

OMBUDSMAN CULTURE IN THE CONTEXT OF POLICY TRANSFER IN TURKEY: NARRATOR? IS IT LIVING?

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Summary

States make policy transfers from other countries or supranational institutions in areas they need help to overcome or think insufficient to respond quickly and effectively to the increasing intensity and this intensity. Policy transfer plays an active role in eliminating the problems in the places that countries think they need and in establishing a healthier system in state-individual relations. It aims to make the internal mechanisms of the countries operative. One of these policy transfers is the Ombudsman institution. Its origin dates back to the 18th century; The ombudsman institution, which emerged in Sweden and Sweden and is applied in many countries today, is a supervisory institution created to provide solutions to the problems, grievances, and deficiencies that arise between public institutions and individuals or other institutions, without going to court. Today, the increasing general density and the need for more judicial and administrative control mechanisms added to it can cause problems/unfair behavior in public-individual relations. The Ombudsman institution, acting as a mediator, suggests removing undesirable behaviors from the public and better developing the state-individual union. With the constitutional amendment made in 2010 and the law enacted in 2012 in Turkey, the Ombudsman Institution came to life on a legal basis. As a policy transfer by Turkey in the European Union membership process; The current effectiveness of the institution included in Turkish public life is still unclear; On the other hand, it remains a question whether this institution is entirely sufficient in the relationship between the state and the individual in practice.

Keywords: European Union, Ombudsman, Policy Transfer, Turkey

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TÜRKİYE’DE POLİTİKA TRANSFERİ BAĞLAMINDA OMBUDSMAN KÜLTÜRÜ: ANLATI MI? YAŞANIYOR MU?

Özet

Devletler artan yoğunluk ve bu yoğunluğa karşı hızlı ve etkili şekilde cevap verebilme adına üstesinden geledikleri veya yetersiz olduğunu düşündükleri alanlarda, başka ülkelerden veya ulus üstü kurumlardan politika transferi yapmaktadırlar. Politika transferi, ülkelerin ihtiyacı olduğunu düşündükleri yerlerdeki aksaklıkların giderilmesinde ve devlet birey ilişkilerinde daha sağlıklı bir sistem kurmalarında etkin rol oynamakta ve ülkelerin iç mekanizmalarında işlerlik kazandırma amacı taşımaktadır. Bu politika transferlerinden birisi de Ombudsmanlık kurumudur. Kökeni 18. yüzyıla dayanan ve İsveç’te ortaya çıkan ve günümüzde çok sayıda ülkede uygulanan ombudsmanlık kurumu, kamu kurumları ile birey veya başka kurumlar arasında ortaya çıkan sorunların, mağduriyetlerin ve eksikliklerin yargıya gitmeden çözümünü sağlamak için oluşturulan bir denetim kurumudur. Günümüzde artan kamu yoğunluğunun ve buna eklenen yargısal ve idari denetim mekanizmalarının aksak veya eksik kalışından dolayı kamu ile birey ilişkilerinde sorunlara/haksız davranışlara neden olabilmektedir. İstenilmeyen davranışların kamudan uzaklaştırılması ve devlet birey birliğinin daha iyi şekilde gelişmesi için, Ombudsmanlık kurumu, arabulucu rolü oynayarak öneriler getirmektedir. Türkiye’de 2010 yılında yapılan Anayasa değişikliği ve 2012 yılında çıkarılan kanunla Kamu Denetçiliği Kurumu yasal zeminde hayata kavuşmuştur. Türkiye tarafından Avrupa Birliği üyeliği sürecinde politika transferi olarak Türk kamu yaşamına dahil edilen kurumun günümüzdeki etkililiği konusu ise halen belirsizdir. Diğer yandan bu kurumun uygulamada tam olarak devlet ile birey ilişkisinde yeterli olup olmadığı da bir soru olarak akıllarda kalmaktadır.

Anahtar kelimeler: Avrupa Birliği, Ombudsman, Politika Transferi, Türkiye

Introduction

In increasingly complex relations, states must solve international problems among themselves and provide and do the necessary services to continue the life order in their society. For this, conditions develop policies for solving problems and for the healthy progress of humanity. These policies are sometimes sufficient to overcome the problem(s) and sometimes insufficient. States make policy transfers from other states, supra-national or international

institutions to places they think need to be improved in their internal structures. These transfers made by states can be voluntary as well as compulsory policy transfers. Therefore, the concept of policy transfer gains importance at this point. Policy transfer is when a state finds a policy in another part of the world in another state, supra-national or international institution and adapts or copies it to its internal structure. In this way, states aim to solve problems they cannot solve on their own – epidemics, environmental pollution, climate change – through other actors. One of these actors is the European Union. The European Union makes some requests as a condition for membership from candidate countries that want to join the European Union. These requests, in other words, mean that a policy needs to be transferred to the candidate country. One of these policies is the ombudsman (Ombudsman) institution. The establishment of this institution, which is the place for individuals to convey their complaints against the state or others, is requested by the European Union from candidate countries. Turkey has been a candidate country since 1999, and the establishment of this institution was realized in 2012 in line with the wishes of the European Union. However, for Turkey to join the European Union, it needs to incorporate this policy and adapt it to itself. The first part of the study provides a conceptual framework that will enable an examination of the concept of policy transfer. In the second part, general information about the ombudsman institution is given, the formation process of this institution in Turkey is discussed, and its relationship with the policy transfer for the establishment of the ombudsman institution in Turkey is discussed through the European Union, which is a supranational institution. In the last part, in the context of policy transfer, an answer is sought as to whether the ombudsman culture in Turkey is narrative or lived.

