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HEALTH OMBUDSMAN IN THE UNITED KINGDOM: ESTABLISHMENT, FUNCTIONS, AND EFFICIENCY

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ABSTRACT

Ombudsmanship is an institution of complaints acting against especially poor administration issues of public authorities per public complaints. Ombudsman, equally, is a public administration audit tool. Ombudsman, meaning representative person or attorney of the people, appeared for the first time in the 18th century Sweden. After the Second World War, it has spread to all continents. In present day, ombudsman has a field of application in 150 states in varying levels and formats. In the course of history, ombudsmen of different specialties have appeared due to increasing capacity and activities of the state and the public bureaucracy. The health ombudsmanship that constitute the main theme of this study is among them. This study aims to analyze the establishment, functions and efficiency of the health ombudsman in the United Kingdom. Accordingly, after general information about the concept of ombudsman is given, the historical establishment process of the health ombudsman in the UK, its functions and efficiency are assessed through the selected method of research. The scientific documents on the issue, such as books, articles, conference papers and official institutional documents in Turkish and English languages, are collected, analyzed through content analysis, the findings are deduced and a

conclusion is reached after discussion. The Health Ombudsman in the UK functions as an important tool of Parliament accountability, guarantor of the right to information, and a key democratic institution in charge general health quality in the country. Access to ombudsman for a complaint is extremely easy, fast and systematic.

INTRODUCTION

Ombudsman, as a public institution, is an institution of complaints that works for removing poor administration practices and human rights violation in bureaucracy. While the ombudsman is a public organization, it has field of application also in the private sector.

In the course of history, the ombudsmanship was employed for the first time in the 18th century Sweden, a Northern European country. One hundred years after having emerged in Sweden, after the Second World War, it has spread to all continents in different public levels. The main factors for the ombudsmanship to earn recognition in this period are the development of the state of law and the democratic gains. Equally in this period, the rapid expansion and growth of public administration, a structural and function mechanism of the state, created the need for its effective auditing. Ombudsmanship, an important tool for public administration auditing, from then on, has become active in different specialties and been implemented in different levels and sectors. The health ombudsmanship that constitute the main theme of this research is among these areas of specialty.

This study aims to analyze the establishment, functions and efficiency of the health ombudsman in the UK. In the study, the structural, institutional and functional aspects of health ombudsmanship's contribution in the UK are explained concisely. Thus, the probable effects of the health ombudsman to the UK democracy and public administration are identified. Therefore, in this study, primarily the theoretical information on

ombudsmanship is given, then the data collected through the selected methodology and the findings are discussed to finalize the research.

1. OMBUDSMANSHIP AND THE HEALTH OMBUDSMAN: THEORETICAL FRAMEWORK

The ombudsman, the composition of the word (Ombuds) (representative) and man, has the meaning of representative person or attorney of the people. Principally, the ombudsman, as a public structure and function, may be defined as an audit mechanism or a mediation organization that examines, investigates and aims to resolve the complaints of persons and institutions claiming to have their rights and entitlements violated by the government and the public organs through defined procedures (Arslan, 1986: 157-158; Remac, 2013: 63).

The objective of the ombudsman is to remove poor administration practices in public administration organs and functions and to protect human rights and principal liberties (Remac and Langbroek, 2016: 88). Its principal aim is to minimize the shortcomings and the poor administration practices of the public bureaucracy, acting upon citizens' complaints or ex-officio (by own initiative). The main features of the ombudsman or the ombudsmanship are as below (Büyükavcı, 2008: 12):

- In relation with the legislative bodies,
- Independent and neutral,
- Acts according to defined functions and procedures,
- Based on a legal regulation,
- Acts upon a complaint or ex-officio,
- Always in interaction with the public bureaucracy,
- Gives recommendations on the resolution of issues,
- Presents a yearly report to the legislative bodies,
- Has an active relationship with the media and the public.

Ombudsman appeared for the first time in history in the 18th century Sweden (Esgün, 1996: 255) and had a rapid spread after the Second World War reaching a worldwide recognition. Among the factors on the expansion and gaining importance, there are; “*global economic and political crises, the expansion of public bureaucracy due to welfare state practices and the increase in poor practices, positive developments in the order of law and human rights and the transformation of the state through these factors and the restructuring of public administration*” (Doğan, 2014: 81-83). In this respect, ombudsman is a guarantor of human rights, democracy and the order of law through the transformation of the state and restructuring of public administration.

Based also on these aforementioned factors; economic, cultural and political developments of today, such as the globalization process and the restructuring of capitalism reshape the social field rapidly. Therefore, the changing social, political and economic demands create an important diversification of ombudsman specialties. Accordingly, ombudsmen specialized and focused in several different fields have appeared. These are (Gülener, 2013: 5-6; Reif, 2011: 300-301);

- Parliamentary ombudsman,
- Human rights ombudsman,
- Children’s rights ombudsman,
- Armed forces ombudsman,
- Press ombudsman,
- Local authority ombudsman,
- Health ombudsman,
- Legal services ombudsman,
- Consumer ombudsman,
- University ombudsman,
- Banking ombudsman.

