiateur de la République*, instituted on 3<sup>rd</sup> January 1973 by status of Law N73-6<sup>207</sup>, is appointed by decree of the President of the Republic in the Council of Ministers, and receives citizens’ complaints through a Member of Parliament (MP) exclusively.<sup>208</sup> The main tasks of the mediator are to find convenient and satisfactory resolutions to the problems between the offender and the offended, and to make reformative proposals to improve management. In order to guarantee independence, the mediator is appointed for a six-year term that cannot be shortened or renewed, operates within protective status, and enjoys judicial immunity when performing his profession [similar to what is accorded to MPs]. For instance, the mediator cannot be prosecuted because of the actions he made during the performance of his duty. The mediator’s working scope and activities are narrowed, as his tenure overlaps with the legislature.<sup>209</sup> The mediator cannot interfere in the course of a jurisdictional procedure nor does he question the basement of a decision of justice. That being said, the mediator is different from a general ombudsman because he cannot act directly; his work involves a mediator (MP) to whom citizens reach out directly. Besides, the grievances cover exclusively the administration or an organization delivering a public service (conflicts of judicial basis or with banks, corporations, industries, companies etc., are excluded). The applicants must have previously made written statements to the organization with which they are

---

<sup>203</sup> Dacian Dragos and Bogdana Neamtu, “Freedom of Information in the EU in the midst of Legal Rules, Jurisprudence and Ombudsprudence: the European Ombudsman as Developer of Norms of Good Administration,” **European Constitutional Law Review**, Vol.13, No.4, (2017), pp.641-672.

And Osipova, Development and Progressive Institutionalization, pp.46-48.

<sup>204</sup> Reif, Ombudsman, p.2. And Kucsko-Stadlmayer, **European Ombudsman Institutions**, p.61.

<sup>205</sup> Herzog, The Book of the Ombudsman, p.190.

<sup>206</sup> Ibid, 191. And Diaw, Ombudsmen, People’s Defenders and Mediators, p.4.

<sup>207</sup> This law was amended on various occasions.

<sup>208</sup> Herzog, The Book of the Ombudsman, p.191.

<sup>209</sup> Ibid, p.191.

in conflict.<sup>210</sup> If the mediator's recommendations are not taken into consideration by a public official, he can appeal to the supervisor and apply the disciplinary mechanism to the prosecutor's office in order to file a lawsuit.<sup>211</sup>

c) **Specialized Ombudsman:** This institutional model is also appointed by the national assembly/parliament. Although the functions of the specialized and general ombudsmen are similar, the specialized ombudsman is limited to specific social segments such as children, minors, seniors, etc.<sup>212</sup> Specialized ombudsmen can be military ombudsman, consumer ombudsman, children's rights ombudsman, elderly ombudsman, disabled ombudsman, student and education ombudsman, ombudsman of minorities, ombudsman of environment, consumer ombudsman, data protection, investment ombudsman, ethnic discrimination ombudsman, etc.<sup>213</sup> These models were established in the Scandinavian states prior to the institutional ombudsman.<sup>214</sup> Hence, these mandate specific institutions enable more narrow representation and outreach.

d) **Regional Ombudsman:** This ombudsman -named by regional, national or local legislature- has a similar decree of a general ombudsman, and targets regional administrations.<sup>215</sup> Spain, Italy and Germany are among the leading countries that have adopted regional ombudsman institutions -based on the European Convention on Human Rights and Fundamental Freedoms.<sup>216</sup> In 1954, West Germany has adopted a military ombudsman (Article 45b of the Constitution law on *Wehrbeauftragter des Bundestages*) with the purpose to redress grievances and encourage good conduct of and within the defense sector. A Commission for the Right to Petition<sup>217</sup> with a wide-ranging mandate, which fulfills the same function as a civilian ombudsman was

---

<sup>210</sup> Défenseur des droits, Le médiateur de la République: présentations et missions, (n.d), <https://www.defenseurdesdroits.fr/fr/institution/competences/services-publics> (Accessed 5 April 2017).

<sup>211</sup> Herzog, *The Book of the Ombudsman*, p.191.

<sup>212</sup> Ibid, p.191.

<sup>213</sup> Ian Harden, "When Europeans Complain: The Work of the European Ombudsman," in Alan Dashwood (Ed.) *Cambridge Yearbook of European Legal Studies. Volume 3*, Cambridge: CELS, 2000, pp.199-237.

<sup>214</sup> Herzog, *The Book of the Ombudsman*, p.191.

<sup>215</sup> Ibid. And Mary A. Marshall and Linda C. Reif, "The Ombudsman: Maladministration and Alternative Dispute Resolution," *Alberta Law Review*, Vol.34, No.1, (1995), pp.227-228.

<sup>216</sup> The Convention was adopted on the 3<sup>rd</sup> September 1953 by the Council of Europe. It encourages the member states to set up grievances mechanisms to protect and promote civil rights within the European borders. (See Osipova, *Development and Progressive Institutionalization*).

<sup>217</sup> Herzog, *The Book of the Ombudsman*, p.191. And Provisions concerning the Right of Petition (German Bundestag), (n.d), <https://www.bundestag.de/blob/189916/fd98dd44d95a4aba39a5eeba03076417/provisions-data.pdf> (Accessed 20 March 2017).

established.<sup>218</sup> In 1975, Law on the Powers of the Petitions Commission of Germany's Bundestag extended the *Wehrbeauftragter's* authority [the power to investigate independently].<sup>219</sup>

In Spain, *defensor del pueblo* is a public body that maintains immunity and inviolability in regulating the public authorities. Its scope is wide-ranging with a mandate to act as the High Commissioner of the Parliament on every public administration, regional and specialized ombudsmen, including those with special decrees.<sup>220</sup>

e) **Supranational Ombudsman:** One of the well-known models of the supranational ombudsmen is the European Union Ombudsman, established under the Maastricht Treaty, as part of EU integration. A supranational ombudsman usually receives complaints in a network of institutions from two or more parties, and redresses disputes within the authorities of its mandates.<sup>221</sup> That being said, the private sector e.g. corporations, industries, banks, companies, and non-profit, semi-public, or semi-private organizations such as NGOs, even universities have adopted ombudsman institutions. Moreover, international organizations and supranational institutions have set up proper ombudsman models at the international administrative level. For instance, the UN, the World Bank, and the International Monetary Fund have established their own ombudsmen to promote accountability and democratic values.<sup>222</sup> The institutional progress of supranational ombudsman differs in nature (public or private), scope (subnational, national or supra-national) and size (large or small). While this institution is statutory in some countries, it is voluntary in others. These variations are determined by each country's standards and procedures set to meet societal needs.

f) **Human Rights Ombudsman:** According to Reif, the role of Human rights ombudsman is a synthesis of the general ombudsman and human rights commissions.<sup>223</sup> Although the ombudsman and the National Commissions of Human Rights might seem quite similar, these commissions are special bodies set for the sole purpose of protecting

---

<sup>218</sup> Ibid. And Najmul Abedin, "The Ombudsman in Developing Democracies: The Commonwealth Caribbean Experience," **International Journal of Public Sector Management**, Vol.23, No.3, (2010), pp.221- 253.

<sup>219</sup> Herzog, *The Book of the Ombudsman*, p.186.

<sup>220</sup> Ibid, p.191. And Defensor del Pueblo "What is the Defensor del Pueblo?" (n.d), <https://www.defensordelpueblo.es/en/who-we-are/what-is-the-defensor/> (Accessed 17 March 2017).

<sup>221</sup> Silay, *A Comparative Examination*.

<sup>222</sup> Ibid, p.7.

<sup>223</sup> Reif, *Ombudsman, Good Governance*, p.8.

civil rights with highly organized and institutionalized structures, and for monitoring government administrations vis-à-vis human rights, thus promoting good governance.<sup>224</sup> These institutions are mandated by the legislature. As discussed earlier, the UN was the first organization to recognize the status of these commissions. The institutional framework and technical structures of these commissions depend mainly on states' legislations.<sup>225</sup> Having that said, post-colonial states, such as Eastern European countries, have established this type of institutions after their independence and fall of authoritarian regimes as a way to meet the liberal status of human rights and civil liberties, and to promote democratic values and good governance (this has been covered in the global growth of the ombudsman section).<sup>226</sup> However, in some countries where the ombudsman already exists, human rights commissions do hardly exist in parallel with grievances or administrative courts due to factors such as scarcity of economic resources, lack of technical capacity, higher expectations from the public, institutional duplication, redundant functions that both institutions fulfill, etc.

All in all, the global development of the grievances system shows that there is no single or unique model of the ombudsman. It can range from mediation to protection to monitoring, depending on states' technical capacities, resources, working environment, policy objectives, and public expectations. However, regardless of the designations and purposes, the ombudsmanship practice aims to monitor rationally and significantly the status of civil rights, democracy, accountability, transparency, and good governance by protecting citizens' rights and dignity.<sup>227</sup>

## 2.8. The Ombudsman Typology

Uggla developed a two-dimensional typology based on the concepts of institutional autonomy and ability to influence.<sup>228</sup> He identified four types of ombudsman

---

<sup>224</sup> Herzog, *The Book of the Ombudsman*, pp.191-192. And Ibrahim Ismail Wahab, **The Swedish Institution of Ombudsman: An Instrument of Human Rights**, Stockholm: LiberFörlag, 1979.

<sup>225</sup> Reif, *Ombudsman, Good Governance*, pp.7-8.

<sup>226</sup> *Ibid*, pp.8-9.

<sup>227</sup> Linda C. Reif, "The Ombudsman: Domestic Protection and Promotion of International Human Rights," in Reif (Ed.) **The Ombudsman, Good Governance and the International Human Rights System. International Studies in Human Rights Volume 79**, Springer: Dordrecht, 2004, pp.81-123.

<sup>228</sup> This typology was developed based on his comparative study on six Latin America's ombudsmen. The typology can be found in Uggla's article, p.428.



institutions based on these dimensions.<sup>229</sup> These are: (1) a classical ombudsman with high autonomy and strong influence [the ideal proper model], (2) a political institution with high autonomy and little influence, to serves the interest of a particular group in society, (3) a ‘dead-end-street’ with a relative autonomy but no real influence vis-à-vis policy impact, and (4) a ‘face’ ombudsman that lacks both independence and influence. This type of ombudsman is used to justify the presence of a grievance mechanism, even if it does not technically serve the purpose of grievances redress and citizens’ rights protection.<sup>230</sup>

Besides, the ombudsman’s autonomy and ability to influence are determined by the stability and predictability of the working environment, structural framework, political system, the founding legal documents, and ‘moral power’. According to Uggla’s study, Honduras, Peru and Bolivia’s institutions fall in the first category of a classical ombudsman with considerably autonomous and influence. In contrast, El Salvador’s ombudsman falls in the second category of a political apparatus due to political corruption in the public service. In Guatemala, human rights ombudsman offices were underestimated by political actors, and could hardly influence public opinion due to political instability. The ombudsman [‘façade’] remains obstructed instrument since the 2000s in the country. On the other hand, Columbia’s ombudsman reemerged after series of domestic political chaos e.g. the civil war, violence, civil aggressions, criminal gangs ‘*bandas criminales*’, absence of special systems of ‘early warnings’, etc. It currently occupies an active space and deals with critical issues such as parapolitics scandal.<sup>231</sup>

Diaw looked into the nexus of institutional circumstances to analyze the mechanisms though which autonomy and influence take place. Accordingly, the ability to influence depends on the interactions between external factors namely rule of law and institutional order, internal factors such as authority, integrity, work and ethical principles, structural order i.e. legal status and institutional authority, and political dimensions namely ideology, identity, and history.<sup>232</sup> Thus, this nexus forms a useful framework to approach the ombudsman’s institutional framework, operations, dynamics, and work

---

<sup>229</sup> Fredrik Uggla, “The Ombudsman in Latin America,” **Journal of Latin American Studies**, Vol.36, No.3, (2004), pp.423-450.

<sup>230</sup> Diaw, *The Ombudsman Story: A Case Study*, pp.25-27. And Diaw, *Ombudsmen, People’s Defenders and Mediators*, p.8.

<sup>231</sup> Osipova, *Development and Progressive Institutionalization*, pp.5-7.

<sup>232</sup> Diaw, *Ombudsmen, People’s Defenders and Mediators*, p.7.

ethics. Moreover, the operational and conducive environment of a functional ombudsman is structurally determined by coherent interactions of internal and external factors.<sup>233</sup> According to Diaw, participatory politics i.e. coherent orientation between the ombudsman and political actors is a fundamental condition to form a rational ombudsman with sustainable administrative standards and functional governance.<sup>234</sup> Similarly, it appears that political dimensions have an effect on the strength of other factors; weak political infrastructure has a negative effect on the three factors i.e. structural order, external and internal factors. For such situation, there has to be a constant integration between the structural and political conditions that shape the performance and policy output of the ombudsman.

## 2.9. The Ombudsman Features

The ombudsman is a transparent institution with trustworthy officers who must be accountable and independent when they fulfill their functions in office.<sup>235</sup> Its findings must be based on solid and valid arguments, and its grievances mechanisms must be accessible and open to citizens without distinction or discrimination. The clarity of evidences and ‘moral power’ require formal investigations, and transparent assessment standards that are used by an ombudsman in individual cases.<sup>236</sup> When the grievance system assimilates these features, the ombudsman achieves its purpose [settling disputes, handling people’s complaints, and upholding the rule of law]. Nonetheless, these features remain evidently a challenge giving the complexity of political systems and socio-cultural milieus.<sup>237</sup> For instance, independence influences the ombudsman’s decision-making, accountability, control mechanisms, verification role, legal statutes, budget control, and the process of hiring staff.<sup>238</sup> Likewise, the source of funds affects the ombudsman’s decisions; this is to say that when the budget comes from the executive branch, the institution is susceptible to influence.<sup>239</sup> For this purpose, the ombudsman needs to be financially stable and independent from the executive, and to

---

<sup>233</sup> Diaw, *The Ombudsman Story: A Case Study*, pp.27-28.

<sup>234</sup> Diaw, *Ombudsmen, People’s Defenders and Mediators*, p.7.

<sup>235</sup> Alyanak, *The New Institution on Protection of Fundamental Rights*, pp.8-12.

<sup>236</sup> *Ibid*, p.23. And Remac, *Standards of Ombudsman Recognition: A New Normative Concept*.

<sup>237</sup> Diaw, *Ombudsmen, People’s Defenders and Mediators*, p.5.

<sup>238</sup> *Ibid*. And Diaw, *The Ombudsman story: A case study*, p.17.

<sup>239</sup> Mario Claasen and Carmen Alpín-Lardiés, **Social Accountability in Africa: Practitioners’ Experiences and Lessons**, Oxford: African Books Collective, 2010.

remain politically neutral.<sup>240</sup> However, it is contended that the ombudsman does not maintain wide legal powers, except the right to investigate on human rights infringement, to suggest methods of dispute resolution, to advice on issues related to governance practices, to make recommendations, and to issue reports [what falls under the Alternative Dispute Resolution (ADR) mechanisms in grievances settlement at the initial stages]. The soft-decree nature means that the ombudsman lacks the ‘hard powers’ of bidding and enforcing decisions, which challenges the institution’s efficiency. Osipova stated that changes have to target domestic macro aspects in order to integrate this institution in the states’ national infrastructure and improve its enforcement powers.<sup>241</sup> McMillan contends that more effort needs to be pursued so to go over traditional and simplistic mechanisms of vertical administrative accountability. The ombudsman is an innovation to promote horizontal accountability. He says: “*If we are serious in our endeavor to have mechanisms of oversight and accountability...then we need to give increased emphasis to non-traditional mechanisms.*”<sup>242</sup> This endeavor is attainable when the ombudsman develops representative instruments and its powers expand beyond ‘soft decree’ to acquire more strength, cohesiveness, and influence.

## 2.10. The European Union Ombudsman

According to Article 2 of the TEU: “*The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.*”<sup>243</sup> To concretize the European principles on human rights, good governance, transparency, and democracy, the EU ombudsman office was founded on the 12<sup>th</sup> of July 1995 [elected by the EU Parliament]<sup>244</sup> within the EU community in line with the UN and European principles.<sup>245</sup> Vogiatzis states: “*the [EU] ombudsman is considered one of the most*

---

<sup>240</sup> Ibid, p.5.

<sup>241</sup> Osipova, Development and Progressive Institutionalization.

<sup>242</sup> McMillan, The Role of the Ombudsman in Protecting Human Rights, p.7.

<sup>243</sup> Official Journal of the European Union, Treaty on European Union, 26 October 2012, <http://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:12012M002&from=EN> (Accessed 2 January 2017).

<sup>244</sup> The European Union, The European Ombudsman, Strasbourg: EU Parliament, 12 July 1995, [https://www.ombudsman.europa.eu/showResource%3FresourceId%3D1226331178521\\_rap95\\_en.pdf%26type%3Dpdf%26download%3Dtrue%26lang%3Den+%&cd=1&hl=en&ct=clnk&gl=tr](https://www.ombudsman.europa.eu/showResource%3FresourceId%3D1226331178521_rap95_en.pdf%26type%3Dpdf%26download%3Dtrue%26lang%3Den+%&cd=1&hl=en&ct=clnk&gl=tr) (Accessed 2 January 2017).