1. An Overview Of Policy Transfer

Developing in today's world; Increasing and spreading communication, socio-economic movements, environmental awareness, solidarity between different groups, and many other examples show that in states; in a complex network of relationships; change and transformation in public policies become necessary. With the elements in the internal structures of the states becoming insufficient for today's conditions, They transfer for themselves from another place(s) or other time(s) due to their inability to cope or maintain sustainability. These transfers close the missing part of the states and trigger interaction with the transferred place or time. The intensity of the interaction also shows us how the transferring state will be interpreted in its internal structure. In this respect, concepts such as

learning lessons (Rose, 1993), policy transfer (Dolowitz & Marsh, 1996), policy convergence (Knill, 2005), and policy diffusion (Walker, 1969) are used to explain this transfer by states. However, policy transfer is accepted as a general inclusive that gathers these concepts under one umbrella, and it is stated that this inclusive concept reveals all aspects of policy development (Evans and Davies, 1999: 363-4). From this point of view, it is useful to dwell on the concept of policy transfer. policy transfer; knowledge of institutions, administrative regulations, and policies at a particular time or place; institutions in another time or place; It is expressed as the process of using administrative regulations and policies in the development (Dolowitz & Marsh, 1996, p. 344). In other words, policy transfer is important in that it shows us the decision-making situation not only through the exchange of information but also by guiding the experiences of the institutions (Mossberger and Wolman, 2003: 428; Wolman, 2009: 11). By looking at these definitions; policy transfer includes an understanding as "the emergence of situations that require close relations between states, more cooperation, and partnership" (Sobacı, 2011, p. 194). Many issues that concern more than one state, such as the concentration of the economy in a single market, environmental movements, the fight against epidemics, and internet crimes, have effectively brought the concept of policy transfer to the fore. The concept of policy transfer tends to answer some basic questions about "concerned" (Dolowitz & Marsh, 1996, p. 345). The first of these questions is the question, "Who are the actors of policy transfer ."These actors; are elected statesmen; political parties; bureaucrats, pressure groups; policy entrepreneurs, and supranational institutions. On the other hand, the actors involved in the policy transfer process are the elected people. Because the elected people reveal the limits and legitimacy of the policies to be adopted and implemented (Sobacı, 2014: 87). Another actor is the bureaucrats. What makes bureaucrats actors is their knowledge and expertise, with which they have a certain influence on the elected. That is why the elected have a key role in decision-making in public policy. They were chosen; they know what bureaucrats tell them. In this way, bureaucrats become influential in policy transfer. Political parties, on the other hand, set policies in line with seizing power. The needs of the audiences they are addressing; In line with their wishes, they transform them into a political tool and include them in the political system. They can transfer policies that can adapt to their own country from the policies of other countries and put these policies in their party programs. Pressure groups are; They participate in the policy transfer process with their activities at the national or international level. They contribute to decisions and the formation of policies. For example, according to Haas (1989: 384-87), while the pollution rate of the

Mediterranean was 33% in the 1970s, with the emergence of pressure groups, states took the necessary measures to prevent pollution within the framework of the "Med Plan" and stated that this rate decreased to 20% within ten years. is doing. Dolowitz and Marsh (1996: 345) emphasize that the actors involved in the policy transfer process are "policy entrepreneurs". The reason for their emphasis is that entrepreneurs are interested in a specific topic and can direct new programs nationally or internationally. Danish Hurwitz and New Zealander Guy Powles's work for disseminating the ombudsman institution is an example of entrepreneurship. Policy entrepreneurs bring innovations to the government's agenda by expressing them very clearly. They work to make changes in the policy (Sobacı, 2014: 89). Finally, if the supranational actor is the World Bank (WB), the United Nations (UN), or the European Union (EU), the thoughts of supranational actors such as the International Monetary Fund (IMF) also play a role in policy transfer. The IMF's views on the financial structure of countries exemplify the policy transfers of supranational actors, such as the World Health Organization (WHO) developing policy to prevent a virus from spreading around the world and spreading its policy to countries. As it is seen, these transfer policies can be carried out individually and institutionally. The second question of Dolowitz and Marsh (1996: 346) is, "Why is the policy transfer made?" According to the authors, this is due to two conditions. The first is voluntary policy transfer, and the other is mandatory policy transfer. In the words of Sobacı (2011: 195), the factor that reveals these policy transfers is why states feel the need to transfer. There is a fully voluntary policy transfer at one end and a mandatory policy transfer at the other, and there are different reasons for transfer between the two. For example, Sobacı (2014: 81) bases the question of why states make policy transfers on different reasons, such as "to be accepted, to receive grants, to be a member of international organizations, to eliminate backwardness". Various factors such as the cultures, financial structure, geographical location, level of development, and social structure of the states affect these reasons. Voluntary policy transfer occurs when policy decision-makers make a "rational" and "conscious" decision to transfer the policy implemented by other states in this type of transfer (Sobacı, 2014: 81). This is the existence of a problem; It is a situation related to the dissatisfaction of citizens or organizations. For example, to alleviate political pressures of political decision-makers (Mossberger and Wolman; 203: 429) or to cooperate as in the "Med plan" (Haas, 1989, p. 384) or within the state; Such policy transfers between states or between supranational actors to eliminate uncertainties or undesirable situations are within the scope of voluntary policy transfer. Mandatory policy transfer, Dolowitz and Marsh (1996: 347-48)

divide this type of transfer into two direct compulsory policy transfer and indirect compulsory policy transfer. It describes how one state pressures another in a direct compulsory policy transfer. However, compulsory policy transfer has two subheadings. These are "conditionality policy transfer" and "obligatory policy transfer." Conditionality in policy transfer; multinational companies and international aid organizations come to the fore; In obligatory policy transfer, it refers to a situation brought by the membership to supra-national and international organizations (Sobacı, 2011: 196; Sobacı, 2014: 84). Assistance by supranational institutions to third or underdeveloped countries and on the other hand, demanding the fulfillment of certain economic policies is an example of conditional policy transfer. Indirect forced policy transfer; refers to the interdependence of countries or the role of externalities (Dolowitz & Marsh, 1996, p. 348). Environmental policies, the point where technology has come, can be given as an example of this policy transfer. The third question Dolowitz and Marsh (1996: 350) seek to answer is "What is transferred ."The authors collected the answers to this question in six groups. These are the policy objectives; content and structure; programs; institutions; ideologies; ideas and attitudes, and finally, negative lessons. Those transferred may be the ideology of a state and its ideas and institutions. The result is that almost anything can be included in the policy transfer issue. When political makers seek a solution to a problem and want to develop a policy in a certain area, looking at their own country's past is the most logical. In this context, they learn what worked in the past and what should not be repeated. Thus, this situation saves the states time and resources (Dolowitz & Marsh, 1996, p. 353). The fourth question that Dolowitz and Marsh (1996: 352) seek to answer is "Where to transfer ."The spatial answer to this question is Evans and Davies (1999: 368) national; international; supranational; It states that it will take place in five different venues, regional and local, or between venues. Accordingly, twenty-five different ways of transfer can be mentioned (Sobacı, 2014: 98). States can transfer the practice of another state; They can also transfer from a regional location. The fifth question, related to the policy transfer issue, is "Are there different degrees of transfer ." While Dolowitz and Marsh (1996: 351) presented five different degrees, Rose reduced the number of these degrees to four and suggested that the degrees of hybridization and synthesis are related to each other and shows these two as a single degree (1991: 21-22) These degrees; Copying is the exact copying of a policy implemented in one state by another state. emulation; It means that a state takes and adopts the best aspects of another state's policy, not the whole of it. Inspiration is the use of a policy adopted by a state by another state to solve its own country's problems. Hybridization and

