

REPUBLIC OF TURKEY  
**OMBUDSMAN INSTITUTION**

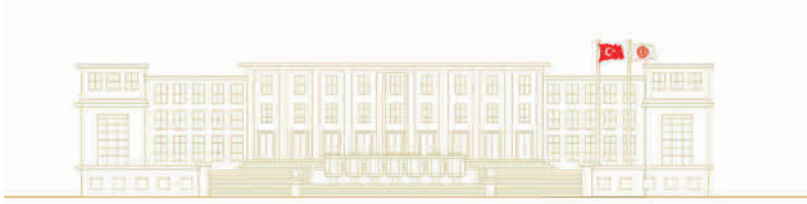
**2019**

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**ANNUAL REPORT**

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ABRIDGED ENGLISH VERSION



# 2019

## ANNUAL REPORT

ABRIDGED ENGLISH VERSION



REPUBLIC OF TURKEY  
OMBUDSMAN INSTITUTION



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## TO THE READER

By Law, the Turkish Ombudsman Institution has to submit an Annual Report about its activities to the Grand National Assembly of Turkey at the end of January each year.

The original annual report is 608 pages long. This abridged English summary has been prepared for the benefit of foreign readers, and some of the key highlights about the Ombudsman Institution of Turkey have also been added in order to familiarize readers with the Institution.

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# CHAPTER

# I

# 2019

## ANNUAL REPORT

### FOREWORDS

Chief Ombudsman

Mr. Şeref Malkoç

Ombudsman

Mr. Yahya Akman

Ombudsman

Mr. Arif Dülger

Ombudsman

Mr. Sadettin Kalkan

Ombudsman

Ms. Celile Özlem Tunçak

Ombudsman

Mr. Hüseyin Yürük



## 1.1 Chief Ombudsman Mr. Şeref Malkoç



The Ombudsman Institution of Turkey is a constitutional institution included in Article 74 of the Constitution with the constitutional amendment made in 2010. According to the Ombudsman Law No. 6328, the Institution shall be responsible for examining, investigating, and submitting recommendations to the Administration with regard to all sorts of acts and actions as well as attitudes and behaviors of the Administration upon complaint on the functioning of the Administration within the framework of an understanding of human rights-based justice and in the aspect of legality and conformity with principles of fairness.

Adopting the principle “let the mankind live so that the State lives”, the Ombudsman Institution aims to contribute to:

- increasing the service quality of the administration,
- internalising the principles of good administration,
- improving human rights standards,
- ensuring the rule of law,
- strengthening the culture of seeking legal remedies,
- forming a transparent, accountable and citizen-engaged administration.

The Institution is a young institution that started receiving complaints in 2013 and it has only been 7 years since its establishment. During this period, significant progress

has been made in improving the ability to resolve disputes by raising the awareness of the general public as well as of the administrations about the Institution. The number of complaints that are received annually has exceeded 20.000 thanks to the increasing recognition of the Institution. Our Institution serves as a public advocate and guides the administration through its recommendations in a sense of responsibility towards the public and on the basis of fairness.

In this context, we have left behind the very busy year of 2019, in which we organised many activities with the purpose of strengthening the culture of seeking legal remedies, made recommendations, prepared and published special reports and studies and held international symposiums and workshops.

In 2019, we increased the number of Ombudsman Student Clubs established in universities to 100. In addition, we held conferences at 32 universities under the theme “Justice, Equity and Ombudsman” and we conducted internship programs with 3 universities at our Institution. In order to promote the culture of seeking legal remedies among high school students, we organised painting, essay-writing and poster contests with the theme “Principles of Good Administration” among high school students in Istanbul.

We continued to hold provincial meetings in 2019, where we brought together citizens, CSOs, local authorities, opinion leaders and administrators of the relevant province.

With the purpose of promoting the culture of legal remedies among our citizens living in Europe, the Institution has organised visits to certain European countries such as Sweden, Belgium, Denmark and the Netherlands. We came together with local CSOs and press members and informed them about the ways of seeking legal remedies.

We participated in Ombudsman network meetings with Ombudsman Institutions in 17 countries. We had reciprocal visits with the ambassadors of 26 countries, representatives of Ombudsman Institutions and Human Rights Institutions. We have increased the number of Ombudsman associations, of which our Institution is a member, to 8. In addition, as the Ombudsman Institution, we were elected as a board member of the Asian Ombudsman Association. Our Institution was also elected as the President of the Organisation of Islamic Cooperation Ombudsman Association.

Our Institution attaches great importance to establishing communication and cooperation with civil society organisations (CSOs) and we consider CSOs to be a very important stakeholder. As a result of our activities organised abroad in 2019, we came together with about 60 representatives of Turkish CSOs abroad, and 600 representatives from local CSOs within the scope of provincial meetings we held in Turkey.

Another very important stakeholder is the press. In 2019, we gave a total of 55 interviews/press releases for agencies and newspapers and participated in live broadcasts on TV and radio 29 times. Our Institution came together with media representatives 485 times in 2019. We came together with 500 local media representatives in total at the provincial meetings. During our international visits, we came together with around 40 local media representatives. In 2019, 143 recommendations made by our Institution appeared in news and the website of the Institution was visited 548.763 times in total.

In 2019, we organised the Animal Rights Workshop, Workshop on Religious Education and the License Completion Program of Theology (İLİTAM), The Past, The Present and The Future of The Ombudsman Workshop. We published the results of the Animal Rights Workshop and The Past, The Present and The Future of The Ombudsman Workshop.

Under the auspices of our President, H.E. Mr. Recep Tayyip Erdoğan, we organised the 2<sup>nd</sup> İstanbul International Ombudsman Conference under the theme “Principles of Good Administration”, which was attended by nearly 200 Ombudsmen and human rights advocates from 60 countries.

As a result of these activities, the number of complaint applications filed to our Institution reached **20.968** in 2019. **The total number of complaint applications since the establishment of the Institution is 80.535. The number of decisions issued in 2019 is 21.170.**

One of the most important aspects of our Institution is that we resolve complaints through amicable settlement in a short period of time. By serving as a bridge of reconciliation between the administration and the citizen, our Institution resolves the problems without the need for a recommendation and contributes to providing the citizens with **“easy access to justice”**. In this context, we resolved **2.707** complaints through amicable settlement in a short period of time in 2019.

One of the biggest weaknesses of the Ombudsman Institutions in the world is the failure to receive eligible applications. As a result of the activities we have carried out, we have made significant progress in terms of the number of eligible applications as well as the number of complaints. The increase in the number of eligible applications facilitates the amicable settlement of complaints and is also reflected in the number of recommendation decisions. As a matter of fact, our Institution issued 792 recommendation decisions during the 5-year period between 2013 and 2017 whereas in 2018, 946 recommendation decisions were issued, which is more than the total number of decisions issued in the last 5 years. There was a considerable increase in the number of recommendations made **in 2019** and this number reached **1.270**.

The compliance rate of the administrations with our recommendations was 20% in 2013, whereas it increased to 65% in 2017, 70% in 2018 and **75% in 2019**.

Another reflection of the increase in the number of eligible applications filed to our Institution is the increase in the number of admissible applications. **4.870** of the **21.170** applications, which we concluded in 2019, were considered “admissible”. This rate corresponds to **23%**. This rate is averagely around 10% in the European Ombudsman Institutions.

In 2019, we conducted **approximately 107.899 face-to-face meetings and phone calls** with the citizens who had problems, and provided them with legal assistance, guided them and tried to find solutions to their problems.

As a result of the **21.170 decisions** we issued and legal assistance provided to **107.899 people** and **guiding activities, we have contributed to the strengthening of a transparent and accountable administration**. In addition to these, we have made important contributions to the reduction of the judiciary’s workload by preventing tens of thousands of lawsuits against the administration with our decisions concerning a large segment of the society. As the Ombudsman Institution, we have become an instrument of direct democracy by ensuring the active participation of citizens in the state administration.

In 2019, in order to enhance our capacity to examine complaints more effectively, we recruited 15 assistant experts. In addition to this, we have increased the number of temporary experts and judges. We organised many training activities in order to improve the competence of our staff in analysing complaints and resolving the disputes.

We put the Complaint Handling Mechanism (SYS) into practice, which we have created with our institutional means. With this system, we aim to handle complaints more easily through an electronic platform and carry out performance monitoring of our personnel, who review complaints, more effectively. In addition, with the introduction of this system, we have completely removed the use of paper in complaint files.

Everyone has contributed to the success in the work of the Institution. I would like to thank everyone who has contributed, including the security guards, workers, drivers, civil servants, assistant experts, experts, Heads of Units, and the Secretary General. And of course, I would like to thank our Ombudsmen for their hard work and great efforts.

Best regards,

**Şeref MALKOÇ**  
**Chief Ombudsman**

## 1.2 Ombudsman Mr. Yahya Akman



Our Institution paves the way for the transformation that will take our country much further in the field of **democracy, human rights and law**; creates an opportunity for both individuals and public administrations; contributes to reaching a compromise between the administration and the citizen on matters incompatible with public conscience; serves to establish a modern administration approach based on the principles of good administration, “transparency” in particular. Our institution, which acts as a public authority, enabling individuals, groups of individuals, CSOs and legal entities to communicate their complaints and seek justice directly and to participate in the administration, contributes to placement of the concepts of “right”, “law”, “justice” and “conscience” in administrative functioning.

On the other hand, the presence of fundamental rights and freedoms in only written legal instruments does not mean a lot. Commitment to and confidence in law by the public administration and users of public power matter a lot in protecting human rights in real terms. It should be noted that the implementation of reforms, especially in the political, legal and administrative areas, has special importance. The reflection of the law and other legal rules on the behaviours of lawmakers (judges and prosecutors, law enforcement officers, civil administrators and military personnel) and other public officials and individuals is a time-consuming process, depending on the increased

level of awareness. This is a goal that cannot be achieved “*overnight*”, however; it can be achieved through devoted and collaborative efforts. Nonetheless, it is of great importance that the change is implemented properly and effectively as well as ensuring the change in terms of legislation. In other words, it is important **to reflect the improvements in the field of legislation on the administrative and judicial practices.**

At this point, the Ombudsman has a very important contribution to raising this awareness and enhancing the capacity of the public administration to provide public services within the framework of transparent, accountable and good administration principles.

Being aware of the importance of this responsibility that our Institution has undertaken, we not only eliminate the unjust treatments based on the meticulously conducted investigations and examinations about the complaints filed to us, but we also provide assistance to the public administration in terms of law, justice, equity and good administration in order to avoid similar violations. To put it in a different way, we aim to bring both faulty and incomplete practices and correct actions and procedures of the administration to the public’s attention in order to contribute to the improvement of the relations between the public administration and the citizen and prevent the occurrence of administrative deviations such as violation of rights, irregularity and corruption. By this means, the implementation of a **transparent administration** will be encouraged **by sharing the wrong actions, procedures, attitudes and behaviours of the administration with the public.**

We are now moving towards a path where we hope that the example of the “Principles of Good Administration” and “Amicable Settlement”, which were brought up by the World Ombudsmen at an international conference held by our Institution this year, will be taken into consideration as the main criteria by the administrations.

The open public meetings held in various cities of our country and conferences held at universities have generated very positive results in terms of increasing the recognition and effectiveness of our Institution. The compliance rate of the administrations with our decisions has been increasing gradually. The dialogues we established with senior executives of the administrations have helped us to work faster, and the methods of good administration and amicable settlement have become easier to achieve.

We hope that the Ombudsman Institution, which has become an efficient way for seeking legal remedies, will become even more effective in the future.



### 1.3 Ombudsman Mr. Arif Dölger



One of the significant developments as part of transition and transformation process that Turkey has been going through in recent years has been the establishment of **the Ombudsman Institution** in 2012. The Ombudsman Institution, whose establishment was a topic of discussion for years and which became a state policy through consensus, has seven years of experience as of today.

Adopting the principle *“Let the mankind live so that the State lives”*, the Institution is a citizen-oriented public entity which serves as defender of citizens and is entitled to examine any administrative organ on behalf of citizens and can access to any information and document to contribute to better functioning of the administration.

Our Institution has established a successful practice in the past seven years in order to achieve the ideal of the rule of law, protect fundamental rights and freedoms and ensure the adherence of the administration to the principles of good administration.

Within the framework of the division of labor in our Institution, our areas of responsibility as of the end of 2016 have been *“education, youth and sports”*, *“energy, industry, customs and trade”*, *“science, art, culture and tourism”* and our areas of responsibility as of the second half of 2019 have been *“population, citizenship, refugee*

*and asylum-seeker rights”, “issues related to the rights of workers working in the administration under the labour status and employment contract” and “other issues and fields”* have been added and applications made in the relevant fields have been examined and resolved.

With a view to improving the relations between the administration and the individuals, and to increasing the confidence of individuals in the administration, we believe that it is more useful to gather the administration and the individual so that these two parties can negotiate the problem. Therefore, amicable settlement of conflicts between the administration and the individual in a way to satisfy both parties is the mostly preferred method by our department. By this means, we believe that we play an active role in helping that communication between the administration and citizen as well as citizen’s confidence in administration will foster and conflicts will be resolved in a quicker, more effective way and in favor of the citizen without facing bureaucratic obstacles.

To this end, it was ensured that the problems were solved amicably through negotiations and correspondence with the relevant administrations regarding many issues in 2019.

In addition to amicable settlement, *Recommendation Decisions* were issued on various matters closely related to the public in 2019.

Turning into a fully functional public entity in a very short time, our Institution has started to receive positive feedbacks from the public thanks to its decisions, activities as well as its reports.

We sincerely believe that as the added value of the Ombudsman Institution to our country and its efficiency in the public opinion increase day by day in terms of citizens’ seeking legal remedies, confidence in our Institution will further raise paving the way for our Institution to reach its well-deserved place in our administrative system.



## 1.4 Ombudsman Mr. Sadettin Kalkan



Throughout history, there have been efforts to protect human rights, to respect the rights and freedoms of every individual, and this has been ensured by adhering to certain rules.

As known, the Universal Declaration of Human Rights was adopted on December 10, 1948 by the United Nations General Assembly Resolution 217 A (III). Turkey published the Universal Declaration in the Official Gazette by the Cabinet Decision No. 9119 dated April 6, 1949. It was decided that the Universal Declaration of Human Rights would be studied and interpreted at schools and other educational institutions and there would be proper publications about this Declaration on the radio and in newspapers. In the preamble published in the Official Gazette, it is stated that “*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law; whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms*”.

In the face of inequality and injustice that have existed throughout the history of humanity, it is essential that the rights of individuals are resolved impartially with an understanding of justice for all. In our country, the Ombudsman Institution acts with a citizen-oriented approach adopting the perspective of equality and human rights and assesses the complaints of individuals in terms of lawfulness and fairness. While our Institution plays a role in assessing and resolving the conflicts between the public and administrations, it also aims to contribute to the institutions' acting in compliance with the principles of good administration such as transparency, accountability and impartiality and to encourage the delivery of public services with a citizen-oriented approach. We contribute to the competencies and expertise of the administrations by issuing decisions about the need to provide clarification for certain legal practices of the administrations and sometimes to amend them, in this way, we assist the administration on having certainty in its functions.

The right of individuals to lodge a complaint to the Ombudsman is a Constitutional right. We organise meetings in provinces and universities, where many people come together, in order to raise the awareness of individuals about seeking legal remedies and to increase the visibility and recognition of our Institution. Since the Ombudsman Institution is an institution that focuses on the mission of ensuring the protection of individuals' rights, it puts effort into raising the awareness of individuals about seeking legal remedies as well as helping them understand their fundamental rights.

My area of responsibility is public personnel regime. In 2019, we received complaint applications mostly about oral examinations conducted by public authorities, appointments, justified transfer requests, financial rights, social rights, mobbing and disciplinary penalties.

Our Institution works diligently and determinedly by paying regard to the principles of justice and fairness on the elimination of injustices by recognizing the rule of law with the motto "let the people live, so that the State lives". With the ever-increasing effectiveness of our Institution, I sincerely believe that our Institution will contribute to the protection of individual rights and the good governance of administrations in our country.

## 1.5 Ombudsman Ms. Celile Özlem Tunçak



In compliance with the Paris Principles, the Ombudsman Institution gained a constitutional ground with the amendment and paragraph added to Article 74 of the Constitution of the Republic of Turkey titled *VII. Right of petition, right to information and appeal to the Ombudsman*, “*The Institution of the Ombudsman established under the Grand National Assembly of Turkey examines complaints on the functioning of the administration.*” Its effectiveness and independence have been guaranteed by the provisions of the Ombudsman Law No. 6328.

The Ombudsman Institution has become a strong voice of public conscience within a very short period of time thanks to the independent studies and research conducted on the basis of the rule of law, democracy, the development of respect for human rights, as well as the sense of responsibility towards the society. Our Institution’s task is not only to evaluate applications, but also to raise the awareness of citizens about their rights, to raise awareness on national and international level and to encourage cooperation between all stakeholders such as administrations, civil society organisations and universities.

According to Article 7 of the Ombudsman Law No. 6328, the Ombudsman has been assigned to deal with applications concerning women’s and children’s rights. It has been regulated by the Implementing Regulation of the mentioned Law that if the complaint

concerns human rights, fundamental rights and freedoms, women's rights, children's rights and general issues concerning the public, no violation of interest shall be sought. In the light of these regulations, our Institution attaches particular importance to the resolution of conflicts faced by women, children, people with disabilities and individuals in need of social assistance in all areas.

The Ombudsman Institution is the only institution to which children can directly apply, which is a first of its kind. All applications received from the children via the Ombudsman Institution's website ([kdkcocuk.gov.tr](http://kdkcocuk.gov.tr)) are carefully examined in terms of all rights guaranteed in the Convention on the Rights of the Child. The Ombudsman Institution of Turkey acts with a mission to seek, protect and implement the rights of all the children living in Turkey.

Our Institution, like other countries' Ombudsman offices, serves two main purposes: "protection" of fundamental rights and freedoms, and "development" of the fundamental rights and freedoms. Our efforts to eliminate the violations identified as a result of investigations and examinations conducted on complaint applications submitted by Turkish, foreign, natural and legal persons contribute to the protection of rights. On the other hand, there is a large number of tools for the development of fundamental rights and freedoms. The most prominent of these tools is the Annual Report submitted to the Grand National Assembly of Turkey every year and the Special Report prepared based on important issues.

My areas of responsibility include "Labour and Social Security", "Human Rights", "Women's Rights", "Children's Rights", "Protection of Family", "Disability Rights", and "Social Services".

I hope that the Ombudsman Institution's 2019 Annual Report will be beneficial. This report was prepared with the idea of ensuring the rule of law, improving the confidence in democracy, respecting human rights and enhancing the capacity of the public administration to provide public service within the framework of transparency, accountability and good administration principles.

## 1.6 Ombudsman Mr. Hüseyin Yürük



It is highly important that the administrators are impartial and independent at the stages of decision-making, implementation and supervision, that they do not discriminate individuals with their decisions and always prioritise justice and equity by taking the basic moral principles into account in order to strengthen the commitment and reliability between the state and the public and prevent potential shortcomings and conflicts that might arise from the delivery of the services provided by the administrations. However, no matter how ideal the structure of the state is and how sensitive the administrators are, there is always a possibility that the administration does not act in compliance with the law and equity in its procedures and practices.

Reasons such as the increase in the population of countries as of the 20<sup>th</sup> century in particular, the increase in communication and interaction between people, societies and countries, scientific and technological developments, the expansion of the administrative structures of States, the complex political structures in the countries and the deterioration and degeneration of State administrations in the 20<sup>th</sup> century have made it impossible for legislative bodies to supervise the public administration on their own. As a result, the Constitutional Court (Individual Application), the Ombudsman, Human Rights Institutions and other forms of supervision have emerged apart from the supervision of legislative bodies.

Ombudsmen are assigned to detect any unjust acts caused by the administrations, to ensure that the administrations act in conformity with the laws and the principles of good administration, to prevent them from abusing their discretionary power granted by the applicable laws, and, when needed, to make recommendations to remove any shortcomings and mistakes detected in the applicable laws for better provision of public services.

Similarly, the Ombudsman Institution of Turkey fulfills its mission of supervision on behalf of the Grand National Assembly of Turkey by quickly and effectively resolving the conflicts and shortcomings in the delivery of services of the administrations provided to natural and legal persons as well as strengthening the relationship of trust between administrations and individuals.

In 2019, a significant number of the applications filed under the heading “Services carried out by local administrations” were concluded in favour of the complainants as a result of our recommendations to administrations, our amicable settlement proposals and referral decisions made on the grounds that administrative remedies were not exhausted.

To conclude, I would like to thank all my colleagues who contributed to the preparation of the 2019 Annual Report, and hope that our Annual Report will further enhance the culture of seeking legal remedies, encourage our administrators to make more equitable decisions regarding the services delivered to the public and act in compliance with the principles of good administration.



# CHAPTER

# II

# 2019

ANNUAL REPORT

## **AN OVERVIEW OF THE OMBUDSMAN INSTITUTION OF TURKEY AND ITS ACTIVITIES**

About the Institution and its  
Legal Framework

Organizational Structure

Human Resources

Training Activities for the Staff

Interaction with Stakeholders

Awareness Raising Activities



## 2.1 ABOUT THE INSTITUTION AND ITS LEGAL FRAMEWORK

### Law on the Ombudsman Institution No. 6328

The Ombudsman Institution of the Republic of Turkey was established in **2012** with the **Law on the Ombudsman Institution No.6328** as a **constitutional public entity** affiliated with the Grand National Assembly of Turkey. It has **its own private budget** and headquarters in Ankara and one office in Istanbul.

According to the Ombudsman Law, the Institution shall be responsible for examining, investigating, and submitting recommendations to the administration with regard to all sorts of acts and actions as well as attitudes and behaviors of the administration upon complaint on the functioning of the administration within the framework of an understanding of human rights-based justice and in the aspect of legality and conformity with principles of fairness.

The Ombudsman Institution aims to contribute to;

- increasing the service quality of the administration,
- internalizing principles of good administration,
- improving human rights standards,
- strengthening the culture of seeking legal remedies,
- forming a transparent and accountable administration.

The Institution started to receive complaints in March 2013. The main duty of the Institution is to advocate for individuals against the administration, as well as protecting and promoting human rights, and it is considered the “**conscience**” and “**lawyer**” of the people in the system that is based on individuals and rights.

The Institution has been carrying out its activities based on rule of law, development of respect for human rights and accountability towards people.

Following the transition from the Parliamentary System to the Presidential System of governance in Turkey, the Law on Ombudsman Institution (Law No. 6328) has been amended and the competence of the Institution has been broadened so as to involve also the acts of the President (Amendment of Article 5 Law No. 6328 ruled by 2/7/2018-Decree Law/703/Art. 110). However, the acts concerning the execution of the legislative power, the acts concerning the execution of the judicial power, the acts of the Turkish Armed Forces, which are purely of military nature, are outside the competence of the Institution.

The Ombudsman Institution was established in compliance with the *Paris Principles*, and carries out its works within the framework of these principles considering the followings:

- The Ombudsman Institution is a constitutional entity whose powers and duties are regulated by the Constitution,
- The Chief Ombudsman and Ombudsmen are elected by the Grand National Assembly of Turkey (GNAT),
- Its revenues comprise the treasury funds to be allocated from the budget of the GNAT,
- The Chief Ombudsman and the Ombudsmen are elected for a given period and may be re-elected,
- The Ombudsman Institution is authorized to conduct independent research in the fields within its mandate, and is not open to suggestions while conducting examinations and research,
- The Ombudsman Institution is vested with the competence to ask for all the information and documents,
- The Ombudsman Institution can publicly announce its recommendations,
- The Ombudsman Institution can work in cooperation with the civil society organizations, etc.

### **By-law on Procedures and Principles Concerning the Implementation of the Law on the Ombudsman Institution**

The By-law has been prepared on the basis of Law on the Ombudsman Institution No. 6328 dated 14/6/2012 and covers procedures and principles for complaint applications lodged by natural and legal persons to the Ombudsman Institution, scope of the duties of the Institution, and good governance principles.

## **2.2 ORGANIZATIONAL STRUCTURE**

The Institution consists of the **Office of the Chief Ombudsman** and the **Office of the Secretary-General**. The Office of the Chief Ombudsman comprises the Chief Ombudsman and 5 Ombudsmen.

The Institution is administered and represented by the **Chief Ombudsman**.

The Office of the Secretary General performs the secretarial, administrative and financial affairs of the Institution. The Office of the Secretary-General consists of the Secretary-General and other administrative staff members.

The duties of the Office of the Secretary-General are as follows:

- a) To conduct clerical services for the Institution;
- b) To keep personal files of the staff members;

- c) To carry out the archive services of the Institution;
- d) To perform the duties assigned to the financial services units and strategy development units by relevant Laws;
- e) To conduct the procedures concerning the leaves and retirement of staff members;
- f) To carry out the personal staff matters, health and social services procedures of the staff members working at the Institution;
- g) To ensure the use of the information systems with regard to the matters concerning the activity field of the Institution and
- h) To perform statutory duties or the duties assigned by the Chief Ombudsman.

The Chief Ombudsman and Ombudsmen are elected by the Grand National Assembly of Turkey for four years and may be reelected. They must act in compliance with the principle of the independence and impartiality during the exercise of their duties.

The Chief Ombudsman and Ombudsmen are paid a monthly salary that is equal to the financial rights including all sorts of remuneration allocated respectively to the highest civil servant and to the Directors-General of the Ministry.

### **Duties and Powers of the Chief Ombudsman and Division of Work and Working Principles**

#### ***Duties and Powers of the Chief Ombudsman***

Duties and powers of the Chief Ombudsman are as follows:

- a) To govern and represent the Institution
- b) To examine and investigate complaints lodged to the Institution and to submit recommendations to administration
- c) To ensure cooperation among Ombudsmen and to ensure that they work in harmony
- d) To eliminate concerns about the scope of duty of ombudsmen
- e) To determine and to change when needed the division of work among ombudsmen, always assigning one of them for women and children's rights
- f) Finalize the complaint in person, when s/he deems it necessary
- g) To prepare regulations concerning implementation of the Law and to make amendments to them, when necessary
- h) To prepare the annual report and to submit it to the Commission
- i) To prepare special reports on issues that s/he deems necessary, without waiting for the annual report
- j) To announce reports to the public
- k) To make explanations regarding actions of the Institution

- l) To determine the ombudsman to act in her/his absence
- m) To appoint Secretary General and other personnel
- n) To allow for criminal proceedings and investigations taking place in the event that Secretary General, expert and assistant experts are claimed to have committed a crime during their duties
- o) To assign referees and to hear witnesses or relevant persons
- p) To request at temporary duty for personnel from public institutions and organisations to be assigned about needed works and matters
- q) To request information and documents from administration with regard to the subject matter under examination and investigation
- r) To examine in situ information and documents with state secret value related to the subject matter under examination and investigation or to have the ombudsman, who s/he assigns, examine it
- s) To conduct in situ examinations and investigations within the scope of Article 22 of the Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution
- t) To request opening an investigation from the relevant authority against administrative bodies, which do not submit the demanded information and documents
- u) To decide on establishment of a new office in places, where deemed necessary
- v) To carry out studies concerning the international cooperation about Institution's scope of duty
- w) To fulfill other statutory duties.