<sup>245</sup> Silay, A Comparative Examination.

*prominent European Union actors pushing for greater transparency.*<sup>246</sup> Hence, it contributes to the institutionalization of accountability and open governance in the EU.

Twenty six EU member-states have established national ombudsmen, while two state members have set ombudsman institutions at the subnational level.<sup>247</sup> Independent and impartial, this institution holds the EU administrative bodies and agencies such as the European Central Bank and the European Council (Article 13 of the Treaty on Functioning of the European Union (TFEU), and excluding the Court of Justice [acts in its judicial capacity], the Court of Auditors, the administrative and legislative activities of the European Parliament<sup>248</sup> (Article 7 of the TEU),<sup>249</sup> accountable to EU citizens who enjoy both the right to EU citizenship, and the right to complaint in cases of administrative injustice [as set down in Lisbon Treaty].<sup>250</sup>

### **2.10.1 The Legal Basis of the European Ombudsman**

The European ombudsman is located in Strasbourg, with an additional office in Brussels.<sup>251</sup> It was established in September 1995 based on the Danish proposal, and by the Treaty of Maastricht, with the objective to enhance the EU's democratization process.<sup>252</sup> The European stakeholders' approach on citizen-centered administration aimed to make the EU governance more open and accountable, and to build transparent relations between citizens and EU administrative bodies.<sup>253</sup> According to Tsadiras, the ombudsman entered into force as a 'non-litigious' mechanism in the European

---

<sup>246</sup> Nikos Vogiatzis, *The European Ombudsman and Good Administration in the European Union*, London: Springer Nature, 2018, p.2.

<sup>247</sup> Ibid, p.6. And Nikiforos P. Diamandouros, *The Ombudsman Institution and the Quality of Democracy*, Center for the Study of Political Change, 17 October 2006, <https://www.circap.org/uploads/1/8/1/6/18163511/diamandouros.pdf> (Accessed 13 January 2017). Alyanak, *The New Institution on Protection of Fundamental Rights*. And Silay, *A Comparative Examination*, p.22.

<sup>248</sup> Vogiatzis, *The European Ombudsman and Good Administration*, pp.19-21.

<sup>249</sup> Simone Cadeddu, "The Proceedings of the European Ombudsman," **Law and Contemporary Problems**, Vol.68, No.161, (2004), p.166.

<sup>250</sup> Ibid, p.176. And Nikiforos P. Diamandouros, *The European Ombudsman*, Annual Report 2005, 13 March 2006, <http://www.statewatch.org/news/2006/apr/eu-ombuds-rep05.pdf> (Accessed 9 March 2017), p.35. And Wil James, *European Union Ombudsman*, London: CIVITAS Institute for the Study of Civil Society, 2015, <http://www.civitas.org.uk/content/files/BO.4.Ombudsman.pdf> (Accessed 7 January 2017).

<sup>251</sup> Diamandouros, *The European Ombudsman*, Annual Report 2005, p.9.

<sup>252</sup> Ibid, pp.17-20. And Vogiatzis, *The European Ombudsman and Good Administration*.

<sup>253</sup> Silay, *A Comparative Examination*, p.22.

‘institutional fabric’ to conduct investigations on maladministration, and to assess the EU bureaucratic conduct, based on civil grievances at the supranational level.<sup>254</sup>

The legal foundation of the EU ombudsman is based on Articles 24 and 228 of the TFEU.<sup>255</sup> Article 24 of the Treaty states: “*Every citizen of the Union may apply to the ombudsman established in accordance with Article 228.*”<sup>256</sup> Article 228 stipulates the investigative and oversight powers of the EU ombudsman.<sup>257</sup> The ombudsman conducts investigations either based on citizens’ requests or on an *ex-officio* i.e. self-initiative inquiry.<sup>258</sup> Similarly, the ombudsman has to notify in case of ‘no ground’ or lack of ground for evidence and inquiries, to update the complainants about the status of their case, and to report to the EU Parliament and the concerned institutions.<sup>259</sup>

---

<sup>254</sup> Alexandros Tsadiras, “Maladministration and life beyond legality: The European Ombudsman’s Paradigm,” **International Review of Law**, Vol.3, No.11, (2015), pp.2-5. And Diamandouros, The European Ombudsman, Annual Report 2005, p.35.

<sup>255</sup> Silay, A Comparative Examination, pp.22-25.

<sup>256</sup> Ibid, p.26. And EUR-Lex, The Treaty on European Union and the Treaty on the Functioning of the European Union, Document 12012E, Official Journal of the European Union C 326, 26 October 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> (Accessed 10 January 2017).

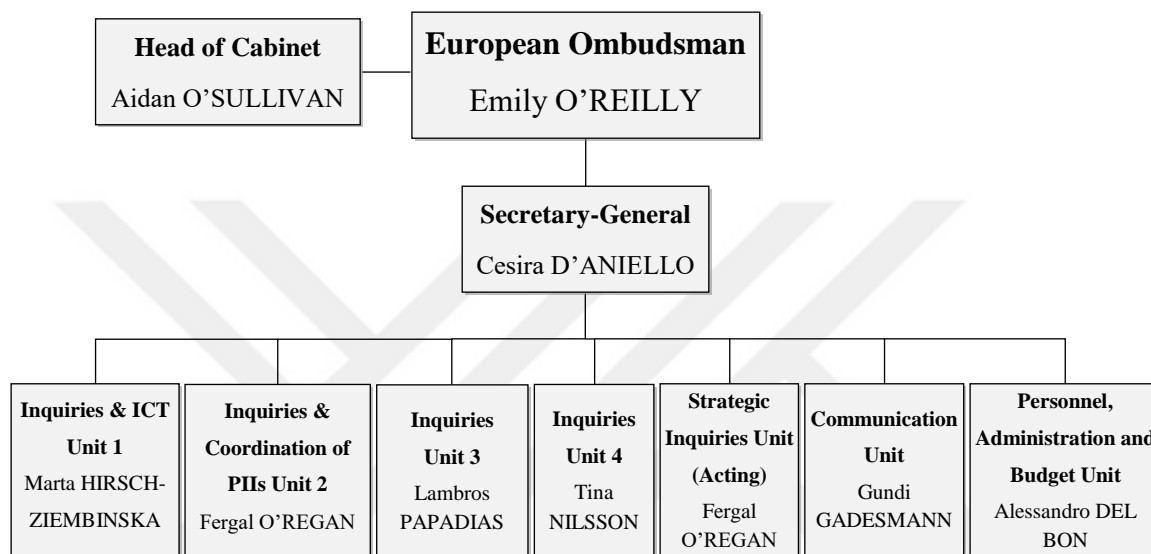
<sup>257</sup> EUR-Lex, The Treaty on European Union.

<sup>258</sup> Diamandouros, The European Ombudsman, Annual Report 2005, p.35.

<sup>259</sup> Jacop Söderman, The European Ombudsman. Annual Report 1995, 22 April 1996, <https://www.ombudsman.europa.eu/en/press/publications/publication.faces/en/3468/v1/html.bookmark> (Accessed 10 February 2017), p.6.

## 2.10.2 The Organizational Chart and Working Scopes of the European Ombudsman

The EU ombudsman is a regional institution with immunity and power to act within the EU community, however, its discretion is limited to specific EU administrative bodies as discussed earlier.<sup>260</sup> The EU ombudsman has the same status as a judge at the Court of Justice.<sup>261</sup>



**Figure 2:** The Organizational Chart of the European Ombudsman

**Source:** European Ombudsman, The Ombudsman's Team, 2017, <https://www.ombudsman.europa.eu/en/office/staff>

According to the above chart, the European ombudsman is composed of the following: a cabinet headed by a chief officer, assistants, and senior advisors. The Cabinet reports to the ombudsman, and works under its direct supervision. This division takes charge of policy planning, organization and implementation. It also advises and helps the ombudsman carry out its administrative and technical assignments, and coordinate with other EU organs. The Secretariat General takes charge of the overall organizational management, coordinates, and executes the ombudsman's strategies. The Communication Unit informs citizens and stakeholders about the investigations and work of this entity. The Inquiries and Information and Communication Technologies Unit works on maladministration issues, proposes conflict resolution mechanisms, and

<sup>260</sup> Article 228 (1) TFEU and Article 2 (1) Statute. Silay, A Comparative Examination, pp.26-29.

<sup>261</sup> Article 10 (2) Statute. Silay, A Comparative Examination, p.23.

coordinates with civil society, regional and international organizations. The Coordination of Public Interest Inquires coordinates ‘special’ inquiries, and manages the fast-track process to access public documents. Similar to the Inquiries and ICT Unit, the EU ombudsman has two more inquiries units that treat maladministration cases, and find suitable solutions. They are composed of head of inquiries, case managers, legal officers, and administrative assistants. The Strategic Inquiries Unit is specialized in EU administration developments. It implements, handles own-initiative inspections, and coordinates with other agencies in line with the ‘Ombudsman’s 2019 Strategy’ and the ‘Annual Management Plan’. The general administrative, financial, organizational and technical matters are handled by the Personnel, Administration, and Budget Unit. Its mission is to provide the institution with qualified personnel, to facilitate a good working environment, and to ensure efficiency, effectiveness and coherence.<sup>262</sup>

The EU ombudsman performs its work in line with ‘Article 8d’ and ‘Article 138e’ of the TEU.<sup>263</sup> It treats inquiries that fall under its mandate.<sup>264</sup> The ‘Process Management and Inquiries Unit’ conducts the initial assessment, while the ‘Implementing Provisions’ entitled to the ombudsman determines whether the complaint falls within or outside its mandate.<sup>265</sup> Likewise, the EU ombudsman is autonomous (Article 9 of the Statute and Article 138e of the Treaty), and politically neutral in serving the general will of the European community.<sup>266</sup> According to Cadeddu and Vogiatzis, the complaint is ‘admissible’ when: *“the object is identified; the alleged facts are or have not been the subject of legal proceedings; the Court has not decided on the issue in question; the deadline to contact the ombudsman is still valid [within two years]; and administrative and internal resolutions have been exhausted.”*<sup>267</sup>

That being said, the ombudsman treats the complaint ‘in confidentiality’ if one party of the grievance wishes so.<sup>268</sup> This aspect is very relevant in citizen-oriented approach,

---

<sup>262</sup> European Ombudsman, The Ombudsman’s Team, 2017, <https://www.ombudsman.europa.eu/en/office/staff> (Accessed 26 January 2017).

<sup>263</sup> Söderman, The European Ombudsman, p.5.

<sup>264</sup> Silay, A Comparative Examination.

<sup>265</sup> Vogiatzis, The European Ombudsman and Good Administration, pp.21-22.

<sup>266</sup> Silay, A Comparative Examination, p.22.

<sup>267</sup> Cadeddu, The Proceedings of the European Ombudsman, 168-169. And Vogiatzis, **The European Ombudsman and Good Administration**, pp.21-22.

<sup>268</sup> Silay, A Comparative Examination. And Söderman, The European Ombudsman, p.6.

which grievance systems take into consideration so to protect both the confidentiality and dignity of the offended and offender alike.

There are two cases when the ombudsman ceases to operate: First when the term of office concludes, and second, when the ombudsman is dismissed by the Court of Justice [based on request of the European Parliament], in case(s) of transgression or power abuse.<sup>269</sup> The officers who must be EU citizens are elected by the European parliament for a five-year term<sup>270</sup> that can be renewed.<sup>271</sup> According to Article 204, they need “*the vote of at least forty members, from at least two EU states.*”<sup>272</sup> Furthermore, the institution should be led by impartial, experienced, and accountable officers<sup>273</sup> who should resign from political or administrative functions during the term of office.<sup>274</sup>

Although the ombudsman has limited and non-bidding power of inquiry, it plays, along with the national and regional human rights and grievances institutions, a significant role in holding the EU public authorities accountable, and remains considerably a vital body in institutionalizing administrative justice and social accountability within the regional territory. It possesses the power to access EU information and documents that are not confidential or subject to ‘law on secrecy’ [upon an agreed consent in advance with the institutions involved].<sup>275</sup> To reach its purpose, the ombudsman needs to collaborate closely with other institutions.<sup>276</sup> Coordination, neutrality and integrity promote good governance and democracy both at the national and supra-national levels in the EU administrative architecture.<sup>277</sup>

---

<sup>269</sup> Article 228 (2) TFEU and Article 6 (1) Statute. Silay, A Comparative Examination, p.23.

<sup>270</sup> Ibid, p.23.

<sup>271</sup> Ibid, p.23.

<sup>272</sup> Ibid, p.23.

<sup>273</sup> Article 6 (2) Statute. Silay, A Comparative Examination, p.23.

<sup>274</sup> Article 10 Statute. Silay, A Comparative Examination, p.23.

<sup>275</sup> Vogiatzis, The European Ombudsman and Good Administration, p.26.

<sup>276</sup> Silay, A Comparative Examination, p.24.

<sup>277</sup> Ibid, p.24. And Diamandouros, The European Ombudsman and Good Administration, p.212.





## CHAPTER 3: *DIWAN AL-MAZALEM* AND *KAMU DENETÇİLİĞİ KURUMU*: TURKEY'S EXPERIENCE IN THE OMBUDSMANSHIP

### 3.1. Introduction

This chapter examines the grievance redress system in the Islamic dynasties, and how state reforms have affected the institutional continuity of the ombudsman in Turkey. This research argues that the adoption of the KDK in 2012 after long series of constitutional amendments and administrative reforms is a form of continuity towards a progressive practice of the grievance redress system that existed since the Ottoman time. The literature review of the Ottoman Empire and Turkey's institutional structures, and the state-citizen relationship, often uses the center-periphery approach as a unit of analysis to study the aspects of continuity and change in both societies.<sup>278</sup> The Ottoman Empire was divided into a center constituted of state elites i.e. military and civil corps supported by sophisticated networks, and a periphery of administered society.<sup>279</sup> The top-down approach to bureaucracy of the modern state hierarchy was influenced by modernization, secularization, and institutional factors.<sup>280</sup> The institutional approach was reframed within Turkey's administrative reforms. The interplay between Turkey's domestic and foreign politics can be considered another factor behind these changes.<sup>281</sup>

### 3.2. *Diwan Al-Mazalem* in the Islamic Dynasties<sup>282</sup>

*Diwan Al-Mazalem* or the grievance redress department is one of the legal institutions of the early Islamic states that existed along with *Hisba*,<sup>283</sup> *Shurta*, and *Qada'*. The

---

<sup>278</sup> Duygu Durmaz, Center-Periphery Approach in Turkish Politics: An Overview, Globallista, 13 April 2012, <https://globallista.wordpress.com/2012/04/13/center-periphery-approach-an-overview/> (Accessed 7 March 2017).

<sup>279</sup> Ayşe Aslihan Çelenk, "Europeanization and Administrative Reform: The Case of Turkey," *Mediterranean Politics*, Vol.14, No.1, (2009), pp.45-46.

<sup>280</sup> *Ibid*, pp.45-46.

<sup>281</sup> Ali Onur Özçelik, "The Importance of Domestic Politics in Explaining the Change in Territorial Politics in EU Candidate States: Turkey as a Case," *Dumlupınar University Journal of Social Sciences*, Issue.41, (June 2015), pp.43-54.

<sup>282</sup> *Mazalem* is an Arabic word which means in the singular form 'zulm' injustice. In other resources, *Diwan Al-Mazalem* is called *Qada' Al-Mazalem*, or *Diwan al-nazar fil-mazalem*.

grievance system was first adopted by Prophet Mohammed (PBUH) to lift injustice, and was institutionalized by his successors namely Omar ibn al-Khattab, Ali ibn Abi Talib, Muaawiya ibn Abi Sufian, Abdul Malik ibn Marwan, and Omar bin Abdul Aziz, to receive people's complaints against public servants about denying people's rights, or abuse of administrative power, and to hold governors accountable.<sup>284</sup> During the Abbasid Caliphate, *Diwan Al-Mazalem* emerged as an independent institution with structured legislative mechanisms. It was led by the Caliphs and local governors who played the role of grievance servant or administrative judge. This authority was based on their sovereign capacity. The ruler delegated this authority to an appointed judge.<sup>285</sup>

However, the question raised here is from which lens can we approach this institution? From a political lens, to consider this system fulfilling mainly the duty of administrative courts, and an alternative to judicial courts, or a religious institution headed by a *qadi*? Muslim jurists such as Ibn Taymiyyah (1263-1328) considered *Diwan Al-Mazalem* a religious institution led by a well-versed *qadi* with solid knowledge in matters of Islamic jurisprudence. The scopes falling under the jurisdiction of the public administration personnel were contextual; they depended on the time and place, and were not largely restricted by the law. According to Zubaida, the judgements made by the institution were a synthesis of Sharia-based values and customary codes. However, the judgments did not strictly follow the criteria or evidence(s) of *qadi* courts.<sup>286</sup>

Therefore, the grievances and trials were handled in two main branches that fall either within administrative 'Siyasa' or judicial powers.<sup>287</sup> In the middle of the eleventh century, *Diwan Al-Mazalem* became a fundamental part of the Islamic polity.<sup>288</sup> During the Mamlukes, *Al-Mazalem* became an alternative to Sharia courts.<sup>289</sup> The first Mamluk Sultan<sup>290</sup> Aybek et-Turkmani (1254-1257) delegated his authority to Alaaddin Aydekin

---

<sup>283</sup> Al-Mawardi examined this public order institution, headed by *muhtesib* who controls the course of moral-legal life in Muslim society. This officer observes public morals, imperfect scales, mixed commodities, and has to make a decision on spot.