synthesis; on the other hand, the items related to the policies implemented in two or more countries; are to be combined to best suit the emulating country. States have a choice over the degree of policy transfer. States are faced with a situation between voluntary and compulsory policy transfer. They have the right to determine the degree that suits them on a two-pronged indicator. The economics of the states allow them to stay between voluntarism and necessity; Apart from the social or political situation, it is also mentioned today under the influence of factors originating from its internal structure and individual or organizational actors. This situation, the issue of what triggers the transfer, makes the states more sensitive in public policies. The last question sought by the concept of policy transfer is, "What factors limit policy transfer ."Environmental and cultural in front of policy transfer; past policies as well as political factors; policy complexity; institutional constraints; structural constraints, bureaucratic obstacles; economic resources, and political ideologies have an inhibitory effect on the realization of policy transfer (Dolowitz & Marsh, 1996, pp. 353-55). To briefly mention these obstacles, Those who maintain past policies can sometimes be inactive because of what has been done in the past. It limits policymakers as to what is transferred and can tie their hands. The probability of policy transfer between two states remains low if their political and administrative structures differ. This, in turn, becomes a barrier to policy transfer of structural and institutional factors. Another obstacle is the ideological relations between the two states in the past and continuing today. Policy transfer between countries with different ideologies will not be easier than between countries with similar ideologies. Apart from these, counting the differences in knowledge, technological progress, and states' infrastructure is possible. Ultimately policy transfer represents a process (Sobacı, 2014: 78). This process constitutes a conceptual framework for policy transfer. Completion or retention of the policy transfer is within this process. Positive or negative developments that e process shows us which policy transfer the actors take or not. In the next part of the study, the relationship of the ombudsman institution, which is one of the current structural arrangements in Turkey, with policy transfer will be tried to be established.

2. Ombudsman (Ombudsman) And Overview Of Ombudsman Institution In Turkey

The Ombudsman, which means ambassador, delegate, and representative in the Swedish language, was established for the first time in Sweden in 1809 in the modern sense (Roosbroek & Walle, 2016, p. 288). Ombudsman is used in the sense of a "person to whom

complaints are made for others" (Tortop, 1998: 3). There is no general definition on which to agree on the concept of an Ombudsman. The institution shows different practices and structural forms in different countries (Parlak and Sobacı, 2008: 279). The Ombudsman, which has spread rapidly since the second half of the 20th century, is named differently from country to country. In Spain, "People's Defender" is met with concepts such as "Parliamentary Commissioner" in England and "Mediator" in France (TÜSİAD, 1997: 11). There are many definitions in the literature for the concept of an Ombudsman. Pickl (1986: 37) defines the Ombudsman as the private office or private officer to whom the public takes their complaints. According to Erhürman (2000: 160), "To control the legality and expediency on the transactions, actions, and behaviors of the management, and to remove the transactions that it finds unlawful or inappropriate, or to compensate for the damage caused by these transactions and actions; It is defined as an independent state body authorized to take initiatives and non-binding decisions before the administration for the correction of inappropriate behavior towards the governed ."Sezen, on the other hand, is the Ombudsman (2001: 72). Research is defined as a person or institution authorized to examine and make corrective suggestions and explain its findings. It is possible to increase the number of definitions related to the Ombudsman. In addition, based on the definitions, there must be some minimum conditions for an ombudsperson institution to exist. These; are to be independent to be applied by citizens; It does not take binding decisions like the courts and supervises the administration (Erhürman, 2000, pp. 157-60). These conditions can also be said to be the distinguishing features of the Ombudsman (Ünal, 2013, p. 74). More precisely, the Ombudsman; will be useful in discussing the historical process to understand it. The Ombudsman can be seen as the result of a search that can express the complaints and complaints of the governed from the rulers in almost every period of history (Ünal, 2013: 75). Within this historical process, Şahin (2010: 133-34) divides the history of the Ombudsman into three periods. Firstly, the period in which the citizens in the current sense control or control the public, rather than being someone that Sweden formerly appointed to strengthen the authority, and secondly, Denmark (1955), Germany (1957), Norway (1963), England (1967), France (1973) Greece (1998) shows its transfer or expansion to other states after the second world war, and finally, due to the disintegration of the Soviet Union. It means that many countries have adopted it as an institution. Instead of these three periods, it would be appropriate to consider the Swedish Ombudsman as a divergent policy transfer as a single integrity. Because it is possible to see the reflections of the Swedish Ombudsman in the states after the Second World War and in