### **Duties and Powers of Ombudsmen**

Duties and powers of Ombudsmen are as follows:

- a) To examine and investigate the complaints, which fall within the subject and area they are assigned, and to make recommendation to the Chief Ombudsman
- b) To request information and documents from administration with regard to the subject matter under examination and investigation
- c) To request opening an investigation from the relevant authority against administrative bodies, which do not submit the requested information and documents
- d) To prepare special reports about the topics s/he deems necessary and to submit them to Chief Ombudsman
- e) To make explanations about actions of the Institution, when s/he is assigned by the Chief Ombudsman
- f) To assign experts and to hear witnesses or relevant persons
- g) To examine in situ information and documents having a state secret value, when s/he assigned by the Chief Ombudsman

- h) To conduct in situ examinations and investigations within the scope of Article 22 of the Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution
- i) To act for the Chief Ombudsman in absentia
- j) To assist Chief Ombudsman in performing her/his statutory duties
- k) To perform other duties assigned to her/him by the Chief Ombudsman.

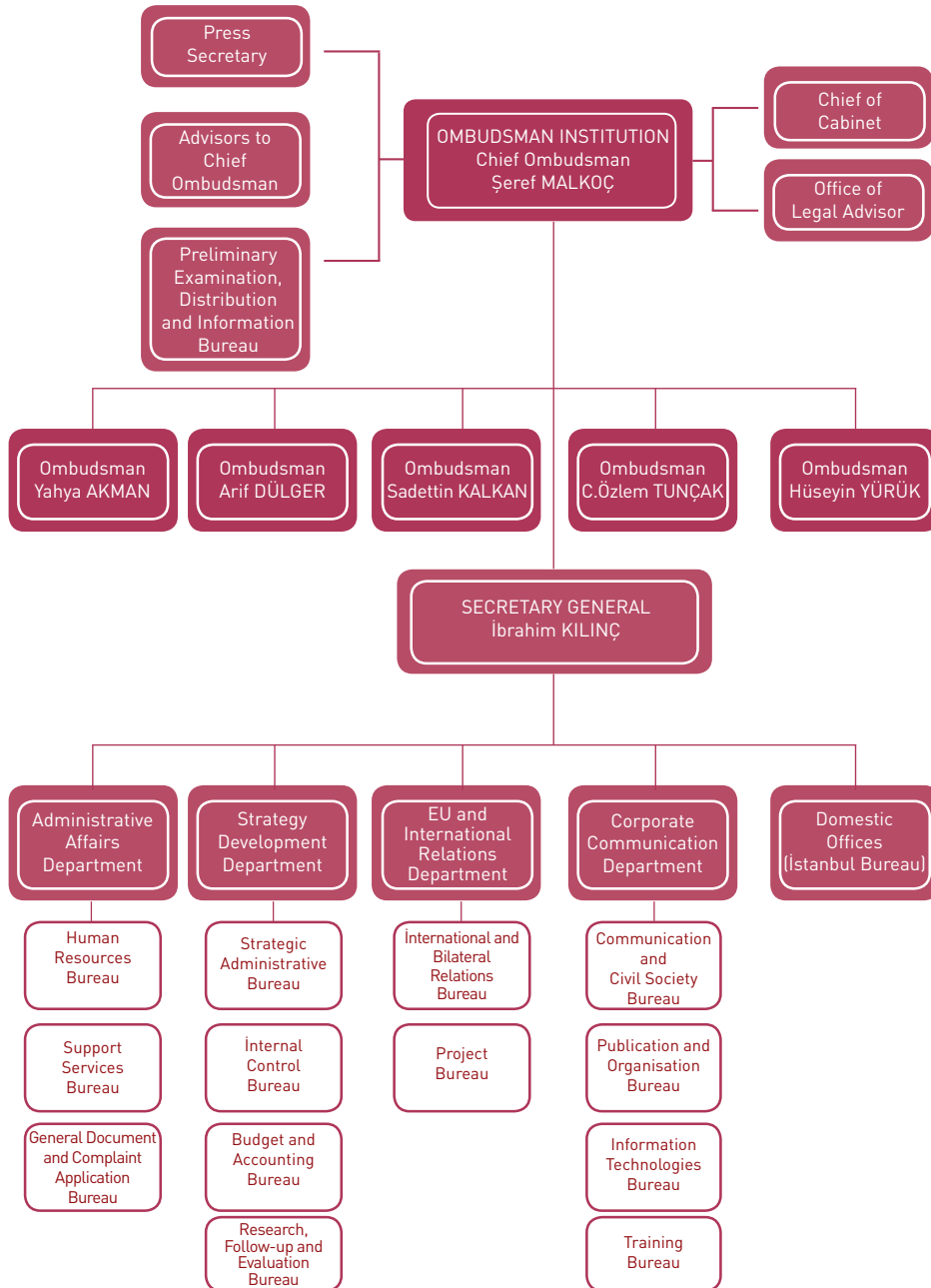
### Division of Work

The areas of responsibilities of the Ombudsmen are as follows:

<b>Ombudsman Mr. Yahya AKMAN</b>	<ul style="list-style-type: none"> <li>❑ Forestry, water, environment and urbanization</li> <li>❑ Right to property</li> <li>❑ Food, agriculture and livestock</li> <li>❑ Justice, national defense and security</li> <li>❑ Justice, national defense and security</li> <li>❑ Healthcare</li> </ul>
<b>Ombudsman Mr. Arif DÜLGER</b>	<ul style="list-style-type: none"> <li>❑ Education, youth and sports,</li> <li>❑ Energy, industry, customs and trade,</li> <li>❑ Science, art, culture and tourism</li> <li>❑ Population, Citizenship, Refugee and Asylum Rights</li> <li>❑ Issues related to the rights of employees working in the status of workers in the administration arising from the Labour Law and employment contracts</li> <li>❑ Other related subjects and areas</li> </ul>
<b>Ombudsman Mr. Sadettin KALKAN</b>	<ul style="list-style-type: none"> <li>❑ Public Personnel Regime</li> </ul>
<b>Ombudsman Ms. C. Özlem TUNÇAK</b>	<ul style="list-style-type: none"> <li>❑ Labor and Social Security</li> <li>❑ Disability Rights</li> <li>❑ Human Rights</li> <li>❑ Women's Rights</li> <li>❑ Children's Rights</li> <li>❑ Social Services</li> <li>❑ Protection of Family</li> </ul>
<b>Ombudsman Sn. Hüseyin YÜRÜK</b>	<ul style="list-style-type: none"> <li>❑ Transportation, Press and Communication</li> <li>❑ Services provided by local governments</li> <li>❑ Economy, Finance and Tax</li> </ul>

The Organizational chart of the Ombudsman Institution is as follows:

### ORGANIZATIONAL CHART OF OMBUDSMAN INSTITUTION OF TURKEY



## 2.3 HUMAN RESOURCES

As of 31 December 2019, the Ombudsman Institution comprises **273** staff including 153 permanent staff, 79 permanent workers, 2 contractual IT specialists, 27 temporary staff and 12 temporary workers.



## 2.4 TRAINING ACTIVITIES FOR THE STAFF

Training activities organized for the staff in 2019 are as follows:

- A Conversation on “Political and Legal Transformation of Turkey in 21<sup>st</sup> Century” (January 2019)
- A Conversation on “The Place of the Ombudsman Institution of Turkey in Society and Where Turkey Stands Now” (February 2019)
- A Conversation on “The Future of Turkish Democracy Depends on Institutions like Ombudsman Institutions” (March 2019)
- A Conversation on “Audit System” (April 2019)
- A Conversation on “Why is it difficult to make changes in Turkey” (June 2019)
- In-service Training Programme including “Motivation and Stress Management”, “A Conversation on the “Concepts of Rights and Rightness”, a workshop on “Decision making procedures and formats, identifying problems by the decisions of inadmissibility and referral and determining the steps to be taken” (March 2019)
- Training Programme on Children’s Rights for the Assistant Experts of the Ombudsman Institution (June 2019)
- First Aid Training (June 2019)
- Human Rights Training (September-October 2019)
- Occupational Health and Safety Training (November 2019)
- Vocational Trainings for Assistant Experts (2019)





## 2.5 INTERACTION WITH STAKEHOLDERS

The Institution actively assumes its role in effectively introducing the ways of seeking legal remedies and in strengthening the culture of rights in society. In this regard, the Institution not only aims at increasing the recognition of fundamental rights and freedoms by large segments of the society but also strives for introduction to the public of all ways of seeking legal remedies, particularly the right to apply to the Ombudsman. This will result in spreading the culture of seeking legal remedies in the society, and thus contribute positively to the introduction of the Ombudsman Institution. In addition, activities of the Ombudsman Institution towards spreading the culture of seeking legal remedies by offering the opportunity to apply free of charge and in an easy way also reduce the workload of the judiciary.

Based on the fact that the recognition level of the Ombudsman Institution is low, the activities which started in 2017 to make citizens familiarize with the Institution increasingly continued also in 2019 with addition of new activities.

In this regard, many activities have been carried out in 2019 including regional meetings to spread the culture of seeking legal remedies and to raise awareness, visits and information providing activities for the disadvantaged groups, presentations and conferences for the universities and academic field, general and specific workshops, more effective introductory publications to familiarize people with the Institution and culture of seeking legal remedies, constructive works to increase the frequency of appearing in the printed and visual media, and various activities to reach larger segments of society through social media. Some of these activities have been categorized as follows:

### 2.5.1 Relations with the Media



Our Institution attaches great importance to establishing good relations with the media with a view to introducing the Institution and increasing the efficiency of the Institution through receiving the support of public. To this end, the local and national press members are often invited to the workshops, conferences and meetings organized by our Institution. Also, upon invitation by press members, our Institution participates in the events organized by the press members.

In this regard, in 2019, the Chief Ombudsman Mr. Şeref Malkoç:

- has given **55** interviews/press statements for the national and international media.



- participated in live broadcasts on TV and radio **29** times.
- came together with the media representatives **485** times within the year.

In 2019, our Institution appeared in **22.123** news in printed and visual media such as newspapers, TV, and internet. The total number of media coverage of our Institution for the last three years has been **73.045**.

**Table 1:** Number of the news about the Ombudsman Institution in 2019

	2019
Newspaper	2.279
TV	1.395
Internet	18.449
<b>TOTAL</b>	<b>22.123</b>

### *Printed Media*

The most significant decisions regarding the applications which were of particular concern to the society were ensured to have widespread media coverage in order to contribute to the recognition of the Institution, its activities and decisions, and to get public support.

### *Social Media*

In 2019, the Institution continued its activities to be recognized and to raise awareness by way of its active social media accounts like Facebook, Twitter, YouTube and Instagram. In this regard, as of the end of 2019, the number of the followers of our Institution on Facebook have increased to **28.544**, to **1.515** on Instagram and to **8.744** on Twitter.

In addition, the social media accounts of “Ombudsman Institution for Children” have been activated. The activities carried out for the children are shared through these social media accounts.



### *Website of the Ombudsman Institution*

The website of the Institution was visited over 548.763 times in 2019.

<https://www.ombudsman.gov.tr/>

## 2.5.2 Institutional Meetings and Events

### 2<sup>nd</sup> Istanbul International Ombudsman Conference (18-19 November 2019)



The “2<sup>nd</sup> Istanbul International Ombudsman Conference” was held on 18-19 November 2019 under the theme **“Principles of Good Administration”** with the **purpose of obtaining information about the best practices in the world, exchanging experiences and reinforcing cooperation in the protection and development of human rights regarding the role of the Ombudsman in the Principles of Good Administration.**

The conference was attended by nearly 200 Ombudsmen and human rights advocates of 60 countries from 5 continents, including, *inter alia*, South Africa, Niger, Kenya, Malawi, Lithuania, Croatia, Italy, Bulgaria, China, Japan, Thailand, Korea, Vietnam, Kazakhstan, Russia, Mongolia, Kyrgyzstan and it was organised on 18 November 2019 at Dolmabahçe Palace with the participation of H.E. Mr. Recep Tayyip Erdoğan, President of Turkey. The conference, which started with the opening remarks of H.E. Mr. Recep Tayyip Erdoğan, continued with speeches by the Speaker of the Grand National Assembly of Turkey (GNAT), Mr. Mustafa Şentop, President of the Court of Cassation, Mr. İsmail Rüştü and Chief Ombudsman, Mr. Şeref Malkoç.

The 2-day-long International Ombudsman Conference, held under four sessions, was attended by the President of Religious Affairs, Mr. Ali Erbaş, President of the Petition Committee of the GNAT, Ms. Mihrimah Belma Satır, Ombudsmen Mr. Arif Dülger, Ms. Celile Özlem Tunçak, Mr. Hüseyin Yürük, Mr. Sadettin Kalkan, Mr. Yahya Akman, Secretary General, Mr. İbrahim Kılınç, public authorities and academics.

During the Conference,

- General Assembly Meeting of the Organisation of Islamic Cooperation Ombudsman Association (OICOA) was held and Chief Ombudsman of the Republic of Turkey, Mr. Şeref Malkoç was elected Chairman of the Board of Directors of the OICOA.

- 16<sup>th</sup> General Assembly of the Asian Ombudsman Association was held and the Ombudsman Institution of the Republic of Turkey was elected as a member of the Board of Directors of the Asian Ombudsman Association.
- A memorandum of understanding was signed between the Ombudsman Institution of Turkey and the Institution of Human Rights Ombudsman of Bosnia and Herzegovina in order to strengthen cooperation.



Also during the Conference, Chief Ombudsman, Mr. Şeref Malkoç had bilateral discussions and exchanged information with the Ombudsman of Ukraine, Human Rights Commissioner of Kazakhstan, the Chairman of the National Human Rights Commission of Bangladesh, the Vice Chairman of National Commission of Supervision of China, the Chairperson of the Korean Anti-Corruption and Civil Rights Commission, the President of the General Inspection Organisation of Iran and the Secretariats of Asian Ombudsman Association and Organisation of Islamic Cooperation Ombudsman Association.

### "Workshop on the Past, the Present and the Future of the Ombudsman" (14 February 2019)



*"Workshop on the Past, the Present and the Future of the Ombudsman"* was held on 14 February 2019 on the occasion of the sixth anniversary of the establishment of our Institution. Speaking at the opening ceremony of the "Workshop on the Past,

the Present and the Future of the Ombudsman” held at the parliament hall, Chief Ombudsman, Mr. Şeref Malkoç summarised the historical roots of the Ombudsman Institution as well as its constitutional basis noting that the Ombudsman Institution represents vulnerable groups such as children, women, the disabled and the elderly in terms of seeking legal remedies and justice. Mr. Malkoç also stated that the Ombudsman Institution has achieved much in a short time of six years and that the number of applications filed to the Institution has increased whereas the rate of compliance of administrations with the recommendations has increased to 70% from 20%, which demonstrates that there has been extraordinary progress.

### Workshop on Religious Education and İLİTAM (31 January 2019)



The Ombudsman Institution organised the “**Workshop on Religious Education and the License Completion Program of Theology (İLİTAM)**” on 31 January 2019 in order to promote the program İLİTAM, to facilitate its requirements and to make more people benefit from the program, as well as to facilitate decision making on complaint applications filed to the Institution regarding İLİTAM and religious education.

### Animal Rights Workshop (24 January 2019)



When the complaints received by our Institution were examined, it was understood that a righteous balance was required between the protection of human rights and animal-friendly people living in peace and security, and it has been understood that



the issue should be evaluated within a broader perspective in order to establish this balance. In this context, **“Animal Rights Workshop”** was held on 24 January 2019 to address the legal regulations on stray animals, solution practices and suggestions of local administrations regarding stray animals, animal shelters and animal rights protection strategies.

**Consultation Meeting of the Project titled "Technical Assistance for Empowerment of the Role of Ombudsman in the Protection and Promotion of Human Rights" (April 2019)**



A consultation meeting was held on 3 April as part of the project “Technical Assistance for Empowerment of the Role of Ombudsman in the Protection and Promotion of Human Rights” jointly carried out by the European Union and our Institution.

The role of the Ombudsman Institution in terms of protecting and promoting human rights was discussed, suggestions and requests about essential matters were expressed.

**Introductory Meeting for the Strategy on the Rights of the Child (April 2019)**



The introductory meeting for the **“Strategy on the Rights of the Child”**, covering the period of 2018-2023 prepared by the Ombudsman Institution and the United Nations Children’s Fund (UNICEF), was held with the purpose of improving the handling of child-related cases and internal practices, raising social awareness on the rights of the child and including the rights of the child in the work of the Ombudsman Institution.

### Human Rights Day Events (December 2019)

A panel was held on Wednesday, December 11, 2019, on the occasion of December 10, Human Rights Day. Member Judge of the Constitutional Court, Prof. Dr. Yunus Şevki Hakyemez, Deputy Dean of the Faculty of Law at Atılım University, Ms. Çiğdem Sever and Member of the Council of State Dr. Selami Demirkol attended the panel.



### “Training Program on Seeking Legal Remedies and Ombudsman Institution” for Youth and Children (11-20 December 2019)



Within the scope of our Institution’s work on the Rights of the Child, training programs under the theme “**Seeking Legal Remedies and Ombudsman Institutions**” were organised for university, high school and middle school students between 11 December and 20 December 2019, and the training program was applied to three separate groups at two hotels.

### 2.5.3 Relations with Public Institutions and CSOs

Our Institution was established as an independent and efficient complaint handling mechanism in the functioning of public services in order to examine, investigate all kinds of actions, procedures and conduct of the administration and make suggestions in terms of compliance with law and equity with an understanding of justice based on human rights.

**As well as being responsible for safeguarding the rights and freedoms of individuals against the administration, our Institution is also responsible for providing guidance to public officials, raising the standard of quality of public services and working to contribute to internalising the principles of good administration in Turkey.**

In this context, the Ombudsman Institution performs positive functions on behalf of both citizens and public institutions. It acts not only as a tool ensuring that public institutions deliver timely, fair and quality services for the citizen but also performing the function of verifying the legitimacy of the service delivered by public institutions.

Furthermore, **Civil Society Organisations**, which have an independent structure and are the spokesperson for the public in the face of public administration within the scope of the political, social, cultural, legal and environmental objectives of the citizen **by undertaking social responsibilities voluntarily for the sake of their members**, play an active role in fulfilling the natural function of the Ombudsman.

In this context, the **level of communication and cooperation with administrations and civil society organisations**, which are the primary stakeholders of our Institution and are the servers of the justice/legislation/rights, is of great importance in preventing violations of rights, promoting the culture of seeking legal remedies and achieving the goal of good administration in the public eye. Some of the activities carried out in 2019 in this sense are listed below.

- Ombudsman-Citizens Meetings and Visits to Administrations and CSOs during Provincial Working Visits
- Communication and Cooperation Meetings with Public Institutions
- Communication and Cooperation Activities/Visits with CSOs

## 2.6 AWARENESS RAISING ACTIVITIES

Many events and activities such as symposiums, conferences, regional and communication meetings, panels, workshops, etc. were carried out throughout the year through written, visual and social media channels in order to ensure that our Institution is seen as a dispute resolution mechanism in eliminating the problems with administrations experienced by real persons, and in order to receive the requests of citizens in the most precise way.

### Ombudsman-Citizens Meetings and Provincial Working Visits

In order to make the Ombudsman Institution become more functional as it works to improve the standards of quality service of the administration by promoting the culture of seeking legal remedies among citizens, regional meetings and provincial working meetings under the theme “**Ombudsman Meets the Public**” were held in 68 provinces including Trabzon, Bursa, Eskişehir, Şanlıurfa, Konya, İzmir, Gaziantep, Ordu, Erzurum, Antalya, Van, Kayseri, Kars, Şırnak, Bilecik, Manisa, Aydın and Denizli. These activities are quite important in terms of making the Institution’s role on bureaucracy and social life better understood and establishing a common understanding between the citizen and the Institution.

These meetings serve the purpose of seeing the functioning of the public services on the spot, ensuring cooperation between CSOs and public institutions and organisations, contributing to the development of the culture of seeking legal remedies, and providing

information to the participants during provincial visits on the concept of Ombudsman, the functioning and works of the Ombudsman Institution and raising awareness by finding solutions to the problems of people living in those provinces by listening to their complaints.

### Meetings with Elementary and High School Students

Our Institution also receives applications from children. In this context, many activities carried out in 2018 in order to increase the recognition of our Institution among primary and secondary school students and to promote the culture of seeking legal remedies increasingly continued also in 2019.

### Competition on Principles of Good Administration among High Schools in İstanbul

In 2019, The Ombudsman Institution continued its efforts to promote the culture of seeking legal remedies among the youth and to teach them the ways of seeking legal remedies. Therefore, in cooperation with the İstanbul Provincial Directorate of National Education, our Institution organised a short movie, essay, poster and painting competition under the theme “**Principles of Good Administration in Public Services**” among all high school students in İstanbul.



*Photo: Award Ceremony for the Competition on Principles of Good Administration among High Schools in İstanbul*



## Meetings with University Students

In 2019, as the Ombudsman Institution, we attached particular importance to universities. There are 206 universities and over 7.5 million university students in our country. Cooperation with universities, law faculties in particular, has been further enhanced and the establishment of Ombudsman Student Clubs at universities has been encouraged in order to contribute to the development of the culture of seeking legal remedies among university students and academics and to introduce our Institution to them. Currently, there are **Ombudsman Student Clubs at 100 universities**. These student clubs will both introduce the



Ombudsman to university students and the academic community and contribute to the development of the culture of seeking legal remedies at universities. In this context, the 2<sup>nd</sup> Ombudsman Student Clubs Congress, the first of which was held on 15-16 October 2018, **was held in Ankara on 21-22 October**.

Moreover, protocols are signed between our Institution and universities on “**Cooperation for the purpose of Conducting Education and Scientific Studies**”. Thanks to these protocols, cooperation with universities, particularly with law faculties, is increased and joint studies are planned in order to improve the functioning of the institution in terms of handling complaints and to contribute to a more effective resolution. Also, clinical studies and applied internship programs are carried out with students.

In addition, many university campuses were visited and conferences were held in order to increase the recognition of the Ombudsman Institution among university students and speeches were made during the opening ceremonies of the academic year of universities. Students, who visited our Institution, were informed about our Institution, its functioning and areas of responsibility. Also, within the scope of regional Ombudsman meetings and provincial working visits, conferences were held at the universities located in those provinces.



# CHAPTER

# III

# 2019

## ANNUAL REPORT

### **THE THEME OF 2019: GOOD ADMINISTRATION PRINCIPLES AND OMBUDSMAN**

Manual on Good  
Administration Principles

Good Administration  
Principles and Case Studies

2<sup>nd</sup> Istanbul International  
Ombudsman Conference  
on the Theme of Good  
Administration Principles and  
Ombudsman

## **The Concept of Good Administration and The Role of the Ombudsman Institution regarding the Principles of Good Administration**

The concept of good administration has a large area of use falling within the scope of many disciplines such as public administration, political science, business administration and law and adopted by the public, private and civil society sectors with its different aspects. Started to be used as legal audit standard towards the end of 1990s, the concept of good administration refers, in the most general sense, to compliance with specific procedures, principles and norms in order to carry out a certain activity.

The concept of good administration has been recognised only recently as a right as well as an administrative and legal audit standard. However, it can be stated that the intellectual and historical foundations of the good administration are as old as the emergence of the concepts of power and administration. A report prepared by the Venice Commission states that the “good administration was expressed by Aristotle as the following: “Moral responsibility was viewed as originating with the moral agent as decision-maker.”

In history, some principles and rules of good administration are found in the times of Sumerians, Ancient Egypt, Persian Empires, Ancient China and India, Greek and Roman civilizations, even civilizations of Aztec, Inca and Maya. Therefore, the basis of many of the principles and rules discussed in the context of good administration dates to pre-modern state era. In particular, a regime in conformity with such principles as lawfulness, equality, impartiality and honesty was demanded by those who were ruled by the public administration and voiced by the political philosophers.

The proliferation of the Ombudsman Institutions and particularly the efforts of the European Ombudsman, which started its operations in 1995, to regulate the good administrative behaviours for the EU Institutions, made the principles of the good administration possible to be developed as a legal and administrative auditing standard.

After the Ombudsman Institution of Turkey started to receive applications for complaints, a new era started in Turkey, in which the principles of good administration would be referred to as the legal and administrative auditing standards.

A number of positive developments have been recorded in the field of good administration in the recent years both in Turkey and across the World. With a view to adoption of the understanding of the good administration, rules have been established in many legal texts, new institutions have been established, and existing institutions have been restructured in line with the new developments.

As per the Law on the Ombudsman No. 6328, the Ombudsman Institution, which is a constitutional public entity, is in charge of examining, investigating, and submitting recommendations concerning all sorts of acts and actions as well as attitudes and behaviours of the administration within the framework of an understanding of human

rights-based justice and legality and conformity with principles of fairness, through creating an independent and effective mechanism of complaint concerning the public services.

It has been targeted, with the establishment of the Ombudsman Institution, to resolve the disputes arising between the administration and individuals in an effective and timely manner through an independent mechanism.

Excluding the exceptions prescribed by the Law, all kinds of acts and actions as well as attitudes and behaviours of the administration fall within the remit of the Institution.

Article 125 of the Constitution lays down that recourse to judicial review shall be available against all actions and acts of administration and that judicial power is limited to the review of the legality of administrative actions and acts. In other words, administrative judicial review is limited to legality review. However, the Ombudsman Institution has the authority to examine the acts and actions as well as attitudes and behaviours of the administration in conformity with principles of fairness.

