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THE THIRD-PARTY FUNCTION OF TURKEY'S OMBUDSMAN
INSTITUTION IN RESOLVING PUBLIC DISPUTES

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THE THIRD-PARTY FUNCTION OF TURKEY'S OMBUDSMAN INSTITUTION IN RESOLVING PUBLIC DISPUTES

A Ph.D. Dissertation

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INSTITUTION IN RESOLVING PUBLIC DISPUTES

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by

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By Hazal Duran

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Doctor of Philosophy in Political Science.

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ABSTRACT

THE THIRD-PARTY FUNCTION OF TURKEY’S OMBUDSMAN INSTITUTION IN RESOLVING PUBLIC DISPUTES

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This study focuses on the third-party function of ombudsman in resolution of public disputes between the citizens and public institutions and the factors undermine and facilitate its third-party function in the Turkish case. Ombudsman institutions have been evaluated in terms of administrative, legal, and human rights functions for years. Although interest in the ombudsman's dispute resolution function has increased recently, there is a lack of empirical studies of understanding this function. This study aims to fill the void by examining the case of Turkey’s Ombudsman Institution. As one of the youngest ombudsman institutions in the world, the Ombudsman Institution of Turkey has been using the friendly-settlement method since 2017 to increase the dispute resolution capacity. This study firstly quantitatively examines the friendly-settlement method based on 1003 cases. Data shows that despite friendly settlement is associated with informal and interactive dispute resolution in general, its use in the Turkish context is heavily dominated by formal and non-interactive methods. In order to understand the reasons creating this divergence, the study uses 24 semi-structured

interviews conducted with experts and senior officials of the institution. Following the analysis of interviews, the study shows that authority, flexibility, network, dispute resolution capacity, and the attitude are five major factors determining ombudsman's third-party function in the Turkish case. The findings also displays that these factors are causing less interaction and informality in relation to bureaucratic legalism in Turkey.

Keywords: Dispute Resolution, Ombudsman, Friendly-Settlement, Informality, Interaction

ÖZET

KAMUSAL UYUŞMAZLIKLARIN ÇÖZÜMÜNDE TÜRKİYE OMBUDSMANLIK KURUMUNUN ÜÇÜNCÜ TARAF FONKSİYONU

Duran, Hazal

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Bu çalışma, ombudsmanın vatandaşlar ve kamu kurumları arasındaki kamusal uyuşmazlıklarının çözümündeki üçüncü taraf işlevine ve Türkiye örneğinde üçüncü taraf işlevini kolaylaştıran ve zayıflatan faktörlere odaklanmaktadır. Ombudsman kurumları yıllardır idari, hukuki ve insan hakları işlevleri açısından değerlendirilmiştir. Son yıllarda ombudsmanın uyuşmazlık çözümü işlevine olan ilgi artmış olsa da bu işlevi anlamaya yönelik ampirik çalışmalar eksiktir. Bu çalışma, Türkiye Kamu Denetçiliği Kurumu örneğini inceleyerek bu boşluğu doldurmayı amaçlamaktadır. Dünyanın en genç ombudsmanlık kurumlarından biri olan Kamu Denetçiliği Kurumu, uyuşmazlık çözüm kapasitesini artırmak amacıyla 2017 yılından itibaren dostane çözüm yöntemini kullanmaktadır. Bu çalışma öncelikle 1003 vaka üzerinden dostane çözüm yöntemini nicel olarak incelemektedir. Bulgular, dostane çözüm genel olarak gayri resmi ve interaktif uyuşmazlık çözümü ile ilişkili olmasına rağmen, Türkiye bağlamında bu yöntemin kullanımında ağırlıklı olarak resmi ve interaktif olmayan

yöntemlerin baskın olduğunu göstermektedir. Bu farklılığın nedenlerini anlamak için çalışmada kurumun uzmanları ve üst düzey yetkilileri ile yapılan 24 yarı yapılandırılmış görüşme kullanılmıştır. Görüşmelerin analizinin ardından çalışma, Türkiye örneğinde ombudsmanın üçüncü taraf işlevini belirleyen beş ana faktörün otorite, esneklik, ağ, uyuşmazlık çözme kapasitesi ve tutum olduğunu göstermektedir. Bulgular ayrıca, bu faktörlerin Türkiye'de bürokratik yasalıcılıkla ilişkili olarak daha az interaktifliğe ve gayrı resmiliğe neden olduğunu oraya koymaktadır.