the states that emerged after the collapse of the Soviet Union. For example, the British Ombudsman prepares reports like the Swedish Ombudsman; While it has similarities with the Swedish Ombudsman, it examines; Written application, which is different from Sweden; instead of a direct complaint, it can be shown that the complaint application is made to one of the House of Commons. On the other hand, while the French Ombudsman does not take orders from anyone like the Swedish Ombudsman and is an independent institution, it is similar to the Swedish Ombudsman; The difference from Sweden is that the Ombudsman is appointed by decree (Kestane, 2006, p. 136). In 1973, France, influenced by the Ombudsman, established the institution of "Mediator," which means mediator, and made it suitable for its structure in the following processes (Temizel, 1997: 35). Until the mid-1990s; The ombudsman institution, which has been implemented in many countries under different names and structures, was established in the international arena under the name of "European Ombudsman" with the "European Union Treaty" signed in Maastricht in 1992 (Ünal, 2013: 80). In this way, the union has an ombudsman institution within its own body. The European Parliament appointed the European Ombudsman which has the same status as the European Court of Justice (Temizel, 1997, p. 36). European Ombudsman by the EU Parliament is any natural or legal person residing in any member state or having a registered office other than the European Court of Justice and the European Court of First Authority; institutions and organizations, and bodies are authorized to receive complaints about maladministration in their activities (Şahin, 2010, p. 135). As an institution that finds application in different fields with the rapid spread of the Ombudsman in the world over time, the emergence of various actors using the Ombudsman, the increasing complexity of the state, and the expansion of its jurisdiction; have led to the emergence of different types of ombudspersons (Parlak & Sobacı, 2008, p. 285; Ünal, 2013). In this respect, it is possible to talk about five different types of ombudspersons today (Sezen, 2001, pp. 74-5). General Purpose Ombudsmen: It is the type that accepts complaints about all administrative actions and transactions, regardless of the level of administration, without a certain border area. This type of Ombudsman can operate locally, nationally, or regionally. For example, in Canada, where there is no national ombudsperson, ombudspersons operate at the provincial level. Single or Special Purpose Ombudsmen: A certain part of the audit network enters, or simply the type of Ombudsman tasked with protecting the interests of a complaining group. The ombudspersons entering this section are environment; military; It looks at certain public domains, such as health. Sweden; The presence of military ombudspersons in countries such as Norway exemplifies this type.

For example, undesirable events may occur in the communication or patient treatment processes between the health ombudsperson, patients and their relatives, and health personnel. Some countries, to overcome these problems, needed an institution that could evaluate events "independently and impartially," and the health ombudsman came into play (Kırılmaz and Uçar, 2019: 88; Avşar and Avcı, 2017: 144). International or Supra-national Ombudsmen: In international organizations such as the UN, WB, IMF, and Council of Europe, there are ombudspersons whose mandate is mostly limited to these organizations. The European Ombudsman, established within the EU, constitutes a supranational example. This institution was established in 1995. The mandate of this Ombudsman is to investigate complaints of the citizens of the member states and the individuals living in these member states regarding the mismanagement of the Union institutions and bodies within the EU. Human Rights Ombudsman: This type of Ombudsman has emerged with the increasing sensitivity to human rights. This Ombudsman in Latin America was established in Sub-Saharan Africa and Eastern and Central Europe to provide a national mechanism for the fulfillment of the human rights obligations of the state. The human rights protected by these ombudsmen cover a wide area, from first-generation rights to third-generation rights. Private Sector Ombudsman: The Ombudsman institution is no longer just a public institution. The private sector also benefits from this institution. These ombudsmen protect consumer rights in the commercial and industrial fields. Banking; He works in sectors such as insurance. The duty of the Ombudsman institution; Their powers and responsibilities vary from country to country. While Sweden keeps the Ombudsman's powers broad, some countries limit them to the executive. That is, it is limited to a certain place only. The fact that the borders of the European Ombudsman are valid only for the EU borders is a small example of this. Legal basis of the Ombudsman institution; election, dismissal; Although its status varies between countries, it is possible to generalize the characteristics and duties of the institution (Efe and Demirci, 2013: 55). The foundation of the institution is often the constitution. It is found in countries such as France and England, which take their legal basis from laws (Tortop, 1998: 4-5). The parliament usually makes the election of the Ombudsman. However, in France, it is appointed by the President upon the recommendation of the Council of Ministers, while in England, it is appointed by the King/Queen (Tortop, 198:5). The decisions taken by the institution are not binding. The institution is also responsible to the public, and its works are announced to the public (Efe and Demirci, 2013: 55). Although the institution has many powers in Research and supervision, it is an institution that has no sanction other than public

criticism and persuasion (Temizel, 1997, p. 53). In addition, the Ombudsman is an educational; inhibitor; It also has functions such as correction and transparency (Sezen, 2001: 79). In the applications made by the citizens to the Ombudsman, the form requirement is not generally sought. Applications petition fax; It can be done over different areas such as the internet. This makes it easier for real or legal persons to apply to the Ombudsman; it also has the positive feature of creating pressure on the public administrations to be examined. On the other hand, it weakens its influence on the places it controls as much as it lacks the power of sanction. Therefore, it may cause the effectiveness of the Ombudsman to decrease by the applicants or citizens. For example, in countries with rigid and closed bureaucratic structures, such as Turkey, the situation of the Ombudsman can be a subject of criticism.

2.1. Ombudsman Formation In Turkey

The origins of the formation of the Ombudsman in Turkey seem to be the suggestion of the Council of Europe Parliamentary Assembly at the meeting held in 1975 that "member countries that do not have an ombudsman institution yet should appoint officials to fulfill this duty at the national, regional and local level" (Koç, 2015, p. 17). In this context, proposals and studies to establish an ombudsman institution in Turkey, at a time when the preparations for the 1982 Constitution were carried out, It was included in the "reasoned constitution proposal" by the faculty members of the Faculty of Law and Political Sciences of Ankara University (Temizel, 1997, pp. 70-75). In this proposal, it is foreseen that the Ombudsman Board will be established. It is stated that this committee will examine the citizens' wishes and complaints and work to realize fundamental rights and freedoms. The Assembly consists of five members of the Board; Council of State; It is envisaged that the Court of Accounts, the High Council of Prosecutors, and the Union of Turkish Bar Associations will be appointed as Ombudsman by the President for five years two candidates each. However, this proposal was rejected by the National Security Council, and the State Audit Institution was established instead (Dursun, 2011, p. 382). Efforts for the formation of the Ombudsman institution are also found in development plans. Initially, in the Fourth Five-Year Development Plan (1979-1983), it was aimed to establish a "State Lawyer Institution" equipped with the authority to resolve disputes without bringing them to justice, but it could not be realized (DPT, 1979: 484; Ünal, 2013: 154). In the Seventh Five-Year Development Plan (1996-2000), attention was drawn to the need for the renewal of public administration to adapt to changing conditions. In this context, the management approach towards the public has been brought to