Article 6 of the By-Law on the Procedures and Principles regarding the Implementation of the Law on Ombudsman Institution provides that while conducting examinations and investigations, the Institution shall comply with the principles of good administration and monitor whether the acts and actions of the administration are fulfilled with an understanding of human rights based justice and in conformity with the principles of good administration such as lawfulness, absence of discrimination, proportionality, absence of abuse of power, equality, impartiality, honesty, courtesy, transparency, accountability, compliance with the fair expectation, protection of vested rights, right to be heard and to make statements, right to information, reasonable time limit for taking decisions, duty to state grounds of decisions, indication of appeal possibilities, notification of the decision without delay and data protection.

### 3.1 MANUAL ON GOOD ADMINISTRATION PRINCIPLES

Considering restructuring works of public institutions, especially following the 2000s, with the legal arrangements, important developments have taken place in Turkey in terms of ensuring good administration. The aim of these developments is to contribute to quality service provision to the citizens and formation of a transparent and accountable administration.

The Ombudsman Institution has been authorized and obliged to examine the acts and actions as well as attitudes and behaviours of the administration in order to identify to what extent these aims are achieved. As a result of these examinations, the Institution guides the administration, also by emphasising the principles of good administration, to establish good administration. Therefore, in 2019, a Manual on Good Administration Principles was prepared both in Turkish and English. With this Manual, it is aimed to guide the administrations regarding the provision of the public services with a view to truly establishing the understanding of a “citizen-friendly” administration.



### 3.2 GOOD ADMINISTRATION PRINCIPLES AND CASE STUDIES

The Ombudsman Institution examines the applications related to the functioning of the administration both in terms of compliance with the law and fairness and in terms of compliance with the principles of good administration. The examination of the institution is conducted in conformity with the principles of good administration and the Institution pays regard to the principles included in Article 6 titled “Principles of Good Administration” of the By-Law on the Procedures and Principles regarding the Implementation of the Ombudsman Institution Law, which entered into force after being published in the official gazette dated 28.03.2013 and No. 28601. The above-mentioned principles are:

- |   |   |
|---|---|
| 01 Lawfulness                             | 10 Protection of Vested Rights and Compliance with Legitimate Expectation |
| 02 Equality and Absence of Discrimination | 11 Right to Be Heard and to Make Statements                               |
| 03 Proportionality                        | 12 Right to Information   |
| 04 Absence of Abuse of Power              | 13 Reasonable Time Limit for Taking Decisions                             |
| 05 Impartiality                           | 14 Duty to State the Grounds of Decisions                                 |
| 06 Honesty                                | 15 Indication of Appeal Possibilities                                     |
| 07 Courtesy                               | 16 Notification of the Decision Without Delay                             |
| 08 Transparency                           | 17 Protection of Personal Data  |
| 09 Accountability                         |   |

## LAWFULNESS

In the broadest sense, the administration's compliance with the laws means that the administration shall establish procedures that are in compliance with the generally recognised principles of universal law, the rules of Constitution, international law, Presidential decrees, regulatory procedures and fairness.

This principle requires the establishment, functioning, duties and powers of the administration and the use of these duties and powers to be in compliance with the law.

The principle of lawfulness involves requirements such as the following:

- All aspects of the administration shall be based on the relevant laws, particularly the Constitution, and Presidential decrees and other regulatory procedures;
- The administration shall ensure fairness while enforcing a law and using discretionary power;
- The administration is obliged to perform the tasks that are assigned to it and enforce laws;
- Public officials are obliged not to follow unlawful orders;
- The regulatory procedures of the administration shall be in compliance with higher legal norms;
- Fundamental rights and freedoms shall only be limited within the scope of the law and Constitutional framework without prejudice to essence of rights;

### *Case Study*

During its examinations and investigations, the Ombudsman Institution does not only refer to the principle of lawfulness as a compliance with the Constitution, laws or international conventions, but also considers that this principle covers generally accepted principles of law and compliance with the rules of legality and the Institution makes its decisions accordingly. The Ombudsman Institution has many decisions in this regard.

In the Decision of the Ombudsman Institution dated 05/10/2018 on the application no. 2018/4274, it was stated that the applicant was a computer manager in the Maritime Faculty in Istanbul Technical University, that the applicant had a daughter with 94% disability, who was 10 years old, that the applicant wanted to be assigned to Dr. Lütfi Kırdar Training and Research Hospital which was close to her residential address to be able to go to the school where her daughter studied to intervene in case of emergency; however, the Ministry of Health rejected this request on the grounds that appointment



by transfer to another institution was subject to drawing, and the applicant requested being appointed due to the disability of her daughter.

As a result of the examination and investigation conducted by the Institution, it was found out that although the applicant did not have any disability, her child was a person with %94 disability, which required her mother's care, affection and attention, that the school convenient for her daughter was close to the institution that the applicant wanted to be appointed to, that the applicant had another child, who was also a student. Taking into account that the child had a situation requiring regular treatments and that the daughter could need immediate intervention during an emergency and considering the best interests of the child in the face of her disability based on the principle of legality, it was evaluated that the request of the applicant for appointment to Kartal Dr. Lütfi Kırdar Training and Research Hospital, which she preferred in order to be close to her residential place and school of the daughter with disability, should be met by force of being a social state.

As per Article 74 of the Law on Public Servants No. 657, which includes provisions on the inter-institutional transfer of the public servants and considering the provisions on the persons with disabilities, it was concluded that the request must be accepted and the Ministry of Health was recommended to re-evaluate its decision on the request for inter-institutional transfer due to the disability of the applicant's daughter within the framework legality.

## **EQUALITY AND ABSENCE OF DISCRIMINATION**

The principle of equality means that those who are going through the same legal situation must be subject to the same provisions. The principle of equality requires that the administration offer public services equally to those whose legal status is the same and not make any distinction.

This principle means that the administration should

- Treat those in the same situation the same way,
- Take measures where necessary to ensure equality,
- Give equal treatment while providing public services and prohibit discrimination,
- Prevent the formation of privileged individuals and communities by applying different practices to those in the same situation

### **Case Study**

It is stated in the decision of the 8<sup>th</sup> Chamber of the Council of State dated 18.04.2016 and No. E.2014/4582, K. 2016/3856 that the case where the plaintiffs did not give



additional time and a separate question booklet to dyslectic students constitutes a violation of the principle of equality, the social state principle, which obliges all measures to be taken for the educational rights of the disabled, and the equal opportunity principle.

When the arrangements included in the mentioned Manual and the practices of the administrations were examined in this regard, it was understood that detailed arrangements were made in the Manual in order to prevent the difficulties that students with disabilities, who take the transition to higher education examination, may experience in their access to the exam by treating them as a disadvantaged group. It was comprehended that when disabled individuals submitted information or a document that proved their situation within the principles of the prohibition of discrimination and equal opportunity, with which the administration must be in compliance, various foreseen measures in accordance with the type and level of disability were implemented and that dyslexic students took the exam in a room individually and an exam method that was exclusive for them, in which they were provided with the help of a reader and marker, was implemented.

Therefore, as it is understood that the duty imposed on the administrations by the legislation to prevent discrimination in disabled people's access to education and to take the necessary positive measures has been fulfilled by the defendant administrations; accordingly, the individual proceeding, which is the matter in dispute, and the Manual are not considered unlawful.

## PROPORTIONALITY

The principle of proportionality means that the methods and tools chosen by the administration to achieve a legally-protected purpose are necessary, proportionate and convenient. The principle of proportionality requires that the fair balance between the interest of private persons and general public interest is maintained in the procedures conducted by the administration.

This principle is based on:

- Convenience, which is a sub-element of the principle of proportionality and means that the method used to restrict the fundamental rights and freedoms is “convenient” for realising the purpose;
- “Necessity”, which is another sub-element of the principle of proportionality and means that among the several methods to achieve a purpose, the administration should choose the one that restricts the rights and freedoms of individuals the least and choose the lightest measure that would negatively affect their interest;
- “Proportionality”, which means to ensure that a fair balance is maintained between the intervention and the intended purpose/ benefit,

- Harmonising the public interest, which is the purpose of all activities of the administration, in line with the personal interests of natural and legal persons to a certain extent and thus achieving a fair and lawful outcome,
- The requirement that the administration pay attention to the purpose, scope and limitations of the regulation on which it is based in its activities as well as being fair and conscientious.

### **Case Study**

The Decision of the Ombudsman Institution dated 28/04/2017 and application no. 2017/2171. The applicants applied to our Institution for not having been admitted to the exam premises and not having been allowed in the building on 12/03/2017 with the justification that they were late according to the exam rules determined by the Centre for Assessment, Selection and Placement, stipulating that “Admission of the candidates in the building shall be completed 15 minutes before the start of the exam. Candidates shall not be admitted to the exam premises after 09.45 a.m.”. The applicants demanded a relief for their aggrievement from the Ombudsman Institution.

As a result of the evaluation made based on the principle of proportionality, the Institution came to the conclusion that the rule of having to be present in front of the exam building 15 minutes before the start of the exam was “convenient” in terms of meeting the aims of the administration; however, the sanction that candidates who are present in front of the building between 9.45 and 10.00 “shall not enter the exam building” did not provide the elements of “necessity” and “proportionality” and that the intervention on the right to education through an administrative sanction was not proportionate; therefore, this sanction was unlawful and unfair.

The administration was recommended to help the applicants, who were aggrieved because of not being allowed in the exam building although they were present before the start of the exam, by reconsidering the rule of being present in front of the exam building 15 minutes before the start of the exam and to act proportionately in the event that similar radical decisions are made for future exams and to thoroughly inform the candidates and their families through the means of communications and media.

### **THE ABSENCE OF ABUSE OF POWER**

The absence of abuse of power means that powers granted with the decision-making authority must be exercised solely for the purposes for which they have been conferred by law, in accordance with the public interest and public service requirements and without any personal, political or similar motivations.

This principle stimulates the following:

- The administration shall use its powers for the purposes for which they have been conferred upon by law;

- Using the powers granted to ensure public benefit and to provide public order shall not be discretionary;
- Powers shall be exercised in order to provide public benefit and ensure general public interest

### **Case Study**

In the Decision dated 27/12/2007 and numbered 2007/939 E., 2007/939 K. of the Plenary Session of Administrative Law Chambers, it was requested to annul the privatisation proceeding of Petkim Petrokimya Holding A. Ş . (PETKİM) through the sales of 51% of its public shares.

As a result of the examination conducted, it was emphasized that all the administrative acts must be motivated undisputedly by public benefits, that the administration must not have any motives that would derive personal or political benefits or benefits to the third parties, must not deviate from its powers with a view to obtaining financial interests, must consider “overriding public benefits” in case of conflicts concerning more than one public benefits; accordingly, the administrative act must be proceeded considering all kinds of benefits and all sorts of prejudices to be resulted from the act after the judicial audit of its purposes and if a specific purpose was laid down in the law, the act must serve to the purpose in question.

### **IMPARTIALITY**

The principle of impartiality refers to the objective provision of the services by the administration or public officials regardless of identity, beliefs, thoughts and similar characteristics of persons or groups.

The requirements of this principle are as follows:

- The administration should prohibit discrimination and ensure non-privileged and equal treatment,
- Public officials should act independently of personal, family and similar interests.
- The official should not take part in a decision and process in which he or she, or any close member of his or her family has an interest.

### **Case Study**

In the Decision of the 12th Chamber of the Council of State dated 12/06/2014 and numbered E.2014/3085, K.2014/4911, it was understood that an investigation was launched against the plaintiff on the grounds that he had not come to work, and the investigator, who was the disciplinary supervisor of the plaintiff, gave the plaintiff

warning punishment. As per Article 21/1 of the Regulation on Disciplinary Boards and Disciplinary Supervisors, the disciplinary supervisors are capable of conducting disciplinary investigations. Nevertheless, it was found out that allowing the investigator, who was already assigned to carrying out a disciplinary investigation concerning the alleged offence of the public official, to give punishment in the capacity of disciplinary supervisor contradicted with the principles of objectivity and impartiality. It was concluded that the punishment given through the breach of the principles of objectivity and impartiality was unlawful considering the fact that the plaintiff's manager – also the disciplinary supervisor– had personally conducted the disciplinary investigation, prepared the official report by taking the testimony of the witnesses, took the plaintiff's statement and gave the disciplinary punishment after making the legal assessment on the alleged offence.

## HONESTY

Honesty is a principle providing that all public servants should be correct and reliable in all their acts and actions and avoid behaviours that will mislead or do harm to those benefitting from public services.

The requirements of this principle are as follows:

- Public servants should tell their interlocutors the truth and guide them correctly;
- Public officials should avoid behaviours that may obscure the trust of the individuals in the state;
- The administration should not act in a manner that may harm the notion that it is honest with the public.

### Case Study

In the Decision dated 04/03/2019 of the Ombudsman Institution on the application no. 2018/11319, the applicant claimed that the death of the applicant's mother was caused by an erroneous intervention of the doctor and requested necessary administrative and criminal actions against the doctor.

As a result of the examination carried out by the Ombudsman Institution, it was identified that it would be perceived that no investigation was made on the case as the one who was assigned to the role of investigator for the complaints was a colleague of the subject doctor in the same hospital; the investigator who worked in the same hospital would not reveal the faults of the hospital he worked in and his colleague and it would cause the concerned persons to think that the relevant investigation was not objective; and it would undermine the credibility of the establishment of the Law and justice; as a result, it was evaluated that investigation on the doctor complained against was contrary to the principle of honesty.

## COURTESY

Courtesy is a principle which requires public officials to behave in respectful manner in relations with each other and citizens; be polite, helpful, cooperative and timely and understand the problems of the citizens and make genuine efforts to produce solutions.

This principle refers to following courses of action:

- All sorts of acts, behaviours and behaviours of the public officials should be respectful and courteous;
- The administration should act based on citizen-oriented approach, understand the problems expressed by the individuals and guide them appropriately;
- If a mistake occurs which negatively affects the rights or interests of a member of the public, the official shall apologise for it and endeavour to correct the negative effects resulting from his or her mistake in the most expedient way.

### Case Study

In the Decision dated 29/11/2014 of the Ombudsman Institution on the application no. 2014/2608, it was stated that the applicant claimed that his/her son, who had a disability, was deprived of the right to special education and requested relief.

Although it was evaluated after the examination of the case that no unfair treatment was in question on the decision of referring the son in question to a Public Training Centre with a view to ensuring that he would gain cognitive, daily, social and professional skills, the expression on the subject complaint that “Directing handicapped individual, who was excluded from compulsory education, to Public Training Centre with a view to building his cognitive, daily social and professional skills” attracted notice. As using the expression “person with disabilities” instead of the word “handicapped” was required by the principle of courtesy, the fact that more diligence was expected in this regard was emphasised on the section of the Decision titled “Evaluation in Terms of the Principles of Good Administration”.

## TRANSPARENCY

The principle of transparency refers to the administration’s fulfilment of its duty to give information in systematic, easy, prompt and accessible manners to ensure the access of natural and legal persons to information.

The principle of transparency requires diligence on the below points:

- Right of access to information of natural and legal persons should be secured by law;

- Activities and activity results of the administration should be public;
- The participation of those benefitting from services in decision-making processes of the administration should be ensured and citizens' opinions should be requested on the functioning the public services;
- All kinds of regulations and procedures regarding the functioning of the administration should be open and easily accessible to the public.

### **Case Study**

In the Decision of the Ombudsman Institution dated 21/02/2019 on the application no. 2018/10841; it was stated that the applicant requested the removal of the annotation "Pavement and Sewage Debt" affixed to the records dated 04/05/1971 roll no. 184.

At the end of the investigation carried by the Institution it was identified that, following the justification of "no documents were found relating to the payment", the administrative action of demanding a receivable dating back to 47 years contradicted the principles of "certainty" and "security of Law" which are the principles of a State governed by the rule of law; in addition, it contradicted the principles of transparency and duty to state the grounds of decisions as well, since the documents which were subject to the dispute were not eligible for examination.

Accordingly, it was decided to give recommendation to the administration in question to launch actions after conducting the necessary examinations for the issue subject to the application.

### **ACCOUNTABILITY**

The principle of accountability refers to the administration's accounting to its superiors or the general public for all sorts of acts and actions as well as attitudes and behaviours while fulfilling its duties and responsibilities.

The principle of accountability stipulates the following:

- The obligation to make an explanation and provide information, and right to be accounted to for the activities carried out;
- Responsibility of the ones who were assigned resources and authorizations to justify how efficient they used these resources or authorizations;
- In the relations between the State and individuals, building up trust in the state administration, forming an auditing mechanism to welcome public scrutiny of conduct and increasing the efficiency in the administration;
- Obligation of the administrators to take necessary measures to prevent acts and actions which are not in conformity with the law, and purpose and policies of the institutions.

### Case Study

In the Decision dated 15/04/2019 of the Ombudsman Institution on the application no. 2018/13984, the applicant stated that the road in the vicinity of Varandiko in Taflancık Neighbourhood in Hayrat District in Trabzon Province was a single-lane road and as the road was rough, vehicles could not be sent for the transfer of fresh tea leaves in the storehouse of General Directorate of Tea Enterprises (ÇAYKUR) during the evening hours, and the fact that ambulance could not arrive at the scene in the emergency situations caused serious problems, 2-3 kilometre-long part of the road must be immediately treated and as the Municipality of Hayrat was financially limited, it could not launch roadworks, and requested the relief of this victimisation.

As a result of the examination conducted by the Ombudsman Institution, it was found out that the date when the construction of the road would be commenced was evaluated based on the effective use of public resources and discretionary power of the administration; however, the postponement of the works for an indefinite time period even without setting a time frame or deadline for the roadworks was contrary to the principles of accountability, predictability and clarity and it was concluded that the administration, while providing public services, must act in line with such principles as “accountability”, “predictability” and “clarity” and in accordance with a specific plan and programme.

### PROTECTION OF VESTED RIGHTS

Protection of vested rights refers to the obligation to protect the rights, which have been vested lawfully in accordance with the legislation in effect, even if the rule is amended or abolished later. Therefore, based on the situations in compliance with the law, vested rights yield both retroactive and prospective rights for those concerned.

As for the compliance with the fair expectation, there is no right in question which has been vested in accordance with the legislation in effect. However, those concerned have a prediction or an expectation that they will be granted with the rights based on the provisions in effect. Accordingly, compliance with the fair expectation refers to the protection of those who hope to reach a conclusion in favour of themselves relying on the regulatory procedures, commitments, or long-established practices of the administration.

The principles of protection of vested rights and compliance with the fair expectation stipulate the following:

- Protection of rights originating in conformity with the legislation in effect both prospectively and retroactively;
- Not taking retroactive measures except in legally justified circumstances and not interfering with vested rights through subsequent amendments.



- Protection of fair expectations of the individuals in order to ensure legal certainty in the event that long-lasting practices and arrangements are amended or abolished

### **Case Study**

In the Decision dated 07/02/2008 and numbered 2005/38 E., 2008/53 K. of the Constitutional Court, it was stated that the principle of the protection of vested rights was among the general principles of the law, that this right referred to the protection of the subjective rights vested in the individuals arising from the objective rules of the law eligible for granting rights generally in the field of private law and public law, that a right shall be vested only if acquired with all its consequences de facto in accordance with the rules in effect as per the previous law, and it was ruled that a vested right was a right arisen from the status of the person, finalised by his party and transformed into a right of personal nature.

On the other hand, in the Decision of the Constitutional Court dated 04/05/2017 and numbered 2015/41 E., 2017/98 K., it was stated that if an unpredictable amendment in a law, which was in favour of and relied on by the persons, was made and if this situation caused a situation expected objectively by every person to remain inconclusive, the principle of the protection of fair expectation would come to the fore; however, the mentioned conditions were not sufficient in order to protect a fair expectation by law. It was also added that there should not be a public benefit that hindered the protection of this expectation, i.e., when the public benefits and personal benefits are both in question and in conflict, only in the absence of an important public benefit, the fair expectation may be deemed to be protected.

### **RIGHT TO BE HEARD AND RIGHT TO MAKE STATEMENTS**

Right to be heard and right to make statements are the principles that enable those concerned to submit all kinds of information and documents before the completion of a proceeding the consequences of which they will bear, that allow them to express their opinions regarding the issue and which, accordingly, secure the participation of the concerned individuals.

Above-mentioned principles stipulate the following:

- Acting on accurate data and respecting the requests of those concerned while taking an action;
- Ensuring the effective participation of the individuals in decisions which will affect them.

### Case Study

In the Decision of the 12th Chamber of the Council of State dated 02/02/2017 and numbered 2016/8889 E., 2017/127 K., it was stated that an action was brought before the court by the plaintiff, who was the deputy manager in Bakırköy Trade Vocational High School, in order to annul the decision of the High Disciplinary Board regarding “his dismissal from the civil service”.

As a result of the evaluation of the case, it was stated that in order to impose a sanction such as dismissal from civil service, it was a legal obligation that the competent authority make sure that the subject public official knows the claims on himself, the evidences on which the claim are based, legal nature of the accusations and the proposed disciplinary sanction, and allow for making statements of defence; accordingly, the subject official, about whom the decision of dismissal was proposed by the High Disciplinary Board, must be granted the right of defence; it was found that the sanction was imposed on the plaintiff, who was proven guilty as charged, without hearing his self-defence. It was concluded that the ruling of the court was not lawful considering the action of the High Disciplinary Board, which left out and ignored the final defence of the plaintiff, on whom the decision of the dismissal from civil service was made.

### RIGHT TO INFORMATION

Right to information is a right that enables individual, whether the matter is directly related to them or not, to request and obtain the information available on the side of the administration. In this sense, this principle has an important position in the establishment of a confidential relation between individuals and the State and ensuring the transparency of the administration.

Right to information is a precondition of the right to legal remedies, and accordingly, the principle of State of law as well as a requirement for transparency and accountability.

This principle emphasizes the following elements:

- Right to information of the individuals and duty of notification of the administration,
- Administration's obligation to provide all kinds of information and documents for the use of the applicants excluding the exceptions specified in legal arrangements,
- Providing the relevant information in due of time and without delay.

### Case Study

In the Decision of the European Court of Human Rights no. 37374/04 dated 14/04/2019 concerning a request by the Társaság a Szabadságjogokért/Hungary

(Hungarian Civil Liberties Union - TASZ), the Court made it clear that when public bodies implement measures that prevent the information of the general public in the fields concerning the general public, more careful scrutiny of the case as per Article 10 of the European Convention of Human Rights would be carried out and that the function of the press was not limited to the media or professional journalists.

The Court found that the decision of refusal on the request of information formed a monopoly of information and such administrative obstacle was a violation of Article 10 of the Convention. The Court pointed out that the ‘right to information’ was more widely interpreted and it concluded that the interference with the applicant’s rights was a violation of the right to freedom of expression guaranteed under Article 10 of the Convention on the grounds that it might cause deterrence from the matters concerning the general public and entities of vital importance.

### **REASONABLE TIME LIMIT FOR TAKING DECISIONS**

Conclusion of an application to the administration by individuals within an admissible time frame taking sui generis aspect of the application means reasonable time limit for taking decisions. As the determination of such a time frame individually for every application is difficult, it is important to conclude every proceeding within the shortest period of time possible by considering the characteristics of each of the applications.

The principle of reasonable time limit for taking decisions include the following:

- Compliance with the deadlines set for the applications to be concluded in the legal arrangements,
- In the event that a time limit for taking decisions is not specified, completion of the process as quickly as possible according to the characteristics of the application,
- Non-extension of the time for taking decisions deliberately, arbitrarily or negligently.

### **Case Study**

In the Decision dated 22/12/1993 and numbered 1993/2193 E., 1993/4343 K. of the 8th Chamber of the Council of State, it was stated that a lawsuit was filed by the plaintiff, who was a graduate student in the master programme of the Legal Structure of the European Community, with a view to annulling the decision dated 13/08/1991 no.84 of the Board of Directors on the withdrawal of the proceeding dated 09/10/1990 and no.72 on the lateral transfer of the Plaintiff to the Department of the Private Law as the Department Head of the Private Law did not accept the transfer.

As a result of the evaluation of the case, it was stated that administrative proceedings could be withdrawn in the event that they were against the Law; the withdrawal proceedings must be carried out in a reasonable time frame and *ex aequo et bono* if possible; and concluded that there was no compliance with laws in the withdrawal of the proceeding on the lateral transfer of the plaintiff without any justification provided by the administration after the student succeeded in all the courses required by the programme in question in the first year.

## **DUTY TO STATE THE GROUNDS OF DECISIONS**

The principle of duty to state the grounds of decisions refers to the indication of the reasoning of the administrative proceedings in the relative texts. In other words, this principle means that the administration should state that its activities are not arbitrary and have legal and tangible basis.

This principle requires the following:

- Ensuring that the person concerned clearly understands why such a decision has been taken,
- Explaining the reasons of the administrative actions concerning the rights and freedoms of the individuals in an understandable manner.
- Not including the reasons which do not exist indeed in the grounds statement.
- Explaining that the action is not arbitrary by indicating especially legal basis and concrete reasons therefor in the decision text.

### **Case Study**

In the Decision of 10th Chamber of the Council of State dated 10/11/1994 and numbered 1993/1403 E., 1994/5633 K., it was stated that an action was brought before the court with the request of annulment of the defendant's administrative act regarding the rejection of the request for the issuance of a yellow press card and the cancellation of certain articles of the Press Cards Regulation.

As a result of the evaluation of the case, it was found that the principle of the duty to state the grounds of the administrative acts urges the administration in question to state the legal and concrete grounds on which its acts are based, comprehend the law it enforces, put forward accurate and meaningful findings and make an audit, and helps the persons concerned to evaluate the compliance of the ground stated with the law, whether to object or not and whether to file an appeal or not; accordingly, it was concluded that the case on the rejection of the request for the issuance of a yellow press card was contrary to the principle of "duty to state the grounds of the administrative acts" and administrative act regarding the rejection was decided to be annulled.

## INDICATION OF APPEAL POSSIBILITIES

The principle of indication of appeal possibilities refers to the indication which authorities should be referred to against an act carried out and of the deadline set for this referral.

It is important to act in accordance with the subject principles of good administration in order to ensure the exercise of the right to legal remedies by the individuals since the laws have different regulations regarding the authorities to appeal to and different deadlines therefor, and due to the difficulty of following the legal modifications and understanding the laws.

The requirements of this principle are as follows:

- Ensuring that the person concerned understands clearly the justification of the decision taken,
- Explaining the reasons of actions launched relating to the rights and freedoms as well as interests of the individuals,
- Not including the unfounded reasons in the justification,
- Explaining to the person concerned that the reason of the action launched is not arbitrary by indicating the legal basis of the action.