<sup>284</sup> Raghed Sarjani, The Grievances Office in the Islamic Age, Islamweb, 19 July 2012, <http://articles.islamweb.net/media/index.php?page=article&id=179287> (Accessed 26 March 2017).

<sup>285</sup> Nasser Rabbat, "The Ideological Significance of the Dar Al-Adl in the Medieval Islamic Orient," *International Journal of Middle East Studies*, Vol.27, No.1, (February 1995), pp.3-6.

<sup>286</sup> Sami Zubaida, *Law and Power in the Islamic World*, New York: I.B Tauris, 2003, p.52.

<sup>287</sup> Vecdi Akyüz, *Müslüman Türk Devletlerinde Divan-Mezalim Kurumu*, Tarihtarih (n.d), <https://www.tarihtarih.com/?Syf=26&Syz=367502> (Accessed 22 July 2017).

<sup>288</sup> Rabbat, The Ideological Significance of the Dar Al-Adl, p.6.

<sup>289</sup> Zubaida, *Law and Power in the Islamic World*, p.52.

<sup>290</sup> The heirs of the Fatimid and Ayyubids.

El-Bundukdari who was appointed as the Egyptian deputy ruler 'Nâibu Saltan'. He conducted grievances sessions in 'Salihîye Medrese' in the presence of representative of justice 'Darul Adl Nableri'.<sup>291</sup> According to Rabbat, *Al-Mazalem* entails both the leadership and supervision by a higher authority with strong [*de facto*] executive powers to enforce decisions.<sup>292</sup> Modern scholars argue that during the Rashidi and Umayyad periods, there was not a direct separation between political and judicial powers.<sup>293</sup>

Likewise, the grievances courts were an integral part of the Ottoman polity with its old and strong legal culture, and had a large influence on neighboring and annexed regions. The Ottomans developed high skills in public management and state-building affairs. State-citizen relationship was based on transparency and accountability; complainants could approach the head of state or local government in case of injustice committed by public servants. This practice was encouraged by Uighur Khan, Alp Ilteber. He received people's complaints, and treated them case by case carefully. Likewise, the Anatolian Seljuks transferred the Abbasid's *Diwan Al-Mazalem* (5<sup>th</sup> century) to the Ottoman State. The judicial system consisted of high state court<sup>294</sup> headed by the judge who handled political offenses, while other judges and officers were in charge of applying the customary law (customs provisions) on behalf of the judge. According to the Turkic legacy, the ruler in his capacity -the chief representative of the state and father of the nation- led the courts of Yargu, Yolak,<sup>295</sup> and *humayun divanı/ şikayet divanı* when there were complaints against public authorities. He also made final judgments independently from any bureaucratic procedure or formality.<sup>296</sup> This institution reflected commitment and answerability of the ruler, and responsibility to uphold justice. The ruler intervened when his subjects were victims of mistreatment and oppression. According to Ursinus: "during nine months of the year 1675, 2800 decrees issued by the Imperial Diwan in response to complaints received in Istanbul...the sentences were

---

<sup>291</sup> Vecdi Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu.

<sup>292</sup> Rabbat, The Ideological Significance of the Dar Al-Adl, p.5.

<sup>293</sup> Ibid, pp.5-6.

<sup>294</sup> The Court was under the leadership of the ruler.

<sup>295</sup> According to Osman Turan, the administrative judges who looked at the work related to the soldiers in Harikshahs (1098-1221) were called Yolak.

<sup>296</sup> Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu.

*given by the qadis and executed by order of the Grand Vizier, just as in the provinces they were carried out by order of the governors.”<sup>297</sup>*

When the Turkic state structure and provinces were divided, Tuğrul Bey (1040-1063), the Turkic founder of the Seljuk Empire, had Nişapur as the legal and *de facto* reign of the state after the war with the Gaznids. In 1038, the ruler sat to listen to citizens' complaints with the intention of dispensing justice. This practice had impacted the local governance, and had set administrative justice, rule of law, and accountability.

*Al-Mazalem* institution was established in the Karahanli State (840-1212), and was carried out primarily by the heads of state who adopted the Islamic system, laws and traditions in administrative matters. The Karahanili rulers handed over the powers of the ministry to the cadre in charge. The famous ruler of the West Karahanlar, Tamgaç Buğra Han Ibrahim bin Nasr appointed *qadi* Abu Nasr Mansur bin Ahmed bin Ismail to *Sahib Al-Mazalem Al-Rahman* of Samarkand.<sup>298</sup> Nevertheless, there was no clear division of duties between judicial courts and grievances courts in the Karahanli State because a centralized judicial system was applied at the state level.<sup>299</sup>

According to Köprülü:

“The complaints of the military and civilian civil servants of the Saman State (874-999) against the authorities of the army and the palace, in Bukhara, are examined by a high commission set by the participation of the ruler, vizier, some prominent statesmen and occasionally state members. This system resembled *Diwan Al-Mazalem*, which existed in Abbasids and some other Islamic states.”<sup>300</sup>

Likewise, the Gaznelians (963-1187) maintained the Islamic tradition, and set model to the Seljuks and the Turkish-Islamic political system. They have shown great interest in *Siyasatnama* and justice affairs. According to Akyüz, Sultans Beyhaki (d. 1077), Alptekin (962-977), Sebüktekin (978-997) and Mahmud (998-1030) were particularly committed to justice affairs;<sup>301</sup> they carried out the grievance settlement tasks, examined each case with no distinction or discrimination, and subsequently made a decision. The grievance redress system of the Islamic state was transparent, open and accessible; complaints came from anyone against a party accused of wrongdoing, regardless of his

---

<sup>297</sup> Michael Ursinus, **Grievance Administration (*şikayet*) in an Ottoman Province**, London: Routledge Curzon, 2005, pp.3-4.

<sup>298</sup> Ibid, pp.3-4. And Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu

<sup>299</sup> Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu.

<sup>300</sup> Mehmet Fuat Köprülü, **İslam Medeniyeti Tarihi**, İstanbul: Alfa Yayınları, 2014, p.127.

<sup>301</sup> Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu.

societal status. For instance, Sultan Mahmud was sent to the judge for trial following a merchant's complaint.<sup>302</sup> Muslims and non-Muslims known as *zimmi* in Muslim states could appeal to *Al-Mazalem* courts. Nureddin Zengi (d. 1174) led sessions in al-Masjid al-Mu'allak so that all people could easily apply. The grievances courts received complaints of excessive or irregular taxation, illegal seizure of land by powerful parties, non-payment of debt, sale or wage, etc. If one of the parties is found guilty, then punishment applied.<sup>303</sup> The resolutions concluded by *Al-Mazalem* are law-binding.

Notwithstanding, the grievances courts were used by the some rulers to consolidate their power. For instance, Ibn Tulun (880-884), the governor of Egypt, was the first ruler to hold grievances sessions two days a week.<sup>304</sup> The governor showed great care to *Al-Mazalem* system in order to consolidate his political power and the state system.<sup>305</sup> Zubaida argues that the institutionalization of *Al-Mazalem* aimed at spreading a reputation for power and justice.<sup>306</sup> After the death of Ibn Tulun, powers were transferred to other officials to pursue his legacy.<sup>307</sup> This political motive is important to understand why *Diwan Al-Mazalem* was detached from the judicial system, and attached directly to the Caliph's jurisdiction. Al-Mahdi (775–785) and Al-Hadi (785–786), the third and fourth Abbasid Caliphs, supervised grievances sessions in person.<sup>308</sup> They have also introduced the office of *Sahib Al-Mazalem*, led by an impartial and expert servant who handled grievances sessions.<sup>309</sup> His status approached that of a

---

<sup>302</sup> Rabbat, *The Ideological Significance of the Dar Al-Adl*. And Akyüz, *Müslüman Türk Devletlerinde Divan-Mezalim Kurumu*.

<sup>303</sup> Zubaida, *Law and Power in the Islamic World*, p.54.

<sup>304</sup> *Ibid*, p.54. And Rabbat, *The Ideological Significance of the Dar Al-Adl*, p.5. The day in which the Mazalem session was held in the Karakhanid State was called 'Mazalem Day' or '*Mazalem Vakti*'. Each ruler, vizier or governor has reserved certain dates and times for the session according to the circumstances, and so did *Sahib Al-Mazalem*. Kadi Burhaneddin (1381-1398), who founded one of the Anatolian Principalities, also established divan hearing every day. Those who sign up for a day of the week have settled on Sunday, Friday or Saturday. Kafar (d. 967) and Jawhah (d., 992) separated the Saturdays into sessions. Those who made a two-day Mazalem session have chosen Monday-Thursday, Sunday-Wednesday or Saturday-Tuesday. For instance, Ayyubid and Mamluk held sessions on Mondays and Thursdays afternoons. Qadi Burhaneddin (1381-1398), the founder of one of the Anatolian Principalities, established a tribal council for three days a week; Saturday, Sunday and Tuesday. According to Makrizi (d 1442) and Kalkaşandi (d. 1418), the session of the Mamluk Sultanate Berkuk (1382-1398) took place all year except for Ramadan. Akyüz, *Müslüman Türk Devletlerinde Divan-Mezalim Kurumu*. And Rabbat, *The Ideological Significance of the Dar Al-Adl*, pp.3-22.

<sup>305</sup> Akyüz, *Müslüman Türk Devletlerinde Divan-Mezalim Kurumu*.

<sup>306</sup> Zubaida, *Law and Power in the Islamic World*, p.52.

<sup>307</sup> Akyüz, *Müslüman Türk Devletlerinde Divan-Mezalim Kurumu*.

<sup>308</sup> Rabbat, *The Ideological Significance of the Dar Al-Adl*, p.5.

<sup>309</sup> Akyüz, *Müslüman Türk Devletlerinde Divan-Mezalim Kurumu*.

minister, and his capacity remained distinct from the judicial functions.<sup>310</sup> The officer conducted all kinds of investigations in any case opened by 'right of self-examination', and he can request further information and evidence for deliberation.

*Diwan Al-Mazalem's* legacy continued from 1174-1250 in the Ayyubid Dynasty. The Ayyubid Sultans, who were the followers of the Seljuk State in terms of thought, organization and political purpose, listened to people's complaints in the palace where *Darul-Adl* (house/palace of justice) sessions were held twice a week.<sup>311</sup> In the Harezm Shah and Seljuk State, a branch office was established directly under the sovereignty of the state. Anyone could file a direct petition. The Sarge Sergeant took these petitions, presented them to the Sultan, to identify the plaintiff. The fulfillment of the task depended on the authority and character of the ruler. In periods when the power was strong, the public hearing sessions were influential too.

During the leadership of Nasir Muhammed bin Kalavun (1298-1341), *Darul-Adl* held *Al-Mazalem* sessions on regular basis on Mondays and Thursdays. The ruler would delay his decisions to the next session if he was tired.<sup>312</sup> This legacy continued with the Sultan's successors. Sultan Berkuk's son, Melikun-Nasir Ferec (1405-1412), following his father's practice, held meetings in the Royal Residence '*Al-Istabilu-Sultani*', where secret recorder known as *Katibu Sir*<sup>313</sup> read to him the grievances and recorded the necessary resolutions. Likewise, Al-Melikul-Muayyed Sheikh Abu-Nasr Al-Mahmudi (1412-1421) adopted a similar system, and organized grievances sessions in his palace. Likewise, the sessions of Mamluk Sultan Berkuk (1382-1398) were announced in advance through a caller or *Munadi*. In the first period of *Al-Mazalem's* institutionalization, the complaints were examined, and the decisions were noted orally. However, with the gradual development and bureaucratization of this institution, written and practical procedures were adopted. Cases were written, selected, sifted, and presented to the people.<sup>314</sup>

---

<sup>310</sup> Zubaida, Law and Power in the Islamic World, p.53.

<sup>311</sup> Rabbat, The Ideological Significance of the Dar Al-Adl.

<sup>312</sup> Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu.

<sup>313</sup> In the time of Salahaddin (1174-1193), and the Mamluk Sultan Ibn Kalavun (1298-1341), the founder of the Ayyubid State, this officer had wider duties and powers.

<sup>314</sup> Zubaida, Law and Power in the Islamic World, p.53.

According to Lang, Uzun Hasan [ruler of Aqqyunlu in northwestern Iran and Eastern Anatolia] adopted the grievances system in the 15<sup>th</sup> century.<sup>315</sup> She writes:

“When Hasan had finished the morning prayer, the ‘drum of justice’ would be sounded to indicate the convening of the court of appeals (*Diwan Pursidan*). He [Uzun Hasan] would appear in person... Needy, indigent plaintiffs were then summoned to present their cases through a public official who acted as their advocate and intermediary. Cases would be settled immediately and secretaries in attendance would draft and issue the orders. The plaintiffs would leave the court with firm decisions not subject to change or alteration.”<sup>316</sup>

In the Islamic polity and administration, the institution of *Diwan Al-Mazalem* was studied by Islamic scholars notably Abu Hassan Al-Mawardi (972-1058), Abu Hamid Al-Ghazali (1058-1111), Abdul Rahman Ibn-Khaldun (1332-1406), and Nizamulmulk (1018-1092).<sup>317</sup> In his work ‘*Siyasatnama*’,<sup>318</sup> Nizamulmulk discussed the political function of *Diwan Al-Mazalem* to dispense justice and good governance in the Muslim society. In his capacity as vizier, Nizamulmulk held sessions two days a week to hear people’s complaints who suffered injustice. He also advised the ruler to hear his subjects directly and carefully. It is believed that when governors would listen to their subjects, social justice and trust were achieved, as this practice held public servants accountable to the public. Nizamulmulk witnessed how the Sassanid Kings used to sit on horseback to see and hear their subjects, to make fair and firm judgments.

### 3.2.1 The Structure of *Diwan Al-Mazalem*

*Diwan Al-Mazalem* existed in both central and provincial networks of the Muslim states. Although mostly headed by a sovereign authority, this institution existed in parallel to the judiciary, legislative and executive functions. However, some rulers have transferred some of their powers to public officials bearing the title of vizier, *qadi*, or *Sahib Al-Mazalem*.<sup>319</sup> To be eligible, *Nazirul Al-Mazalem* had to fulfill certain qualities

---

<sup>315</sup> Lang, A Western King and an Ancient Notion.

<sup>316</sup> Ibid, p.57.

<sup>317</sup> His original name is Abu Ali Hasan Ibn Ali Tusi. Born in Tus., he was the great vizier of Seljuk sultans Alp Arslan (1063–1072) and Alikshah (1072–1092).

<sup>318</sup> According to Rabbat, *Siyasatnama* or the Book of Government or *Siyar Al-Muluk* (Rules of Kings) was written in Persian and consists of 51 parts. It is considered not only an intellectual source and treaties on politics, but also a useful and practical guide of governance, which the Ottomans and the Safavids referred to during their rule. (See Rabbat, The Ideological Significance of the Dar Al-Adl, p.6).

<sup>319</sup> These officials arranged the complainants’ work, read the petition to the president and acted on behalf. The appointment of *Sahib Al-Mazalem* takes place with a document called *Sicil*, *Mersum* or *Ahd*.



namely knowledge, integrity, authority, command, honesty, transparency, cohesiveness and obedience.

When the decentralization structure was adopted, the governor served as a representative of the ruler in the province, and conducted hearing sessions upon the ruler's consent. The sessions were always carried out in form of a committee hearing. The election of members and assistants was at the discretion of the chairman. High government officials such as finance officers, and palace personnel were also part of the board members.<sup>320</sup> Besides the disputed parties, *Al-Mazalem* sessions were attended by army representatives and witnesses '*Shuhud*'. During the rule of the Mamluk ruler, Sultan ibn Qalawun (1297-1341), the number of the army representatives increased, the head of military affairs '*Nazir al-Jeysh*', and other soldiers took part when the grievances sessions were held. The military commander '*Nakibul Jeysh*' and the guardian of the Sultan took part in the sessions of the Mamluk Sultanate Berkuk (1382-1389). The sessions were chaired by the head of state (Caliph, Sultan, King or Emir), vizier,<sup>321</sup> governor<sup>322</sup> or *Sahib Al-Mazalem*. The chairman was both the session manager and the sole decision maker. The other board members such as *muftis*, lawyers and scholars provided consultation.<sup>323</sup>

*Al-Mazalem* sessions sustained the state system with transparency and accountability. When the sessions were held, the Sultan sat on his chair, there were four chief judges on his right side, the main secretaries of the state on his left, and the armed guards of honor behind him. The assembly also included deputies and other public officials such as the director of finance, the *muhtasib*, and the court servants. There was an officer called *hajib* who received and read the grievances to the Sultan, and consequently, consulted his commanders about the measures to take.<sup>324</sup>

---

<sup>320</sup> Finance representatives represented *Maliyya* or finance section. *Nazir al-Hash* (the Sultan's special budget officer) and *Vekilu Beytilmal* (the president of public property) were members of Ibn Qalawun (1298-1348) and Berkuk (1382-1398) in the Mamluks period.