Anahtar Kelimeler: Uyuşmazlık Çözümü, Ombudsman, Dostane Çözüm, Gayrı Resmilik, İnteraktiflik

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CSCE	The Commission on Security and Cooperation in Europe
ECHR	The European Court of Human Rights
EU	European Union
KAYA	Public Administration Research Project
KPSS	Public Personnel Selection Examination
NGO	Non-Governmental Organization
SGK	Social Security Institution
TGNA	Turkish Grand National Assembly
TODAİE	Public Administration Institute for Turkey and the Middle East
ODR	Online Dispute Resolution
OSCE	Organization for Security and Co-operation in Europe
ÖSYM	Measurement, Selection and Placement Center
TESEV	Turkish Economic and Social Studies Foundation
TOBB	The Union of Chambers and Commodity Exchanges of Turkey
TÜSİAD	Turkish Industry and Business Association
UN	United Nations
YÖK	Higher Education Council

CHAPTER I

INTRODUCTION

1.1 Purpose of the Study

Ombudsman institutions have been at the core of administrative and legal discussions since their proliferation in the 1970s. Although the first ombudsman office was established in Sweden in 1809, it took many years for it to become widespread. As an important public agent, ombudsman has been increasingly used in different countries and in various contexts. Its function has also diversified in line with its dissemination. As well as in the public sector, the institution has been formed to seek rights and solve problems in the private sector, NGOs, international organizations, and universities. The major transformation that the institution has been through and its unique function in the sectors that it operates in has recently attracted scholarly attention.

The literature on ombudsman had mainly focused on the administrative, legal, and human rights functions of the institution. An ombudsman's contribution to transparency and accountability in the public sector as well as its positive impact over collaborative governance and good governance are established within its administrative function. Its legal function evaluated the ombudsman's relations with

the judiciary and its place in the alternative dispute resolution (ADR) system. The human rights function was added with the foundation of human rights ombudsman offices after the 1990s. In this direction, ombudsmen have additionally undertaken the function of promoting democracy in developing countries.

Although the ombudsman's function as a dispute resolution mechanism had initially received less scholarly attention compared to its other functions, this has increasingly been discussed since the 1990s. There has been growing interest in understanding ombudsman's third-party function regarding the similarities and differences between ombudsman and mediation. There is yet to be a comprehensive study focusing on mediation in the ombudsman context due to the lack of empirical data. Since ombudsmen assure the confidentiality of resolved cases, it is merely difficult to empirically examine them. Moreover, as most of these cases can be resolved with informal talks without any recording, gathering data about the process has been challenging.

Turkey's ombudsman institution, on the other hand, provides a chance to discuss third-party function in ombudsman context. Turkey has considered the foundation of an ombudsman institution since the 1970s. Although the institution was seen as a cure for reforming the public administration system, it was later discussed in line with EU accession and promoting democracy in Turkey. Nevertheless, there has been some resistance against the establishment of the institution both in bureaucratic and political circles for years. The ambiguity of the necessity of an ombudsman institution in Turkish bureaucracy, the danger of it being a political apparatus serving in line with the decisions of the executive body, and its acclaimed incompatibility with the Turkish administrative system were the main

reasons of resistance. After a couple of failed initiatives, the Ombudsman Institution of Turkey was established in 2012. It took a long time for public institutions to adopt an ombudsman system as they did not comply with the ombudsman's decisions during its early years.

The ombudsman institution tried to overcome this resistance by empowering its third-party intervention capacity. Turkey's administrative system and bureaucratic culture does not usually favor informality, which is why informal dispute resolution needs to be promoted in the public sector. This issue had especially been underlined in the annual reports of the institution. After long-lasting discussions, friendly settlement was introduced as a method to increase ombudsman's intermediary capacity since 2017. This method allows parties to negotiate a solution to the dispute interactively to reach rapid and less costly settlements. To use this method in the ombudsman context, a change was made in the regulation. Since 2017, over 8,000 cases have been resolved between public institutions and citizens via the third-party intervention of the ombudsman.