### *Case Study*

In the Decision of the 4th Chamber of the Council of State dated 13/11/2006 and numbered 2005/2134 E., 2006/2156 K., it was stated that the order of payment communicated to the plaintiff did not indicate the term of litigation, which was specified as 7 days by law, and that the plaintiff made a counterclaim against the order of claim around 28 days later.

As a result of the examination of the case, it was stated that indication of the legal remedies and authorities the persons concerned should apply and time limits of the application was a constitutional obligation, that considering the terms of litigation and other special regulations with respect to it, in terms of protection of the right to legal remedies of the individuals with respect to very complexed legislation, failure to abide by this obligation was contrary to Article 40 of the Constitution, which regulated the protection of the rights and freedoms of the individuals; therefore, as the order of payment did not contain the information about the terms of litigation, which was 7 days as per the provision in its special law, which must in fact be stated in the order of payment, exceeding the terms of litigation cannot be mentioned.

In addition, the Ombudsman Institution attaches particular importance to whether the administrations act in compliance with the principle of “indication of appeal possibilities” and it recommends the administrations the compliance with this principle in many of its decisions. Indeed, there are decisions of the Ombudsman Institution, where the Institution recommends acting in compliance with the subject principle as the administration is found not to have conformed to the principle of “indication of appeal possibilities” due to the administrations’ failure to indicate the authorities that the persons concerned should apply and time limits of the application (decision dated 29/08/2019 on the application no. 2019/7498, decision dated 06/09/2019 on the application no. 2019/6610 etc.).

### **NOTIFICATION OF THE DECISION WITHOUT DELAY**

The principle of notification of the decision without delay refers to the communication of the result of a proceeding which bears legal impacts on the individual by the administration to the person concerned immediately after its conclusion without delay, in writing or through other legally recognised means.

Accordingly, this principle requires diligence on below points:

- Protecting the individuals from the unpredictable decisions of the administration, which can unilaterally conduct acts on their legal status,
- Ensuring an effective legal audit by means of certification of the grounds on which the administration’s decisions base.
- Informing the person concerned as soon as the decision with legal effect has been taken,
- Notifying that the decisions are not made arbitrarily, deliberately or negligently.

### **Case Study**

In the Decision dated 28/09/2010 and numbered 2010/7934 E., 2010/6948 K. of the 10th Chamber of the Council of State, it was stated that the action was brought before the court with the request of the annulment of the decision rejecting Turkish naturalisation.

As a result of the examination of the case, it was stated that the notification of the procedures of the administrative acts and ensuring that those concerned are fully informed directly affects the use of right of litigation and further judicial remedies; in this sense, legal audit in terms of principles and procedures in the action therein brought to the court with the request of annulment of an administrative act was only possible

in the event that the content of the act, its relevance with the plaintiff, information on the administration proceeding the act was involved in the relative notification letter, and if the act proceeded cannot be disclosed to the person concerned, then relative information must be clearly provided in the document issued for notification purposes, without casting doubt on any proceeding. It was underlined that for the terms of litigation to start, notifying the person concerned in writing according to procedural rules in conformity with the Notification Law was inadequate, the notification must involve the act proceeded in a “clear” and “understandable” manner; in addition, the grounds of the act must be included in the relative notification letter as well with a view to ensuring that the person concerned can scrutinise the compliance of the administrative act with the law.

## PROTECTION OF PERSONAL DATA

The principle of protection of personal data regulates the purposes for and means through which the acts of acquiring, retaining, processing and storing all kinds information that identifies a person directly or indirectly can be carried out, and the available remedies in cases where illegal situations arise during the conduct of such acts.

The protection of personal data is recognised as a separate fundamental right and freedom in the Constitution, and it has a vital importance considering the fact that it is directly associated with the protection of private life and the right to privacy, which is another fundamental right and freedom.

The principle of protection of personal data stipulates the following:

- Collecting and processing personal data in accordance with the principles and procedures established by legal arrangements,
- Ensuring that the personal data are kept and processed by the authorised persons and taking measures to preclude non-authorised third parties from accessing to such data,
- Ensuring that the individuals can learn the parties who collect and process their personal data, the type of data being processed, and the purpose of the collecting and processing such data.

### Case Study

In the Decision dated 29/04/2014 of the European Court of Human Rights on the L.H./Latvia application no. 52019/07, it was claimed that the right to respect for private life was violated on the grounds that the applicant’s personal medical data was obtained by a public institution without his consent.



The European Court of Human Rights reminded the importance of protecting medical data in terms of exercising the right to respect for private life and upon the determination that the applicable legislation did not clearly show the extent and the way of the discretionary power granted to the competent authorities, it decided that Article 8 of the Convention (right to respect for private and family life) was violated in the applicant's case. The court specifically emphasised that Latvian Law did not bring any limitations to the scope of personal data that could be obtained by the institution in question.

### 3.3 2<sup>nd</sup> ISTANBUL INTERNATIONAL OMBUDSMAN CONFERENCE ON THE THEME OF GOOD ADMINISTRATION PRINCIPLES AND OMBUDSMAN



The Ombudsman Institution of the Republic of Turkey has successfully hosted the **2<sup>nd</sup> Istanbul International Ombudsman Conference** which took place on **18-19 November 2019** under the EU-funded project “Technical Assistance for Empowerment of the Role of Ombudsman in the Protection and Promotion of Human Rights”.

The Conference on the main theme “*Principles of Good Administration & Ombudsman*” brought together around 150 participants from 57 countries of different continents representing various national and international Ombudsman Institutions as well as National Human Rights Institutions/Centers.

Starting with the official Opening Ceremony with the participation of the President of the Republic of Turkey H.E. Mr. Recep Tayyip Erdoğan, the 2 day-long conference was held under 4 sessions. During these sessions, good administration principles from transparency to equality, kindness to accountability, non-discrimination to fairness, protection of privacy to responsiveness were discussed. Moreover, to what extent these Principles play a significant role for the Ombudsmen as well as for the Human Rights Institutions were put on the table with different country perspectives both in theory and practice. Through the presentations, it was emphasized that it is of utmost importance to support good administration principles which further strengthen the rule of law, and that the Ombudsmen should work hard to ensure the implementation of these Principles.



*Photo: Official Opening Ceremony of the Conference with the participation of the President of the Republic of Turkey H.E. Mr. Recep Tayyip Erdoğan at Dolmabahçe Palace*



# CHAPTER

# IV

# 2019

ANNUAL REPORT

## **APPLICATION PROCEDURES, GENERAL INFORMATION ON APPLICATIONS AND CASE SUMMARIES**

How to Apply

Application Period

Confidentiality of the Complaint

Preliminary Examination

Actions and Decisions to be Taken  
upon Preliminary Examination

Requesting Information and Document

Assignment of an Outside Expert  
and Hearing of Witness

Examination and Investigation

Resumption of the Term of Litigation

Withdrawing a Complaint

Complaint Handling Process and  
Types of Decisions

Case Summaries

## 4.1 HOW TO APPLY

Natural and legal persons whose interests, rights or freedoms are violated may lodge a complaint to the Ombudsman Institution against all kinds of acts, actions, attitudes and behaviors of the administration. However, the condition of “violation of interest, rights or freedoms” is not sought in the event that the complaint is about human rights, fundamental rights and freedoms, women’s rights, children’s rights and general issues concerning the public.

The complaint is lodged with a petition written in Turkish. However, a petition in a different language in which the complainant can express himself/herself better, may be accepted provided that it is deemed to be fair and reasonable by the Ombudsman Institution.

Complaint applications may be delivered in person by visiting the Ombudsman Institution as well as via mail, electronic mail, e-government, fax or via electronic system available on the website of the Institution. Complaints may also be sent to the office of the Ombudsman Institution in Istanbul. However, the originals of the complaint applications lodged via fax or electronic mail are required to be delivered to the Ombudsman Institution within fifteen days; otherwise, the complaint shall not be admissible. This condition doesn’t apply to the complaints lodged through registered electronic mail.

Moreover, the complaints may be lodged in person or via mail through governorates in provinces and district governorates in districts. Governorates and district governorates send the complaints and their annexes if available in three working days at the latest to the Ombudsman Institution.

Complaints may be lodged by filling out the “Complaint Form for Natural Entities” or Complaint Form for Legal Entities. Provided that the required information and documents specified in the Ombudsman Law are included, a complaint may also be lodged without using the forms. In the event that a justified reason exists, complaints may also be lodged orally.

The complaint may also be lodged by a legal representative or an assignee.

No price is charged due to any reasons for lodging a complaint.

## 4.2 APPLICATION PERIOD

Application may be filed with the Institution within six months following the date of notification of the response to the application filed with the administration. The date of the application is deemed to be the date on which the petition is submitted to the

Institution or provincial or district governor's offices or, in other cases, the date on which the application is received by the Institution.

Any application filed during the term of litigation suspends the ongoing term of litigation.

#### **4.3 CONFIDENTIALITY OF THE COMPLAINT**

Complaint shall be kept confidential at the request of the complainant. All kinds of measures for keeping the complaint confidential shall be taken by the Ombudsman Institution.

#### **4.4 PRELIMINARY EXAMINATION**

Complaints are subjected to a preliminary examination prior to the examination and investigation phase. In the preliminary examination, the complaint is examined in terms of whether

- a) it falls within the scope of duty of the Ombudsman Institution,
- b) it is lodged within proper term,
- c) its reasons, content and parties are the same with the ones of another complaint which is being examined and investigated,
- d) its reasons, content and parties are the same with the ones formerly finalized by the Ombudsman Institution,
- e) it is about the disputes being handled or decided on by the judicial organs,
- f) the administrative remedies are exhausted or not,
- g) it is lodged within the framework of the first paragraph of Article 8 of the Bylaw on the Procedures and Principles regarding the Implementation of the Ombudsman Institution Law,
- h) it includes a specific subject matter,
- i) it contains the information required for lodging a complaint pursuant to the Ombudsman Law,
- j) it contains an infringement of interest.

## 4.5 ACTIONS AND DECISIONS TO BE TAKEN UPON PRELIMINARY EXAMINATION

In the event that there are missing documents or the missing documents are not delivered within the determined period or the subject matter of the complaint is not within the mandate of the Institution, *decision of inadmissibility* is taken. This decision is notified to the complainant and the suspended term of litigation shall continue from the suspension date. In the event that the complaint is first filed to the Institution before applying to the relevant Administration, *a decision of referral* is taken.

The complaints lodged without exhausting the administrative remedies shall be decided to be sent to the relevant administration. This decision shall also be notified to the complainant. The date when the complaints are lodged to the Ombudsman Institution shall be considered as the complaint date lodged to the administration. Upon delivery of the complaint to the relevant administration by the Ombudsman Institution, a new complaint may be lodged to the Ombudsman Institution within six months.

## 4.6 REQUESTING INFORMATION AND DOCUMENTS

The information and documents which the Institution may request in connection with the matter it examines and investigates are to be submitted to the Institution within thirty days following the date of notification of such request. Upon request of the Chief Ombudsman or ombudsman, the relevant authority shall launch an investigation about those who refuse to submit the documents or information requested within this period without any justifiable reason.

The information or documents which are state secrets or trade secrets may not be submitted to the Institution by the highest-ranking post or board of the competent authorities by providing justifications for such refusal. However, such information or documents which state secrets are may be examined on the spot by the Chief Ombudsman or an ombudsman assigned by the Chief Ombudsman.

## 4.7 ASSIGNMENT OF AN OUTSIDE EXPERT AND HEARING OF WITNESS

The Chief Ombudsman or Ombudsmen may assign outside experts in connection with the subject matter under examination and investigation.

Without prejudice to the provisions of the Allowance Law No. 6245 of 10.02.1954, an expert fee which shall not exceed the sum calculated by multiplying the reference value of 1,000 for civil servants and of 2,000 for other persons with the coefficient applied to civil servants' monthly salaries shall be paid upon a decision by the one who effects the assignment. These payments shall be free of taxes or other deductions except the stamp duty.



The Chief Ombudsman or ombudsmen or experts may hear witnesses or relevant people in connection with the matter under examination and investigation.

#### **4.8 EXAMINATION AND INVESTIGATION**

The Institution shall finalize its examination and investigation within six months at the latest following the date of application. The Institution shall notify the outcome of its examination and investigation and, if any, its recommendations to the relevant authority and to the applicant. The Institution shall indicate to the applicant the remedies against the act, the application period and the authority to which the application should be filed.

If the relevant authority does not find the action to be performed in line with the recommendations of the Institution or the solution proposed by the Institution as feasible, it shall notify the reasons for it to the Institution in 30 days.

#### **4.9 RESUMPTION OF THE TERM OF LITIGATION**

If the application is declined by the Institution, the suspended term of litigation shall resume upon the date of notification of the Institution's decision to the person concerned.

In case the application is accepted by the Institution, if the relevant authority does not launch any action or transaction within 30 days upon the Institution's recommendation, then the paused term of litigation shall resume.

If the Institution fails to finalize its examination and investigation within six months following the date of application, then the suspended term of litigation shall resume.

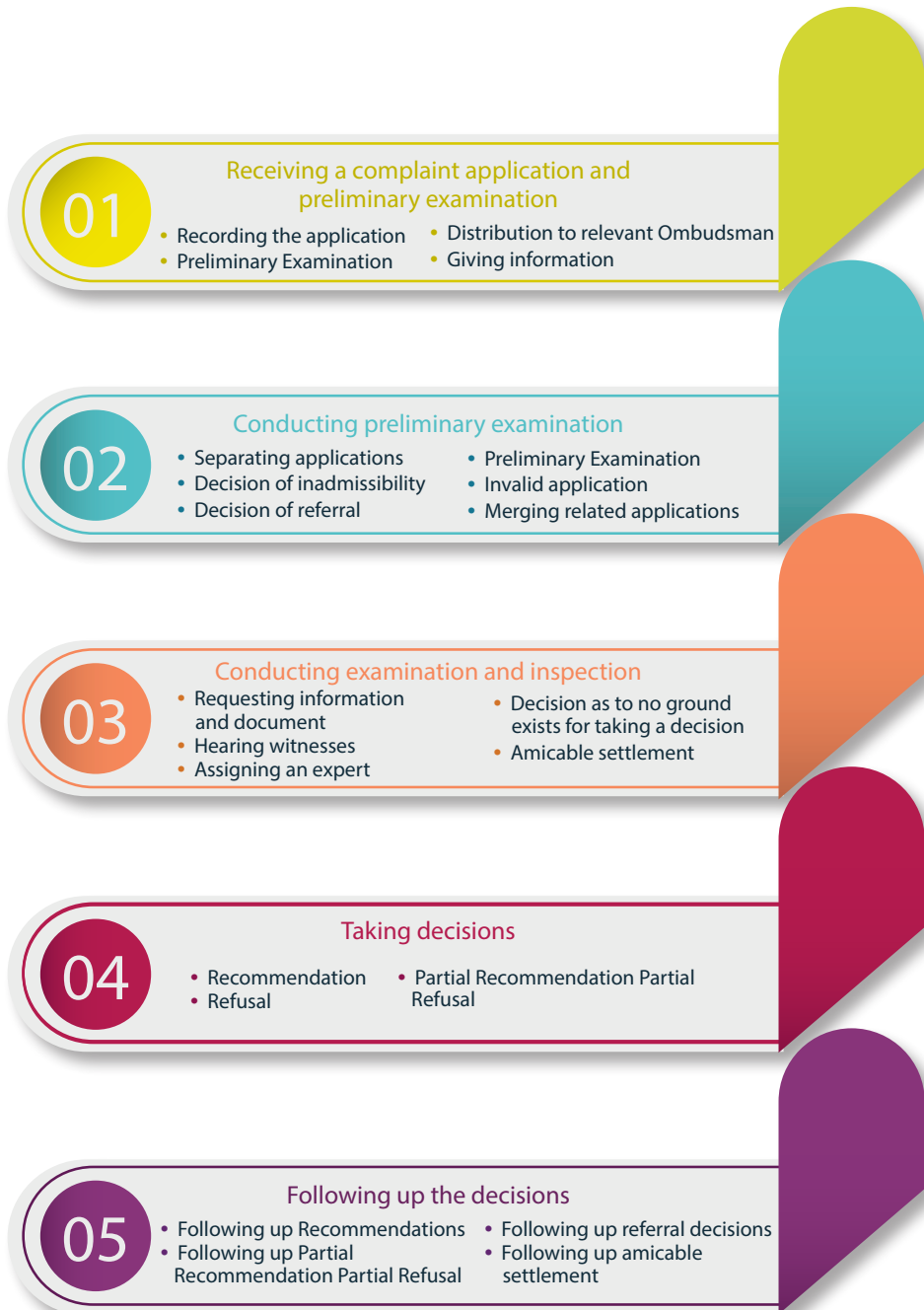
#### **4.10 WITHDRAWING A COMPLAINT**

Complainant may withdraw her/his complaint until the decision is made. In this case, the Ombudsman Institution shall terminate the examination and investigation.

## 4.11 COMPLAINT HANDLING PROCESS AND TYPES OF DECISION

### Complaint handling process

When a complaint application is received, it is handled through the following steps:



## Types of Decisions

The Ombudsman Institution is entitled to issue recommendations, decisions of refusal or decisions as to no ground exists for taking decision as a result of the examination and investigation concerning the complaint.

### *Recommendation*

When the complaint is found appropriate as a result of relevant examination and investigation, a recommendation shall be issued. In such decision, one or more of the following recommendations regarding the administration shall be included:

- a) Admitting the misconduct
- b) Compensating the damage
- c) Taking acts or action
- d) Making legislative amendment
- e) Withdrawing, aborting, changing or correcting the action
- f) Correcting the implementation
- g) Reconciliation
- h) Taking measures

Relevant authority shall inform the Ombudsman Institution within thirty days of the actions established and the measures taken in line with the recommendation or about its justification when it does not consider the recommended solution feasible.

### *Decision of refusal*

When the complaint is found inappropriate as a result of relevant examination and investigation, a decision of refusal shall be issued.

### *Decision as to no ground exists for taking decisions*

The Ombudsman Institution shall decide that there is no ground to take a decision when it terminates its examination and investigation, in the following cases:

- a) When the complainant withdraws her/his complaint,
- b) In case of demise when the complainant is a natural entity or termination of the legal entity if it is a legal entity,
- c) Compliance with the complaint request by relevant administration,
- d) When a lawsuit is filed against the subject matter of the complaint while examination and investigation is carried out

### **Amicable Settlement**

The founding purpose and the reason of existence of the Institution is to seek amicable solutions and to settle disputes in an amicable manner. Therefore, the “Amicable Settlement” decision has been added to the “By-Law on the Procedures and Principles regarding the Implementation of the Ombudsman Institution Law” on 02 March 2017.

Amicable Settlement is one of the mostly applied decision methods of the Institution with a view to quickly and effectively resolving the conflicts. As the success of the Institution depends on its role as a mediator and an arbitrator based on its persuasiveness, amicable settlements are mostly preferred by the Institution serving as a bridge between citizens and the Administration.

It is important that both Parties come to a mutual understanding. Thus, while the examination and research process on the matter continues, Parties may be invited to amicable settlement. If the complaint is considered as reasonable and there is no need for any correspondences which may extend the period of a solution, a meeting is held with the Administration and possible solutions are discussed. After negotiations with the Administration, if the Administration decides to resolve the dispute with the complainant, then the amicable decision is made. The implementation of this decision is followed up by the Institution.

The number of “Amicable Settlement” decisions in 2019 has been 2,707.

## **4.12 CASE SUMMARIES**

The following is a selection of summaries of individual cases as per different subject matters dealt with by the relevant Ombudsmen in 2019:

### **JUSTICE, NATIONAL DEFENCE AND SECURITY**

Applications which are filed to our Institution relating to “justice” are, in general, made by the prisoners or convicts and they consist of complaints on prison conditions, management of prisons, the attitudes and behaviours of the prison staff, disciplinary punishments inflicted by the wardens, request for transfer by the prisoners to the province or neighbouring provinces where the families of the prisoners live, applications on the problems encountered during contact and non-contact visits, health problems, requests for immediate finalisation of the court cases where the applicants are parties to, motion for new trial, failure to collect attorney’s fees, refusal to order an expert report, failure to attend the reconciliation examination, applications by attorneys on a number of problems, notarial proceedings, applications regarding enforcement proceedings.

Applications relating to “national defense, security and law enforcement” include the following: the fulfilment of the appointment requests in recruitment of military officers and non-commissioned officers, destruction of archival records, applications by civilian and military personnel about personal rights, promotion and lodging rights, personal

recruitment in Turkish Armed Forces (TAF), the situation of cadets after the closure of military schools under a decree-law, failure to enter TAF due to the negative results of security investigation, military recreation centres, destruction of the data resulting from criminal record check, termination of identity cards of private security guards, denial of carry permit or withdrawal of cancellation, cancellation of unfair traffic tickets, negative behaviours of security officials.

### *Case Summaries*

#### **About the Request for Being a Conciliator and Destruction of Criminal and Archival Records**

The applicant committed a crime in 2008. Later, he received training on reconciliation and succeeded in relative examination; however, Alternative Solutions Department refused his application for being a conciliator. The same crime was raised as an issue when he applied for being an expert in financial office and assistant manager in accounting office in the Ministry of Finance. The applicant stated that this situation caused lifelong punishment and requested that the criminal record and archive record, which prevented him from rising in the profession or from entering some public positions, be deleted and he be enrolled as a conciliator in the records.

As a result of the examination made by the Ombudsman Institution, the Institution concluded that the refusal of the applicant's request for the destruction of archival records was neither unlawful nor unfair; therefore, applicant's request was refused; that his request for being enrolled as a conciliator in the records was lawful; however, interpreting the provision prescribing that employing those who were "convicted of a deliberate crime" in civil service shall be denied in a broader manner than many other provisions of law was unlawful as there was no upper limit for it. Accordingly, it was decided that the Ministry of Justice be recommended<sup>1</sup> for necessary legal arrangements.

#### **About the Request for Appointment to the Province His Spouse was Working**

The applicant worked in a District Gendarmerie Command under the General Command of Gendarmerie. His wife worked as a contract employee in the central district Directorate General of Land Registry and Cadastre in another province. The applicant stated that there were not any vacant positions for his spouse to be assigned to in the regional directorate; therefore, appointment request of his spouse was not fulfilled; accordingly, he requested that he be appointed to the province his wife was working.

Our Institution requested information and documents from the General Command of Gendarmerie. According to the response letter and its annexes by the General Command, as the applicant was a staff member under the category of gendarmerie services, who was subject to mandatory rotation, his wife had to be appointed to where

<sup>1</sup> Partial Recommendation Partial Refusal dated 10/01/2019 on the application no. 2018/10171

the applicant worked; in addition, as an alternative solution, if the province where the applicant worked and the list of provinces on the same level where he could be appointed were informed, the option to appoint the applicant to one of these provinces could be considered. The Ombudsman Institution requested information on the province where the applicant worked and the list of provinces on the same level where he could be appointed and requested amicable settlement from the institution where the applicant currently worked and information and documents from the Directorate General of Land Registry and Cadastre. Upon the response letter submitted to our Institution, which informed that the wife of the applicant was appointed to the regional directorate in the province where the applicant worked, Amicable Settlement Decision<sup>2</sup> was made.

## PROTECTION OF FAMILY

In 2019, the Ombudsman Institution prepared a *“Special Report on Violation of Rights in Handover of Children and Alimony”*, which includes the steps that can be taken additionally to the recommendations by the Ombudsman Institution, with a view to aligning current practices of our country with the national and international legislation and to preventing violation of rights. This Special Report comprises subjects that are relevant to or supportive of the institution of the family and analyses and findings relevant to the processes of separation and divorce and handover of children.

With *“Judicial Reform Strategy Document”*, published by the Ministry of Justice during the process of the preparation of the Special Report, works that were in line with the above-mentioned findings and suggestions, also included in many recommendations, were started. In the Strategy Document, *“removal of practices aggravating the disputes during the judicial resolution of disputes arising from family law”* was determined as an aim.

Moreover, due to the complaints lodged to the Ombudsman Institution relevant to the alimony payment system coming to the fore in conjunction with the problems occurring during the implementation of the Law no.6284 and with the work towards preventing the violence against women, findings and suggestions about the issue in question were included in the aforementioned special report.

Within the scope of the report, requests for introducing a time restriction to the alimony payment and contradictory opinions thereto were examined in the light of relative legislation. This report underlines not only the importance of the alimony payment for the women, who have to terminate their marriages and have not benefitted from education and employment opportunities, but also draws attention to the situations where this right has been abused.

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<sup>2</sup> Amicable Settlement Decision dated 28/02/2019 on the application no. 2019/48

## Activities carried out in the field of protection of family

### Family Law Workshop

The workshop on “Evaluations and Problems on Family Law Practices and Solutions”, organised by the Directorate General for Legal Affairs under the Ministry of Justice, was held on 02/12/2019.

Simultaneous group sessions were held during the workshop. During the group sessions, Workshop Report on “*Increasing the Effectiveness of the Mechanisms relevant to Preventing Domestic Violence against Children and Women*” and the findings and recommendations of the Ombudsman Institution, included in the “*Special Report on Violation of Rights in Handover of Children and Alimony*”, which was prepared by the Ombudsman Institution in 2019 after the workshop on “*Preventing Violation of Rights in Handover of Children*”, which was among 2018 activities, were shared with the participants.

## LABOUR AND SOCIAL SECURITY

### Working Life

The complaints lodged to the Ombudsman Institution in 2019 mainly consisted of tenure of the workers employed under service procurement agreements made in public institutions and organisations; labour receivables; termination of labour contracts and appearance of this proceeding in the records of the Social Security Institutions, codes of reasons for termination of employment and their impacts on the unemployment pay; applications made by foreign nationals on work permit; administrative fines imposed by the administration due to failure to report occupational accidents; appeals to the loss of earning capacity in profession; and requests for professional competences certificates.

The applications lodged to our Institution in 2019 in the field of social security mainly comprise following issues: incorrect transactions and procedures regarding premium debt restructuring and payment, problems arising from the implementation of the period of limitation in social security legislation, appeals against disability determination procedures; failure to notify the insured or beneficiaries on the proceeding conducted by the Social Security Institution; orphan’s pension cut off; problems encountered during the calculation of retirement pension bonus, applications on legal modification relevant to retirement pension bonus for those with 30 years of service and above, aggrievements suffered due to the revocation of payments, which was identified to be unduly paid to the insured; deficiencies in the insurance coverage of the contracted teachers; aggrievements suffered due to faulty calculation of premium payment days; inconsistency between the number of days according to the Social Security Institution and the jurisprudence arising from the consolidation of the service schemes<sup>3</sup> and loss of rights arising therefrom.