<sup>321</sup> They are ministers who had broad power over the provinces generally and were appointed over all affairs without any special assignment. *Wizarat* could take two forms, either by delegation who had full power to carry any task and might appoint a deputy, or by execution who had limited power and could not appoint a deputy.

<sup>322</sup> They had general power in specific provinces or districts and had the right to supervise all affairs in a particular province.

<sup>323</sup> This was mentioned in the documents of the judges assigned to the *Diwan*. Judges, lawyers and religious authorities have to be members in order to avoid difficulties.

<sup>324</sup> Zubaida, *Law and Power in the Islamic World*, p.53.

That being said, the grievances cases took two forms. Similar to the general ombudsman model (discussed in chapter two), people who were victim of injustice or arbitrary act had the right to report directly to the ruler or his representative, or by making a public announcement, and the applicants were asked to apply at a certain place and day. The Mamluk Sultan Berkuk (1383-1398) announced the sessions' days. In the Seljuk State, the court sergeants invited those who were presenting the case before the court.<sup>325</sup> The case petitions were handed over to the head of the court for preliminary examination, because they contained important issues concerning the state. At the end of the examination, justice for those deemed justified is carried out immediately. Private buildings were established to ensure that meetings can be held in places other than schools, offices, mosques or certain places of the royal palaces.<sup>326</sup>

### **3.2.2 Duties of *Diwan Al-Mazalem***

Abu Hasan Mawardi (974–1058) developed a detailed framework of *Al-Mazalem* jurisdiction and its relationship to the court.<sup>327</sup> In his book titled '*Al-Ahkam Al-Sultaniyyah*', he summarized the institution's duties in the following: (1) Examination of complaints about the administrators and civil servants who are involved in misconduct against the people, and those deviating from the path of right and justice;<sup>328</sup> (2) Elimination of the injustices that civil servants might make when collecting taxes and other public goods; (3) Inspection of the Diwan cartels; (4) Examination of complaints about the delay or incomplete payment of the salaries or the wages; (5) Investigation of the complaints about the goods which the administrators or powerful people have affixed; (6) Supervision of public and private institutions; (7) Implementation of the judgments of *qadi* courts; (8) Implementation of decisions that

---

<sup>325</sup> According to the historical archives, writing a case started the first time in the name of Caliph Mehdi (775-785) that Abu-Verd bin Mutarrif Al-Khorasani examined the petitions left to *Beytu-Adl* in the Rusfa mosque.

<sup>326</sup> Shafi scholars did not find it proper to use the mosque as a courtroom, while others think it is possible. Before Nureddin Zengi (d. 1174) had yet built *Darul-Adl*, the sessions were held in al-Masjid al-Muallak. (See Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu).

<sup>327</sup> Rabbat, *The Ideological Significance of the Dar Al-Adl*, p.6.

<sup>328</sup> The administrative supervision takes three forms: financial audit, goodwill and its supervision, and supervision of public bodies.

*Muhtesib* cannot fulfill; and (9) Controlling the fulfillment of worship deeds such as Friday and *Eid* prayers, pilgrimage, jihad, etc.<sup>329</sup>

Al-Mawardi argued in his book that this institution fulfilled both an administrative and judiciary role. *Diwan Al-Mazalim* was empowered with the enforcement ability. The administrative cases treated by the institution were not separated from the judicial ones, unlike the current understanding of the scopes and powers of modern ombudsman institutions where a strict separation between the judiciary and administrative approach takes form.<sup>330</sup> Hence, it is argued that the former structure of the ombudsman institution was characterized by a close relation between administrative and judiciary functions.

### 3.2.3 The Authority of *Diwan Al-Mazalem*

The authority of *Diwan Al-Mazalem* was subject to ‘who is the judge’.<sup>331</sup> If the judge is the ruler, he tends to have wider authorities than the vizier, likewise, the institution’s jurisdiction covered the whole territory and state borders. If the judge was a servant with delegated authority such as a governor, a vizier, or *Sahib Al-Mazalem*, the jurisdiction may be over either the whole territory [as in the case of the ruler], or limited to a specific region, and the decision could be appealed due to the ruler’s sovereignty and authority. In the ancient traditional grievances system, there was no obligation to make a judgment for every case opened. Sectarian courts have not provided a continuous justice service, and the execution of grievances were suspended in some periods. However, when this function was carried out by special officials [excluding the ruler, governor, or vizier], this institution provided a continuous service.<sup>332</sup>

The grievances’ judge had wider authority to oversee the case, and make decisions. The presumed evidences under evaluation could be written documents (such as official records), confession or oath, and served as solid materials. However, in order for the written documents to be considered solid proof, the judge had to define the case accurately. In the oral proceedings, the judge only listened to the parties, while in the

---

<sup>329</sup> Abu Hassan Mawardi, **Al-Ahkam Al-Sultaniyyah**, Kuwait: Dar Ibn Kutaibah, 1989, pp.102-125. And Rabbat, *The Ideological Significance of the Dar Al-Adl*, p.6.

<sup>330</sup> Mawardi, *Al-Ahkam Al-Sultaniyyah*.

<sup>331</sup> The judge in this context refers to the ruler who holds the state powers in absolute terms, or the officers to whom he delegates his authority, or the executive organ such as the vizier and the governor.

<sup>332</sup> Akyüz, *Müslüman Türk Devletlerinde Divan-Mezalim Kurumu*.

written cases, the judge read the petition to the other parties. In order to ensure an open and transparent hearing session, judges, lawyers, clerks, and security officers were present. The duties of the jurist and the judges involved in the hearing had to inform the president of the court about the rights and methods, and if necessary, to submit a resolution proposal to the chairman. The decisions were made on the same day, however, in some cases, decisions were postponed to another date.<sup>333</sup> For instance, when the Abbasid caliphate Abu Jaafar Al-Mamun (813-833) was exhausted he decided to leave the petitions to the next session. It is believed that by this way, the judge could avoid making arbitrary or irrational judgments. Clear statements must be written following the decisions concluded, and the nature of the case should be provided, which should be of a fair stance to solve the injustice caused. As stated, decisions were made and applied verbally before the gradual development of the institution, whereby both the opening of the case and decisions reached were conducted in written forms. The notification was made immediately after the hearing [sometimes by special officials]. The final decisions taken by the court carried the status of a verdict '*Hukm*' or '*Hukmu Al-Mazalem*', and that were implemented immediately and fairly. The concluded decisions cannot be revoked or appealed because of the decision maker's status.<sup>334</sup>

### **3.3. The Ombudsman in the Contemporary Understanding: Case of Turkey**

In 2002, the Turkish government, led by the Justice and Development Party (JDP), engaged in series of EU-supported projects as result of internal and external dynamics.<sup>335</sup> The government adopted an active approach to governance and administration. These reforms were not only an opportunity to build public trust and a modernized government-citizen relationship, but also a pragmatic attempt to establish a sustainable political infrastructure, to enhance economic development, and to increase public sector efficiency in line with the EU standards.<sup>336</sup>

---

<sup>333</sup> The choice of the decision to be taken at the end of the lawsuits at *Al-Mazalem* court was at the free discretion of the judge, not the opinions expressed in his doctrine.

<sup>334</sup> Akyüz, Müslüman Türk Devletlerinde Divan-Mezalim Kurumu.

<sup>335</sup> Çelenk, Europeanization and Administrative Reform.

<sup>336</sup> Ibid, p.50.

### 3.3.1 Human Rights Inquiry Commission

The dynamics of human rights have transformed the understanding and mechanisms many countries across the world handle this concern. Turkey has undertaken pragmatic steps and projects in this regard. The Human Rights Inquiry Commission known locally as *İnsan Hakları İnceleme Komisyonu*, was launched as the first body adopted at the national level to protect human rights in modern Turkey, and operates on the standing orders of Turkey's GNA.<sup>337</sup> The Commission was set up to fulfill intranational and international purposes (Article 4 of the Law no.3686); It monitors, investigates, follows up, examines the status, the constitutional laws, amendments, and implementation of human rights projects and international treaties, collaborates with other international actors on human rights issues, and prepares annual reports to present its activities.<sup>338</sup>

To fulfill its purpose, the Commission has the right to obtain information from public agencies such as ministries, general and annexed administrations, local authorities, universities, private institutions, etc. The Commission is empowered by the Constitution to conduct inquiries and act autonomously in human rights matters.<sup>339</sup> It is important to state that although the Commission works on human rights issues, it is not directly associated with the ombudsman institution. The Commission reports directly to the GNA,<sup>340</sup> its members are elected by secret vote, independent members and political parties are represented according to their proportions in the GNA, and decisions require absolute majority of the members present.<sup>341</sup>

---

<sup>337</sup> Based on Law no.3686 (5 November 1990), (See İnsan Haklarını İnceleme Komisyonu, General information about the Human Rights Inquiry Commission, Grand National Assembly of Turkey, TBMM, 2009), <https://www.tbmm.gov.tr/komisyon/insanhaklarieng/index.htm> (Accessed 2 July 2017).

<sup>338</sup> Ibid.

<sup>339</sup> Çağrı Çakır, "Institutionalization of Human Rights in Turkey in the Context of International Assessment Mechanisms", (Master, Middle East Technical University, Graduate School of Social Sciences, January 2013), <http://etd.lib.metu.edu.tr/upload/12615876/index.pdf> (Accessed 5 March 2017), pp.40-45.

<sup>340</sup> Kamu Denetçiliği Kurumu, About us, Ombudsman in Turkey, 4 January 2017, <https://www.ombudsman.gov.tr/English/about-us/index.html> (Accessed 5 March 2017).

<sup>341</sup> İnsan Haklarını İnceleme Komisyonu, General information.

### 3.3.2 Public Auditorship Institution (*Kamu Denetçiliği Kurumu*)

The modern history of the ombudsmanship in Turkey frames the development of this practice with the foundation of the KDK.<sup>342</sup> The Five Year Development Plans “*Beş Yıllık Kalkınma Planları*” launched by the Turkish government in the 1960s were turning policies that gave rise to this institution that was highlighted in the Seventh Five Year Development Plan (1996-2000).<sup>343</sup> The Ministry of Justice initiated on 24<sup>th</sup> November 1997 the Public Auditorship Institution, and prepared the ‘Law Draft on Public Auditorship Institution’ [issued by the Cabinet of the GNA on 23<sup>rd</sup> November 2005].<sup>344</sup> The Development Plans placed people’s well-being as a top priority, and addressed issues such as managing services’ effectiveness, restoring public accountability, improving public service delivery, restructuring public administration, and supervising administration-citizens’ relationship. The need to address these issues, and to develop a pragmatic and soft-law approach lay the foundation and institutionalization of the ombudsman as a supervisory but non-governing system of public auditorship that falls outside the judiciary function, and that would be accessible to the public. The ombudsman serves as a bridge between the government and the citizens in the contemporary democratic polity. It plays the role of a ‘watchdog’ over public servants and stigmatizes power abuse.<sup>345</sup>

The ombudsman in Turkey was incorporated in the referendum of the 12<sup>th</sup> September, to amend the Constitution of 1982.<sup>346</sup> Discussions on the foundation of the ombudsman in Turkey take into consideration two types: on one side, the internal factors, namely the constitutional amendments and the 2010 local reforms, and on the other side, external factors such as the European rapprochement and harmonization process, and global agendas on “citizen-centric governance, good governance, inclusiveness, transparency, social accountability, and improving public service delivery”. Hence, the administrative

---

<sup>342</sup> This institution is considered a type of conventional ombudsman centralized with general authorization and multiple members.

<sup>343</sup> Çakır, Institutionalization of Human Rights in Turkey, p.47. And Ministry of Development, Seventh Five Year Development Plan (1996-2000), 18 July 1995, <http://www.kalkinma.gov.tr/Lists/Kalkinma%20Planlar/Attachments/3/plan7.pdf> (Accessed 2 July 2017).

<sup>344</sup> United Nations, **Turkey Public Auding Institution Law**, 2006, [www.track.unodc.org/LegalLibrary/LegalResources/](http://www.track.unodc.org/LegalLibrary/LegalResources/) (Accessed 14 February 2017).

<sup>345</sup> David K. Adejuwon, “Enhancing Public Accountability and Performance in Nigeria: Periscoping the Impediments and Exploring Imperative Measures,” **Africa’s Public Service Delivery & Performance Review**, Vol.2, No.2, (2014), pp.104-108.

<sup>346</sup> Alyanak, The New Institution on Protection of Fundamental Rights, pp.4-5.

reforms serve two purposes; they are equally relevant to fulfill the Accession requirements, and to monitor public administration.<sup>347</sup>

Another external factor includes the United Nations Development Program (UNDP) initiative on institutional reforms. The ‘Project for strengthening the institutional capacity of ombudsman institution’ was launched in March 2015, to assess the capacity and performance of the KDK in line with the EU and international standards of good governance and transparency, and to enhance technical knowledge and know-how exchange with other ombudsman networks in order to develop recommendations and best practices.<sup>348</sup>

### **3.3.2.1 The European Rapprochement and Harmonization Standards**

In December 1999, Turkey was accepted as a candidate country in the Helsinki Summit of the European Council.<sup>349</sup> The Copenhagen Criteria requires an economic, institutional, administrative and political alignment with the EU system and conditions. In this regard, Turkey has achieved significant progress both in its domestic and foreign politics.<sup>350</sup> In the administrative field, the government has pursued further policies in the areas of service delivery, democracy and human rights, and integration with the EU institutions.<sup>351</sup> These reforms targeted central and local governments. The foundation of a national ombudsman<sup>352</sup> emerged as part of the administrative reforms to strengthen public accountability, auditorship, transparency and public trust.<sup>353</sup> Eliçine argued that Turkey’s domestic reforms are a continuation of the previous governments’ policies, and should be studied from a historical and political framework rather than exclusively analyzing them through the lens of the EU accession and harmonization policies.<sup>354</sup>

---

<sup>347</sup> Ibid.

<sup>348</sup> United Nations Development Program, Project for Strengthening the Institutional Capacity of Ombudsman Institution, Ankara: UNDP, 2015, [http://www.tr.undp.org/content/turkey/en/home/operations/projects/democratic\\_governance/project-for-strengthening-the-institutional-capacity-of-ombudsma.html](http://www.tr.undp.org/content/turkey/en/home/operations/projects/democratic_governance/project-for-strengthening-the-institutional-capacity-of-ombudsma.html) (Accessed 2 March 2017).

<sup>349</sup> Eliçine, *The Europeanization of Turkey: Reform in Local Governments*, p.107.

<sup>350</sup> Ibid.

<sup>351</sup> This agenda was based on the European Convention on Human Rights (ECHR). (See Alyanak, *The New Institution on Protection of Fundamental Rights*, p.4).

<sup>352</sup> A delegation was invited to Turkey and received information and recommendations about the functioning of the ombudsman institution and exchanged views on the ombudsman institution for Turkey.

<sup>353</sup> Eliçine, *The Europeanization of Turkey: Reform in Local Governments*, pp.108-112.

<sup>354</sup> Ibid.

The process of Europeanization covers specific issues on domestic changes such as: the democratic process of the ruling regime, the role of the military, identity politics, state-citizens relationship, the constitutional reforms, Cyprus conflict, minority rights, asylum policies, and the Armenian polemic.<sup>355</sup> However, the EU accession criteria had little impact on Turkey's membership, and Turkish policy-makers have pursued their own agenda and national interest that are in some instances incompatible with the EU demands.<sup>356</sup> Furthermore, Turkey's foreign policy approach and the regional geopolitical map have shifted its priority to the MEA region. Likewise, the EU influence, selective approach, credibility and delay to accept Turkey in the Union caused skepticism and 'counter-conduct'.<sup>357</sup>

### 3.3.2.2 The Constitutional Amendments and the Local Referendum

In 1997, a special commission was set up to draft the ombudsman law with the participation of academicians, judges, ministers and experts.<sup>358</sup> In 1999, the draft was submitted to the Office of Prime Minister and the National Assembly. In 2006, the draft passed into a law as part of the state reforms and EU accession process.<sup>359</sup> The Assembly adopted the law,<sup>360</sup> while the Constitutional Court did not.<sup>361</sup> The Court stated: *"It is not possible for an institution required to rank among central administrative or decentralized institutions within the administrative organization to be*

---

<sup>355</sup> Eliçine, The Europeanization of Turkey: Reform in Local Governments. And Börzel and Soyaltin, Europeanization in Turkey. Stretching a Concept to its Limits? pp.6-15.

<sup>356</sup> Börzel and Soyaltin, Europeanization in Turkey. Stretching a Concept to its Limits? pp.14-16.

<sup>357</sup> Ibid, pp.6-16. And Münevver Cebeci, "De-Europeanisation or Counter-Conduct? Turkey's Democratization and the EU," **South European Society and Politics**, Vol.21, No.1, (2016), pp.119-132.

<sup>358</sup> A "Draft Law on Public Spoken Draft" was carried out and completed on August 12, 1998. It was revised by the Ministry of Justice, and was amended into "Draft Law on Public Auditing Institution". (See Çakir, Institutionalization of Human Rights in Turkey, p.47).