Among these, the Health Ombudsman is in charge of investigating citizens’ complaints on the health sector and to protect their rights and liberties in this domain. The health Ombudsman in charge of citizens’ complaints on the health sector, in cases they deem to be

necessary launch an investigation on the case and resolves the complaint by taking advisory decisions addressed to concerned institutions. The health sector, which is indispensable for human life, day by day becomes a field necessary to be audited. The health ombudsman, the specialized ombudsman in this domain, attempts to fill this void (Özer, 2015: 83).

2. MATERIAL AND METHODOLOGY

The methodology of the research is based on a content analysis of the scientific documents such as books, articles, conference papers and official institutional documents in Turkish and English languages along with other scientific documents, and their treatment and discussion, in order to analyze the establishment, functions and efficiency of the UK Health Service Ombudsman. The principal objective of the research through its method is to inform on the establishment, functions and efficiency of the UK Health Service Ombudsman, and to assess the functional capacity and effectiveness of a health ombudsmanship in the United Kingdom. These assessments would also give hints on the UK democracy and the public (health) administration in the context of ombudsman.

3. FINDINGS

In order to resolve the complaints of citizens against the administration in the UK and to help the means of audit already in place, a report was commissioned to Sir John Whyatt in 1961, to constitute a ombudsmanship. In this report, the shortcomings of the means of audit already in place were identified, and the establishment of an ombudsmanship was suggested to the parliament (Çakmak, 2008: 67; Abraham, 2011: 1; Gregory and Hutchhesson, 1975: 78). Ombudsmanship in the UK was established in 1967, by the “Parliamentary Commissioner Act” passed by the Parliament (Kirkhamn, 2006: 792).

The UK Ombudsman is known as the “Parliament Commissioner” (Altuğ, 2002:

99; Giddings, 2003: 139). They have been appointed by the Queen. They do not have a specific period of office, their tenure lasts until they are 65 years old. While they can leave their post of their own accord, they may be unseated by the Queen upon request of both houses of the Parliament. They are independent vis-a-vis both the Parliament and the government. The citizens do not have the right to apply direct to the Parliament Commissioner, and the Commissioner may not act ex-officio, however the wishes and complaints may be made via a Member of Parliament (House of Commons) (Soyupek, 2014: 23; Ataman, 1993: 224; Gay, 2010: 2; Giddings, 2008: 94). The Commissioner, after deciding to investigate the complaints under defined procedures, informs the concerned member of the House of Commons on the issue. The Commissioner prepares a report after the investigation is finished and presents the report to the concerned party and to both houses of the Parliament (Arslan, 1986: 170-171). In the United Kingdom, the Commissioner is also politically neutral, in order to fulfill their requirements, they have to stay away from partizanship. Therefore, the Commissioner may not have relations with the political parties (Fendoğlu, 2010: 11). Also, the decisions and suggestions of the Commissioner are in advisory capacity (Poole, 1983: 193).

Due to the successful works of the Parliament Commissioner in the UK; the health ombudsman, the local authority ombudsman, the police complaints ombudsman and the legal services ombudsman are commissioned (Ünal, 2008: 113; Adler, 2003: 327). Therefore, in the United Kingdom, in addition to the Parliament Commissioner, there are ombudsmen specialized in several fields (Soyupek, 2014: 22).

The Health Service Commissioner, among the aforementioned ombudsmen, was established in England, Wales and Scotland, according to the legislative regulations made in the 1970s to address

the complaints against the National Health Service¹ (NHS) founded in 1948 (Giddings, 2004: 115; Seneviratne, 2002: 22-23). In the United Kingdom, the National Health Service is based on a regulation dated 1946 passed by the Parliament, as the foundation of basic health services (Tingle, 1993: 195). Accordingly, the UK Health Service Commissioner was established in 1972 along with a legislative regulation restructuring the National Health Service system (Kerrison and Pollock, 2001: 120; Anderson, 1979: 104; Ham, 2009: 23). Subsequently, in 1987, 1993 and 1996, the ombudsmanship was improved by legal arrangements (Gay, 2012: 3; Neff and Avebury, 2000: 671; Seneviratne, 2002: 162). The functions and activities of the ombudsman in the health services field were expanded, to the extent that the Parliament Commissioner and the Health Service Commissioner had a dual status known to be the “Parliamentary and Health Service Ombudsman-PHSO” (Esgün, 1996: 258; Eryıldız, 2006: 87) and its official website² was entitled accordingly (Parliamentary and Health Service Ombudsman, Resource Accounts, 2010-11: 5).

The UK Health Service Ombudsman examines complaints on poor administration issues on the National Health Service, such as poor services and failure to deliver a service (Perry, 2016; Seneviratne, 2002: 162; Gregory and

¹ The NHS in the UK was established by a law passed on 6 November 1946, and put into effect in 1948. Its principal features may be resumed in three articles; it covers all citizens regardless their affordability capacity and aims to deliver equal health services to everyone; people do not pay for health services or pay premiums as it is financed by general tax, and it aims to deliver health services through a holistic approach. The responsibility of the NHS is provided by the Secretary of State for Health (Kılıç and Bumin, 1993: 32-33). The NHS has a holistic structure and function in providing all citizens access and facilitation to basic health services (Webster, 2002: 1).