the fore (Şengül, 2013: 74). It has been proposed to establish an ombudsman institution similar to the EU to resolve conflicts between governments and individuals effectively and quickly (DPT, 1996: 117-19). In the Eighth Five-Year Development Plan (2001-2005), a special commission was established, and this commission prepared a report. In the report, attention was drawn to the strict functioning of the judiciary. It was stated that there was a need for an audit system that oversees the administration outside the judiciary but is not dependent on the administration and pointed out the necessity of establishing an ombudsman (Ombudsman) system in Turkey regarding the complaints of the people. However, it was emphasized that the necessary infrastructure should be established, and the institution should include all institutions so that a new and dysfunctional institution does not emerge (DPT, 2000, pp. 43-44). The ombudsman institution included in the development plans could not be implemented. The establishment of the Ombudsman institution has been included in various research reports prepared by non-governmental organizations. In 1997, non-governmental organizations such as the Turkish Industrialists and Businessmen's Association (TÜSİAD), the Union of Chambers and Commodity Exchanges of Turkey (TOBB), and the Independent Businessmen's Association (MUSIAD) prepared reports on the establishment of the Ombudsman on different dates. However, the recommendations of the Ombudsman in their reports were not taken into account by the bodies authorized to establish the institution for many years; The process of establishing the ombudsman institution in Turkey has been continuously postponed (Ünal, 2013, pp. 156-57). The Governorship of Bayburt made a different proposal regarding establishing the Ombudsman institution, Bayburt Governor's Office, based on Article 11/A of the Provincial Administration Law No. 5442, "Val To prevent crime, takes the necessary measures to protect public order and trust. The directive envisaged the establishment of a "Public Advisory Board" limited to working at the provincial level. It is thought that this Board will consist of seven members. With the approval of at least five members of the Board, to make a press statement within the scope of the examination issues, to request documents and information from the institution to be examined through the governorship, Authorities, and duties such as giving opinions and suggestions to the governorship are included in the directive. Apart from this, everyone who claims that he has been wronged in public or that his interests are not protected; may apply to the Board either in writing or orally, and the form requirement will not be sought in the application; complaints will be free; Applications made by post will be accepted. The Board may also examine ex officio; the Bayburt Service Foundation will cover the examination expenses; it is counted

among the duties and powers of the Board to which the workplace will be allocated by the governorship (Tayis, 1997, p. 120). However, as with other suggestions, no progress could be made, and studies could not be implemented. Until 2006, the ombudsman institution could not find a legal basis; The proposals made until 2006 remained suspended. The Ombudsman Institution gained legal existence with Law No. 5548 on the Ombudsman Institution, which was adopted in 2006. The term ombudsman was not used directly in the law, but the expression "Ombudsman" was used among the different proposals (Şengül, 2007, pp. 136-37). However, with its decision in 2008, the Constitutional Court found the law violated Articles 6, 87, and 123 of the Constitution and annulled it. The lack of a constitutional basis as grounds for annulment, the need not go beyond the administrative structure. The election of the members of the Ombudsman by the parliament is contrary to the 87th article of the constitution because the duties and powers of the parliament are clearly stated in the 87th article. It is stated that the Assembly cannot elect the members of this institution. Until the constitutional amendment made in 2010, there was no study on the ombudsman institution; With the constitutional amendment in 2010, the constitutionality problem of the ombudsman institution was eliminated by adding the 74th article of the constitution. On 14.6.2012, Law No. 6328 on the Ombudsman Institution was adopted. The law shows great similarities with the law numbered 5548 in terms of content and systematics. (Sengul, 2013: 75). Law No. 6328 consists of five parts, 37 articles, and one provisional article. The first part is "General Provisions," the second part is "Establishment, Duties and Working Principles,"; The third section is titled "Application to the Institution and the Procedures to be Taken," and the fourth section is titled "Provisions Regarding Personnel." The last section is "Miscellaneous Provisions ."The Ombudsman Institution was established to examine complaints about the functioning of the administration and is administratively subordinate to the Turkish Grand National Assembly (TBMM). It is envisaged that the Grand National Assembly of Turkey will elect the Ombudsman, and the election will be completed in the fourth ballot at the latest. The Grand National Assembly of Turkey elects the Ombudsman by secret ballot for four years. Two-thirds of the total number of members in the first two ballots and an absolute majority of the total number of members in the third ballot are required. If an absolute majority is not achieved on the third ballot, the candidate who gets the most votes on the fourth ballot is elected. Law No. 6328 repeats the method of selecting the lead auditor. The election of the auditors, whose number is five, is chosen in the same way but by the mixed commission consisting of the members of the Parliamentary Petition Commission and the

Human Rights Commission. Ombudsman in Turkey and its auditor's status are similar to the Swedish Ombudsman system. Mission time; being able to be elected a second time, making a distinction between the lead auditor and the auditor; Authorization of the lead auditor over the auditors is similar to the Swedish Ombudsman system (Şengül, 2013: 77). The need for an Ombudsman institution emerged in the 1970s, and suggestions and studies were made in this context, but no results were obtained. Ombudsman is a need; to eliminate the problems arising from the administration and remove the clumsiness of the judiciary; The necessity of this institution has been expressed for the last forty years with the effect of situations such as the expectations of non-governmental organizations. Finally, the ombudsman institution emerged after a long study and was put into practice in 2012. The question of whether internal or external actors were influential in the creation of this institution in the context of policy transfer comes to mind. As far as we can deduce from the above, it can be said that this is not due to the influence of internal actors.