<sup>359</sup> On June 15, 2006, the GNA accepted the first draft as 'Law Draft on Public Auditorship Institution' law no.5521, but it was vetoed by the President on the ground that the law did not have a constitutional basis (incompatible with the Constitution) on July 1, 2006. However, on 28<sup>th</sup> October 2006, the law was accepted by the National Assembly. It was published in the Official Gazette on 13<sup>th</sup> October 2006. (See Çakir, Institutionalization of Human Rights in Turkey, pp.47-50).

<sup>360</sup> The Law on Public Auditing Institution consists of 41 articles and 4 Provisional Articles. It was prepared by the Public Auditor, and includes the duties, qualifications, elections, working principles, independence of the Public Chief Auditor and the public auditors, and the regulations on the applicants to be made to the institution and the personnel of the Authority. (See Kamu Denetçiliği Kurumu, Law on the Ombudsman), [https://www.ombudsman.gov.tr/contents/files/Law%20no\\_%206328-revised-03-08-2018.pdf](https://www.ombudsman.gov.tr/contents/files/Law%20no_%206328-revised-03-08-2018.pdf) (Accessed 4 January 2017).

<sup>361</sup> It was rejected on the basis of Article 123 of the Constitution. (See Alyanak, The New Institution on Protection of Fundamental Rights, p.4).



*established apart from administration and to be bound to the Legislation, in defiance of the principles of central administration and decentralization.”*<sup>362</sup> Both Law no.5982 on constitutional amendments and Law no.74 of the 1982 Constitution were reviewed.<sup>363</sup> Following this, the procedures, principles, duties, operations related to the examinations of the Public Auditorship Institution, and the rights and qualifications of the auditors were constituted by decree (RPPCILOI).<sup>364</sup>

The KDK was established on the 14<sup>th</sup> June 2012, and started its activities on the 29<sup>th</sup> June 2012.<sup>365</sup> According to Alyanak: *“The law authorized the ombudsman institution to examine, study, and make proposals concerning acts, actions, attitudes and behaviors of the administration within the framework of a human rights-based justice and in conformity with the principles of fairness.”*<sup>366</sup>

According to the Ministry of Foreign Affairs and the KDK official website:

“The ombudsman institution has legal personality, a separate budget and is based in Ankara. The purpose is to establish an independent and efficient complaint mechanism regarding the delivery of public services, and investigate, research and make recommendations about the conformity of all kinds of actions, acts, attitudes and behaviors of the administration with law and fairness under the respect for human rights.”<sup>367</sup>

All in all, the synthesis of the internal and external dynamics paved the way for Turkey to institutionalize the KDK.<sup>368</sup> This institution was founded within the framework of ‘Enhancing the Efficiency of Public Services’ of the 7<sup>th</sup> and 8<sup>th</sup> Five-Year Development Plans, and the scope of satisfying the political criteria of Turkey “National Program for Adopting the Acquis (NPAA)” of the EU rapprochement process.<sup>369</sup> The institution is specialized in grievances related to public administration, and is fairly accessible to

---

<sup>362</sup> Constitutional Court decision (25 December 2008), and numbered P.2006/140, D 2008/185. (See Alyanak, *The New Institution on Protection of Fundamental Rights*).

<sup>363</sup> The amendment was accepted by the referendum and became effective. It was published in the Official Gazette no.27708 I (23 September 2010). (See Secretariat General for European Union Affairs, Law no.5982 Amending Certain Provisions of the Constitution), [https://www.ab.gov.tr/files/BasınMusavirlik/haberler/constituional\\_amendments.pdf](https://www.ab.gov.tr/files/BasınMusavirlik/haberler/constituional_amendments.pdf) (Accessed 10 March 2017).

<sup>364</sup> Ceretli, Eren and Yilmaz, *Ombudsman in the World System and a Case Study*, p.118.

<sup>365</sup> Kamu Denetçiliği Kurumu, “Law no.6328 on the Ombudsman. Official Journal n. 28338”, 29 June 2012, [http://www.ombudsman.gov.tr/en/custom\\_page-325-law.html](http://www.ombudsman.gov.tr/en/custom_page-325-law.html)(Accessed January 10, 2017).

<sup>366</sup> Alyanak, *The New Institution on Protection of Fundamental Rights*, p.5.

<sup>367</sup> Ministry of Foreign Affairs, Human Rights, (n.d), <http://www.mfa.gov.tr/İnsan-hakları.en.mfa> .And Kamu Denetçiliği Kurumu, *Ombudsman*, 4 January 2017, <https://www.ombudsman.gov.tr/English/about-us/> (Accessed 25 January 2017).

<sup>368</sup> Alyanak, *The New Institution on Protection of Fundamental Rights*, pp.26-27.

<sup>369</sup> Çakır, *Institutionalization of Human Rights in Turkey*, p.47. And Ceretli, Eren and Yilmaz, *Ombudsman in the World System*, p.120.

Turkish nationals and foreigners (Article 17 of LOI).<sup>370</sup> The application is made through provincial governor' districts and district governorships through a petition.

### 3.3.3 The Legal Basis of the KDK

**Table 2**  
**The Legal Framework and Legislation of the KDK**

National Legislation	International Legislation
<p>Articles 74(4)<sup>371</sup> and 74(6)<sup>372</sup> of the Constitution;</p> <p>The Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution (RPPCILOD); and</p> <p>Recommendation 1615 of Parliamentary Assembly.</p>	<p>The Universal Declaration of Human Rights;</p> <p>The EU Charter of Fundamental Rights;</p> <p>The European Convention on Human Rights;</p> <p>Paris Principles; and</p> <p>Venice Commission.</p>

**Source:** Servet Alyanak, "The New Institution on Protection of Fundamental Rights: Turkish Ombudsman Institution," *Ankara Review of European Studies*, Vol.14, No.1, 2015. *Kamu Denetçiliği Kurumu*, "Legislations", 4 January 2017, <https://www.ombudsman.gov.tr/English/international-legislation/index.html>

Turkey developed a contemporary ombudsman model in 2012. The KDK is regarded as an independent public authority that monitors injustices, prevents the misuse of administrative power, judicial discretion, suggests proper conducts, and proposes flexible solutions, thus, it contributes to improve public service delivery, transparency and democratic values.<sup>373</sup> Karasoy states that the ombudsman has the authority to

<sup>370</sup> Alyanak, *The New Institution on Protection of Fundamental Rights*, p.5.

<sup>371</sup> "The ombudsman established under the Grand National Assembly of Turkey examines complaints on the functioning of the administration".

<sup>372</sup> "The establishment, duties, functioning of the ombudsman and its proceedings after the examination and the procedures and principles regarding the qualifications, elections and personnel rights of the Chief Ombudsman and Ombudspersons shall be laid down in law".

<sup>373</sup> Hasan Tahsin Fendoğlu, *Ombudsman and Discussions on Ombudsman in Turkey*, Ankara: Institute of Strategic Thinking, 31 December 2010, <http://www.sde.org.tr/en/newsdetail/ombudsman-in-turkey-was-discussed/2459> (Accessed 18 February 2017).

investigate incidents, to provide analysis, and to issue statements to the general public.<sup>374</sup>

The ombudsman is a constitutional institution and a public body linked to the National Assembly.<sup>375</sup> The KDK legal framework is a synthesis of both national and international legislations. The KDK is based on the Constitution, the RPPCILOI, and Law on the Ombudsman Institution (Law no.6328). This law structures the working scopes, so to avoid an overlap of activities with the Commission of Human Rights.<sup>376</sup>

These legislations and provisions constitute the constitutional and institutional frameworks of the ombudsman that are necessary for its autonomy, legitimacy, independence, and institutional stability. It has the power to deal with human rights issues and administrative matters that might occur in national or subnational administrations, or entities that provide public services. Hence, the KDK does not possess the authority to issue judicial regulations or make sanctions. Likewise, the power to cancel or suspend executive decisions of law-binding status falls outside of the KDK authority.<sup>377</sup> Similar to the European Ombudsman, the KDK adopts a soft-law approach to perform its investigative activities, and institutions have to show cooperative behavior by supplying relevant information and documents within thirty days from the notification date, and likewise, officials and other employees of bodies must respond to the ombudsman's and provide explanations, or justification in cases for refusal.<sup>378</sup> Even though there are no judicial consequences for not cooperating with the ombudsman (Article 23 of RPPCILOI), it comes from a sense of duty and responsiveness to facilitate carrying out investigations.

---

<sup>374</sup> Alpay H. Karasoy, "Ombudsman in Turkey: its Contributions and Criticism," **European Scientific Journal**, Vol.11, No.22, (2015), pp.46-59.

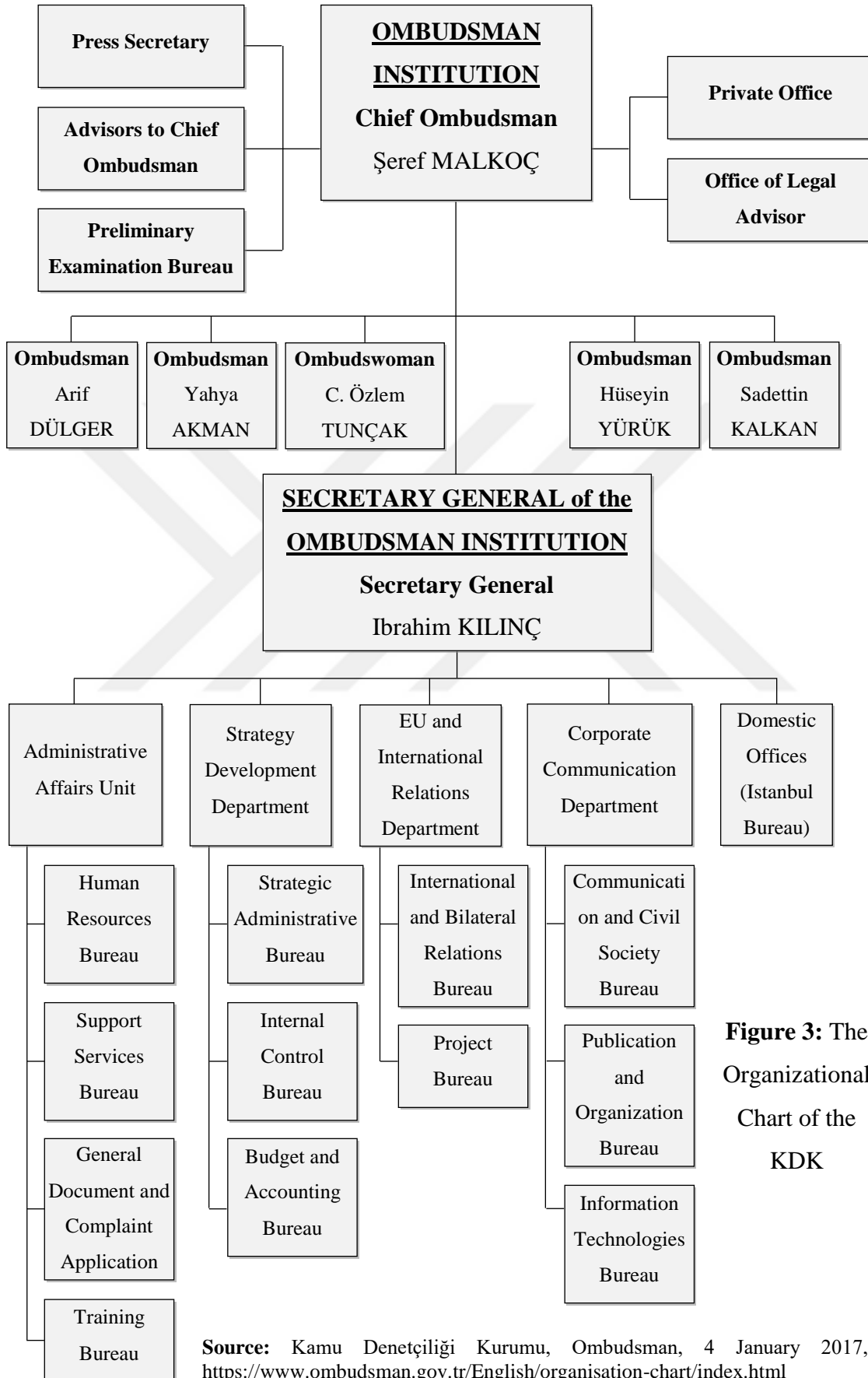
<sup>375</sup> In the parliamentary system, one of the functions of the parliament is to audit the executive (Articles 98, 99, 100 of the Constitution). In Turkey, the ombudsman is administratively and financially autonomous and has its special budget, unlike public institutions with general budget.

<sup>376</sup> Alyanak, *The New Institution on Protection of Fundamental Rights*, p.12.

<sup>377</sup> *Ibid.*

<sup>378</sup> Kamu Denetçiliği Kurumu, Article 18 LOI, Law no.6328 Official Gazette no. 28338, 29 June 2013, [https://www.ombudsman.gov.tr/contents/files/Law%20no\\_%206328-revised-03-08-2018](https://www.ombudsman.gov.tr/contents/files/Law%20no_%206328-revised-03-08-2018) (Accessed 10 January 2017).

### 3.3.4 The Organizational and Operating Charts of the KDK



**Figure 3:** The Organizational Chart of the KDK

**Source:** Kamu Denetçiliği Kurumu, Ombudsman, 4 January 2017, <https://www.ombudsman.gov.tr/English/organisation-chart/index.html>

The Republic of Turkey is a parliamentary representative democracy. It has adopted a single ombudsman model i.e. single and central structural model of the ombudsman headed by a chief ombudsman who is accountable to the parliament, one secretary general, five auditors, a secretary general and several personnel on duty in the institution (Article 4 (1)).<sup>379</sup> The chief ombudsman and ombudspersons are appointed by the National assembly. There are five departments that report to the secretary general of the ombudsman, they are in charge of administrative affairs, strategic development, EU and international affairs, corporate communication, and domestic offices based in Istanbul. Article 10 of the law defines the qualifications required for the chief auditor and the auditors. The chief auditor has to be at least 50 years old, and the auditor must be 40 years old at the time of election.<sup>380</sup> Furthermore, candidates are recommended to have strong knowledge of politics, law, economic, administrative sciences, or management, with ten years of working experience in public institutions. The personnel should not engage in political activities in the time of application. Besides being highly qualified, the ombudspersons have to have high ethical values such as transparency, integrity, professionalism, reliability, impartiality, loyalty, etc.<sup>381</sup> The ombudsman's term of office is four years, and is renewable.<sup>382</sup> The Chief auditor and auditors can be elected for a second term (Article 14).<sup>383</sup> However, they can be dismissed from duty upon objective justifications defined by law.

---

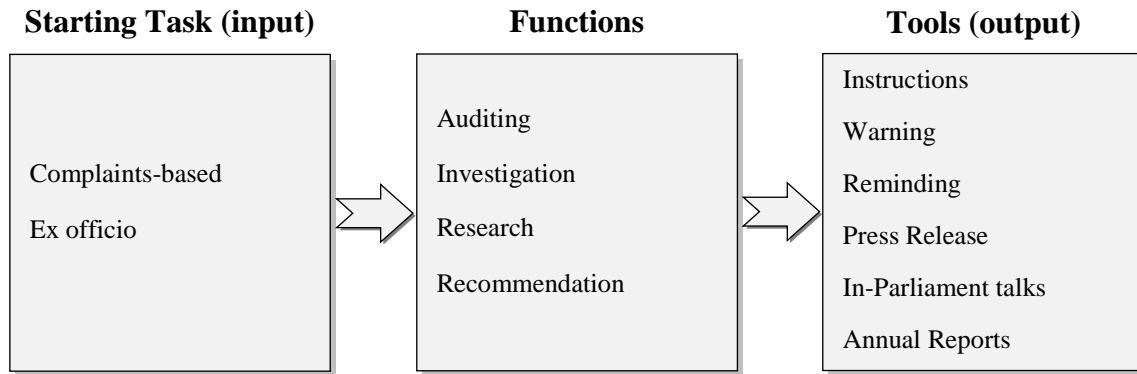
<sup>379</sup> Kamu Denetçiliği Kurumu, Law on the Ombudsman Institution, no.6328, (n.d), [https://www.ombudsman.gov.tr/contents/files/Law%20no\\_%206328-revised-03-08-2018.pdf](https://www.ombudsman.gov.tr/contents/files/Law%20no_%206328-revised-03-08-2018.pdf) (Accessed 10 January 2017).

<sup>380</sup> Setting a high age limit is justified by the importance attached to the position, which requires expertise and strong professional background. (See Çakir, Institutionalization of Human Rights in Turkey, pp.50-51).

<sup>381</sup> Bo Rothstein and Nicholas Sorak, Ethical Codes for the Public Administration: A Comparative Survey, University Of Gothenburg, The Quality of Government Institute, Working Paper No.12, 2017, [https://qog.pol.gu.se/digitalAssets/1663/1663513\\_2017\\_12\\_rothstein\\_sorak.pdf](https://qog.pol.gu.se/digitalAssets/1663/1663513_2017_12_rothstein_sorak.pdf) (Accessed 7 March 2017).