² <http://www.ombudsman.org.uk/>.

Giddings, 2002: 675; Tingle, 1993: 197; Kerrison and Pollock, 2001: 120; Parliamentary and Health Service Ombudsman, 2016).

The UK Health Service Ombudsman has been appointed by the Queen (Neff and Avebury, 2000: 671) and their tenure lasts until they are 65 years old (Giddings, 2000: 341). The Ombudsman may investigate the ineffectiveness or the lack of services by a health administration, the claims of an administration not delivering the required services properly or at all, and any other activity by an administration or on their behalf (Eryıldız, 2006: 87). However the UK Health Service Ombudsman does not have authority in cases below and cannot exercise its functions (Akıncı, 1999: 341; Seneviratne, 2002: 165):

- Cases taken to court or the independent judges' council,
- Complaints on the personnel affairs of the National Health Service, such as assignments, fees and disciplinary matters,
- Contractual and commercial matters other than the contract clauses on the services provided to patients,
- Complaints on the services given by hospitals and nurseries not affiliated with the National Health Service,
- Complaints on state bodies such as the Secretary of State for Health, the Wales Office, Scotland Cabinet Secretary for Health and Sport, and the National Health Service Executive Committee,
- Complaints on local authorities such as social services.

Prior to application to the UK Health Service Ombudsman, all other application means should be exhausted (Avşar, 2012: 153). All citizens (patients, patient relatives, and the NHS or National Health Council staff) may apply to the ombudsman (Seneviratne, 1994: 71; Perry, 2016). The UK Health Service

Ombudsman may solely act upon a complaint. The complaints to the Ombudsman are made in general by a written petition, the case file goes through a preliminary examination to be decided whether an investigation can be carried out regarding time and other factors. The statute of limitation for cases is one year. The Health Ombudsman has all the authorities of the Parliament Commissioner. At the end of the investigation, the Ombudsman sends a copy of their report to the complainer, the Member of Parliament supporting them, along with the concerned health administration and the superior administration in charge of that administration, also to the Secretary of State if the complaint is on the regional health administration. The Health Ombudsman, in case the violation persists and is deemed to be resolved, sends a special report to the Secretary of State. The Secretary of State is obliged to present this report to the House of Commons and the House of Lords. The Ombudsman also presents a yearly report to the Parliament. Equally, there has been a close relationship between the House of Commons Select Committee and the Ombudsman through their reports. The reports are taken to the general assembly after being reviewed by the committee (Eryıldız, 2006: 87-88; Avşar, 2012: 153; Giddings, 2000: 341-352).

The UK Health Service Ombudsman may demand all the documents and information from the concerned institution. If required, they may carry out on-site investigation and commission experts. Their interviews and inspections are confidential. They may suggest that the concerned administration resolve the injury (Avşar, 2012: 153-154; Akıncı, 1999: 342; Seneviratne, 2002: 166).

The UK Health Service Ombudsman received 13,310 complaints in 1997-2002 (Seneviratne, 2002: 186; Giddings, 2000: 346), while the yearly report of the UK Health Service Ombudsman states that

26,583 applications were made in the 2012-2013 period. Among them, 6,924 applications were taken into examination. In the 2013-2014 period, 7,760 of 27,273 applications were taken into examination. In the 2014-2015 period, 29,000 application were made and 6,815 application were taken into examination (Parliamentary and Health Service Ombudsman-PHSO Annual Report and Account, 2014: 11-13 from transporter Gökçe, 2016: 757).

4. DISCUSSION AND CONCLUSION

The UK Health Service Ombudsman is not only involved with poor administration practices, but also the general quality of health services. Furthermore, the Ombudsman is the guarantor of the right to information in health services. In this regard, they have further powers compared to the Parliament Commissioner (Akıncı, 1999: 340; Seneviratne, 2002: 169). The Ombudsman has an important role on increasing the service quality of hospitals and institutions delivering public health service. Also, the concerned party, due to "Open Government Plan," is entitled to demand information on health matters. The Health Institution, Health Council and National Health Service Foundation are obliged to provide this information. In case this

information is not provided or a fee is demanded, the process may be subject to complaint (Avşar, 2012: 152; Giddings, 2000: 343; Smith, 2002: 20-21).

The UK Health Service Ombudsman, as a key institution with the NHS and a functional process, is an important mechanism of Parliament accountability and the guarantor of right to information, in domains they are in charge of. Due to the independence and neutrality of the Ombudsman in their functions, the convenience and speed of access to the institution, their expanded field of assignment, the relations they establish between the Parliament and the administration, their function of informing the public and suggesting resolutions; it may be said that it is a highly efficient institution in increasing quality in health administration.

As a result of the discussion above, the Health Ombudsman in the United Kingdom is an efficient tool of auditing public bureaucracy in the health domain. Equally, the Ombudsman, with its expanded functional capacity along with their structural and functional features, has a role in improving democracy and the order of law.

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