2.2. The European Union As A Driving Factor In The Establishment Of The Ombudsman In Turkey

Unions such as the European Union (EU) also impact the prevalence of the Ombudsman institution in the world (Köseoğlu, 2010: 37). The criteria adopted by the EU at the Copenhagen Summit in 1993 draw a general line in terms of public administration. Along this line, candidate countries must build and develop their administrative capacities. In addition, candidate countries must implement the Copenhagen political criteria principles such as the rule of law, minority rights, respect for human rights, and development of democracy (Balcı, 2005, p. 25). The EU uses these requests in the context of conditionality. Conditionality is a strategic tool used by the EU. Candidate states depend on implementing laws and rules in various fields (Sobacı, 2011, pp. 86-88). In other words, the EU asks candidate countries to adapt a voluntary obligation to their internal structures. One of the requests to be fulfilled is establishing an ombudsman institution. This issue is expressed in the progress reports on Turkey's EU accession process. The 1998 progress report states that the establishment of the ombudsman "will greatly benefit the protection of human rights in Turkey" (Progress Report, 1998, pp. 14-15). It is emphasized in another progress report (1999: 8) that the democratic reform process that Turkey entered in 1995 should continue. The situation emerging in this report shows that Turkey does not sufficiently meet the Copenhagen criteria. The Copenhagen criteria are a condition that must be met for candidate countries. The EU wants the candidate

countries to fully comply with the requirements and states that the process leading to membership passes through the fulfillment of these criteria. It is possible to see whether these criteria are fulfilled in the progress reports published regularly every year. Although progress has been made in some areas in Turkey in the 2001 progress report; Turkey has not yet fulfilled the Copenhagen political criteria, and therefore; It is stated that throughout the country, the reform process that will ensure the legal and de facto protection of human rights and fundamental freedoms for all citizens should be intensified and accelerated (Progress Report, 2001, p. 94). In the 2002 progress report; Since 1998, Turkey's banking; Agriculture; progress in sectors such as energy; Although it is stated that the financial industry has been restructured, limited progress has been made in other areas (Progress Report, 2002, p. 118). In the 2005 progress report, it is stated that there has been no progress on the establishment of the "Ombudsman" and that the Ombudsman will play a key role in increasing the efficiency of the public administration and revealing abuses (Progress Report, 2005, p. 13). Turkey, which started membership negotiations in 2005, established an ombudsman institution in 2006 with the law numbered 5521 in line with the 2005 Progress Report. In the justification of the law, it seems that an EU-oriented legitimate ground has been prepared for the Turkish Ombudsman by drawing attention to the fact that "the ombudsman institution has been established in the EU" (Koç, 2015, p. 21). The influence of the EU, a supranational institution, is seen here. However, this law was annulled in 2006 because it was unconstitutional. In the 2008 progress report, It is stated that the canceled ombudsman institution should be established urgently. The report, "establishment of the ombudsman institution which was delayed; is of key importance to prevent tensions in the society" (Progress Report, 2008, pp. 69-70) indicates that the EU is trying to implement a compulsory policy transfer to Turkey for the establishment of the Ombudsman. The 2010 progress report; Constitutional reform in 2010; forms the basis for establishing the Ombudsman Institution, and it is stated that more political support should be provided, especially for establishing the Ombudsman Institution (Progress Report, 2010, p. 10). As a result of the negotiations with the European Ombudsman in 2012, The ombudsman institution was accepted in the Grand National Assembly of Turkey on 14.6.2012, and the ombudsman institution was established in Turkey in the same year. Turkey's lead auditor elected by the Grand National Assembly of Turkey contacted the European Ombudsman; and joined the European Ombudsman network. Taking the "best practices" from other institutions affiliated with this network, the lead

auditor, and making use of these applications, it is said that they should be determined to adapt them to the situation in Turkey (Progress Report, 2013, p. 13).

In the 2014 progress report, the institution's work contributed to increasing citizens' awareness of fundamental rights. The EU welcomed the review of complaints regarding administrative procedures within the Turkish Armed Forces (TAF) and complaints about ill-treatment during military service. However, the lack of authority to act *ex officio* and the lack of follow-up on the recommendations given by the institution are mentioned as the subject of criticism in the report (2014: 11).

In the 2015 progress report; While the increase in the harmonization of the recommendations made by the institution by the public administrations is seen as positive; The institution's silence on human rights violations in the East and Southeast; not being involved in litigation; Issues such as not filing a lawsuit and not having the authority to act *ex officio* was seen as the negative side of the institution (2015: 9). In the 2016 progress report, the gradual increase in the performance of the institution and the increase in the compliance of the public administrations with its recommendations were seen as positive aspects. And therefore, the institution is still weak (2016: 12, 69).

2017 the progress report was not published due to Turkey's disagreements with the EU.

In the 2018 progress report, it was emphasized that the institution's performance increased significantly compared to the previous four years. It was stated that the number of applicants to the institution - 17.131 persons - was three (3) times more than the total of the last four years, and the institution successfully raised awareness. However, it has been underlined that the problems in the past continue – lack of authority to act *ex officio*, limited power, and weakness in good governance (2018: 15).

In the 2019 progress report, the positive aspects of the previous periods, the increase in performance, and the damaging elements, not taking action *ex officio*, lack of good governance, and non-intervention, were repeated (2019: 17). When we consider the progress reports of Turkey from the past to the present by the EU:

- ✓ The ombudsman institution in Turkey still needs clarification on what it should do.
- ✓ Although it is stated persistently in the progress reports Since the authority to act *ex officio* is not given to the institution, its effectiveness on public administrations needs to be improved.

- ✓ The positive criticisms of the institution remained quantitative; It is impossible now to talk about an improvement in public administrations in terms of quality.
- ✓ The institution of good governance needs to work more.

As can be seen, the EU Turkey implements a compulsory transfer policy for establishing the ombudsman institution; Turkey, on the other hand, is doing this to enter the EU as a full member. In this respect, policy transfer is a voluntary obligation for Turkey. When we look at the formation of the Ombudsman in Turkey, whether it is through non-governmental organizations or public institutions, it is seen that it has always been suggested and could not be implemented. A political actor, such as the EU, is dominant in establishing the Ombudsman in Turkey. Although the ombudsman institution is a compulsory policy transfer, it is likely to be perceived as a voluntary transfer in implementing such institutions, which remains at the proposal stage in Turkey.