<sup>382</sup> Kamu Denetçiliği Kurumu, Law on the Ombudsman Institution.

<sup>383</sup> Alyanak, The New Institution on Protection of Fundamental Rights, p.7.



**Figure 4:** The Ombudsman Operating Chart

**Source:** Ebru Ünver, “The Ombudsman System and Ombudsman in the Turkish Public Administration,” (Master, Ankara University, 2008), p.22.

The KDK receives documents within 30 days, and conducts investigation within six months, however, if the applicant refers to the court, the period of jurisdiction will be suspended from the time of application to the institution.<sup>384</sup> If the complaint is within the authority of the ombudsman, it initiates the required process. If the control is outside the scope of the audit, the KDK can inform other parties about the measures to be taken.<sup>385</sup>

According to the KDK website, the institution has issued decisions on: the allegations on “the violation of the right to life”, the rule of partial recommendation and partial dismissal, recommendation on assigning stipends to non-Muslim religious attendants, decision of supreme board election on information and educational works for the constituents, 1<sup>st</sup> of May freedom of movement, Taksim Gezi Park special reports, etc.<sup>386</sup>

The highest number of applications received comes from Central Anatolia and Marmara regions, while the least come from Eastern Anatolia and Southeastern Anatolia. Many of these complaints were related to education, labor and social security sectors.<sup>387</sup>

<sup>384</sup> Çakır, Institutionalization of Human Rights in Turkey, pp.51-53.

<sup>385</sup> Official Gazette no.28601. (28 March 2013). Alyanak, The New Institution on Protection of Fundamental Rights, p.9.

<sup>386</sup> Kamu Denetçiliği Kurumu, Ombudsman, Some Decisions, 4 January 2017, <https://www.ombudsman.gov.tr/English/some-decisions/index.html> (Accessed 10 January 2017).

<sup>387</sup> **Hurriyet Daily News**, “Turkish Ombudsman Complains of insufficient Authority”, 17 April 2014, <http://www.hurriyetdailynews.com/turkish-ombudsman-complains-of-insufficient-authority-65157> (Accessed 3 March 2017).

According to the Secretary General of the KDK, the ombudsman responded to about 90% of the complaints, and this makes it an important and vital institution in Turkey.<sup>388</sup>

### 3.3.5 Independence and the Working Scope of the KDK

This research argues that independence is a core component of an ombudsman to guarantee objectivity, integrity, legitimacy, and continuity. It means that the institution can make fair decisions without pressure, compulsion or influence of any extraneous person or authority. Independence takes place when the system is accountable,<sup>389</sup> and has institutional<sup>390</sup> and financial autonomy.<sup>391</sup> This feature empowers the officers to exercise their duties independently of any external influence or order (Article 12 of LOI).<sup>392</sup> The KDK constitutes a neutral and effective auditorship mechanism that settles grievances, investigates on maladministration, prepares annual or special reports, reports to specialized committees [Petition Committee of the GNA and Joint Committee of the Human Rights Examination Committee], and submits proposals on administration-related matters within its scope and authority.<sup>393 394</sup>

Considering the competence and relevance of the ombudsman institution in promoting the values of democracy, accountability, trust, social justice, and openness, one of its main challenges is the limited power and scope. The investigation power of the ombudsman is restricted.<sup>395</sup> For instance, the ombudsman cannot intervene, open cases

---

<sup>388</sup> United Nations Development Program, Ombudsman Institution Met with NGOs and Citizens at Eskişehir, Ankara: UNDP, 7 December 2017, <http://www.tr.undp.org/content/turkey/en/home/stories/ombudsman-institution-met-with-ngos-and-citizens-at-eskieshir.html> (Accessed 3 March 2017).

<sup>389</sup> There are two forms of accountability: Formal and informal. Formal accountability means that the ombudsman is accountable to another authority within the legal framework, such as providing reports to the parliament. Informal accountability is when the ombudsman provides the public/citizens with information about its work.

<sup>390</sup> Operational autonomy means that the ombudsman has the ability to perform its duties independently from other individuals, entities, institutions, authorities, etc. (See Alyanak, *The New Institution on Protection of Fundamental Rights*).

<sup>391</sup> It means that the ombudsman can control its budget and manage its resources independently. (See Alyanak, *The New Institution on Protection of Fundamental Rights*).

<sup>392</sup> Article 12 of LOI on independence and impartiality, <https://www.ombudsman.gov.tr/English/dosyalar/the-ombudsman-institution-law.pdf> And Article 47 of RPPCİLOI, <https://www.ombudsman.gov.tr/English/dosyalar/by-law.pdf> (Accessed 8 March 2017).

<sup>393</sup> Article 1 of LOI, <https://www.ombudsman.gov.tr/English/dosyalar/the-ombudsman-institution-law.pdf> And Article 14 of RPPCİLOI, <https://www.ombudsman.gov.tr/English/dosyalar/by-law.pdf>

<sup>394</sup> Alyanak, *The New Institution on Protection of Fundamental Rights*. p.8.

<sup>395</sup> Ferris, Goodman and Mayer, *Brief on the Office of the Ombudsman*, p.12. And Tsadiras, *Maladministration and life beyond legality*.

or launch amendments or investigations on decisions signed by the President *ex officio*, legislative and executive authorities, the Armed Forces, or private sector.<sup>396</sup> Also, complaints without a definite subject, or fall out of scope are not scrutinized.<sup>397</sup> This limited power is due to the strict distinction between the legal statutes and soft-law approach, and the functional mechanisms to achieve institutional impartiality.<sup>398</sup> All in all, the KDK remains an innovative mechanism to oversee the executive branch, and to assess the merits and compliance of the decisions, behaviors and conducts of the public servants, hence promotes good governance and democracy.<sup>399</sup>

---

<sup>396</sup> Article 5 (2) of LOI, <https://www.ombudsman.gov.tr/English/dosyalar/the-ombudsman-institution-law.pdf> And Article 32 (1) (d) of RPPCILOI <https://www.ombudsman.gov.tr/English/dosyalar/by-law.pdf>

<sup>397</sup> Article 5 of RPPCILOI, <https://www.ombudsman.gov.tr/English/dosyalar/by-law.pdf>

<sup>398</sup> Diaw, *Ombudsmen, People's Defenders and Mediators*, p.5.

<sup>399</sup> Article 5 (1) of LOI, <https://www.ombudsman.gov.tr/English/dosyalar/the-ombudsman-institution-law.pdf>. And Alyanak, *The New Institution on Protection of Fundamental Rights*, pp.9-10.





## CHAPTER 4: FINDINGS AND CONCLUSION

In light of rising societal dynamics, modern state structures are getting more complex, while people's expectations about the state role and service delivery are getting high. With the technological advancements, traditional methods of seeking justice have become insufficient, and the need to adopt approachable and efficient public institutions within the framework of respect for human rights, democracy and transparency has become inevitable. This research aimed at exploring the historical roots of the development of the ombudsman in Modern Turkey, and adopted the historical approach with reference to institutionalism as proposed by Samuel Huntington in his work titled "Political Order in Changing Societies".

The main argument of the theoretical framework stated that transparent, responsive, and participatory political institutions have the ability to maintain order in contemporary political communities. Huntington argued that policy structures and organizations need to be adapted to a 'matching pace', so to be in correlation with societal transitions. Furthermore, political institutions carry out the will to institutional democracy, and to establish trust between the agent i.e. the government, and the principle i.e. the citizens, thus it has become a necessity to create a check on the agent's activities in the interests of the principle. The ombudsman finds its relevance in serving this purpose. Therefore, the establishment of this institution comes in line with Huntington's argument on the importance of formal government institutions, and structures that need to be sustained in order to build stable democracies.

The first chapter introduced the research topic, research problem, and discussed the conceptual and theoretical frameworks adopted.

The second chapter explored the development of the ombudsman, the typologies and different models of this institution worldwide. It argued that the typology reflects the contextual interactions between political conditions and law systems in which administrative justice and ethics evolve. This chapter also covered the European ombudsman as one model of supranational ombudsman, its organizational chart and working scopes.

The third chapter looked at the development of the ombudsman in modern Turkey. A historical approach to study *Diwan Al-Mazalem* (Grievances Court) in its ancient and modern foundations was used to evaluate the aspects of continuity and change.

While some scholars refuted the view that the ombudsman was not explicitly developed from the Ottoman's Grievance administration (*Şikayet*), and provided historical evidences of complaints records, petitions and grievances documentations, other scholars such as Goffman and Lang argued that the Ottoman governance shaped, implicitly, the European governance system, and constituted an integral constituent of Europe's practice. To reach this conclusion, these scholars studied the ombudsman's origins in the Ottoman Empire and early modern Europe. Therefore, studies on the proper origins of the ombudsman have to connect European ombudsman to the Islamic administrative legacy.

This research found that although the Orientalists' discussions associate the ombudsman to the early Scandinavian practice, grievances resolution system had been a far-reaching institution of the Islamic administration. This was the position of Lang in his work titled "A Western King and an Ancient Notion: Reflections on the Origins of Ombudsing".

Although the institutionalization of the ombudsman in modern Turkey occurred in the 1970s, the ombudsmanship is considered a revived practice adapted to modern dynamics, when we take into account the Ottoman legacy. In other words, we can approach the aspect of continuity in the ombudsmanship practice, which existed in the Ottoman administrative enterprise. The aspect of change is measured by the institutional reforms that modern Turkey led in order to adapt public administration to the modernization process vis-à-vis the citizen-oriented management approach.

Likewise, the General Preamble of the Law on Public Auditorship Institution states that the roots of the ombudsman institution originated from the Ottoman's Chief Justice.<sup>400</sup> The grievances courts' officers examined governments' conducts and operations. Warning and punishments were issued when injustices, corruption and misconducts were found. Hence, the ombudsman aimed at protecting people's civil rights, preventing the power turn into persecution, and correcting civil servants' conducts. As it was stated

---

<sup>400</sup> Grand National Assembly of Turkey, 24<sup>th</sup> legislative session, 2<sup>nd</sup> legislative year. Law Draft Concerning Public Auditorship Institutions and Reports of European Union Commission on Harmonization and Constitutional Committee (1/626), p.5.

in chapter two, the ombudsman was adopted -for the first time in Europe- by King Charles XII of Sweden (1697-1718) who stayed in Bender (currently the Republic of Moldova). He observed the Ottoman ruling style and how Suleiman the Magnificent managed the state-citizens relationship. He consequently adopted this institution and made it a modern model trying to adapt this construct to modern. In “Early Visions of Justice for the Humble in East and West”, Kracke argued that this institution, in search for instruments to consolidate public sector, set order, accountability and justice, assimilated both the Eastern and Western practices.

Chapter three described how the essence of the idea to establish an institution such as *Diwan Al-Mazalem* with the purpose to settle grievances, was structured within the Islamic administrative system as it was the case of the Abbasid and Ottoman Caliphates who founded a central system which acquired the status of a ministry in nowadays organizational system.

In the 19<sup>th</sup> and 20<sup>th</sup> centuries, this system gradually acquired more functions and prominence. Initially, the ombudsman reported grievances cases, and prosecuted them, later it started receiving and redressing citizens’ complaints against public authorities, slowly the prosecutorial and judges review functions dwindled. There are many factors behind this institutional change. This study argued that the emergence of social welfare states, post-war political systems, rule of law, power separation, bureaucratic and globalization dynamics, democratic transition and advocacy for civil rights are the main determinants of the ombudsman’s growth. As a result, these variables transformed state-citizens relationship and governments’ democratization process. Thus, the ombudsman institution is an agent for change that contributes to an extensive understanding of the citizen-centric governance and horizontal accountability.

Chapters two and three found that the ombudsman in its ancient and modern forms serves as a civil rights advocate and public consultation body. It is appointed by state legislature to receive citizens’ complaints, to redress grievances, to mediate, and to recommend actions. There was a gradual understanding of the relevance of this institution as an alternative mechanism to justice renovation, and the ombudsman has ultimately occupied an essential place in present-day societies. This argument was supported by Sumit and Waghmare’s work which discussed the legislative and judicial

aspects of this institution. The study also asserted that the ombudsman remains an independent and effective institution to implement human rights, dispense justice, oversee public administration and hold civil servants accountable and trustworthy. In fact, this institution has become a standard of accountability in modern democratic states, and has contributed to the globalization of bureaucratic concepts. In his book “The Swedish Institution of Ombudsman: An Instrument of Human Rights”, Wahab stated that the ombudsman was adopted with the rise of contemporary understanding of democracy, human rights and good governance. Thus, the core purpose of the ombudsman institutions throughout the world is to promote administrative accountability and enhance culture of trust between the administrators and the administered. This research found that the ombudsman is an effective mechanism to promote democracy and trust. The ombudsman in contemporary societies fulfills the functions of the prosecutor, and maintains independence from the legislative branch i.e. national assemblies or parliaments, in safeguarding civil rights and freedoms. The particularity of this institution can be viewed in its fair and free accessibility to the public, and the ability to mediate between citizens and their respective governments. This institution acquired wider competencies due to transition to modern constitutional regimes. When studying the features of the ombudsman, this research found that one of the challenges faced by this institution is the non-binding and limited power, which affects its locus. This is because the ombudsman is an autonomous institution established by legislative statutes, and remains outside the control or guidance of the executive. It goes without saying that the ombudsman’s powers are mainly exercised during the course of its investigation, thus, it cannot act beyond its mandate, or force any party to abide to its decisions. This research argued that independence is a requisite of a functional ombudsman, and thus, should be strengthened by constitutional laws in order to work for the benefit of the citizens without being subject to interference or influence from extraneous forces. Chapter two and three discussed this idea, and found that autonomy remains a challenge to institutionalize an independent body, and as long as its decisions are not binding. It also addressed the limited authority of the ombudsman; its narrowness tends to divert the intents, and drives resources away from the ombudsman’s primary functions. Thus, with the growth of ombudsmanship, legislative amendments to widen the scope of this institution need to be implemented so

that it can use resources effectively. Widening the powers of the ombudsman will positively impact administrative accountability and horizontal investigative powers.

That being said, public institutions are expected to help the ombudsman access documents and information and follow a conciliatory attitude. The ombudsman's investigative powers should be extended to perform its duty, and should have access to all the documents of public institutions and organizations, except those outside the scope of its powers such as confidential and secret documents. The study also found that some models are not directly and easily accessed by citizens. This is the case of the Mediator of the Republic. That is why citizens should be able to access the ombudsman easily and without cost.

Likewise, the ombudsman should not be used by governments as means to consolidate their power, or associated to political parties in the country [to guarantee independence], and should act within its authorities as a reliable body of integrity. Another important component to be developed is the ombudsman's independence. As the officers are representatives of the plaintiffs' interests, their selection should be highly competitive; they have to have strong knowledge and expertise, and possess high ethical values such as transparency, integrity, professionalism, reliability, impartiality, and loyalty. The personnel should not engage in political activities in the time of service. Besides that, it is argued that if the officers' salaries are competitive, they will perform their duty properly. In the light of chapter three, the ombudspersons are required to be knowledgeable in law to settle administrative disputes. Besides, they can perform effectively and efficiently their job when they are independent, work within the framework of their power and mandate, and are not vulnerable to political oppression or pressure from other institutions. Ünver has reached similar conclusions in his dissertation on "The Ombudsman System and Ombudsman in the Turkish Public Administration".

Chapter three stated that there were two main factors behind the institutionalization of the ombudsman in Turkey; the internal dynamics based on constitutional and administrative reforms, and external dynamics explained by the EU rapprochement and global governance. Since its foundation, the KDK was viewed as an effective mechanism in the Turkish society. It has contributed to improve public service delivery,

openness, efficiency, transparency, and public participation. A local survey was conducted in Izmir and Manisa to highlight the local perception of the KDK. The study identified legislative deficiency as a main challenge to the KDK. Notwithstanding the competencies of this institution in handling maladministration and institutionalizing democratic practices, its powers are relative. In other words, the ombudsman can only investigate, recommend and report to the GNA. To solve this issue, the study suggested that the ombudsman's reports should acquire 'legally-binding status', and enforce its decisions so to move beyond an advisory function and soft-law approach.

The ombudsman is based on *de jure* and *de facto*. The European Principles provide a legal framework where different policy actors work together in promoting transparency, respect for human rights, and good governance. The EU ombudsman remains independent in its operation from any authority or national government. It also helps to implement key elements of fundamental justice. This research has used the case the EU ombudsman vis-à-vis the EU Charter of Fundamental Rights, and the Code of good administrative behavior.

In the light of the previous discussions, a functional ombudsman in Turkey should consider its distinctive societal circumstances. The policy transfer -the third form of homogenizing apparatus of Europeanization- that the EU is supporting, should not disregard Turkey's local practices and heritage. The framework should take into account the country's internal dynamics, and global developments. There are many factors affecting institutional attributes such as legal traditions, governance regime, economic development, social structure, etc. As a matter of experience, nations do not progress by adopting export-oriented models. China, Germany, Japan, and Turkey are cases showing that progress comes from within. However, it does not also mean that countries are not open to external experiences to adopt institutional norms and best practices. The Vienna Declaration recognizes 'the right of every government to adopt the most suitable framework and model according to its own national needs'. Accordingly, Turkey is not compelled to adhere to European norms or practices. The answer to the research question can be further corroborated by Huntington's argument on the condition for institutionalization. He points to the importance on establishing mechanisms that revive old traditions and practices in frameworks applicable to modern organizations and contemporary concepts.