Nonetheless, the use of friendly settlement in the Turkish case revealed a puzzle. In literature, friendly settlement is associated with informal and interactive dispute resolution based on an informal and interactive dialogue between parties. It brings informality and flexibility by negotiating the possible solution between the parties rather than resolving disputes through official correspondence and following bureaucratic processes. Nonetheless, statistical data on Turkey's ombudsman institution shows that formal and non-interactive methods are still predominantly used within friendly settlement in the Turkish case. Majority of friendly-settlement cases are not handled with mediation between the parties, they rather investigate the

root-causes of the dispute and inform the parties about the possible solutions without actively intervening into a resolution process. Thus, this method acknowledges investigation and providing information missions in the Turkish case rather than informality and interaction as the literature assumes.

As an institution using friendly-settlement in dealing with cases and recording data on them, Turkey's ombudsman institution is a good example to examine ombudsman's third-party function. To do so I focus on the following questions:

"How does ombudsman function as a third-party between public institutions and citizens in Turkey?" and "Which factors facilitate or undermine ombudsman's third-party function?" Finding answers to these questions will shed light on why informal practices are not acknowledged adequately in practice and which factors cause this phenomenon.

The study aims to offer new explanations for understanding the third-party function of ombudsman and the factors facilitating and undermining this function in a highly centralized bureaucratic structure. The Turkish case provides enormous advantages to understand ombudsman's third-party function in relation to informality and interaction. Firstly, ombudsman's function in a highly central-bureaucratic context has not been discussed in the literature. Although there had been some attempts to reform Turkey's administrative system in line with decentralization and collaborative public administration since the early 2000s, these reforms did not bring the intended outcomes. Turkey still has a highly centralized bureaucratic system that does not promote informality at a system level. This study contributes to the literature by bringing both institutional and system-level factors affecting

ombudsman's third-party function. Informality in the central administrative structure will be discussed to fulfill this gap.

Secondly, despite the need for understanding ombudsman's third-party function in the public sector, lack of data prevented a comprehensive examination of the ombudsman's third-party function. This study analyzes third-party function of ombudsman based on first hand empirical data including cases resolved through friendly-settlement. As a result, a dataset on friendly-settlement cases in a highly centralized administrative context was formed for this study.

Thirdly, the findings of the study will help to understand the limits of the use of ADR in the public sector in Turkey. Turkey has taken concrete initiatives to use ADR in public institutions in the recent decade. In addition to the establishment of an ombudsman institution, the use of mediation in the judiciary also bolstered ADR. Although there has been theoretical work on the use of ADR in Turkey, the implementation of these ADR methods has not been evaluated due to a lack of empirical studies. Thus, the findings of this study will improve the use of this method in other areas. With the purpose of grasping the third-party function and the factors facilitating and undermining this function, this study particularly examines friendly-settlement cases.

1.2 Critical Perspectives on Ombudsman Research

It is important to discuss the critiques of existing studies on ombudsman's function to understand worldwide criticisms towards its evolving functions. Parallel to the proliferation of the ombudsman institution, ombudsman received scholarly

attention since the 1970s. Nevertheless, the existing studies are criticized for being insufficient and for not reflecting the shifting and multiplying nature of ombudsman. The literature emphasizes the systematic research problem, the lack of empirical research and the dominance of descriptive-evaluative research as the main problems of ombudsman research.

The lack of systematic research prevents the cumulative growth of literature. As Male emphasizes, the literature failed to notice “the systemic organizational changes” in the ombudsman structure (Male, 1999: 44). One of the reasons accounting for this problem is the lack of empirical research since early studies (Roosbroek & Walle, 2008). Early studies on the ombudsman institution have been found empirically and analytically deficient arising from a descriptive-evaluative nature (Danet, 1978; Roy Gregory & Giddings, 2000a; Marc Hertogh, 2013). Hertogh & Kirkham defined ombudsman studies as “ill-defined and under-coordinated discipline, too top-heavy with prescriptive and descriptive literature” (Hertogh & Kirkham, 2018: 2).

The empirical-analytical research problem found especially in the early studies is associated with the dominance of an administrative and legislative approach (Dragos & Neamtu, 2014, vi; Hertogh & Kirkham, 2018). Early studies discuss the institution based on two prominent questions: “Is ombudsman an alternative to the judiciary?” and “What is ombudsman’s position in the public administration system?” Normative standards were developed to investigate whether administrative decisions follow good administration principles. Focusing on these issues led to an increase in normative studies rather than analytical and empirical ones.

