Chapter 4

Turkey’s Ombudsman Institution as a Control Mechanism for the Effectiveness of Public Administration

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ABSTRACT

The subject of this study is to investigate how the Ombudsman Institution of Turkey (KDK) establishes itself as a control device regarding the Turkish public administration practices. In the study, the historical development of the ombudsman institution with various country cases will be examined, and the functionality of the Ombudsman Institution of Turkey will be evaluated. The decisions taken by the Ombudsman Institution in Turkey will be evaluated for the orderly functioning of public administration from the aspects of both the administration and citizens perspectives. While evaluating the extent to which the Ombudsman Institution of Turkey differs from other country practices, a methodological comparison will be made within this framework. In this chapter, the effectiveness of the Ombudsman Institution of Turkey will be discussed and the impact of the Ombudsman’s decisions on the administration will be evaluated. Moreover, it will be questioned what kind of deficiencies the Ombudsman Institution have in terms of application, and potential policy responses will be investigated.

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INTRODUCTION: CONTROLLING ADMINISTRATION AND OMBUDSMAN CONTROL

As one of the basic processes of the administration, controlling, is very important for the regular and efficient maintenance of public services. Control is a method used to evaluate the situation of the public administration (PA) and to determine the disruptive aspects of it. Although in this sense control is considered as a technical issue, it appears as a complementary element of the state of law that eliminates the arbitrary practices of the administration. Controlling is an indispensable requirement for the functioning of public services. However, in terms of the types of the controlling, it is crucial to consider the question of what type and size of the control function will fit the purpose regarding the functioning of the administration and its relations with citizens. However, the answers to this question may vary depending on the types of control.

While supervision of the administration are practiced in four different ways, i.e., judicial control, parliamentary control, administrative control and public scrutiny, the need for a mechanism in addition to these types is of great importance regarding the nature of the issue at hand. Ombudsman, as an institution that assumes the role of arbitrator between state and citizens, functions as a type of control. The ombudsman was established in order to respond to the demands of citizens regarding violations of right against the unfair implementations of the PA. In this respect, the ombudsman should function to increase the effectiveness of the control of the administration. Although the Ombudsman institution does not have the power of sanction, it can become a pressure mechanism over the administration. On the other hand, as a result of the discussions on the necessity of a control mechanism independent of the executive body, various applications have developed and an ombudsman institution has emerged.

It is presumed that the PA acts in its actions and transactions in accordance with the law. According to this definition of the presumption of compliance with law; PA should behave in accordance with legislation in its actions and procedures; however, various problems arise related to the administrative acts and procedures. The main source of this problem is the discretionary power that the law gives to the PA to be used within certain limits. However, the fact that the PA has a one-sided superiority over the citizens under the administrative law is noticed in the activities of the PA. At this point, the issue of supervision of the PA comes to prominence, and the Ombudsman comes into play as a crucial control mechanism. However, before focusing on the subject of ombudsman, it is necessary to give some consideration to the control of the administration. Because understanding the points at which the ombudsman control differentiates from other types of control will be one of the emphasis of this study.

From the perspective of PA, control can be defined as an administrative function to ensure the use of current sources by public institutions and organizations as planned, and relevant processes are monitored and reported to the specified administrative and political units (Tosun, 2017). As mentioned above, the controlling of the PA is carried out in four different ways: judicial, parliamentary, administrative control, and public scrutiny. The first of them, administrative control can be divided into two as internal and external control. Hierarchical control is an inhouse control of the PA. In this type, control is carried out over the PA by units again established within PA, instead of by judiciary or parliament. The principle of hierarchy ensures the integrity of public administration in the management of administrative procedures on the basis of superior-subordinate relationship between public officials. With the hierarchical control, the control of the operation performed by the subordinate is ensured; and the transaction may be approved, canceled or withdrawn (Gozler and Kaplan, 2019). Public Finance Management and Control Law, No. 5018, (KMYKK) included not only internal controlling but also external, and thus,