Although many countries have adopted the Scandinavian-type ombudsman, it is not merely the convenient paradigm to adapt in countries with different sociopolitical structures. For that reason, the study stated that there is no single model or scheme to fit the variety of legal systems, traditions, and changing societal circumstances. Buck, Kirkham, and Thompson have reached similar conclusions in their book 'The Ombudsman Enterprise and Administrative Justice'.

This research also argued that the ombudsman should not be viewed through the lens of EU membership and rapprochement, and goes beyond being a burden on Turkey to fit the European model. Turkey is not an EU member state, and there are other issues brought into discussions other than institutional modernization. Turkey has its unique experience, and given its Ottoman heritage, the country is able to adopt an ombudsman answerable to the current needs of its local population, and adaptable to the working system and mechanisms of public institutions and organizations, which differ from the European context. The foundation of this institution has to take into consideration IBA's definition as provided in the first chapter. That being said, Turkey's foreign policy approach and the regional geopolitical map have shifted its priorities to the MEA region. Likewise, the EU influence, selective approach, credibility and delay to accept Turkey to become a full member state caused skepticism and counter-conduct.

Chapter three explored *Diwan Al-Mazalem* in the Islamic dynasties. This institution is defined as an authority assigned to investigate on incidents of heavy-handed bureaucracy and unlawful practices. The historical development of the ombudsman can be evaluated to develop an institution adapted to Turkey's institutional reforms to match the modernization process of the country vis-à-vis its citizen-oriented management approach.

The historical development of the ombudsman in modern Turkey found similarities between the ancient and contemporary grievances system. The institution has two different ways of performing duties. The office conducts its duty based on citizens' application received through an administrative mechanism including petition, application, letter, or request. The ombudsman also assesses the complaint based on *ex-officio*; it can actively take action without waiting for citizens to make a demand.



Therefore, the attributes of the ombudsman are consolidation of open governance, administrative justice, and public trust. Thus, both individual and institutional dynamics influence the public perception of the ombudsman. This research concludes that the role of the ombudsman in the EU and Turkey is similar; it serves as an investigatory body, it receives public complaints, and where appropriate, and it mediates disputes by adopting remedies to consequences of a particular act or omission. In accordance with its functional aspects, the ombudsman has helped not only citizens settle their dispute with public institutions and organizations, but it has also guided public entities to identify their deficiencies and improve control mechanisms.

It was stated that the effectiveness of an ombudsman is conditioned by three structural conditions: First, the judicial framework and legal power, second, the political ideology and culture, and third, managerial and organizational behavior of civil servants. It is clear that an operational ombudsman promises to correct and reform, not to enforce, the working mechanisms of administrative systems. The ombudsman could also propose creative and preventive solutions to problems and societal issues. It is headed by trustworthy officers who act as mediators between the state and its citizens, and develop rational conflict resolution mechanisms. Osipova has stated that the Swedish model of the ombudsman has acquired a respected position among politicians and citizens. He described *Hogste Ordningssmannen* as an effective institution of control led by dependable personalities who are democratically and autonomously nominated, and easily approachable by anyone from larger society to settle by power of investigation and mediation conflicts, or propose conflict resolution methods.

Although the two models this research has scrutinized are different in terms of working environments and scopes, yet, their working chart (as demonstrated in figure 4) is similar. They both aim to serve people victim of administrative injustice, and to improve public administration. Yatkin and Tassar have conducted a comparative study on the ombudsman in the EU and Turkey. They found that the main function of the ombudsman is to control public administrative authority, to monitor public servants, and to improve the effectiveness of the public sector. Therefore, they concluded that this institution is a rational system of auditing and horizontal accountability, adopted in response to the legislative and judicial deficiencies that exercises a re-investigatory role, to provide effective and efficient protection to people, and hold public servants on trust.

Wiegand found that the ombudsman has psychological and practical values. An accessible and nonpartisan body with no subjective stance, unjustified time delay, or tension between the grievances parties due to judicial proceeding, the ombudsman remains a trusted institution that empowers citizens and gives them courage to complain and stand for their rights. The ombudsman offers a modern approach to public accountability. It is viewed as a watchdog that has the institutional capacity to hold the government accountable. In both cases, the ombudsman has demonstrated its ability to respond to the complexities that rise in government administration, and to protect citizens' rights.

All in all, this research states that the ombudsman is a relevant institution that exists side by side with other public institutions, and that should be encouraged in countries striving for transparent and good governance. Taking into account these arguments, the ombudsman is viewed as an instrument to stigmatize misconduct in the public sector, to promote human rights, to uphold the dignity of the people, and to mediate between the public entities and citizens through negotiation and recommendations.

Reinvesting in the past requires deep historical explorations and analysis to understand how past experiences can be mapped to current realities and future challenges. This research aims to be a starting step towards this quest, and so, to provide a model for MEA countries to revisit their history and reclaim their heritage so to respond better to the current modernization challenges.



## BIBLIOGRAPHY

### *Books*

Ashiagbor, Diamond, Nicola Countouris and Ioannis Lianos. **The European Union after the Treaty of Lisbon**. Cambridge: Cambridge University Press, 2012.

Bilgin, Mehmet Huseyin, Hakan Danis, Ender Demir and Ugur Can. **Empirical Studies on Economics of Innovation, Public Economics and Management**. Istanbul: Springer, 2017.

Buck, Trevor, Richard Kirkham and Brian Thompson. **The Ombudsman Enterprise and Social Justice**. Farnham: Ashgate, 2010.

Claasen Mario and Carmen Alpín-Lardiés. **Social Accountability in Africa: Practitioners' Experiences and Lessons**. Oxford: African Books Collective, 2010.

Dashwood, Alan. **Cambridge Yearbook of European Legal Studies. Volume 3**. Cambridge: CELS, 2000.

Diamandouros, Nikiforos P. **The European Ombudsman: Origins, Establishment, Evolution**. Luxembourg: Office for Official Publications of the European Communities, 2005.

Friedrich, Carl Joachim. **Man and His Government**. New York: McGraw-Hill, 1963.

Gregory, Roy and Giddings, Philip. **Righting Wrongs: The ombudsman in Six Continents**. Amsterdam: IOS Press, 2000.

- Gregory, Roy and Giddings, Philip. **The Ombudsman, the Citizen and Parliament: A History of the Office of the Parliamentary Commissioner for Administration and Health Service Commissioners.** London: Politico, 2002.
- Han, Woo-Keun. **The History of Korea.** Honolulu: University Press of Hawaii, 1980.
- Harris Michael and Martin Partington. **Administrative Justice in the 21<sup>st</sup> Century.** Oxford: Hart Publishing, 1999.
- Hatton, Ragnhild M. **Charles XII of Sweden.** London: The Camelot Press, 1968.
- Howard, Charles L. **The Organizational Ombudsman: Origins, Roles, and Operations: A Legal Guide.** Chicago: American Bar Association, 2010.
- Huntington, Samuel. **Political Order in Changing Societies.** 7<sup>th</sup> printing. London: Yale University Press, 1973.
- Institute of Internal Auditors. **Supplemental Guidance: The Role of Auditing in Public Sector Governance,** 2<sup>nd</sup> Edition. January 2012.  
[https://na.theiia.org/standards-guidance/Public%20Documents/Public\\_Sector\\_Governance1\\_1\\_.pdf](https://na.theiia.org/standards-guidance/Public%20Documents/Public_Sector_Governance1_1_.pdf)
- Johnson, John Asher. **The Role of the Military in Underdeveloped Countries.** Princeton: Princeton University, 1962.
- Kanade, Mihir. **The Multicultural Trading System and Human Rights: A Governance Space Theory on Linkages.** London: Routledge, 2017.
- Knill, Christoph. **The Europeanization of National Administrations.** Cambridge: Cambridge University Press, 2001.

- Köprülü, Mehmet Fuat. **İslam Medeniyeti Tarihi**. Istanbul: Alfa Yayınları, 2014.
- Kuesko-Stadlmayer, Gabriel. **European Ombudsman Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realization of an Idea**. New York: Springer Wien, 2008.
- Leicht Kevin T. and J. Craig Jenkins. **Handbook of Politics, State and Society in Global Perspective**. Iowa: Springer, 2010.
- Lerner, Daniel. **The Passing of Traditional Society**. Glencoe: Free Press, 1958.
- Lippmann, Walter. **The Public Philosophy**. Boston: Little Brown, 1995.
- Mawardi, Abu Hassan. **Al-Ahkam Al-Sultaniyyah**. Kuwait: Dar Ibn Kutaibah, 1989.
- Porta, Donatella Della and Michael Keating. **Approaches in the Social Sciences**. Cambridge: Cambridge University Press, 2008.
- Radaelli, Claudio M. **The Politics of Europeanization**. Oxford: Oxford University Press, 2003.
- Ramcharan, Bertie G. **The Protection Roles of the UN Human Rights Special Procedures**. Leiden: Martinus Nijhoff, 2009.
- Reif, Linda C. **The Ombudsman Concept**. Edmonton: University of Alberta, 1995.
- Reif, Linda C. **The Ombudsman, Good Governance and the International Human Rights System**. Leiden: Martinus Nijhoff, 2004.
- Scott, Richard. **Institutions and Organization: Ideas, Interests, and Identities** (4<sup>th</sup> ed). California: Sage, 2013.

Seneviratne, Mary. **Ombudsmen: Public services and Administration Justice.**  
London: Butterworths LexisNexis, 2002.

Smith, Kent G. and Michael A. Hitt. **Great Minds in Management: The Process of Theory Development.** Oxford: Oxford University Press, 2004.

Ursinus, Michael. **Grievance Administration (*şikayet*) in an Ottoman Province.**  
London: Routledge Curzon, 2005.

Vogiatzis, Nikos. **The European Ombudsman and Good Administration in the European Union.** London: Springer Nature, 2018.

Wahab, Ibrahim Ismail. **The Swedish Institution of Ombudsman: An Instrument of Human Rights.** Stockholm: LiberFörlag, 1979.

Zubaida, Sami. **Law and Power in the Islamic World.** New York: I.B Tauris, 2003.

### *Periodicals*

Abedin, Najmul. "The Ombudsman in Developing Democracies: The Commonwealth Caribbean Experience". **International Journal of Public Sector Management**. Vol.23, No.3, 2010, pp. 221- 253.

Abedin, Najmul. "Conceptual or Functional Diversity of the Ombudsman Institution: Classification". **Administration and Society**. Vol.43, No.8, 2011, pp. 896-929.

Abedin, Najmul. "A Critical and Argumentative Study of the Development and Performance of the Ombudsman Institution in a Small Multiracial Society: The Republic of Trinidad and Tobago". **Public Organization Review**. Vol.13, No.3, September 2013, pp. 261-289.

Adejuwon, David K. "Enhancing Public Accountability and Performance in Nigeria: Periscoping the Impediments and Exploring Imperative Measures". **Africa's Public Service Delivery & Performance Review**. Vol.2, No.2, 2014, pp. 102-125.

Alyanak, Servet. "The New Institution on Protection of Fundamental Rights: Turkish Ombudsman Institution". **Ankara Review of European Studies**. Vol.14, No.1, 2015, pp. 1-29.

Barry, Nicholas and Tom Campbell. "Towards a Democratic Bill of Rights". **Australian Journal of Political Science**. Vol.46, No.1, March 2011, pp. 71-86.

Cadeddu, Simone. "The Proceedings of the European Ombudsman". **Law and Contemporary Problems**. Vol.68, No.161, 2004, pp. 161-180.



- Cebeci, Münevver. “De-Europeanisation or Counter-Conduct? Turkey’s Democratization and the EU”. **South European Society and Politics**. Vol.21, No.1, 2016, pp. 119-132.
- Çelenk, Ayşe Aslihan. “Europeanization and Administrative Reform: The Case of Turkey”. **Mediterranean Politics**. Vol.14, No.1, 2009, pp. 41-60.
- Cho, Hyonsuk. “Feeling Power in Early Choson Korea: Popular Grievances, Royal Rage, and the Problem of Human Sentiments”. **The Journal of Korean Studies**. Vol.20, No.1, 2015, pp. 7-33.
- Dragos Dacian and Bogdana Neamtu. “Freedom of Information in the EU in the midst of Legal Rules, Jurisprudence and Ombudsprudence: the European Ombudsman as Developer of Norms of Good Administration”. **European Constitutional Law Review**. Vol.13, No.4, 2017, pp. 641-672.
- Efe, Haydar and Murat Demerci. “The Concept of the Ombudsman and Expectations from the Ombudsman Institution in Turkey”. **Sayıştay Dergisi**. Issue.90, 2013, pp. 49-72.
- Eliçine, Yeşeren. “The Europeanization of Turkey: Reform in Local Governments”. **International Journal of Economic and Administrative Studies**. Vol.4, No.7, 2011, pp. 104-126.
- Fendoğlu, Hasan Tahsin. “Public Auditorship (Ombudsmanship) and Right to Constitutional Complaint to the Constitutional Court”. **Review of Ankara Bar**. Issue.4, 2013, pp. 23-49.
- French Duncan and Richard Kirkham. “Complaint and Grievance Mechanisms in International Law: One Piece of the Accountability Jigsaw?” **New Zealand Yearbook of International Law**. Vol.7, 2009, pp. 197-206.

- Huntington, Samuel. "Political Development and Political Decay". **World Politics**. Vol.3, No.17, 1965, pp. 386-430.
- Hyder, Md. Nayem Alimul. "Scope and Challenges on Provisions regarding Ombudsman in Bangladesh". **Law Journal**. [Electronic Version]. 10 December 2004, <http://www.lawjournalbd.com/2014/12/scope-and-challenges-on-provisions-regarding-ombudsman-in-bangladesh/>
- Karasoy, Alpay H. "Ombudsman in Turkey: its Contributions and Criticism". **European Scientific Journal**. Vol.11, No.22, 2015, pp. 46-59.
- Kracke, Edward A. "Early Visions of Justice for the Humble in East and West". **Journal of American Oriental Society**. Vol.96. No.4, 1976, 492-498.
- Lang, McKenna. "A Western King and an Ancient Notion: Reflections on the Origins of Ombudsing". **Journal of Conflictology**. Vol.2, No.2, 2011, pp. 56-65.
- Marshall Mary A. and Linda C. Reif. "The Ombudsman: Maladministration and Alternative Dispute Resolution". **Alberta Law Review**. Vol.34, No.1, 1995, pp. 215-239.
- Nemec, Juraj, Marta Orviska and Colin Lawson. "The Role of Accountability Arrangements in Social Innovations: Evidence from the UK and Slovakia". **The NISPA Journal of Public Administration and Policy**. Vol.9, No.1, 2016, pp. 73-96.
- Odyakmaz, Zehra. "Identification of Ombudsman Institution and Evaluating Some Articles of the Law n. 6328". **Journal of Turkey Academy of Justice**. Vol.4, No.14, 2013, pp. 1-85.

- Oğuşgil, Vahap Atilla. “Ombudsman Institutions in the Candidate Countries on the Road to EU Membership: a Comparative View”. **Eastern Journal of European Studies**. Vol.6, No.1, June 2015, pp. 31-48.
- Osakede K. O and S.A Ijimakinwa. “The Role of Ombudsman as a Means of Citizen Redress in Nigeria”. **Review of Public Administration and Management**. Vol.3, No.6, 2014, pp. 120-128.
- Özçelik, Ali Onur. “The Importance of Domestic Politics in Explaining the Change in Territorial Politics in EU Candidate States: Turkey as a Case”. **Dumlupınar University Journal of Social Sciences**. Issue.41, June 2015, pp. 43-54.
- Peters, Anne. “The European Ombudsman and the European Constitution”. **Common Market Law Review**. Vol.42, No.3, 2005, pp. 697-743.
- Rabbat, Nasser. “The Ideological Significance of the Dar Al-Adl in the Medieval Islamic Orient”. **International Journal of Middle East Studies**. Vol.27, No.1, February 1995, pp. 3-28.
- Reif, Linda C. “Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman”. **Boston College Third World Law Journal**. Vol.31, No.2, 2011, pp. 269-310.
- Remac, Milan. “Standards of Ombudsman Recognition: A New Normative Concept?” **Utrecht Law Review**. Vol.9, No.3, 2013, pp. 62-78.
- Tsadiras, Alexandros. “Navigating Through the Clashing Rocks: The Admissibility Conditions and the Grounds for Inquiry into Complaints by the European Ombudsman”. **Yearbook of European Law**. Vol.26, No.1, 2007, pp. 157–192.

Tsadiras, Alexandros. “Maladministration and life beyond legality: The European Ombudsman’s Paradigm”. **International Review of Law**. Vol.3, No.11, 2015, pp. 1-17.

Uggla, Fredrik. “The Ombudsman in Latin America”. **Journal of Latin American Studies**. Vol.36, No.3, 2004, pp. 423-450.

Wiegand, Shirley A. “A Just and Lasting Peace: Supplanting Mediation with the Ombuds Model”. **Ohio State Journal on Dispute Resolution**. Vol.12, No.1, 1996, pp. 95-145.