3. In Turkey, Ombudsman Culture: What Does It Tell Us?

In the previous section, in Turkey, We have said that the internal dynamics for the formation of the ombudsman institution need to be revised. In this respect, where internal dynamics are insufficient, external dynamics can intervene where countries think they should be corrected in their internal structures. This state of involvement; is also a prerequisite for admission to supra-national institutions such as the EU. Turkey; became a candidate country for the EU in 2005 and accepted the commitments that must be fulfilled to enter the EU in the context of conditionality. Although Turkey's need for an ombudsman institution has been expressed in many places (TÜSİAD, TOBB), It was not (a) sufficient for establishing the institution. The ombudsman institution, which should be included in its administrative system depending on Turkey's being a candidate country, was stated by the EU as a duty to be done in the progress reports to Turkey. Turkey's need for an institution like the Ombudsman could not be resolved internally.

On the other hand, the demand for such an institution was expressed by different segments. Finally, the attempts to become a member of the EU, Turkey's ombudsman institution from outside -are in line with EU membership transfer. Were made mandatory. Therefore, this institution was implemented in Turkey in 2012 with the determined stance of the EU – the effect of the progress reports; Since 2013, it has started to evaluate applications. This section will discuss what the Ombudsman has been trying to tell us in the seven years since 2013. The

institution provides the work(s) on the recognition of the Ombudsman in Turkey through many publications. When we make reading on the historical activity reports;

Table 1. Number Of Ombudsman Coverage In The Press By Years

Year/Date	2014	2015	2016	2017	2018	2019	2020	2021
Total	468	217	1.041	28.845	22.090	22.123	13.618	15.018

Source: Compiled from annual ombudsman reports from 2014-2021

The efforts for the recognition of the institution are gradually increasing. It is stated that the reason for the rapid increase, especially since 2017, is the existence of the institution in the social field, that is, the increase in the number of e-applications -the number of e-applications in 2017 is 13,312- and the renewal of the institution by making it more accessible (Ombudsman Annual Report, 2017: 123).). However, two recent studies (in the case of Erzincan and Niğde) are interesting in that they show that citizens' recognition of the Ombudsman is the opposite. In a study conducted on a thousand people (1,000) in Erzincan (Arslan, 2019, p. 133) to the question of "whether they had heard of the ombudsman," 75.80% of the participants stated that they had never heard of the institution before. 64% said they listened to the institution's name on TV, 3.30% on the Internet, and 32.60% from school. The study (Demirbilek, 2019, p. 60) conducted on a total of 160 people belonging to 4 different occupational groups (Lawyer, tradesman, teacher, and pharmacist) born in Niğde revealed that 65% of the participants did not know the Ombudsman. It is noteworthy that despite the increase in technological opportunities, citizens state that they do not (can) have information about the Ombudsman and have not heard of the institution.

Table 2. Ways And Numbers Of Transportation To The Ombudsman By Years

Year/Date	2013	2014	2015	2016	2017	2018	2019	2020	2021
Fax	24	133	94	76	133	83	81	74	17
From Hand	365	665	574	585	126	1076	1738	645	461
Mail	2136	1775	1776	1117	2191	2552	3339	3279	3192

Application	4356	2978	3516	3631	13312	13489	15520	86129	15118
Email	570	88	95	107	232	385	290	82	55
Total	7.638	5.639	6.055	5.519	17.131	17.585	20.968	90.209	18.843

Source: Compiled from the Ombudsman's annual reports for 2013-2021.

According to the table above, The most common form of access to the Ombudsman is an e-application. In addition, in the 2018 and 2019 annual reports, the official website of the institution was viewed by 963,035 and 548,763 people, respectively (Ombudsman Annual Report 2019: 42). Although the number of applications made to the institution is low in a country like Turkey with a large population and bureaucratic discontent, the efforts to raise awareness and seek rights downwards, which have been initiated since 2017, are given importance by the institution, and it is seen that the EU progress reports contribute to this increase. Although it is reflected in the statistics, this cannot be seen entirely in two studies explicitly conducted in Erzincan and Niğde, indicating that the institution's deficiency in this direction continues. For example, another question (2019: 138 and 140) directed to the participants in the study conducted in Erzincan was, "Did you enter the institution's website?", 97.50% of the participants who heard the institution's name answered 'No' to the question; In the same study, "Is the public information activities of the institution sufficient?" It is thought-provoking that 'all' (242 people) of the participants answered No to the question. In EU progress reports, One of the criticisms of the Ombudsman in Turkey is that the culture of seeking rights should be explained to more citizens. Therefore, when asked whether they applied to the Ombudsman to seek rights in Erzincan, "all" participants stated that they did not apply to the institution (Arslan, 2019, p. 157). In the study conducted in Niğde, 98.3% of the participants answered "No" to a similar question (Demirbilek, 2019: 63). While positive criticisms are made about the institution related to claiming rights in the progress reports, it seems difficult to say that the citizens have met this. In the study in Erzincan, "Do you know the application conditions for the institution?" A 94.2% 'No' answer to the question (Arslan, 2019, p. 142), while in Niğde, 78.75% of the participants answered 'No' to a similar question (Demirbilek, 2019, p. 62). shows that they are far from having enough knowledge about it. However, applying to the institution can be quickly done on the institution's home page.

Table 3. Number Of Complaints Made To The Ombudsman By Years

Year/Date	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total	7.638	5.639	6.055	5.519	17.131	17.585	20.968	90.209	18.843

Source: Compiled from annual ombudsman reports between 2013-2019

In the table above, it is seen that the culture of seeking rights has increased over numbers; In addition, the increase in complaints since 2017 is due to the rise in e-application (See Table-2); The reason for the excessive increase in 2020 is attributed to the "epidemic" in the report (2020: 48). However, the reason for the extreme decline in 2021 is not stated in the 2021 annual report. Although the culture of claiming rights has increased quantitatively when we look at it from a qualitative point of view, this needs to be reflected in the citizens. In the field studies conducted in Erzincan and Niğde, it is revealed that the citizens do not know the conditions for applying to the Ombudsman; This contrast leads us to the conclusion that the citizens do not culturally experience the Ombudsman. For the corporate culture to go down and settle healthily, the institution's being impartial and independent and having the authority to sanction stand out as important factors. In this way, citizens can easily apply to the institution by feeling safe to seek their rights. Therefore, it provides a supportive contribution to pave the way for good governance. The existence of mutual interaction can help public services to eliminate the adverse effects of better and more functional administration. However, in the progress reports, the limited powers of the institution reveal that it continues to create negativity. In this case, the institution moves away from being the door to seek rights for citizens and causes the institution's existence to be questioned. For example, the institution's lack of authority to act ex officio, not being directly involved in lawsuits, and working in a limited administrative area cause the institution to have a negative meaning for the applicants.