<sup>3</sup> Service consolidation under Social Security Institution refers to the calculation of the days served under different service schemes such as 4A, SSI Premium, 4B and pension fund for the self-employed.



## Case Summaries

### Requests for Annulment of Administrative Fines Imposed due to the Failure to Notify Occupational Accidents

The applicant stated that he was imposed a fine by the Social Security Institution because the occupational accident occurring at workplace was not reported in time and that on the date when the accident happened, the worker in question was not employed within the company and requested the cancellation of the fine.

As a result of the examination made by the Ombudsman Institution, it was seen that the start date of employment was not reported as 05/06/2018 in the statement of employment and no contradictory data were presented in the file submitted by the administration. Furthermore, judging from the “plot” of the forensic examination report issued by the concerned hospital and from the applicant’s statement with his signature, it was understood that the accident happened on 04/06/2018. Considering that there were no findings in the file demonstrating that the applicant worked in the company on the concerned date, it was evaluated that the imposition of administrative fine due to “*failure to report an occupational accident*” was unlawful; accordingly, it was concluded to submit a Recommendation<sup>4</sup> to the Social Security Institution on withdrawal of fine.

### Request for Correction of Start Date of Retirement

The applicant informed that two days after 28/19/2018, when he met the age requirement to qualify for normal age retirement during the period when he was suspended from his duty, he sent an application letter to the administration by means of PTT-APS<sup>5</sup> and his application was registered in the destination administration’s records on 05/10/2018, which he learned about with the tracking number. The applicant stated that his pension payment started on 01/12/2018 instead of 01/11/2018, which was the actual date of start; as a result, he incurred a loss of the right to pension for a month, and requested the correction of the start date and that one month’s pension be paid to his party.

As a part of the amicable settlement attempts of the Ombudsman Institution, Social Security Institution (SSI) was contacted; according to the response of the SSI, the start date of his retirement was corrected in line with the demand of the applicant. Thus, the application was resolved through amicable settlement.<sup>6</sup>

<sup>4</sup> Recommendation dated 13/09/2019 on the application numbered 2019/5198

<sup>5</sup> Post and Telegraphy Corporation of Turkey, a state-owned postal service

<sup>6</sup> Amicable Settlement Decision dated 25/04/2019 on the application no. 2019/1958

## CHILDREN'S RIGHTS

The subjects of the applications made in 2019 by children via the Ombudsman Institution's website specifically designed for children are, inter alia, child protection system; negative attitudes and behaviours of peers, teachers and administrators in the education system; access to the right to education, security of school environment and transportation conditions; education, healthcare and nursing services for children with special needs; settlements, environmental health and safety; access to health services; visitation rights of children held in closed areas; establishment of personal relationship between children and their families and requests concerning daily needs of the unaccompanied minors and children under protection and care.

Based on the applications filed to the Ombudsman Institution, it is understood that Syrian children suffer from various problems (identification and arrangement of classes according to language levels, ages and situations of children) in the education system starting from school enrolments. In addition, communication problems occur because the explanations for the parents and children made by the administration are not clearly understood due to language barrier. It has been understood that such problems occurring because of language and cultural differences cause absenteeism and even drop-outs. It is considered that there is an urgent need to strengthen school administrations and to take refugee students into a case-based follow-up process in order to communicate effectively with refugee children and families within the education system.

### Case Summaries

#### Request for Fresh Air

The child applicant stated that excessive air pollution prevailed in the region he lived and the most important reason for the air pollution was the smoke and dust emitted by the lime plant in the region by claiming that the plant had no protective measures such as filters, and requested that the lime plant in question be closed down or necessary measures be taken in the plant with a view to protecting the environment and human health.

As a result of the examination, it was found out that the request and claim of the child applicant was concerning the children and general public in the region, right to healthcare secured under the Convention of the Rights of the Child, which, accordingly, referred to the state's obligation to ensure a clean environment for the maintenance of children's health. Within this scope, the Ombudsman Institution referred this issue to the relevant administration, without disclosing the child's identifying information, in order to carry out necessary inspections on whether the lime plant in question operated with an approach sensitive to the environment and human health and whether the particles emitted from the factory posed a danger to human health and agricultural areas.<sup>7</sup>

<sup>7</sup> Decision of Referral dated 14/06/2019 on the application no. 2019/10005

According to the response of the administration, unexpected visits were carried out to inspect the factory on various dates upon applications, filter system and dust reduction system in the factory were installed and operating; however, as the full combustion was not achieved during maintenance works, instantaneous outbursts were detected; therefore, necessary warning was given to the factory to irrigate the activity field on a daily basis and run dust reduction systems actively. The administration also informed that the frequency of the inspections in the subject plant would be increased.

### About Access to Right to Education Safely and Happily

The child applicant stated that he was afraid of dark when he was going to school very early in the morning through the long path from his house with a garden and requested deployment of a ward in the early morning hours.

The application was concluded to be relating to the access to right of education safely and happily and to the principle providing that protecting the best interest of the child shall be the paramount consideration in the decisions made relevant to the provision of public services; accordingly, the application was referred to the relevant administration<sup>8</sup>.

The administration informed in its statement that the staff patrolling in the region was reminded of the sensitivity of the subject, the number of the staff in front of and around the school and by-streets were increased, and constant control in the area was ensured in order to make children feel safe.

### Activities for the Implementation of the “Strategy on the Rights of the Child” Developed by the Ombudsman Institution

A meeting was held on 30/10/2019 with the participation of teachers from various schools in Ankara and students being members to the ombudsman clubs from four universities in order to carry out a needs assessment by holding two focus group sessions separately for the development of access to the society toolkit, a component under the *Strategy on the Rights of the Child*, which was prepared in order to adopt a child-friendly approach during the examination of the applications made by children on the website ([cocuk.ombudsman.gov.tr](http://cocuk.ombudsman.gov.tr)) of the Ombudsman Institution developed for the children within the scope of the activities carried out for the protection and development of the children’s rights.

Consultant experts conducting the activity from UNICEFF and Ombudsman Celile Özlem TUNÇAK along with the experts working in the field of children’s rights participated in the focus group meetings, organised under annual work plan of UNICEFF and the Ombudsman Institution.

From 90 primary and secondary schools in Ankara, a total of 106 teachers from the branches of social sciences, guidance, technology and design and values education

<sup>8</sup> Decision of Referral dated 20/05/2019 on the application no. 2019/3389

participated in the first focus group meeting, where the work towards the early education on the culture of seeking legal remedies was discussed. Moreover, the opinions of the participants on the access to the society toolkit, which was prepared to promote the Ombudsman Institution's webpage for children, were obtained and their contributions were received.

#### **Activities towards the Establishment of a Committee on the Rights of the Child in the Grand National Assembly of Turkey (GNAT)**

With a view to promoting the Strategy on the Rights of the Child of the Ombudsman Institution and discussing the ways of protecting and developing children's rights in Turkey, a meeting was organised in cooperation with UNICEF and the Ombudsman Institution on 15<sup>th</sup> April 2019 with the participation of competent administrations in child protection, deputies, UNICEF Representative to Turkey, National Coordinators of Child Rights Committee, Members of Children's Council of Ankara Metropolitan Municipality and members of civil society organisations.

On the 30<sup>th</sup> anniversary of the adoption of the UN Convention on the Rights of the Child, the Ombudsman Institution shared its proposal for the establishment of a committee relating to children's rights in the GNAT under the proposals to overcome legislative and practical deficiencies in the field of children's rights in Turkey.

#### **Study Visit of the Working Group on the Rights of the Migrant Children, Established under the Association of Mediterranean Ombudsmen**

Working Group on the Rights of the Migrant Children, which was established under the Association of Mediterranean Ombudsmen (AMO), visited the Ombudsman Institution of Turkey on 24<sup>th</sup>-25<sup>th</sup> October 2019 soon after its study visits to some of the other member countries. Within the framework of the programme prepared with the contributions of the experts working in the field of children's rights of the Ombudsman Institution, good practices and supportive and protective activities for migrant children of the administrations working in this field were shared with the working group.

#### **Consultation Meeting held in Gaziantep on the Protection of the Rights of the Child at Local Level**

The Chief Ombudsman Şeref Malkoç and the Ombudsmen Celile Özlem Tunçak, Arif Dülger, Saadettin Kalkan along with the experts working in the field of children's rights visited Gaziantep Children's Home, which shelters migrant children and children with special needs, on 12<sup>nd</sup> September 2019 within the scope of the activities for the protection of the rights of the child at local level.

The delegation collected information from the institution's staff and the children and made examination on the current situations, demands and needs of the children between the ages of 12-18 living there.

Furthermore, within the scope of the activities for the protection of the rights of the child at local level, a consultation meeting was held on 12<sup>nd</sup> September 2019 under the cooperation of UNICEF and the Ombudsman Institution and with the participation of the administrations' and civil society organisations' representatives active in the field of child protection in Gaziantep.

In the meeting, where the public institutions, civil society organisations' representatives and children were available, information was collected on the civil society organisations' activities carried out in the field of child protection and the participation of the children in these activities.

#### **Participation in the 23<sup>rd</sup> Annual Conference of the European Network of Ombudsmen for Children and in the Seminar of the Council of Europe.**

The Ombudsman Institution was represented in the 23<sup>rd</sup> Annual Conference of the European Network of Ombudspersons for Children (ENOC), which was organised in Northern Ireland on the dates between 25<sup>th</sup> and 27<sup>th</sup> September 2019.

#### **Participation in the II<sup>nd</sup> Meeting for 2019 of Child Advisory Board**

Within the framework of their duties and responsibilities, the members of Child Advisory Board comprising 20 children, who were selected to work actively at least for 2 years among the members of the Child Committee and whose number of boys and girls were equal, came together in Van Province on the dates between 25<sup>th</sup> and 28<sup>th</sup> June 2019 in order to determine the contents of the 20<sup>th</sup> National Child Form, evaluate and discuss the Advisory Board Action Plan for 2019 and social cohesion programme by exercising their rights to participate and making their views known, which are secured by the UN Convention on the Rights of the Child.

#### **Training Programme on Children's Rights in the Ombudsman Institution**

Within the scope of annual work plan for 2019 prepared jointly by the Ombudsman Institution and UNICEF Turkey, training on children's participation, guaranteed within the framework of the UN Convention on the Rights of the Child, was provided to the assistant experts of the Ombudsman Institution and the students of Atılım University doing internship in the Institution. During the training, which was led by Nilgün Çavuşoğlu from UNICEF Turkey on 24<sup>th</sup> June 2019, children's rights, institutions responsible for protection and development of children's rights, basic principles of the Convention on the Rights of the Child were discussed and the programme was concluded after a workshop on children's rights.

### Visit of the Sub-Committee on the Rights of the Child of the Grand National Assembly of Turkey to the Ombudsman Institution

The chairperson and deputy members of the Sub-Committee on the Rights of the Child consisting of the members of Committee on Human Rights Inquiry of the Grand National Assembly of Turkey visited the Ombudsman Institution on 28<sup>th</sup> November 2019.

Welcomed by the Chief Ombudsman Şeref Malkoç, the Ombudsman Celile Özlem Tunçak, the Secretary General İbrahim Kılınç and the experts, the delegation, comprising the chairperson of the sub-committee Radiye Sezer Katırcıoğlu, Deputy of Çorum Erol Kavuncu, Deputy of Afyon İbrahim Yurdunuseven, Deputy of Eskişehir Metin Nurullah Sazak and the Deputy of Balıkesir Pakize Mutluaydemir, collected information on the works of the Institution relating to children.

### EDUCATION, YOUTH AND SPORTS

Applications in the field of education, youth and sports were mostly about the following sub-headings: “Exams and related practices; transactions, acts and actions concerning students; matters regarding higher education services, problems of teachers relating to education & training; works for the disadvantaged youth; other matters relating to the services provided in the field of education, youth and sports”. The majority of the complaint applications in the field of the above-mentioned sub-headings are as follows:

The security measures taken by Exam Authorities such as Student Selection and Placement Centre (OSYM), Ministry of National Education, and Open Education Faculty; fee for application to the examination of OSYM and problems occurring regarding the online payment system of the relative fee; implementation of the system of “losing a quarter point for each incorrect answer (keeping random guessing from increasing the score) in mid-term, final and make-up examinations and the system of retaking 3 failed courses conducted by the Open Education Faculties of the Universities; objections to the examination to become certified public accountants conducted by the Union of Chambers of Certified Public Accountants of Turkey; the objections to the declaration of the exams as null and void and results of the exams conducted by OSYM.

Applications on transactions, acts and actions concerning students mainly concentrate on lateral/vertical transfers and failed transfer of courses as a result thereof; summer school and make-up examination, loss of KYK<sup>9</sup> scholarship, change of the scholarship into a credit, reimbursement procedures of scholarships/credits.

9 The scholarship of the General Directorate of Credit and Dormitories Agency

### Case Summary

#### Request for Education near His Family with the Status of Special Student Due to the Disability of Both His Parents

The applicant stated that he was studying professional certificate programme in engineering in the Civil Engineering Department in Erzurum Technical University, that his father was 98% disabled and his mother was 78% disabled and requested that he be admitted to Elazığ Fırat University through the grant of the status of special student. In the Recommendation<sup>10</sup> submitted by our Institution, following remarks were included: “As the decision dated 6/12/2017 of the Executive Committee of the Council of Higher Education (YÖK) on the fact that students of certificate programmes in engineering shall not be deemed to be special students damages the principle of equality of opportunity in education, conflicts with the YÖK’s duty to secure uniformity in education and as no explicit legal grounds exist for this decision, the decision has been concluded and considered that the council decision in question is unlawful and unfair”. The letter submitted by YÖK as a response to the Institution’s decision informed that on the condition that the applicant applied by providing evidence for his special situation, the relative request would be evaluated.

### ECONOMY, FINANCE AND TAX

Most of the applications made by the natural and legal persons on the acts and actions as well as attitudes and behaviours of the administrations in the field of economy, finance and tax have been about the following matters: banking transactions, capital markets, financial offenses and trafficking, public receivables and debts, tax procedures, insurance transactions, tender procedures and other matters relating to economy, finance and tax.

### Case Summary

#### Request for Removal of the Lien Imposed on the Pension by the Tax Office due to Tax Debt

The applicant claimed that although he closed down his business as a tax debtor in 2006, Karşıyaka Tax Office seized 1/3 of his pension in return for the tax lien on 01/11/2018 and requested relief through the release of the attachment.

As a result of the examination and investigation, it was concluded that with Article 60 of the Constitution, it was aimed to secure everyone’s right to social security and minimum level of living against social risks; in this regard, pension fund was one of the social security rights guaranteed by the Constitution; therefore, seizing the pension fund, which was directly related to the right to social security, without consent was not

<sup>10</sup> Recommendation dated 19/09/2019 on the application no. 2019/1930



in compliance with the right to social security; in addition, treating the pension fund under the right to property as in the case of the Constitutional court decisions as well as the decisions of the European Court of Human Rights, relevant cuts on the pension must be returned. Furthermore, the Ombudsman Institution arrived at the conclusion that there were no legal interests in causing bureaucracy by having the applicant make an additional application this time for the return of the cuts after the release of the attachment. Considering all these facts, it was found out that seizing the pension without consent was neither lawful nor fair.

Accordingly, it was decided to submit a Recommendation<sup>11</sup> to the Revenue Administration about removal of the lien imposed on the pension of the applicant and refunding the deductions made and to warn against imposing lien on the pensions without consent.

## ENERGY, INDUSTRY, CUSTOMS AND TRADE

Applications in the field of energy, industry, customs and trade have been mostly about the following: problems arising from getting mining license or cancelling it, acts of electricity distribution companies, standby credits given for enterprises by Small and Medium Enterprises Development Organisation (KOSGEB), matters relating to domestic and foreign trades, consumer problems, and customs procedures.

### Removal of Electricity Transformer from the Schoolyard

The applicant requested the removal of the electricity transformer, which was in the schoolyard of Özel İdare Elementary School by stating that it might pose a risk for the safety of the children.

As a result of the evaluation made by our Institution, it was concluded to submit a Recommendation<sup>12</sup> for Uludağ Electricity Distribution Incorporated Company to surround the electricity transformer with a barrier or woven-wire fence in order to secure the area, for Bursa Governorate to hold a meeting with a view to ensuring coordination and finding a permanent solution in compliance with the legislation and for Bursa Metropolitan Municipality, Osmangazi Municipality, Turkish Electricity Distribution Company (TEDAŞ) to conduct necessary proceedings and acts.

### Request for the Entry of the Land Vehicles with Foreign License Plates to Turkey.

The applicant applied to our Institution to request permission for the entry of the land vehicles with foreign license plates to Turkey.

Within the scope of the examination of the file, it was found out that the applicant did not meet the requirement of staying out of the Customs Territory of Turkey at

11 Recommendation dated 31/05/2019 on the application no. 2018/16572

12 Recommendation dated 21/10/2019 on the application no. 2019/7297

least 185 days in 365 days backward prior to the date he wanted to enter so as to meet the settlement condition. In addition, it was understood as per Article 17 titled “*time extension*” of General Customs Communiqué about the temporary importation of land vehicles (Serial Number: 1), in order to interpret the illness condition as a force majeure for time extension, the rightful owner of the vehicle should be the subject person in the case; in other words, the rightful owner’s own health condition should prevent the vehicle from going abroad.

In this concrete case, it was ascertained that the applicant requested the illness of his mother and father be deemed a force majeure; however, in order to consider the illness as a force majeure the ill person must be the rightful owner of the vehicle and the person must fall ill within the period of time when the vehicle must stay in the country; therefore, it was concluded that the refusal of the request for the time extension for the vehicle with a foreign license plate was neither lawful nor unfair. Accordingly, Decision of Refusal was made on the application <sup>13</sup>.

## DISABILITY RIGHTS AND SOCIAL SERVICES

Applications in the field of disability rights and social services have been mostly about nursing home fees and disability pensions, irregular cut off on the pensions, applications on subsistence allowance, which are not provided although the criteria for neediness and other conditions in the legislation are met, claims relevant to public services conducted by social assistance and solidarity foundations across the country. Furthermore, the subjects of the applications in this field have also been the following: objections to the percentages in the medical board reports, problems suffered during the access to public services, problems of diabetic patients, failure to benefit from the right to education, right to travel free of charge, right to have a companion, access to the services provided under home care services, problems suffered by the persons with disabilities in need of protection, care and help, problems of martyr’s relatives and veterans, discrimination against the persons with disabilities, problems relating to the social assistance provided by the public institutions and municipalities and behaviours and attitudes of the officials towards the persons with disabilities.

Within the scope of Disability Rights, the following activities were carried out:

- With the support of the Ministry of National Education, a 120-hour Turkish Sign Language education was provided for 12 staff members of the Ombudsman Institution in 2018.
- A workshop on “A New Mechanism for the Resolution of the Disputes between the Persons with Disabilities and the Administration: The Ombudsman Institution” was organised with the representatives of associations and federations of persons with disabilities.

<sup>13</sup> Decision of Refusal dated 21/10/2019 on the application no. 2019/10807

The Ombudsman Institution participated in the following activities:

- The “3<sup>rd</sup> Network Plenary Session”, organised by Rights of Children with Disabilities Network on 21<sup>st</sup> and 22<sup>nd</sup> April 2018 in İstanbul.
- The workshop on “Determination of Disability and Invalidity, Relative Problems and Pension Rights of the Persons with Disabilities”, organised by the Human Rights Centre of the Union of Turkish Bar Associations on 8<sup>th</sup> November 2018.
- The International Conference on Disability Rights with the theme of “Access to Justice of People with Disabilities”, which was organised on 15<sup>th</sup> and 16<sup>th</sup> December 2018 in İstanbul within the scope of the project titled “Supporting access to Justice for People with Disabilities in Combating Discrimination”, conducted under the partnership of the Association for Monitoring Equal Rights and Association for People with Hearing Impairment & Their Families of Van.
- The meeting on “CRPD Constructive Negotiation”, organised by General Directorate of Services for Persons with Disabilities and Elderly People within the Ministry of Family, Labour and Social Services on the 13<sup>th</sup> and 14<sup>th</sup> March 2019 in Geneva/Switzerland.
- The meeting on “Supporting Access to Justice for People with Disabilities in Combating Discrimination”, which was organised by the Association for Monitoring Equal Rights on 19<sup>th</sup> July 2019.
- The meeting on “Sharing and Evaluating CRPD National Committee’s Concluding Observations”, held on 1<sup>st</sup> October 2019 in 75. Yıl Senior Centre.
- Workshop on “Problems of Women with Disabilities and Solutions”, conducted by the Ministry of Family, Labour and Social Services on 24<sup>th</sup> October 2019.
- The workshop on the “Right to Sports”, carried out in 75. Yıl Senior Rehabilitation Centre on 29.11.2019; the workshop on the “Right to Participate in the Social, Cultural Event and Tourism and Recreational Activities”, conducted in SSI’s Kavaklıdere Facility on 09.12.2019; the workshop on the “Right to Health”, held in 75. Yıl Senior Rehabilitation Centre on 11.12.2019, organised by the General Directorate of Services for Persons with Disabilities and Elderly People within the Ministry of Family, Labour and Social Services and with the participation of the representatives of relative public institutions and civil society organisations in the field of disability, within the scope of preparatory work for Accessible Vision Document and National Action Plan on the Rights of Persons with Disabilities.
- “Conference on the Rights of Persons with Disabilities and Advisory Committee Meetings”, hosted by the Human Rights and Equality Institution of Turkey on the 2<sup>nd</sup> December 2019 in the Green Park Hotel.

## Case Summaries

### About the Claim of Discrimination Based on Disability and Violation of Right to Education

The applicant stated that his son who was at the age of pre-school education had a physical handicap and that his son and his family were exposed to “discrimination” by the kindergarten teacher in the school where his son was registered as an inclusive student upon the guidance of the Counselling and Research Centre. The applicant claimed that the exercise of his son’s right to education was hindered and requested the provision of necessary conditions for his son to continue to exercise his right to education.

As a result of the examination and investigation conducted by our Institution, it was found out that the breach of the right through “discrimination based on disability” resulted from the acts of the teacher and that “discriminatory treatment” by an education provider towards a child in a learning environment required, beyond a penalty, finding and eliminating the main reasons underlying this negative treatment in order to protect the best interest of the child and raise the future generation properly; in this regard, administrative penalties to be imposed on the teacher were considered to be inadequate in developing positive attitudes and behaviours in a person. It was evaluated that in order to change the negative behaviours and attitudes, taking measures by identifying and eliminating the motives (lack of education/capacity, practice, inadequacy of support services and physical infrastructure of the school, insufficient number of staff members etc.) for the teacher in acting in this manner was necessary for the protection of the best interest and rights of the children served by the teacher.

Within this scope, it was decided to submit a Recommendation<sup>14</sup> to the Ministry of National Education on the following issues:

1. Mindset-shifting on-the-job training must be provided to the teacher, who is the subject of the complaint, in order to ensure that the teacher can change the negative attitudes and behaviours towards the students with special needs with a view to reminding the teacher of the duties and responsibilities in the field of education for children with special needs, eliminating the lack of knowledge in line with the legislation and developments on the rights of persons with disabilities and increasing the capacity and awareness;
2. Relevant to mainstreaming (and inclusion) in our country; the problems and their reasons must be identified in detail through a comprehensive and up-to-date examination and investigation to be conducted by the administration within the framework of an inclusive approach where the needs and demands of all the stakeholders, including students, parents, teachers and administrators, will be considered;

<sup>14</sup> Recommendation dated 18/04/2019 on the application no. 2018/12500

3. Within this frame, especially in order to change the negative attitudes and behaviours of the teachers and administrators, to support them and shift their mindsets, solutions that will overcome the current deficiencies and eliminate the practical problems must be found out in line with the struggles and needs to be determined as a result of the examination and investigation and these solutions must be put into practice within the shortest time and relative work must be shared with the general public within a specific programme and completed in medium and long terms.

### Request for a Special Education Classroom

The applicant informed that his son, born on 01/01/2011, was an atypical autistic child and that they continually encountered problems in his education starting with preschool period. He stated that the problems started with “refusal to accept him to the school” and although they changed the school, they came across the same reluctance and indifference by the teacher’s party, at the end, it was decided to provide education for him in a special education classroom; however, the classroom in question was not set up and relative teacher was not assigned to the school; eventually, the child had to give a break to his education for months and the applicant requested help so that his son could continue his education.

As a result of the examination conducted by our institution, to guarantee “the best interest of the child” and “effective and full exercise of the right to education”, relevant administration was contacted urgently and it was learned that the decision to set up a special education classroom had been made and by the applicant contacted simultaneously that the classroom was not set up; therefore, the child was not able to continue his education. Following our attempts relevant to the District Directorate of National Education, it was ensured that the special education classroom was set up, that a teacher was assigned, and the classroom was duly refurbished according to the responses of the applicant. As a result of the follow-up and support of our Institution, it was understood that “the request was fulfilled by the relative administration” through the set-up of a special education class, assignment of a teacher and refurbishment of the classroom; therefore, Amicable Settlement Decision was made<sup>15</sup>.

## HUMAN RIGHTS

As a result of the examinations and investigations diligently conducted on the complaints filed to the Ombudsman Institution, unjust treatments are resolved, and public administration is guided on the practice of law, justice and good administration with a view to precluding any further similar violations. Bringing the faulty and incomplete transactions as well as correct acts and actions in the general public objectively is one of the important goals of our Institution in order to contribute to the improvement of the relationship between the public administration and citizens and to the prevention of violation of rights.

<sup>15</sup> Amicable Settlement Decision dated 19/04/2019 on the application no. 2018/13021

Although the applications filed in 2019 on alleged violations of fundamental rights and freedoms were mostly individual applications, it was seen that a number of applications on concrete alleged violations were lodged by lawyers, civil society organisations and professional organisations. Among the complaints lodged to our Institution, the applications in the field of following matters are included: abuse of rights in the penitentiary institutions, right to petition and right to information, right to vote and stand for election, civil rights, right to travel, freedom of assembly and association, freedoms of thought, religion and conscience and prohibition of torture and ill-treatment.

Article 20 of the Constitution guarantees the privacy of private life within the scope of fundamental rights and duties. In the subject article, the following provision is laid down: *“Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.”* Within the scope of this provision, individual’s rights also comprise right to be informed of his/her personal data, access to these data and requesting correction and deletion and learning whether data are used in accordance with their purpose. In this regard, the individuals are entitled to learn about the processed data and request rectification in case personal data are processed inaccurately, have such data erased. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. Personal data shall not be processed without explicit consent of the data subject or it is expressly provided for by the laws.