### *Dissertations*

Çakir, Çağrı. “Institutionalization of Human Rights in Turkey in the Context of International Assessment Mechanisms”, **Master** “Published”. Middle East Technical University, Graduate School of Social Sciences, January 2013.

Osipova, Elena. “Development and Progressive Institutionalization of the Ombudsman in the Russian Legal and Political System”, **PhD** “Published”. University of Bologna, Law and Economics Department, 2013.

Silay, Yunus Emre. “A Comparative Examination between the Ombudsman Institutions of the EU, the UK, the Sweden and the Turkey”, **Master** “Published”. University of Westminster, 2013.

Ünver, Ebru. “The Ombudsman System and Ombudsman in the Turkish Public Administration”, **Master** “Published”. Ankara University, 2008.

### *Internet Sources*

Akyüz, Vecdi. Müslüman Türk Devletlerinde Divan-Mezalim Kurumu, Tarihtarih (n.d).  
<https://www.tarihtarih.com/?Syf=26&Syz=367502> (Accessed 22 July 2017).

Anderson, Kent D. The Ombudsman as an Administrative Remedy. The International Ombudsman Institute. 1987,  
[http://www.theioi.org/downloads/d9154/IOI%20Canada\\_Occasional%20Paper%2041\\_Kent%20Anderson\\_OM%20as%20an%20administrative%20remedy\\_1987.pdf](http://www.theioi.org/downloads/d9154/IOI%20Canada_Occasional%20Paper%2041_Kent%20Anderson_OM%20as%20an%20administrative%20remedy_1987.pdf)(Accessed 25 February 2017).

Börzel Tanja A. and Digdem Soyaltin. Europeanization in Turkey. Stretching a Concept to its Limits? KFG Working Paper No.36. University of Freie. February 2012.  
[http://www.polsoz.fu-berlin.de/en/v/transformeurope/publications/working\\_paper/wp/wp36/WP\\_36\\_Boerzel\\_Soyaltin.pdf](http://www.polsoz.fu-berlin.de/en/v/transformeurope/publications/working_paper/wp/wp36/WP_36_Boerzel_Soyaltin.pdf) (Accessed 28 March 2017).

British and Irish Ombudsman Association. Guide to Principles of Good Complaint Handling. Firm on Principles, Flexible on Process. The British Library. 2007.  
<http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf> (Accessed 17 March 2017).

Ceretli, Ismail, Abdurrahman Eren and Ayhan Nuri Yilmaz. “Ombudsman in the World System and a Case Study: The Netherlands’ Experiences and Turkey’s Situation”. Bartın University Publications No.16, 2015.  
<http://acikerisim.bartın.edu.tr:8080/xmlui/handle/11772/185> (Accessed 12 February 2018).

Conceição da Costa Marques, Maria. The Role of Auditing in the Public System. University of Waikato. 2005.  
<https://www.mngt.waikato.ac.nz/ejrot/cmsconference/2005/proceedings/criticalaccounting/DaConceicao.pdf> (Accessed 1 June 2017).

- Del Villar, Katrine. Who guards the guardians? Recent Developments Concerning the Jurisdiction and Accountability of Ombudsmen. *AIAL Forum*, Issue.36. 2 November 2002.  
<http://classic.austlii.edu.au/au/journals/AIAdminLawF/2003/3.pdf> (Accessed 3 February 2017).
- Diamandouros, Nikiforos P. The Ombudsman Institution and the Quality of Democracy. Center for the Study of Political Change. 17 October 2006.  
<https://www.circap.org/uploads/1/8/1/6/18163511/diamanduros.pdf> (Accessed 13 January 2017).
- Diamandouros, Nikiforos P. The European Ombudsman, Annual Report 2005. 13 March 2006. <http://www.statewatch.org/news/2006/apr/eu-ombuds-rep05.pdf> (Accessed 9 March 2017).
- Diamandouros, Nikiforos P. Speech during the Session of Legality and Good Administration: is there a Difference? Office for Official Publications of the European Communities. 15 October 2007.  
<https://www.ombudsman.europa.eu/speeches/en/2007-10-15.htm> (Accessed 2 April 2017).
- Diaw, Mariteuw Chimère. The Ombudsman Story: A Case Study in Public Oversight, Natural Justice and State Transformation. August 2007.  
[https://www.researchgate.net/publication/312341186\\_The\\_Ombudsman\\_story\\_A\\_case\\_study\\_in\\_public\\_oversight\\_natural\\_justice\\_and\\_State\\_transformation](https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation) (Accessed 10 January 2017).
- Diaw, Mariteuw Chimère. Ombudsmen, People's Defenders and Mediators: Independence and Administrative Justice in State Transformation. Overseas Development Institute, Verifor, Comparative Case Study 7. January 2008.

<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4478.pdf> (Accessed 15 January 2017).

Douglas, Crystal, Andrea Fischer, Kim Fletcher, Amanda Guidero, Marcus Marktanner, Luc Noiset, and Maureen Wilson, *The Arab Uprisings: Causes, Consequences and Perspectives*. Kennesaw State University. March 2014.  
[http://icat.kennesaw.edu/docs/pubs/RK\\_Final\\_Paper.pdf](http://icat.kennesaw.edu/docs/pubs/RK_Final_Paper.pdf) (Accessed 20 June 2017).

Durmaz, Duygu. *Center-Periphery Approach in Turkish Politics: An Overview*. Globallista. 13 April 2012.  
<https://globallista.wordpress.com/2012/04/13/center-periphery-approach-an-overview/> (Accessed 7 March 2017).

Emmergut, Ellen M. *Institution, Institutionalism*. Humboldt University. 2010.  
<https://www.sowi.hu-berlin.de/de/lehrebereiche/comppol/publ/pdfs/Immergut2011.pdf> (Accessed 20 June 2017).

European Ombudsman. *About the Ombudsman in the European Union*. (n.d)  
<https://www.ombudsman.europa.eu/en/home> (Accessed 6 January 2017).

Everett, Michael. *A Public Service Ombudsman for the UK*. The House of Commons Library. 12 August 2016.  
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7587> (Accessed 20 January 2017).

Fendoğlu, Hasan Tahsin. *Ombudsman and Discussions on Ombudsman in Turkey*. Ankara Institute of Strategic Thinking. 31 December 2010.  
<http://www.sde.org.tr/en/newsdetail/ombudsman-in-turkey-was-discussed/2459> (Accessed 18 February 2017).



Ferris, Charles, Brian Goodman and Gordon Mayer. Brief on the Office of the Ombudsman. International Ombudsman Institute. September 1980.

[http://www.theioi.org/downloads/epr4c/IOI%20Canada\\_Occasional%20Paper%2006\\_Charles%20Ferris\\_Brief%20on%20the%20Office%20of%20the%20OM\\_EN\\_1980.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiT-YqOpOvdAhWthaYKHf7ABoQFggdMAM&usg=AOvVaw3TrU6pU4BtYORxFrW6vBIj](http://www.theioi.org/downloads/epr4c/IOI%20Canada_Occasional%20Paper%2006_Charles%20Ferris_Brief%20on%20the%20Office%20of%20the%20OM_EN_1980.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiT-YqOpOvdAhWthaYKHf7ABoQFggdMAM&usg=AOvVaw3TrU6pU4BtYORxFrW6vBIj)

Gottcherer, Dean M. Fundamental Elements of an Effective Ombudsman Institution. International Ombudsman Institution. 2009.

[http://www.theioi.org/downloads/934ch/Stockholm%20Conference\\_15.%20Plenary%20Session%20II\\_Dear%20Gottcherer.pdf](http://www.theioi.org/downloads/934ch/Stockholm%20Conference_15.%20Plenary%20Session%20II_Dear%20Gottcherer.pdf) (Accessed 10 January 2017).

*Kamu Denetçiliği Kurumu*. About the Ombudsman in Turkey. (n.d).

<https://www.ombudsman.gov.tr/English/about-us/index.html> (Accessed 6 January 2017).

Kucsko-Stadlmayer, Gabriele. The Spread of the Ombudsman Idea in Europe. 12 June 2009.

[http://www.theioi.org/downloads/34chi/Stockholm%20Conference\\_25.%20Back%20to%20the%20Roots\\_Gabriele%20Kucsko%20Stadlmayer.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjrstn-95LeAhWLh6YKHZh4DfsQFggUMAA&usg=AOvVaw0mqjKZS141S9ypRkwbAmdI](http://www.theioi.org/downloads/34chi/Stockholm%20Conference_25.%20Back%20to%20the%20Roots_Gabriele%20Kucsko%20Stadlmayer.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjrstn-95LeAhWLh6YKHZh4DfsQFggUMAA&usg=AOvVaw0mqjKZS141S9ypRkwbAmdI) (Accessed 7 June 2017).

Herzog, Enrique Múgica. The Book of the Ombudsman. Defensor del Pueblo. 2015.

[https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/The\\_book\\_DP\\_Ingles.pdf](https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/The_book_DP_Ingles.pdf) (Accessed 20 January 2017).

The Institute of Internal Auditors. The Role of Auditing in Public Sector Governance. January 2012.

[https://na.theiia.org/standards-guidance/Public%20Documents/Public\\_Sector\\_Governance1\\_1\\_.pdf](https://na.theiia.org/standards-guidance/Public%20Documents/Public_Sector_Governance1_1_.pdf)  
(Accessed 1 June 2017).

International Ombudsman Institute. Brief on the Office of the Ombudsman. September 1980.

[http://www.theioi.org/downloads/epr4c/IOI%20Canada\\_Occasional%20Paper%2006\\_Charles%20Ferris\\_Brief%20on%20the%20Office%20of%20the%20OM\\_EN\\_1980.pdf](http://www.theioi.org/downloads/epr4c/IOI%20Canada_Occasional%20Paper%2006_Charles%20Ferris_Brief%20on%20the%20Office%20of%20the%20OM_EN_1980.pdf) (Accessed 10 January 2017).

James, Wil. European Union Ombudsman. CIVITAS Institute for the Study of Civil Society. 2015. <http://www.civitas.org.uk/content/files/BO.4.Ombudsman.pdf>  
(Accessed 7 January 2017).

Management Study Guide. Importance of Audit in Public Sector Organizations. (n.d). <http://www.managementstudyguide.com/importance-of-audit-in-public-sector-organizations.htm> (Accessed 1 June 2017).

Modho, Bernards. Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Human Rights Council. 4 March 2008.

[http://www.ohchr.org/Documents/Issues/Development/IEDebt/DraftGuidelinesonFD\\_HR.pdf](http://www.ohchr.org/Documents/Issues/Development/IEDebt/DraftGuidelinesonFD_HR.pdf) (Accessed 4 February 2017).

Nabholz-Haidegger, Lili. The institution of Ombudsman. Parliamentary Assembly. Doc. 9878. 16 July 2003. <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10235&lang=en> (Accessed 10 January 2017).

- Neave, Colin. Complaint Management by Government Agencies: an Investigation into the Management of Complaints by Commonwealth and Act Government. Commonwealth Ombudsman. October 2014.  
[http://www.ombudsman.gov.au/data/assets/pdf\\_file/0011/30017/October-2014-Complaint-management-by-government-agencies.pdf](http://www.ombudsman.gov.au/data/assets/pdf_file/0011/30017/October-2014-Complaint-management-by-government-agencies.pdf) (Accessed 20 January 2017).
- Peters, Guy B. Institutional Theory: Problems and Prospects. Political Science Series. Institute for Advanced Studies. 2000.  
[https://www.ihs.ac.at/publications/pol/pw\\_69.pdf](https://www.ihs.ac.at/publications/pol/pw_69.pdf) (Accessed 15 January 2017).
- Rothstein, Bo and Nicholas Sorak. Ethical Codes for the Public Administration: A Comparative Survey. University Of Gothenburg, The Quality of Government Institute, Working Paper No.12, 2017.  
[https://qog.pol.gu.se/digitalAssets/1663/1663513\\_2017\\_12\\_rothstein\\_sorak.pdf](https://qog.pol.gu.se/digitalAssets/1663/1663513_2017_12_rothstein_sorak.pdf) (Accessed 7 March 2017).
- Sarjani, Raghed. The Grievances Office in the Islamic Age. Islamweb. 19 July 2012.  
<http://articles.islamweb.net/media/index.php?page=article&id=179287>(Accessed 26 March 2017).
- Söderman, Jacop. The European Ombudsman. Annual Report 1995. 22 April 1996.  
<https://www.ombudsman.europa.eu/en/press/publications/publication.faces/en/3468/v1/html.bookmark> (Accessed 10 February 2017).
- Sumit and Oshoneesh Waghmare. Institution of Ombudsman -A Legislative and Judicial Outlook. Academike. 22 October 2015.  
<https://www.lawctopus.com/academike/institution-ombudsman-legislative-judicial-outlook/>(Accessed 17 January 2017).
- The Office of the United Nations High Commissioner for Human Rights. Vienna Declaration and Program of Action. 25 June 1993.

<http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf> (Accessed 2 February 2017).

United Nations Office of the High Commissioner for Human Rights & United Nations Development Program. Seminar on Good Governance Practices for the Promotion of Human Rights. 5-16 September 2004,  
<https://www2.ohchr.org/english/issues/development/governance/compilation/docs/backgroundnote.pdf>(Accessed 4 February 2017).

The Office of the United Nations High Commissioner for Human Rights, Good Governance and Human Rights. 2007.  
<https://www.ohchr.org/Documents/Publications/GoodGovernance.pdf>  
(Accessed 2 February 2017).

United Nations Development Program. Ombudsman Institution Met With NGOs and Citizens at Eskişehir. UNDP Ankara. 7 December 2017.  
<http://www.tr.undp.org/content/turkey/en/home/stories/ombudsman-institution-met-with-ngos-and-citizens-at-eskiehir.html> (Accessed 3 March 2017).

United Nations Economic and Social Commission for Asia and the Pacific, What is Good Governance? (n.d). <http://www.unescap.org/sites/default/files/good-governance.pdf> (Accessed 17 March 2017).

The Victorian Ombudsman, About the Victorian Ombudsman (n.d).  
<https://www.ombudsman.vic.gov.au/About/The-Victorian-Ombudsman>  
(Accessed 10 January 2017).

### *Seminars*

McMillan, John. “The Role of the Ombudsman in Protecting Human Rights”,  
**Conference on ‘Legislatures and the Protection of Human Rights’**.  
University of Melbourne, Faculty of Law, 21 July 2006, 1-9.  
[http://www.ombudsman.gov.au/data/assets/pdf\\_file/0016/31093/21-July-2006-  
The-role-of-the-Ombudsman-in-protecting-human-rights.pdf](http://www.ombudsman.gov.au/data/assets/pdf_file/0016/31093/21-July-2006-The-role-of-the-Ombudsman-in-protecting-human-rights.pdf)

### *News Papers*

**Hurriyet Daily News**. “Swedish Embassy Honors Ottoman Idea of Ombudsman on  
300<sup>th</sup> Anniversary”, 25 October 2013.  
[http://www.hurriyetdailynews.com/swedish-embassy-honors-ottoman-idea-of-  
ombudsman-on-300th-anniversary-56869](http://www.hurriyetdailynews.com/swedish-embassy-honors-ottoman-idea-of-ombudsman-on-300th-anniversary-56869)

**Hurriyet Daily News**. “Turkish Ombudsman Complains of insufficient Authority”, 17  
April 2014.  
[http://www.hurriyetdailynews.com/turkish-ombudsman-complains-of-  
insufficient-authority-65157](http://www.hurriyetdailynews.com/turkish-ombudsman-complains-of-insufficient-authority-65157)

## CURRICULUM VITAE

### *Nadia Lahdili in a nutshell:*

Nadia LAHDILI was born in Safi, Morocco. She completed all her formal education in Morocco until earning her Baccalauréat in Technical stream. Driven by her passion for Social Sciences, she attended the International Islamic University in Malaysia (IIUM) to further her Bachelor and Master degrees in Human Sciences majoring in Political Science, and minoring in Economics. Her thesis then was about “France’s Public Policy towards Muslim Migrants under the Presidency of Nicolas Sarkozy (2007-2012)”. She has attended the Human-Centered Computing Methods and Technologies by NASA & MIMOS, in addition to her holding of a Certificate in Citizen Journalism from the YALA’s Academy Aileen Getty School of Citizen Journalism. Previously, Nadia served as a Research Assistant to the Head of Political Science Department, a Tutor for Academic Support, and an Administrative Staff at Alumni and Career Services Division, IIUM. She has also undertaken a training as Program Coordinator at SESRIC, Ankara. Her research interest sits in the intersection between Conflict Studies, Environmental Politics, Human Rights, International Relations, Public Administration, Political Economy, Political Institutions, Management, and Migration Studies. Some of her published papers include: “The Islamic Movements and Political Participation in Morocco: Case Study of the Justice and Benevolence Movement and the Justice and Development Party”, “Sheikh Said Rebellion (1925): The Controversy Between Nationalist and Religious Motivations”, “Globalization: Economically Advantageous to Developing Nations or vice-versa”, “Darfur Conflict: The Role of International Intervention in the Conflict Resolution”.