Without bringing a systematic and analytical approach to examine the institution, early studies focus more on descriptive case evaluations of country examples. Hill's study on New Zealand ombudsman (Hill, 1976), Friedman's study on Canada (Friedmann, 1977), Wyner's study on Nebraska ombudsman (Wyner, 1973), Hiden's study on Finland ombudsman (Hiden, 1973), and Gregory and Hutchesson's study on UK ombudsman (Gregory & Hutchesson, 1975) are examples of case studies evaluating ombudsman offices. Apart from the studies conducted by Hill and Friedman, these studies were based on very limited empirical data and descriptively evaluated ombudsman cases. Nonetheless, since case-based studies are mostly conducted in the language of that country, they remain vague and were difficult to comprehend for a long time (Roosbroek & Walle, 2008: 293).

Parallel to the normative nature of early studies, these studies tried to define structural and functional bases of ombudsman. Studies focusing on structural basis identify ombudsman's institutional structure and relations with executive and legislative branches (Gellhorn, 1966) and its distinctive institutional capabilities (Hill, 1974).

By the second half of the 1970s, increasing quantitative research based on systematically driven data began to emerge. During this period, studies mostly focused on the assessment of public satisfaction. Ombudsman-public relations and how it contributes to improvement in the public sector were the focus of some prominent research. These studies illustrated that while the ombudsman's impact is perceived as limited to a certain extent, the "psychological public impact" it creates among citizens is crucial (Hill, 1974). Hill's comparative study on New Zealand, Scandinavia, and UK ombudsman in 1976 and Friedman's comparative survey on

public perception of ombudsman in UK and Alberta, Canada in 1977 were the first studies evaluating the public attitude towards the institution (Friedmann, 1977; Hill, 1976). Hill's study examining the perspectives of applicants on the ombudsman based on their application letters shows that they perceive it as an impartial mechanism with a lack of formal powers (Hill, 1976: 132-133). Friedman's study empirically analyzes public perception and attitude towards ombudsman and finds that people have a positive perception of ombudsman and regard it on their side against public institutions and bureaucracy (Friedmann, 1977: 518-523). Although Friedman's and Hill's studies were based on empirical data, rather than providing an analytical examination, their focus was on the assessment of the ombudsman's performance. Due to this reason, these evaluation-assessment studies created deficiencies for analytical-empirical studies.

One of the reasons commencing to the lack in empirical evidence is related to the confidentiality problem. While some studies may provide empirical data, this data cannot provide in-depth information on ombudsman process. This results in the failure of a systematical examination of the changing function of the ombudsman and a failure in acknowledging its diversified function. Even though there is an increasing number of studies that examine the ombudsman's functions, these studies use descriptive statistics gathered from annual reports of ombudsman institutions rather than collecting primary data. For this reason, grasping the third-party function of ombudsman has been a problem for these studies.

1.3 Methodology of the Study

This study is based on a mixed-method research design to understand how ombudsman functions as a third-party between public institutions and citizens and what factors facilitate and undermine its third-party function. Mixed-method research involves quantitative data from cases and qualitative data from semi-structured interviews with experts and senior officials resolving disputes.

The quantitative part of this study is based on 1003 friendly settlement cases selected with stratified random sampling in a research universe, i.e., 3892 friendly-settlement cases resolved in the period between 2017 and September 2019. I selected sample in line with the distribution of cases according to the year of resolution and public institution subject to complaint in research universe. As these cases were confidential and covering personal data of the applicants, I signed a contract in order to protect personal data.

The quantitative data examines friendly-settlement cases under fifteen categories to understand general characteristics. After the empirical examination of friendly-settlement cases, the second part of this study is based on 24 semi-structured interviews with experts and senior officials of the ombudsman institution, with the aim to analyze the factors facilitating and undermining third-party function in the Turkish context.

For the qualitative part of the study, I prepared a questionnaire focusing on the use of friendly settlement. I pilot tested this questionnaire before conducting the interviews. During semi-structured interviews, I paid attention to ethical considerations in order to ensure the anonymity of interviewees. Firstly, all interviewees received an information sheet summarizing the purpose of the research and a consent form. I also took their written consent. While keeping a consent form, I

also provided a copy to the interviewees. The interviews were only recorded if the interviewee consented to it.