## WOMEN’S RIGHTS

In 2019, the applications in the field of women’s human rights were mostly filed to the Ombudsman Institution regarding violence against women, discrimination, request for social benefits and problems resulting from the practice of the Law no. 6284.

In the field of women’s rights, it is observed that women applicants tend to apply to the Ombudsman Institution in cases of incomplete, delayed and neglected proceedings etc. in judicial protection system or administrative application procedures.

Since the cases submitted to our institution relating to all kinds of violence against women, honour killings and feud, harassment and abuse generally devolve upon judicial bodies, they fall out of the scope of the duties and authorities of our Institution.

Even if the decision of inadmissibility is made on the applications on these issues as per the relative articles of the Law no. 6328 due to their devolution upon judicial bodies, the situations of the women are evaluated in each application file and the women are informed of the public services they can benefit from in line with their needs and

demands and counselling service in this regard is offered. Furthermore, the applicants are guided to relative institutions for psychological support and legal assistance etc., and the process of their proceedings are monitored; thus, amicable settlement may be reached on the application file.

On the other hand, except for the cautionary decisions taken ex officio or upon a request, by the judge, law enforcement officers and administrative chiefs within the scope of the Law on 6284, the Ombudsman Institution refuses the administrative request of women, being subject to or at risk of violence, without examination with reference to the fact that the administrations are not involved in the court decisions.

In line with the international legislation and jurisprudence, if a victim of domestic violence applies to the Ombudsman Institution or if the Ombudsman Institution becomes aware of acts of violence, by conducting a risk assessment on the concrete incident, the Ombudsman Institution examines the application to identify whether the administration does its share in terms of taking measures within the limits of its powers, and submits recommendations.

### *Case Summary*

#### **About the Requirement of being A Male Candidate in the Firefighter Recruitment Announcement**

The applicant briefly stated that she graduated from civil defense and fire service department and there were thousands of female firefighters studying the same programme, that Diyarbakır Metropolitan Municipality published an online advertisement to recruit firefighters as civil servants; however, being a male was an eligibility requirement and she was not able to apply for the position, neither were many other women like her. The applicant expressed that she was subject to an unfair treatment with this advertisement and requested that necessary action be taken on this matter and her relief be granted immediately.

Decision of Referral<sup>16</sup> was made on the application, which was understood to have been filed without exhausting administrative remedies. In this decision briefly, the administration was requested to inform and make explanations on, in alignment with national and international legislative provisions, which prohibit discrimination against woman in employment, whether the requirement of being male was sought for in the staff recruitment to the “fire department” of the municipalities affiliated to the Ministry of Interior pursuant to the relevant international conventions and national legislative provisions; if not sought for, whether any female firefighting staff members were employed or not in the operation departments; if not, what the legal and concrete grounds were therefor and whether any female staff members would be employed in

<sup>16</sup> Decision of Referral dated 05/03/2019 on the application no. 2019/4335



the next firefighter recruitments and why civil defense and fire service department graduates from associate degree programmes of the universities and firefighting and fire safety graduates of the secondary education schools were not listed under the educational requirements for the staff to be recruited (at least for some of them).

#### **The Visit of the Country Director of UN Women-Turkey Ms. Asya Varbanova to the Office of the Ombudsman Ms. Celile Özlem TUNÇAK**

The Country Director of UN Women-Turkey Ms. Asya Varbanova and Programme Management Specialist Ms. Zeliha Ünalı visited the Ombudsman Ms. Celile Özlem Tunçak in her Office on 16/07/2019. Ms. Asya Varbanova, who took office as the Country Director in Turkey, explained new strategies in the field of women's rights and fundamental foci concerning sustainable development goals. She informed that their Office aimed at developing cooperation between the Ombudsman Institution and UN Women.

The Ombudsman Ms. Tunçak brought forward the activities in the field of women's rights, workshops on important matters relevant to women's human rights and special report works of the Ombudsman Institution. Ms. Tunçak emphasized that the Ombudsman Institution delightedly monitored the awareness created in the general public and the administration about how important its function was as a bridge between civil society organisations and the administration.

#### **Workshop on Women organised by the Presidency's Social Policies Council**

The Ombudsman Institution took part in the workshop on women, which was organised by the Presidency's Social Policies Council on 14<sup>th</sup> February 2019. In the workshop, it was expressed that a current situation analysis was targeted within the framework the problems encountered by women in social life and in the professional life as well as solutions relevant thereto.

The Ombudsman Institution contributed to the workshop by expressing opinions and bringing forward some suggestions in line with the results of the work conducted in the field of women's human rights.

#### **Second Regional Forum for the Promotion of the Istanbul Convention in the Western Balkans and Turkey**

In the Second Regional Forum for the Promotion of the Istanbul Convention in the Western Balkans and Turkey, organised between 8<sup>th</sup> and 10<sup>th</sup> October 2019 in Tirana, capital of Albania, difficulties arising from the implementation of Istanbul Convention, deficiencies in the existing institutional and legal infrastructure as well as the impacts of political will and determination on the implementation were discussed.

### Informative Meeting Conducted by the Committee on Equality of Opportunity for Women and Men of Grand National Assembly of Turkey

Some applications were made indicating the problems relevant to the practice of the Law no. 6284, which became current issue in 2019. On 27<sup>th</sup> November 2019, the Ombudsman Institution participated in a meeting, which was organised by the Sub-Committee on the Effective Implementation and Monitoring of The Istanbul Convention established by the decision dated 14<sup>th</sup> November 2019 of the Committee on Equality of Opportunity for Women and Men of GNAT with a view to evaluating the works of the Sub-Committee upon the invitation dated 22/11/2019 of the Committee on Equality of Opportunity for Women and Men of Grand National Assembly of Turkey on “*Preventing the violence against women and domestic violence with the duties and activities of the Ombudsman Institution within the scope of acts of violence against women and domestic violence and the findings and decisions, if any, of the Institution on the problems relating to the implementation of the Law no.6284 on Protection of Family and Prevention of Violence against Women*”.

In the meeting, the Ombudsman Institution informed the Committee about the Workshop Report on “*Increasing the Effectiveness of the Mechanisms on Prevention of Domestic Violence against Women and Children*” and “*Special Report on Violation of Rights in Handover of Children and Alimony*”, prepared in 2019 after the workshop on “*Preventing Violation of Rights in Handover of Children*”, which was among 2018 activities.

### Workshop on Family Law by the Ministry of Justice

Organised by the Ministry of Justice, the workshop, where the Family Law practices were evaluated and relative problems and their solutions were discussed, was held on 02/12/2019.

In the workshop, the Ombudsman Institution contributed to the sessions titled cautionary decisions made by the judges as per the Law no. 6284 along with the problems arising from the implementation of these decisions and their solutions, problems arising from coordination and integration of judicial authorities with each other and external unites and their solutions, legislative problems and their solutions.

## PUBLIC PERSONNEL REGIME

Public Personnel Regime refers to the legal status that the staff, which constitutes the natural human element of the public administration, is subject to. In the public personnel regime, civil service is an important type of employment and a significant portion of the current public employees are civil servants. It is a fact that public employees in question suffer from several problems in introduction to public services, employment on-site, financial rights, assessment of their performance and potential, promotion and career progression, appointment and replacement. Many applications are filed to our Institution with complaints on these issues.

The applications lodged to our Institution by civil servants are examined in accordance with the Law No. 657 as well as relative legislation and regulations. In addition, the faulty legislative practices of the administration, legislative gaps and compliance of the requests of the applicants with the law are investigated and examined.

Applications relating to public personnel regime are examined under the sub-headings of appointment, replacement, financial and social rights, promotion, disciplinary punishment and recruitment, mobbing, problems of contractual staff, personnel assessment, cadre and positions, issues related to the rights of employees working in the status of workers in the administration arising from the Labour Law and employment contracts and other matters regarding public officials.

**Table 2:** Statistics of Applications on Public Personnel Regime

Public Personnel Regime	Number	Percentage %
Issues related to the rights of employees working in the status of workers in the administration arising from the Labour Law and employment contracts	976	18,88%
Appointment, Transfer, Assignment and Replacement	905	17,50%
Recruitment (including problems regarding not being appointed as civil servant, limitations on vacancy, etc.), appointment, transfer and replacement	745	14,41%
Financial Rights	670	12,96%
Disciplinary punishment and dismissal	452	8,74%
Promotion	380	7,35%
Problems of contractual and temporary staff	254	4,91%
Civil service exams (written exams and oral examinations conducted by the public institutions)	218	4,22%
Complaints regarding attitudes and behaviours of public officials (including mobbing and ill-treatment),	206	3,98%
Cadre and/or positions	107	2,07%
Other matters regarding public officials	102	2,03%
Social Rights and Benefits	67	1,30%
Duties, responsibilities and general rights	48	0,93%
Personnel Assessment	19	0,37%
Personnel within the scope of privatisation	17	0,33%
Prohibitions	1	0,02%
<b>Total</b>	<b>5170</b>	

## Case Summaries

### Request for Transfer of Staff with Disabilities

The applicant informed that he worked in Gaziantep Documentation Directorate of the Turkish Standards Institution since 2013, that he was a hearing-impaired person and in his medical report his 52% disability was reported. The applicant also stated that his family resided in Aydın and on 18.04.2016, a negative response was given to his petition for appointment dated 26.02.2016. The applicant expressed that following this rejection, he requested for appointment to Aydın Province on 12.07.2017 by citing her mother's condition and as a response to his petition "he was offered to work in Manisa Coal Laboratory"; however, he did not take the offer. The applicant informed that he finally requested appointment once more on 14.02.2018; however, he was rejected by the Department of Human Resources of the institution as he was required in the province he worked; accordingly, he requested that he be appointed to the Provincial Directorate of Turkish Standards Institution in Aydın Province.

As a result of the evaluation conducted by our Institution, it was concluded that relevant actions must be taken in order to fulfil the applicant's request, and a Recommendation<sup>17</sup> was submitted to the administration considering the fact that disability status in evaluation of applications and positive discrimination in favour of people with disabilities were secured under the legislation relating to civil servant, and interpreting the relative legislation together with the Law on Disabled People, it was understood that "protective and supportive measures for the employees with disabilities" were included in the relative legislation and that legal arrangements in question were enacted with a view to taking protective measures on "employment and working life of people with disabilities", to preventing social exclusion of people with disabilities as well as eliminating the problems encountered by people with disabilities in their working life and taking into account the fact that the practices aggravating working conditions of people with disabilities and causing their estranging themselves from social life would contradict relative provisions of the Law on Civil Servants and the Law on Disabled People.

### Mobbing and Ill-Treatment

The applicant was a 20-years veterinarian, who was working as a R&D Coordinator in the Foot-and-Mouth Diseases Institute. The applicant filed an application to our Institution because he was systematically subject of verbal abuse in the past two years by certain people and applied to his institution about it several times; however, he was away empty-handed and to request an on-site examination of his current office, which was away from the laboratory and whose working conditions were not eligible after its replacement with the former one as well as the identification of the mobbing he was subject of.

<sup>17</sup> Recommendation dated 05/04/2019 on the application no. 2018/11948

In order to conduct an on-site examination on the claims of the subject veterinarian, the Ombudsman Institution assigned experts; accordingly, it was identified, as was already expressed by the applicant, that the allocated office was located outside the laboratory block in a two-roomed building, which was used to be a masjid<sup>18</sup> and that in the room, where a heating system was not installed, there was only an old desk along with an old file cabinet. After the visit of the experts, Acting Director of the Institute convened the veterinarian and expressed his discomfort about this visit's having been carried out without authorisation. Upon the quarrel started after the veterinarian response that he exercised his constitutional right; a disciplinary action was started by the Acting Director of the Institute. The investigator assigned by the Acting Director recommended that the veterinarian be sent away from the workplace on the grounds that the veterinarian broke the peace, and the acting director appointed the veterinarian, who was working in the Foot-and-Mouth Diseases Institute, to the District Directorate of Agriculture and Forestry and inflicted disciplinary punishments even without waiting for the result of the investigation.

Considering the fact that the unfair practices that the veterinarian suffered before applying to our Institution and while the examination was in progress spread over a long period and the systematicity of these practices, it was concluded to issue a Recommendation<sup>19</sup> to remove the disciplinary punishment of the applicant, to appoint him to his former workplace, Foot-and-Mouth Diseases Institute, and to start an investigation against the parties to the mobbing.

Upon the investigation carried out by the Directorate for Guidance and Inspection under the Ministry of Agriculture and Forestry following the Recommendation issued by the Ombudsman Institution, the Director of Foot-and-Mouth Diseases Institute, who was also the Acting Deputy Director in the Directorate General of Food and Control, was suspended from his duties and sent to Disciplinary Board of the Ministry of Agriculture and Forestry so that necessary evaluations would be made relevant to his behaviours considered to be against the code of ethics. Veterinarian returned to his work in the Institute.

## SERVICES PROVIDED BY LOCAL GOVERNMENTS

Our Institution received many applications in 2019 in the field of services provided by local governments. The subject matters of these applications were mainly as follows: Procedures and practices relevant to zoning and public works, permission procedures, infrastructure services, urban transformation, proceedings relevant to natural gas, financial services, water services, public transportation, parking services, landscaping, ensuring traffic order and pedestrian safety, solid waste management, community policing, funeral and burial services, fire services and other matters relating to services provided by local governments

<sup>18</sup> A small mosque

<sup>19</sup> Recommendation dated 28/02/2019 on the application no 2018/17444

## Case Summaries

### About the Removal of Age Limit, a Barrier in Issuing a Student Commutation Card in Public Transport

The applicant stated that although there was no age limit in the Law no. 2547 on Higher Education and other relative regulations for being a student, Bursa Metropolitan Municipality placed a restriction on age with its Implementing Regulation of Commutation Tickets in Public Transport Vehicles and that he was a Ph.D. student in Dokuz Eylül University, who was born in 1981 and a student commutation card was not issued for his party due to the aforementioned regulation of Bursa Metropolitan Municipality. The applicant expressed that placing an age restriction on student commutation cards was unlawful, that in Ankara Metropolitan Municipality, such an age-relevant requirement was not sought for low rate student commutation cards and the same went for İzmir considering the By-Law on Customised Commutation Cards of İzmir Metropolitan Municipality, and requested the annulment of the age limit in issuing student commutation cards set forth in the Implementing Regulation of Commutation Tickets in Public Transport Vehicles of Bursa Metropolitan Municipality.

As a result of the examination and investigation conducted, it was evaluated that the definition of “student” differed according to municipalities and in general there was not an age limit for higher education students; in addition, the administration had discretionary powers in determining the criteria for applying reductions; however, these powers were not limitless neither absolute and should be used in line with the public service requirements and for public interest; in this concrete event, “30 years” limit was placed for Ph.D. students by the administration. In the letter submitted to our Institution as a response, the administration did not justify the grounds for exercising its discretionary power although the exercise of the discretionary power must be justifiable and it was evaluated that the implementation of age criterium by the administration was not in accordance with the public service requirements.

Within this scope, it was concluded that a Recommendation<sup>20</sup> should be submitted to Bursa Metropolitan Municipality about taking relative actions to remove the age limit in the definition of student laid down in the Implementing Regulation of Commutation Tickets in Public Transport Vehicles of Bursa Metropolitan Municipality.

### About the Request for Taking Necessary Measures for Stray Dogs

The applicants requested taking necessary measures for dangerous stray dogs, collection and transfer of stray dogs to animal shelters by competent authorities, and killing the dogs that pose a threat to human life if deemed necessary and drafting legislation that would allow the streets to be cleared of stray dogs in a similar way to the practices in modern countries

<sup>20</sup> Recommendation dated 06/09/2019 on the application no. 2019/6610

As a result of the evaluations made on the application, it was decided to submit a Recommendation<sup>21</sup> to the Ministry of Agriculture and Forestry, Ministry of Health, Ministry of National Education, Ministry of Interior, Ankara Metropolitan Municipality and Çankaya Municipality.

#### About the Request for Avoidance of Looking in the Bags of the Visitors, of Causing Uneasiness and for Respect for Visitors at the Entrance to the Cable Car Facilities

The applicant stated that at the entrance to İzmir Cable Car Facility, private security officers made visitors open their bags to look in even after passing through x-ray scanner and that the applicant applied to the administration on this issue. The applicant claimed that in the response letter of the administration, it was stated that *“the obligation to comply with the security measures is in line with the decision of allowing visitors to enter our facility”* and that he applicant did not accept the search for bags by being treated as suspects when entering the facility for a picnic and the applicant requested development of more humane, ethical and legal methods in order to prevent letting food & beverages in the facility, avoidance of search of bags and of causing uneasiness, and more respectful and courteous attitudes towards visitors.

As a result of relevant examination and investigation, it was concluded to submit a Decision of Refusal<sup>22</sup> on the request of the applicant since it was evaluated that hand held metal detectors and walkthrough metal detectors could be employed to determine whether there were any articles that would endanger the security at the entrance to the Cable Car Facilities, that the security offers could have visitors open their bags as there was not an X-ray scanner, that the measure in question did not conflict with the principle of proportionality in terms of ensuring public security; therefore, it was lawful.

#### RIGHT TO PROPERTY

Regarding the “Right to Property”, the Ombudsman Institution of Turkey receives applications concerning the following subject matters: Immovable properties of which citizens claim ownership, but which are classified as forest, meadow etc. and passed into the ownership of the Treasury; applications claiming that the public authority seizes the privately-owned immovable without expropriation; applications concerning the unpaid expropriation prices despite court decisions; applications by citizens who purchase immovable from construction companies, being appointed trustees of Savings Deposit Insurance Fund, requests for the immovable to be handed over to applicants; and applications fleeing to mesne profits made by the administrations.

In addition, citizens file complaints with the claim that their right to property is restricted through expropriation of immovable properties based on the zoning programmes along with absence of any activity for expropriation, with the request for payment for the

21 Recommendation dated 29/01/2019 on the application no. 2018/9733

22 Decision of Refusal dated 19/03/2019 on the application no. 2018/11558



current fair value of the expropriation price of the immovable in question, or for relative administrations' renouncing the immovables that have been planned to be expropriated if no operations are to be launched for expropriation purposes so that citizens can exercise their right of disposition on the immovables.

### Case Summary

#### Request for Payment of Receivables Arising from Confiscation without Expropriation

The applicant cooperative stated that receivables from the Ministry of Youth and Sports arising from confiscation without expropriation and dating back to 2011 had not been paid yet and requested that the Decision no. 2011/461 E. 2012/596 K. Of the 2<sup>nd</sup> Civil Court of First Instance in Aydın be duly implemented and demanded relief.

As a result of the evaluations made on the application, it was concluded, as per Article 138 of the Constitution and Article 28 of Procedure of Administrative Justice Act No. 2577, which stipulate that the administrations shall not delay the execution of the decision of independent and impartial courts nor shall they fail to execute the decisions concerning payment of a debt within a reasonable time by claiming lack of economic resources, which would bring about the violation of right to fair trial as per the established case-laws of both the European Court of Human Rights and Constitutional Court; considering the fact that implementation of a judicial ruling with delay would constitute dereliction of duty and as per the provision laying down that *"The administration shall be liable to compensate for damages resulting from its actions and acts"* in Article 125 of the Constitution, that the failure of the administration to duly execute the court decision was unlawful and unfair.

Taking into account the claims of the applicant, clarifications of the relative administration, relative legislative provisions, jurisprudence and information and documents in the file, it was decided to submit a Recommendation<sup>23</sup> to the Ministry of Youth and Sports so that the administration would take an act within a reasonable period to execute the relevant court decision.

### POPULATION, CITIZENSHIP, REFUGEE AND ASYLUM RIGHTS

In 2019, the applications filed in the field of "Population, Citizenship, Refugee and Asylum rights" were mostly regarding the following matters: Civil registration services and procedures, citizenship services, problems relating to visa and passport, problems of Turkish citizens living abroad temporarily or permanently, problems of asylum seekers and fugitives, and other related matters in this field.

<sup>23</sup> Recommendation dated 05/08/2019 on the application no. 2019/3797

## Case Summaries

### Request for Information on Citizenship Application and Acceleration of the Process

The Applicant stated that his wife, who was Algerian, applied to Kahramanmaraş Governorate on 29/05/2017 to acquire Turkish citizenship, that the application was pending for around a year by claiming that it had not been concluded, yet. Accordingly, the applicant requested information on the current state of the citizenship application and finalisation of the process through acceleration thereof.

As a result of the examination conducted by our Institution, it was found out that as per Article 12 titled “Acceptance and Finalisation of Applications” of the By-law on the Procedures and Principles to be Complied with in the Provision of Public Services, which lays down that citizens’ applications shall be finalised within the period set forth in the service standards, the delay was in conflict with the provisions of the aforementioned article, that a decision was not made through the finalisation of the investigation although about two years had passed to date since 29/05/2017, when a request on behalf of a foreign national, who lived in our country as married to a Turkish citizen more than three years, was submitted; accordingly, it was evaluated that this administrative process was not lawful nor was in compliance with the principles of good administration because of the failure to duly inform the applicant of his application.

In this respect, pursuant to the provisions of Turkish Citizenship Law No. 5901, it was decided to issue a Recommendation<sup>24</sup> for the Ministry of Interior about the relief of the relevant person through finalisation of the application dated 29/05/2017 on request for acquisition of Turkish citizenship by way of marriage within the shortest time.

### Request for Registration of the Court Decision on Adoption in the Records of Civil Registration System

The applicant stated that he was the legal representative of the inheritors of ....., who was the adopted child of ....., that the decision no.....of the 12<sup>th</sup> Civil Court of First Instance in İstanbul on the adoption by the adoptive..... was not registered in the Central Civil Registration System (MERNIS), and that the applicant applied to the Provincial Directorate of Population and Citizenship Affairs in İstanbul to request rectification of the records and insertion of the adoption proceedings in the records. By claiming that his application in writing was submitted to the Directorate General of Population and Citizenship Affairs on 12/06/2018 and his application was left unanswered although a long time had already passed, the applicant requested that the court decision on adoption be proceeded in the records in order to eliminate the aggrievements suffered by his clients.

<sup>24</sup> Recommendation dated 16/07/2019 on the application no. 2019/1071

As a result of the Ombudsman Institution's attempts towards amicable settlement, Directorate General of Population and Citizenship Affairs informed that the court decision in question was proceeded and registered in the records. As it was understood that the request of the applicant was fulfilled, Amicable Settlement Decision<sup>25</sup> was made.

## FORESTRY, WATER, ENVIRONMENT AND URBANISATION

The applications filed to our Institution in this field are usually relating to the following subject matters: Practices of Housing Development Administration of Turkey (TOKİ), requests for entitlement within the scope of Article 2(B) of the Forest Law, requests for demolition of risky buildings under the Law no. 6306, requests for housing benefits under the Law no. 6306 and for taking buildings and neighbourhood into the scope of the same law, applications on the administrations' failure to compensate the applicants for award of damages, requests for building control permits and their cancellations, applications relating to apartment building management and site management, applications relating to hunting, requests for permission for drilling a well, applications related to the areas determined as site areas (protected areas), environmental and noise pollution, applications relevant to membership fees to professional chambers, special forest lands, problems suffered by survey and cadastre engineers, transactions relating to land registry and cadastre.

### Case Summary

#### Resumption of the Suspended Urban Transformation Loan Support

The applicant informed that 2 masonry buildings and 1 reinforced concrete building were declared as risky constructions and within this scope he started to benefit from urban transformation loan support; however, in March 2018, the payments were cut off, that although he applied to the relevant administration many times to resume the loan support, he was told to wait for some time due to the error in the system; accordingly, the applicant requested relief be granted to his party in his application to the Ombudsman Institution.

Within the scope of the attempts of our Institution towards amicable settlement, information and documents were requested by relative administration. In the response letter submitted by the Directorate General for Infrastructure and Urban Transformation Services in the Ministry of Environment and Urbanisation, the following was stated: "...Upon the information provided to the Provincial Directorate that due to an error occurring in the payment system, the payments could not be made by the relative bank, necessary interventions were undertaken; accordingly, confirmations of loan rate supports were started to be made manually in the system and totality of the amount due was transferred to the account of the relative person on 22.05.2019". As a result of

<sup>25</sup> Amicable Settlement Decision dated 05/03/2019 on the application no. 2019/1951

the examination of the application file along with its annexes, as it was understood that the payments were made in line with the request of the applicant and that the subject request was fulfilled by the administration, Amicable Settlement Decision<sup>26</sup> was made.

## HEALTHCARE

The applications filed to our Institution in the field of healthcare comprise the following matters: Applications relating to the failure of doctors/dentists and other healthcare personnel to duly provide healthcare services [claims of malpractice (on medical terms) and violation of patient rights], applications including requests for cancellation of deductions made by the SSI on the prescribed medications, pharmacists' requests for agreement with SSI, applications including requests for social security coverage for some medical devices and medications, applications regarding the technical problems on Centralised Doctor Appointment System, medical board reports/ medical board reports for disability/ objections to medical board reports for Turkish Armed Forces (TAF), claims of unfair revocation of drug licences by the Turkish Medicines and Medical Devices Agency, applications claiming that private and foundation hospitals charge emergency patients fees, unfair charge of fees for the healthcare services that must be provided under social security coverage and problems encountered during access to medicines procured from abroad.

### Case Summaries

#### Request for Free Access to Medicines and Devices Used in the Treatment of Type I Diabetes

The applicant stated that he had been suffering from Type I diabetes for approximately 20 years, that although he went under necessary treatment and the treatment was duly followed up, he was detected with diabetic retinopathy, diabetic nephropathy and diabetic neuropathy complications. The applicant informed that he recently started haemodialysis treatment three days a week and noted that instant blood sugar measurement and intervention were very important in the treatment of diabetes, and requested that necessary actions be taken to cover state-of-the-art medical equipment, devices, apparatus and medicines under state support.

As a result of the evaluation carried out by our Institution, it was decided to issue a Recommendation<sup>27</sup> for the Social Security Institution to include state-of-the-art medical equipment, devices, apparatus and medicines, which were proven to be successful in the treatment of diabetes based on evidence and scientific data, in the Healthcare Implementation Communique and within the scope of the refund system of the Social Security Institution by taking into account the costs of complications relating to diabetes as well while determining the cost incurred by the SSI for the

<sup>26</sup> Amicable Settlement Decision dated 17/07/2019 on the application no. 2019/3293

<sup>27</sup> Recommendation dated 29/04/2019 on the application no. 2019/6118

funded healthcare services and criteria for the procurement of medical equipment; to make improvements over the terms of payments of the medical equipment, devices, apparatus and medicines, which had already been under refund system of the SSI and to finalise the operations already launched and conducted towards these ends immediately.