The study conducted in Erzincan is vital in determining this situation through the participants. In the study, "Is it a deficiency that the ombudsman does not act ex officio?" 63.9% of the participants stated their opinion as 'No' (Arslan, 2019, p. 151) to the question; In another question, 2.5% of the participants said 'Yes' (Arslan, 2019, p. 144) to the question of "whether the institution is impartial" -The rate of those who said 'Yes' to this question in Niğde is 3.13% (Demirbilek, 2019,p. 61)- again in the study in Erzincan, "Does the lack of sanction authority of the ombudsman reduce the effectiveness of the institution?" The fact that 66.4% of the participants said 'Yes' to the question is a practical example of the inability of the

corporate culture to progress downwards. In other words, it is also an indication that the ombudsman culture in Turkey has difficulties finding a response below. It is understood that the relationship between quantity and quality is inversely proportional. Corporate culture actively; Although it cannot be transmitted downstream; of the administrations subject to the application of the recommendations of the institution; The increase in the compliance rate over the years is also seen as an important development in the progress reports. Because in retrospective progress reports (2014), the criticism that the institution does not follow up on the recommendations shows that the rate of compliance with the requests has increased over the years, indicating that it is not a coincidence.

Table 4. Recommendations Of The Ombudsman And Compliance Rates Of The Administration By Years

Year/Date	2013	2014	2015	2016	2017	2018	2019	2020	2021
Recommendation Given.	64	93	56	62	245	677	860	68.128	71.358
Administration's Compliance Rate (%)	20	39	37	42	65	70	75	%76.38	%79.5

Source: Compiled From The Ombudsman Annual Reports For The Years 2013-2021.

In Table.4, by year, According to the recommendations and decisions of the Ombudsman, the compliance rate of public administrations is shown. The increase in compliance rate, significantly as a percentage since 2017, has increased considerably. The basis of this increase is the effect of the rise in the number of e-applications in 2017. On the other hand, this increase was perceived positively in the progress reports and was seen as the success of the ombudsman institution. According to the advice given by the Ombudsman in Turkey, which has a bureaucratic state tradition, the compliance rate with its decisions must increase over the years. The importance of this increase points us to the fact that the bureaucracy is more sensitive in its relationship with the citizen. Therefore, it opens the door for us to good governance. Secondly, it demonstrates that bureaucratic mechanisms are auditable and shows the transition of administrative institutions to a transparent and accountable state. Naturally, it offers an alternative outside the judiciary against the problems that may arise from the

bureaucracy of the citizen. In the study conducted in Niğde, "Do you find public services effective and sufficient?" 72.5% of the participants answered "No" to the question (Demirbilek, 2019, p. 53). The advice of the Ombudsman; and compliance by the administration according to its decisions is in parallel with the research question made specifically in Niğde. Increasing the compatibility of the applications of the citizens to the Ombudsman by the administrative institutions will contribute to reducing the tension between the citizen and the administration. As a result, an important step will be taken in the trust and recognition of the citizens in the Ombudsman. By the Ombudsman institution and establishment in Turkey, it does not have the authority to examine some institutions. This situation brings to the agenda the lack of an ombudsman, the helplessness of citizens in the face of these unexamined institutions, and the decrease in the positive perception towards the Ombudsman at this point. It raises a question as to whether the presence of the Ombudsman is necessary. Dursun (2011) states that to be able to talk about an ombudsperson, his independence must be ensured; otherwise, it points to the danger of this institution being seen as one of the other types of administrative control.

Conclusion

Is the ombudsman culture in Turkey narrative, or is it lived? When we are faced with the question; In fact, it is seen that Turkey's effort to establish an ombudsman institution in the process from 1970 to 2012 could not be implemented both in the development plans and in the work of non-governmental organizations even at the provincial level, remained in recommendations and could not go further. Parallel to the spread of the ombudsman institution in the world, Turkey has not been able to implement it within itself, nor has it accepted the offer made by the faculty members. In this context, the Ombudsman cannot go anywhere but a narrative in Turkey. In other words, the field studies conducted in Erzincan and Niğde highlight the inadequacy of the ombudsman institution in the field despite its statistical progress – in its activity reports. Turkey entered a new process with its acceptance as a candidate country by the EU in 1999. In the context of conditionality, the EU has made some demands on Turkey, one of the countries that want to become a member of the EU. One of them is the establishment of the ombudsman institution. The EU has repeatedly stated this in progress reports it has prepared on Turkey for establishing this institution. Finally, in line with EU directives, the ombudsman institution in Turkey was established in 2012 and became operational. A compulsory policy transfer was realized by establishing an institution in

Turkey and through a supra-national actor. Although we say that this policy transfer was carried out to achieve a goal, the existence of the EU, which is a supranational actor, is an undeniable fact in the current ombudsmanship in Turkey – at least since 2017. In this respect, although the Ombudsman seems to be a compulsory policy transfer, it is seen in the annual reports that the Ombudsman fulfills an essential need in Turkey. The Ombudsman, established as an independent review institution to listen to the complaints of the individual and to eliminate undesirable dissatisfaction, is "living" in Turkey thanks to the policy transfer.

On the other hand, when we look at the field studies, we see that the ombudsman institution is a "narrative ."In the face of such a dilemma, when we accept that the weight is on the field, the ombudsman culture remains mainly in the "narrative ."Finally, the establishment of this institution is the realization of past wishes. Therefore, we can see the transfer as a voluntary policy transfer. And now, for the Ombudsman in Turkey to cease to be a narrative and to progress on the path of an institution that is lived in, significant duties fall on the narrators to live the field better.

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