### Procurement of a Device for the Surgery

The applicant stated that he had been waiting for an operation more than a year due to the malfunctioning of the fiberoptic anaesthetic apparatus and its three other backups to be used in the surgery for hip replacement revision in Cerrahpaşa Medical Faculty Hospital, that during this period, his living comfort seriously deteriorated and the fact that only one of the hips were revised caused risks for each prosthesis (the new and old one). The applicant informed that the surgery in question could only be performed in Winter because of risk of infection and if this surgery was not performed in that Winter, he would have to wait for a year more; as a result, the applicant filed an application to our Institution to request the performance of this surgery through repairment of the apparatus, procurement of a new one or by borrowing it from the nearest hospital.

Regarding the issue, the Ombudsman Institution requested information and documents from the hospital. The response letter conveyed to the Institution briefly informed that the patient was operated through performance of fiberoptic intubation with a demo device supplied after the representatives of the company supplying the relative device were directly contacted. The applicant later sent an-email to inform that the surgery was successfully performed with the demo device; therefore, he forwarded his thanks to our Institution.

Within this framework, as the administration stated that the applicant's request was fulfilled, Amicable Settlement Decision<sup>28</sup> was issued as per Article 33 (A) of the By-Law on the Procedures and Principles regarding the Implementation of the Law on Ombudsman Institution.

## TRANSPORTATION, PRESS AND COMMUNICATION

As in all countries, transportation services remain important in our country, as well and continue to increase their importance in line with emerging developments. In today's world, fast, safe, comfortable and peaceful transportation is considered as an important indicator of development and economic power.

The information technologies and communications sector, which is also one of the most important industries of today, causes rapid changes in the economic and social life. Furthermore, it has been going under significant transformations. Especially with the development of mobile communications and internet, it is seen that the networks

<sup>28</sup> Amicable Settlement Decision dated 02/05/2019 on the application no. 2019/4554

and services converge quite closely, and significant advances have been made in the development of technologies that enable users to have access to multiple services at once.

Moreover, the freedom of the press, deeply affects the public's ability to receive news and develop opinions. In particular, the role of this freedom in the democratic formation of social opinion is of great importance. In this regard, the freedom of the press and the activities of the media organisations need to be meticulously addressed. However, it is known that both citizens and administrations in the media sector have complaints about certain issues. Indeed, in this context, various applications are lodged to our Institution concerning particularly press.

### *Case Summary*

#### **About the Ticket Sales of Orient Express**

The applicants stated that it was impossible to find a ticket for Orient Express, the journey of which was between Ankara and Kars, that the practices of ticket sales violated the “principle of transparency” because even if the train tickets were up for sale 30 days prior to the departure, the time when they were marketed was unclear; in addition, the tickets up for sale were bought by tour companies, which sold the tickets for the journeys of many months later and within a package tour programme for outrageous prices. Claiming that citizens were condemned to these companies and their right to travel was violated, the applicants requested that the date and time of ticket sales be announced on the official website, restrictions be placed on the amount of the tickets sold to tour companies, more than one ticket sale to the same person be prohibited, number of trips be increased and additional carriages be provided.

As a result of the examination conducted on the application, it was concluded to submit a Recommendation<sup>29</sup> to the General Directorate of Turkish State Railways about ensuring consistency in the times the tickets were available for sale by way of necessary arrangements on the electronic system, selling tickets at a reasonable time, providing sleeping cars or couchette cars instead of pullman cars in winter and providing additional carriages within the bounds of technical possibility in order to satisfy the increasing demand.

<sup>29</sup> Recommendation dated 12/07/2019 on the application no. 2019/3015

# CHAPTER

# V

# 2019

## ANNUAL REPORT

### INTERNATIONAL COOPERATION

Projects

International Cooperation  
Activities

Relations with Other  
Ombudsman Institutions and  
Networks around the World

Visiting Foreign Delegations



## 5.1 PROJECTS

The Ombudsman Institution attaches great importance to cooperate and collaborate with its international counterparts and partners. In this regard, it implements EU and internationally funded projects.

### ➤ *Twinning Light Project on the Empowerment of the Role of Ombudsman Institution in the Protection and Promotion of Human Rights*

As the Beneficiary, the Ombudsman Institution had initiated “**Empowerment of the Role of Ombudsman Institution in the Protection and Promotion of Human Rights Project**” which includes Twinning Light and Technical Assistance Components under the scope of IPA fund. The project activities of the twinning light component in cooperation with Portuguese Ombudsman had started with the kick-off meeting held on 12 November 2018 and completed on 29 June 2019.

### *Visit of Portuguese Ombudsman to Turkish Ombudsman Institution (20-24 May 2019)*



Prof. Dr. Maria Lúcia Amaral, the Portuguese Ombudsman, visited Turkish Ombudsman Institution between the dates 20-24 May 2019. She was informed about the activities of the Ombudsman Institution of Turkey. She also attended the joint training programme organized for the experts within the Project.

### *Two Study Visits to Ombudsman Institution of Portugal (27 May/16 June 2019)*

In the context of the EU funded TwinningLightProject “Empowerment of the Role of Ombudsman in the Protection and Promotion of Human Rights” in partnership with the Portuguese Ombudsman and Turkish Ombudsman, two different groups of experts/personnel working at the Ombudsman Institution of the Republic of Turkey attended study visits to Lisbon/Portugal, the first one on 27-31 May 2019 and the second one on 16-20 June 2019.



### ***A High Level Visit to Portuguese Ombudsman Institution (23-27 June 2019)***

A high level delegation consisting of the Chief Ombudsman, the Ombudsman Ms. Celile Özlem Tunçak, the Ombudsman Mr. Yahya Akman, Secretary General Mr. İbrahim Kılınç and three experts visited the Portuguese Ombudsman Office between the dates 23-27 June 2019 and exchanged information regarding both institutions.



### ***➤ Technical Assistance for Empowerment of the Role of Ombudsman in the Protection and Promotion of Human Rights***

The Project is implemented by the Ombudsman Institution and funded by the European Union. The project started in March 2019 and will last 36 months. Overall objective of the Project is to achieve measurable progress towards the full enjoyment of all fundamental rights and freedoms by all individuals without discrimination in all areas. The Purpose of the Project is to increase the effectiveness of the Ombudsman Institution in the protection and promotion of human rights.



### ➤ *A Working Plan in Progress with the UNICEF*

In the fields of children's rights, the Ombudsman Institution cooperates with the UNICEF and carries out a working plan. In this regard, as part of Turkey-UNICEF Cooperation Program 2016-2020, a working plan for 2019 was signed between our Institution and the UNICEF on 15 April 2019. The outputs of this Plan will be increased level of involvement of both Turkish and refugee teenagers and youth until 2020 and increased opportunities for them to communicate with their peers. In addition, until the end of 2020, based on international best practices, it is envisaged to strengthen the capacities of human rights monitoring mechanisms in order to prevent violation of children's rights and to activate recovery actions. Within this working plan, our Institution in partnership with UNICEF carries out relevant activities and coordination.

## 5.2 INTERNATIONAL COOPERATION ACTIVITIES



As the Institution places a great deal of importance to establishing close collaboration and strengthening relations with the Ombudsman Institutions of other countries, the Ombudsman Institution has actively participated in many international activities and paid working visits to countries in 2019.

Some of these events and visits are listed below:

- The event of the 20<sup>th</sup> Anniversary of the Greek Ombudsman and Conference (February 2019)
- Working visit to Sweden as part of the ongoing Project on Strengthening the Culture of Seeking Legal Remedies (March 2019)
- European Network of Ombudsmen (ENO) Conference and working visit to Belgium as part of the ongoing Project on Strengthening the Culture of Seeking Legal Remedies (April 2019)
- Working visit to Denmark as part of the ongoing Project on Strengthening the Culture of Seeking Legal Remedies (April 2019)
- 53<sup>rd</sup> Meeting of the Legal and Political Affairs Committee of the Parliamentary

Assembly of the Black Sea Economic Cooperation (PABSEC) on the “Role of the Ombudsman Institutions in Fostering Democracy in the BSEC Member States (May 2019)

- 16<sup>th</sup> Baku International Ombudsman Conference (June 2019)
- A Working Visit to Bulgaria (September 2019)
- Visit to the Institution of Mediator of the Republic of Guinea) to provide training for the Institution’s staff (September 2019)
- Peer Review Seminar hosted by the UK Parliamentary and Health Service Ombudsman in conjunction with the IOI (September 2019)
- ENOC’s 23<sup>rd</sup> Annual Conference (September 2019)
- High-Level Conference for ECRI 25<sup>th</sup> Anniversary (September 2019)
- UN Women Regional Forum on Promoting Implementation of Istanbul Convention in the Western Balkans and Turkey (October 2019)
- IOI Europe Workshop (October 2019)
- Poldershop event hosted by the Office of The National Ombudsman of the Netherlands and working visit to Netherlands (October 2019)
- Regional Conference organized by the Serbian Ombudsman (November 2019)
- Subcommittee No.8 Meeting of the EU-Turkey Association Council (November 2019)
- Working visit to Morocco as well as the Training organized by the Association of Mediterranean Ombudsmen (AOM) (November 2019)
- Conference organized by the Office of the High Commissioner for Human Rights in the Russian Federation (16-18 December 2019)





### 5.3 RELATIONS WITH OTHER OMBUDSMAN INSTITUTIONS AND NETWORKS AROUND THE WORLD



#### *Relations with other Ombudsman Institutions*

So far, our Institution has signed bilateral memorandums of understanding with Ombudsman Organizations of 9 different countries. The two of them were signed in 2019 which are:

- A Memorandum of Understanding with the Commission for Protection against Discrimination of Bulgaria (August 2019)
- A Memorandum of Understanding with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina (November 2019)



#### *Relations with the International Ombudsman Networks and Associations*

Our Institution is currently a member/part of the following networks and associations;

- International Ombudsman Institute (IOI)
- European Network of Ombudsmen (ENO)
- Association of Mediterranean Ombudsmen (AOM)
- Asian Ombudsman Association (AOA)
- Organization of Islamic Cooperation Ombudsman Association (OICOA)
- European Ombudsman Institute (EOI)
- Network of Regional Ombudsmen of Western Balkans
- Network of National Ombudsmen of Balkan Region

In 2019, our Institution has maintained its close cooperation with the above-mentioned

international Ombudsman Associations and Networks, closely followed up their activities, and further increased its relations with these networks through phone calls, correspondences as well as coming together at relevant meetings.

Our Institution attends meetings, trainings, seminars organized by the above-mentioned networks and associations. In this context, our Institution attended the following events in 2019:

- European Network of Ombudsmen (ENO) Annual Meeting (Brussels, 08-09 April 2019)
- IOI Europe Workshop (Riga, 16-17 October 2019)
- Study visit of the AOM regarding migrant children's rights (Ankara, 24-25 October 2019)
- 4<sup>th</sup> Steering Committee Meeting of the OICOA (Istanbul, 17 November 2019)
- 16<sup>th</sup> General Assembly Meeting of the Asian Ombudsman Association (AOA) (Istanbul-18 November 2019)
- 2<sup>nd</sup> General Assembly Meeting of the Organisation of Islamic Cooperation Ombudsman Association (OICOA) (Istanbul, 19 November 2019)
- Training on "The Own Initiative" hosted by the Institution of the Mediator of the Kingdom of Morocco in collaboration with the Association of Mediterranean Ombudsmen (AOM) (Rabat, 26-27 November 2019)

In addition, our Institution is in close cooperation with the European Network of Ombudsmen for Children (ENOC), and attended the 23<sup>rd</sup> Annual Conference of ENOC organised on 25-27 September 2019 in Belfast-Northern Ireland, UK.

## 5.4 VISITING FOREIGN DELEGATIONS

During the year, the Institution received a number of visitors and delegations from mainly the foreign Ombudsman Institutions and National Human Rights Institutions, international organizations, and representatives of diplomatic missions based in Turkey.

Below is a short list of the individuals and delegations that visited our Institution in 2019:

- Delegation of the Commission for Protection against Discrimination of Bulgaria (October 2019)
- A Working Group of the Association of Mediterranean Ombudsmen (AOM) (October 2019)

- The Mediator of the Republic of Guinea (November 2019)
- Audit Board of the Republic of Indonesia (BPK RI) (November 2019)
- 03/01/2019, Mr. Juan Gonzales Barba-Pera, Ambassador of Spain to Turkey
- 08/01/2019, Mr. Kemal Köprülü, Ambassador of Turkish Republic of Northern Cyprus to Turkey
- 17/01/2019, Mr. Shri Sanjay Bhattacharyya, Ambassador of India to Turkey
- 21/01/2019, Ms. Lucia Garcia Rico, Counselor at Spanish Embassy
- 14/03/2019, Mr. Gustavo Alonso Campos Fallas, Ambassador of Costa Rica to Turkey
- 18/03/2019 and 03/04/2019, a Delegation from the UNDP Project Monitoring and Evaluation
- 26/03/2019, Mr. Massimo Gaiani, Ambassador of Italy to Turkey
- 03/04/2019, Mr. Viktor Matis, Ambassador of Hungary to Turkey
- 03/04/2019, Mr. Philippe Duamelle, Representative of UNICEF Turkey
- 06/04/2019, Mr. Yves Cruchten, Rapporteur, the Parliamentary Assembly of the Council of Europe (PACE) and his delegation
- 25/04/2019, Mr. Süleimenova Ulbosin, Mr. Yerden Aripov and Mr. Mergaliyev Aslambek, Judges of the Supreme Court of the Republic of Kazakhstan
- 03/05/2019, Ms. Clare Ovey, Head of Division at the Registry of the European Court of Human Rights and Ms. Işık Batmaz, Legal Expert
- 20/06/2019, a Delegation from the UK Home Office
- 20/06/2019, Mr. Marian Wendt, Head of Petitions Committee of the German Bundestag and his delegation
- 04 /07/2019, Ms. Dunja Mijatovic, Council of Europe Commissioner for Human Rights and her delegation
- 16/07/ 2019, Ms. Asya Varbanova, Country Director of UN Women in Turkey and Ms. Zeliha Ünalı, Director of Programmes



- 08/08/2019, Ms. Özlem Ünsal, SPD Member of Parliament for Schleswig-Holstein and Second Chair of the Petitions Committee
- 19/09/2019, Representatives of ENNHRI and OHCHR including Ms. Lora Vidovic, (Ombudsman of Croatia), Ms. Rosslyn Noonan (Independent Expert), and Ms. Liza Sekaggya





# CHAPTER

# VI

# 2019

ANNUAL REPORT

## STATISTICS

2019 at a Glance

General Statistics

## 6.1 2019 AT A GLANCE

The Ombudsman Institution in 2019:

- received **20.968** applications
- resolved **21.170** cases
- examined **4.870** cases that passed through investigation and examination
- issued **2.707** amicable settlement decisions
- issued **1.270** Recommendations including partial ones
- had **82%** ability to settle disputes
- fulfilled **107.899** requests for information

**Figure 1:** 2019 at a glance



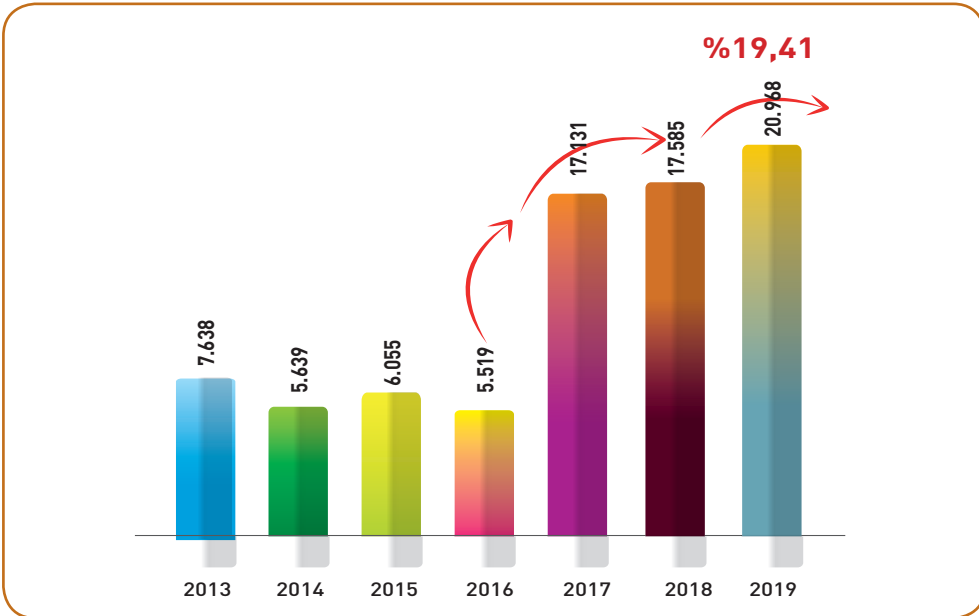
## 6.2 GENERAL STATISTICS

As of 2013, a total of **80.535** complaint applications have been received.

**Table 3:** Number of complaints as per years

Number of Complaints	2013	2014	2015	2016	2017	2018	2019	TOTAL
Complaints filed	7.638	5.639	6.055	5.519	17.131	17.585	20.968	80.535

**Figure 2:** Changing trend of complaint applications as per years



When the number of complaints in 2019 is compared with the number of complaints in 2018, it is seen that the increase rate is **19,24%**.

**Table 4:** Comparison of complaints of 2018 and 2019

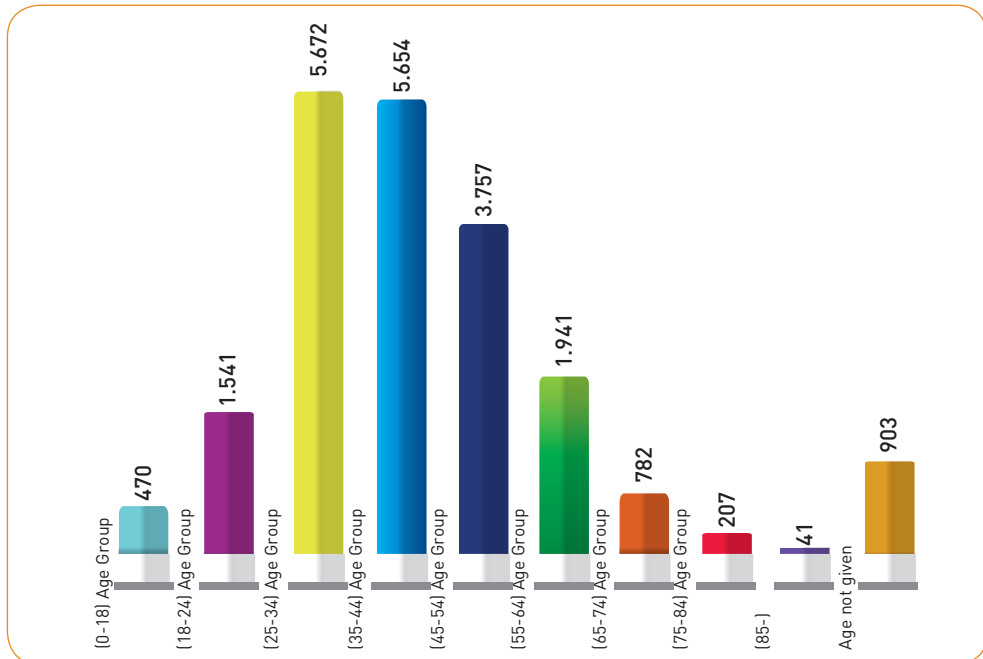
Year	2018	2019	Increase Rate %
Total Complaints	17.585	20.968	19,24%

The distribution of complaint applications filed to the Institution in 2019 as per age group is **27,05%** of the age group 25-34, **26,96%** of the age group 35-44, **17,92%** of the age group 45-54.

**Table 5:** Distribution of complaint applications as per Age Groups in 2019

Age Group	Number of applications in 2019	Percentage %
[0-18]	470	2,24%
[18-24]	1541	7,35%
[25-34]	5672	27,05%
[35-44]	5654	26,96%
[45-54]	3757	17,92%
[55-64]	1941	9,26%
[65-74]	782	3,73%
[75-84]	207	0,99%
[85-]	41	0,20%
Age not given	903	4,31%
<b>TOTAL</b>	<b>20.968</b>	

**Figure 3:** Distribution of complaint applications as per Age Groups in 2019



In 2019, **97,93%** of applications were filed by real persons while **2,07%** were filed by legal persons. **75,91%** of 20.533 real person applicants are male while **19,52%** of them are women and **2,29%** of them are children. **56,32%** of legal persons who applied to the Institution consist of companies while **11,49%** consist of trade unions, **7,82%** consist of associations and **7,59%** consist of public institutions.

**Table 6:** Distribution of complaint applications as per types of applicant in 2019

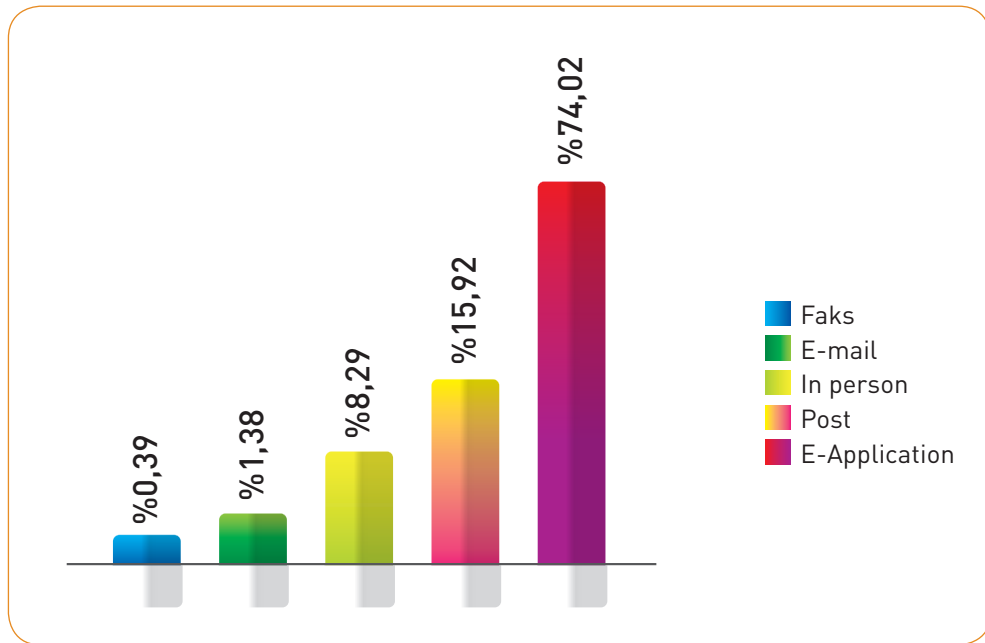
Type of Applicant			2019	%
Real person	Male	15.586	20.533	%97,93
	Women	4.009		
	Child/Boy	266		
	Child/Girl	204		
	Age not given	468		
Legal persons	Company	245	435	%2,07
	Trade Union	50		
	Association	34		
	Tradesman	4		
	Other	69		
<b>TOTAL</b>			<b>20.968</b>	

In 2019, the majority of applications have been filed through ***E-Application method*** with the rate of **74,02%** which is followed by “**By post**” with the rate of **15,92%**.

**Table 7:** Distribution of the complaints as per Application Methods for 2018-2019

Application Method	2018	%	2019	%	Rate of Change %
By fax	83	0,47%	81	0,39%	-2,41%
In person	1076	6,12%	1738	8,29%	61,52%
By post	2552	14,51%	3339	15,92%	30,84%
By E-application	13489	76,71%	15520	74,02%	15,06%
By e-mail	385	2,19%	290	1,38%	-24,68%
<b>TOTAL</b>	<b>17.585</b>		<b>20.968</b>		<b>19,24%</b>



**Figure 4 :** Distribution of the complaints as per Application Methods for 2019

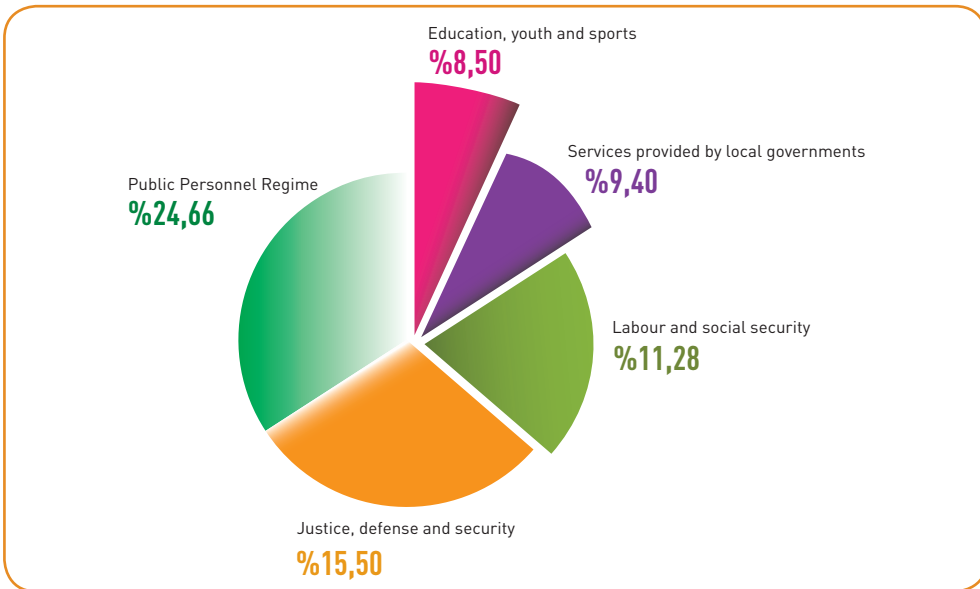
In 2019, the majority of the complaints have been about “**Public Personnel Regime**” with a rate of **24,66 %** followed by the subject matter “**Justice, National Defense and Security**” with a rate of **15,50%.**

**Table 8:** Distribution of the Complaints as per Subjects in 2018 and 2019

Subject of the Complaint	2018	%	2019	%	Rate of change %
Public personnel regime	4705	26,76%	5.170	24,66%	9,88%
Justice, national defense and security	1202	6,84%	3.250	15,50%	170,47%
Labor and social security	4319	24,56%	2.366	11,28%	45,24%
Services provided by local governments	1122	6,38%	1.971	9,40%	75,67%
Education, youth and sports	2079	11,82%	1.782	8,50%	-14,19%
Economy, finance and tax	587	3,34%	1.568	7,48%	167,12%
Transportation, press and communication	301	1,71%	1.188	5,67%	294,68%

Property right	364	2,07%	493	2,35%	35,44%
Forestry, water, environment and urbanization	427	2,43%	478	2,28%	11,94%
Child rights	786	4,47%	459	2,19%	-41,60%
Disability rights	117	0,67%	435	2,07%	271,79%
Health	313	1,78%	427	2,04%	36,42%
Energy, industry, customs and trade	274	1,56%	414	1,97%	51,09%
Human rights	331	1,88%	234	1,12%	-29,31%
Population, citizenship, refugee and asylum rights	208	1,18%	223	1,06%	7,21%
Social services	106	0,60%	165	0,79%	55,66%
Protection of family	59	0,34%	105	0,50%	77,97%
Other subjects	117	0,67%	90	0,43%	-23,08%
Food, agriculture and livestock	78	0,44%	76	0,36%	-2,56%
Science, art, culture and tourism	59	0,34%	65	0,31%	10,17%
Women's rights	31	0,18%	9	0,04%	-70,97%
<b>TOTAL</b>	<b>17.585</b>		<b>20.968</b>		<b>%19,24</b>

**Figure 5:** Distribution of the Complaints as per Subjects in 2019



The percentage of the decisions in 2019 has been as follows:

**Referral** with a rate of **41,43%**

**Inadmissibility** with a rate of **35,65%**

**Amicable Settlement** with a rate of **8,21%**

**Invalid Application** with a rate of **0,81%**

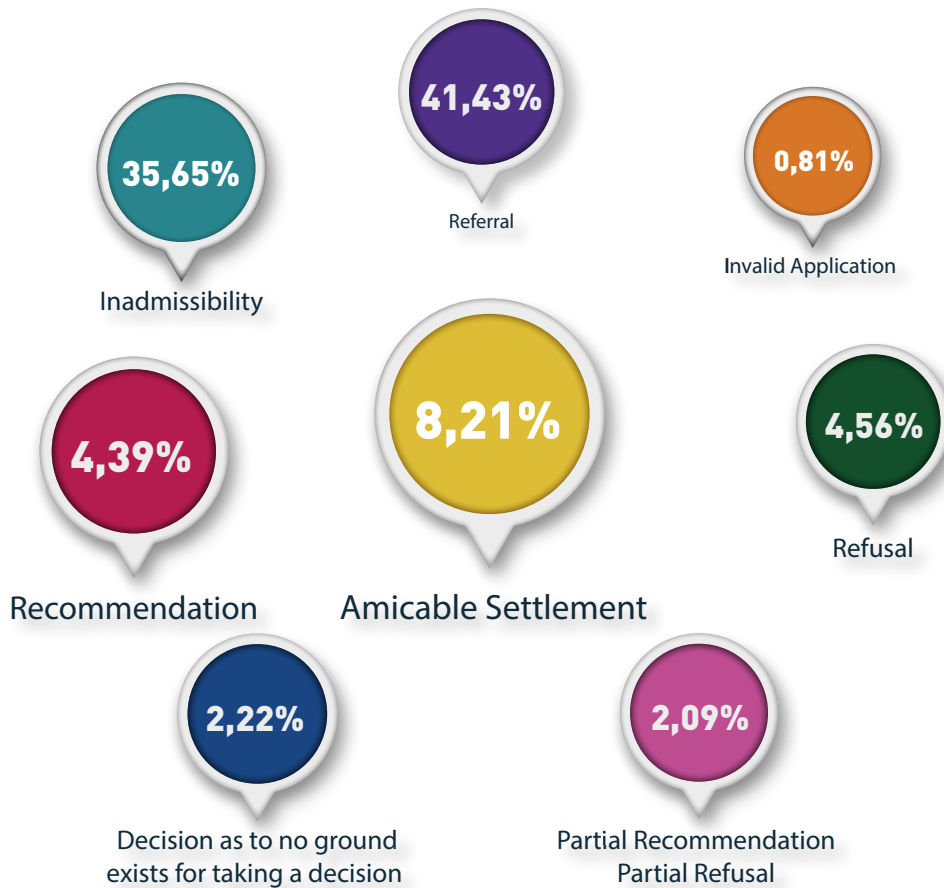
**Decision as to no ground exists for taking a decision** with a rate of **2,22%**

**Recommendation** with a rate of **4,39%**

**Refusal** with a rate of **4,56%**

**Partial Recommendation Partial Refusal** with a rate of **2,09%**

### The percentage of the decisions in 2019



**Table 9:** Percentage of the Types of Decision in 2019

Types of Decision	2018	%	2019	%	Rate of change %
Referral	4812	30,90%	8112	41,43%	<b>68,58%</b>
Inadmissibility	6517	41,85%	6981	35,65%	<b>7,12%</b>
Invalid Application	187	1,20%	159	0,81%	<b>-14,97%</b>
Merging	75	0,48%	98	0,50%	<b>30,67%</b>
Separating	24	0,15%	27	0,14%	<b>12,50%</b>
Amicable Settlement	1916	12,30%	1607	8,21%	<b>-16,13%</b>
Decision as to no ground exists for taking a decision	433	2,78%	435	2,22%	<b>0,46%</b>
Recommendation	677	4,35%	860	4,39%	<b>27,03%</b>
Refusal	662	4,25%	893	4,56%	<b>34,89%</b>
Partial Recommendation Partial Refusal	269	1,73%	410	2,09%	<b>52,42%</b>
<b>TOTAL OF DECISIONS</b>	<b>15.572</b>		<b>19.582</b>		
Number of the cases resolved by merging decision (+)	2118		1588		
<b>Number of cases resolved</b>	<b>17.615</b>		<b>21.170</b>		<b>20,18%</b>

The total of the cases processed in 2019 has been **25.000** including **20.968** cases received in 2019, and **4.032** cases transferred from 2018.

**Table 10:** Data on Cases of 2019

Number of the cases transferred from 2018	Number of the Cases Received in 2019	Total	Number of the Cases Concluded in 2019	Number of Cases being processed
4.032	20.968	25.000	21.170	3830

The majority of the complaints has been against the **Local Governments** with a rate of **10,86%** followed by the **Ministry of Justice** with a rate of **10,60%**.

**Table 11:** Distribution of the complaints as per Institutions (Top 5 Institutions)

Name of the Institution	2019	%
Local Governments	2278	10,86%
Ministry of Justice	2223	10,60%
Social Security Institution	1808	8,62%
Ministry of National Education	1401	6,68%
Ministry of Health	1383	6,60%

In 2019, the number of the cases resolved through “Amicable Settlement” has been **2,707**.

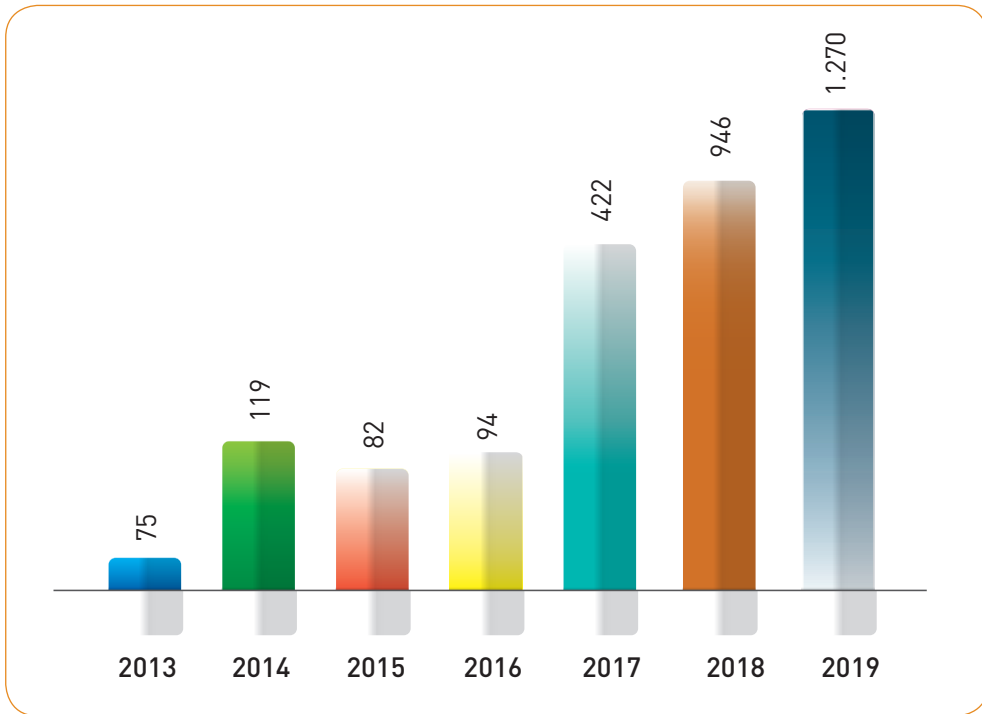
**Table 12:** Distribution of the cases resolved through amicable settlement in 2019

Number of the Cases resolved through friendly settlement	Through Amicable Settlement	Through Referral	TOTAL
	1.607	1.100	2.707
	59,36 %	40,64%	

In 2019, the number of the Recommendations has been **860** while the number of Partial Recommendation Partial Refusal has been **410**.

**Table 13:** Comparison of Recommendation and Partial Recommendation Partial Refusal as per years

Type of Decision	2013	2014	2015	2016	2017	2018	2019	2018-2019 Rate of change (%)
Recommendation	64	93	56	62	245	677	860	27,03%
Partial Recommendation Partial Refusal	11	26	26	32	177	269	410	52,42%
<b>TOTAL</b>	<b>75</b>	<b>119</b>	<b>82</b>	<b>94</b>	<b>422</b>	<b>946</b>	<b>1.270</b>	

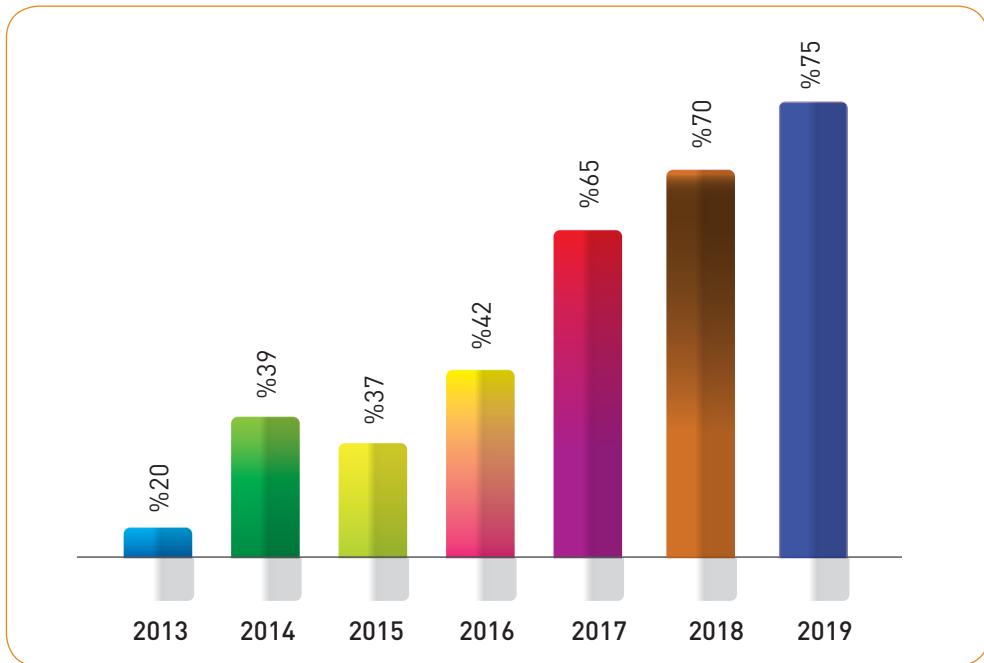
**Figure 6:** Number of Recommendations as per years**Compliance Rate**

While the compliance rate of the Administrations with the decisions of the Ombudsman was around 20% in 2013, when the Ombudsman Institution was newly established, this rate has increased to **75,17%** in 2019.

**Table 14:** Compliance rate of the Administrations with Recommendations as per years

Compliance rate %	2013	2014	2015	2016	2017	2018	2019
	20	39	37	42	65	70	75

**Figure 7:** Compliance rate as per years

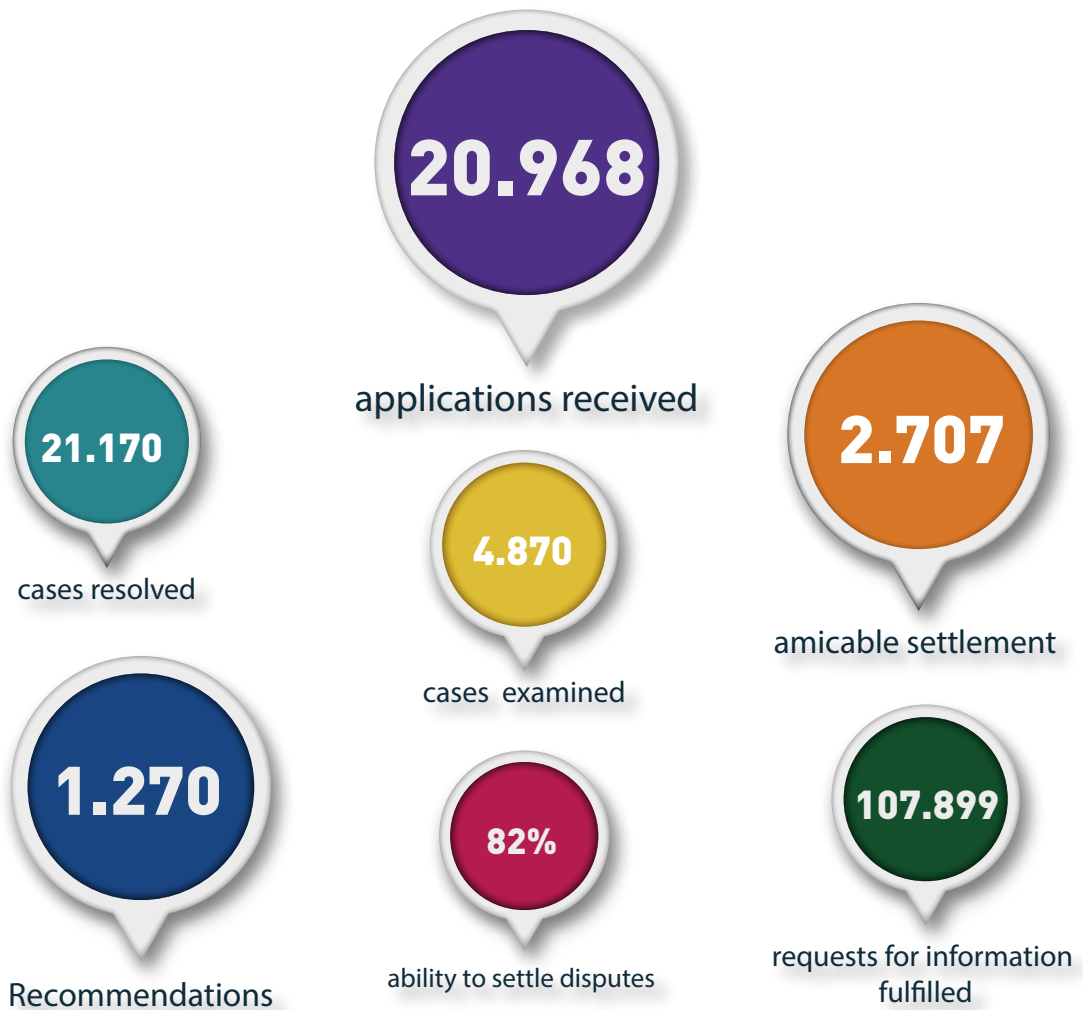


**Figure 8:** Comparison of Percentage of Compliance for 2013 and 2019





**Figure 9:** The Year In Figures





# CHAPTER

# VII

# 2019

ANNUAL REPORT

**GENERAL  
EVALUATION  
REGARDING THE  
ADDED VALUE OF  
THE OMBUDSMAN  
INSTITUTION FOR  
TURKEY**

Added Value of the Institution  
for Turkey

## 7.1 ADDED VALUE OF THE INSTITUTION FOR TURKEY

Pursuant to the provision in Article 74 of our Constitution, the Ombudsman Institution, a Constitutional Institution established by Law No. 6328, which examines complaints regarding the functioning of the administration as well as contributing to the functioning of the administration, aims to help prevent current problems and potential problems that may possibly arise in the future, with the recommendations that it makes in general in terms of legislative amendments and principles of good administration.

It is stated in the general justification of the Law No. 6328 on the Ombudsman that “... it is aimed to ensure that the administrations comply with the recommendations of the Institution as much as possible and to reduce the burden of administrative judiciary...”. Therefore, as an Institution that provides support to administrative jurisdictions, which handled approximately 565 thousand case files in 2019, it is among our main objectives to ensure rapid access to justice.

Our Institution aims to ensure that complaints are concluded as quickly and efficiently as possible and to achieve the goal of rapid access to justice through the method of amicable settlement.

In this context, the Ombudsman Institution processed **25,000** complaints in total in 2019. **20,968** of these applications were received in 2019 while 4.032 of them were transferred from 2018. **21,170** (84,68%) of these applications were concluded by our Institution and the results of the examinations were reported to the complainants.

**2,707** of these applications filed in 2019 were resolved through amicable settlement. Again, a total of **1,270** recommendations issued as a result of the examination and investigation conducted by our Institution contributed to reducing the workload of the courts.

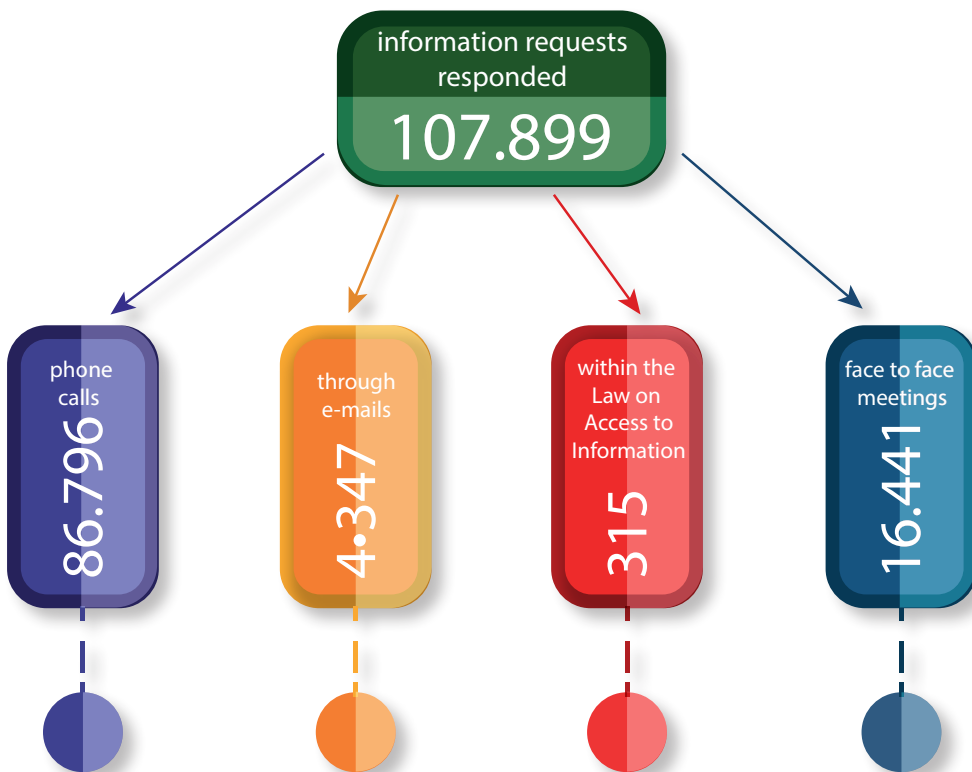
In addition, a total of 893 Decisions of Refusal made in 2019 can possibly lead to a decline in the rate of applicants’ resorting to the jurisdiction due to the explanation included in these decisions that their request could not be fulfilled within the framework of the legislation.

Also, the legal status of the application topics in terms of practice is also clarified in the applications filed to our Institution. Since our Institution’s procedure of examining complaints, time requirement and the requirement of interest violation are similar to the requirements to file a lawsuit in administrative jurisdiction, our decisions of inadmissibility regarding applications that do not meet these requirements can have a positive effect on the workload of the jurisdiction.

In addition to examining the complaints, the Ombudsman Institution of Turkey also responds to individuals’ information requests. Through our Information Office, which

works like a call center, information requests of **107.899** persons in total have been responded in 2019, which include;

- Totally **86.796 phone calls** (including outgoing and incoming calls),
- **4.347** applications for information requests **through e-mails**,
- **315** applications filed within the framework of Law on Access to Information No. 4982,
- **4.441 face to face meetings** with citizens who personally visited the Institution in Ankara and our office in Istanbul,
- Around **12.000** face to face meetings through Regional Meetings of the Ombudsman Institution with citizens, Provincial Working Visits, University Conferences and Meetings to Spread the Culture of Legal Remedy internationally.



As a result of the examination and investigation conducted by our institution, we have a direct contribution to the reduction of the workload of the courts with the help of our 4,870 amicable settlement decisions, recommendation decisions and legal aid, as well as helping the formation of a transparent, accountable and human-oriented administration. As a result of all these, the Institution has become a means of supervising the public institutions and organisations through the complaints it examines, and the participation of citizens in the state administration, especially local administrations, has been ensured, contributing to the strengthening of democracy in our country as a tool of direct democracy.

One of the most important aspects that differentiates our Institution from other supervision mechanisms is that it examines the applications while at the same time detecting the problem areas in practice and the unlawfulness in the legislation, and that it can make recommendations to amend a legislation in order to prevent possible unlawful practices, violations of right or unfair practices. At this point, the aim of the Institution is to prevent violations of individuals' rights and violations of justice, as well as to prevent violations against individuals who are experiencing a similar situation. In this respect, the decisions made as a result of the examination made by or Institution do not only affect the applicant, they also affect tens of thousands or hundreds of thousands of people who are experiencing a similar situation.

In this context, the Institution sometimes issues decisions that affect a particular occupational group, an entire city or hundreds of thousands of people who were victimised by the same situation. For instance,

- Our Recommendations to remove the process of handover of children from the enforcement system and to create “family meeting points/child handover centers” and our Recommendation to discuss the “Family Mediation System” in order to handle divorce proceedings in a healthier way affect the parties of 142,488 divorce suits filed in 2018.
- Our Recommendation regarding the necessary legislative amendment for people who have been discriminated against due to their religious belief or been dismissed or removed from office during the February 28 Process (Coup in Turkey) concerns approximately 300 thousand people.
- Our Recommendation on the issue of taking special measures for disabled public officials in the legislation related to public housing concerns about 53 thousand disabled public officials.
- Our Recommendation to make the necessary regulations regarding stray animals affects all animal lovers and people who have been negatively affected by stray animals in Turkey.

- Our Recommendation regarding the regulation of alcohol breath testing by traffic officers in a way that does not victimise the citizens concerns 29 million people who have a driving license.
- Our Recommendation that vehicles purchased on behalf of the disabled be not subject to inheritance and transfer tax affects approximately 4,8 million disabled individuals.
- Our Recommendation regarding the regulation of working conditions of preschool teachers affects 50 thousand preschool teachers.
- Our Recommendation to timely notify the parties about the penalty of fast-pass system violation concerns 12 million fast-pass system users.
- The Recommendation Decision on the effectuation of oral exams in accordance with the principles of good administration affects approximately 200 thousand candidates who take the oral exams of public institutions.
- Our Recommendation to fix the occupational code of permanent employees in accordance with their occupation concerns about 300 thousand permanent employees.
- Our Recommendation on the regulation of Orient Express train ticket sales' procedure affects 360 thousand passengers.
- Our Recommendation on ensuring that notary transaction fees can be paid by credit card, debit card or online affects all notaries and all persons who use notary transactions and the mentioned payment methods.
- Our Recommendation on paying additional tuition fees to teachers on duty during the weekends affects approximately 1 million teachers.
- Our Recommendation on taking the necessary steps in order to reduce the exam application fees to a reasonable level in the exams carried out by the Assessment Selection and Placement Center (ÖSYM) concerns approximately 2 million candidates who take these exams.
- Our Recommendation to give additional payment to municipal workers affects around 450 thousand municipal workers.
- Our Recommendation regarding the implementation of civil registry on duty in the centers where the exams organised by ÖSYM are carried out affects approximately 2 million students participating in the exams.

- Our Recommendation on creating a new regulation that will allow the relevant administration to determine the amount of the administrative fines imposed on fuel stations within the framework of relative and certain limits in accordance with the nature of the incident, the violation and the enterprise instead of determining a fixed amount for the administrative fine affects 13,000 fuel stations and 10,000 LPG stations in our country.
- Our Recommendation on adjusting the new regulations regarding the score calculation in the Academic Incentive Allowance Regulations in line with the principle of preserving the justified expectations affects 166 thousand 225 academic staff working in higher education institutions.
- Our Recommendation to include the graduates of the food technology undergraduate program in the list of Appendix-1 of the Law No. 5996 on Veterinary Services, Plant Health, Food and Feed concerns all food technology graduates.
- Our Recommendation to extend the time period for informing people about the process of changing natural gas meters and to make these changes within reasonable time-intervals concerns 2 million natural gas customers.

When the figures given above are evaluated, it is seen that millions of people have been directly or indirectly affected by our aforementioned decisions. And, it is estimated that tens of thousands of lawsuits were prevented as a result of the decisions and activities of the Ombudsman Institution, given that 1 to 2 per thousand of these victims had the potential to resort to the judiciary.

As a result, the contribution of the Ombudsman Institution, which carries out a wide range of activities in order to receive more qualified applications and to spread the culture of seeking legal remedies, is indisputable thanks to its efforts to reduce the workload of the judiciary. In this context, our Institution has:

- contributed to the good functioning of the administration with its recommendations to comply with the principles of good administration, and allowed citizens to participate in the administration,
- contributed to the solution of problems that concern many individuals through legislative amendment,
- not only solved the problem of the citizen directly in individual applications, but also clarified the legal status people experiencing a similar situation,
- solved the problem of the citizens and provided legal guidance to them regarding the applications filed within the scope of information requests.

Therefore, considering the number of individuals affected by the Recommendations explained with examples above, thousands of lawsuits were prevented as a result of the decisions and activities of the Ombudsman Institution.













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