Confidentiality of the data was also ensured during and after the research process. First, I anonymized data gathered from the interviews. I assigned an ID number to each interviewee. I also coded demographic information about the participants including gender, age, occupation, and educational background and stored in a separate file. I used a coding system in order to protect their personal information (for example, Interviewee 1, Age: 28, Gender: F, Educational Background: Public Administration). This method enabled the use of essential data regarding the characteristics of participants by securing anonymity of their identity. The interviewees were not exposed to stimuli that could upset them or which might jeopardize their professional standing within the institution. They had the right to voluntarily end the interview or to skip any question.

Following the analysis, this study demonstrates that there are five factors that affect the ombudsman's third-party resolution function in Turkey. These factors are authority, flexibility, network, dispute resolution capacity, and the attitude of parties. The results reflect while friendly settlement promotes informality and interaction in nature in theory, it is merely dominated by formal and non-interactive resolution based on investigation and providing information functions rather than mediation in practice in the Turkish case. In addition to institutional conditions regarding rules and regulations regarding ombudsman that create this inclination, almost all other factors are related to bureaucratic legalism in Turkey.

1.4 Overview of the Dissertation

The following sections of this dissertation are structured as follows: Chapter 2 provides the theoretical framework analyzing ombudsman's different functions. The first section of this chapter examines the emergence of the ombudsman institution since the 1970s parallel to the dissemination of other ADR mechanisms. The second section of this chapter discusses the ombudsman's four changing functions in the public sector: administrative, legal, human rights, and dispute resolution functions. Chapter 3 focuses on the foundation of the ombudsman institution in Turkey. The first section evaluates discussions on ombudsman in Turkey and the reasons of bureaucratic resistance against the foundation of the institution. The second section features Turkey's ombudsman institution founded after several failed initiatives and its dispute resolution scheme. Chapter 4 presents the methodology of the study. After providing theoretical information on mixed-method research, the chapter covers the collection of quantitative and qualitative data, sampling, and data analysis processes. Chapter 5 reports both quantitative and qualitative findings of the empirical study. The first section explores 1003 friendly-settlement cases based on stratified random sampling among 3892 cases. This section tries to display the use of friendly settlement in the ombudsman context. Based on the outcomes of the first section, the second section of this chapter analyzes the factors facilitating and undermining third-party function of ombudsman in adopting interactive and informal resolution strategies. Chapter 6 comprehensively evaluates the findings of this study and concludes it. The first section pays attention to why interactive and informal methods are used less in the Turkish context. The second section underlines future research directions. The third section offers some policy

suggestions for improving Turkish ombudsman’s interactive and informal resolution capacity.



CHAPTER II

THEORETICAL FRAMEWORK

This chapter provides the theoretical framework for the study exploring the ombudsman's third-party dispute resolution function. In line with the emergence of ADR since the 1970s, ombudsman has expanded in the world in the public sector. The increase in the number of ombudsman offices is related to various contextual changes such as the quest for fighting against bureaucratic maladministration during the 1970s and the increasing demand for democracy after the 1990s. Ombudsman's function in the public sector has also transformed into being an administrative unit to an institution promoting democracy and human rights. In this chapter, I analyze the changing function of the ombudsman under four categories: administrative, legal, human rights, and dispute resolution functions.

The administrative function of ombudsman is related to its contribution to good governance and collaborative governance. The legal function refers to ombudsman relations with the judiciary and whether it can be an alternative to a legal-based solution. The human rights function is in accordance with ombudsman's democracy promotion mission and contributions to human rights since the 1990s.

Lastly, the dispute resolution function of ombudsman became popular after the 1990s focusing on ombudsman's intermediary power. Although ombudsman's dispute resolution contribution had not been the focus in literature for a long time, it has received growing attention in recent years. Friendly settlement, a method increasingly being used in the ombudsman context, has recently gained much serious attention. This method is used to increase interaction and informality in the ombudsman context compared to ombudsman's investigatory and informatory activities. As the missing piece in the puzzle, friendly settlement in relation to dispute resolution capacity of ombudsman has been evaluated.

2.1 The Evolution of the Ombudsman Concept

Previous research explains how the ombudsman became popular in the public sector with the emergence of ADR methods. Compared to traditional legal resolution based on judicial processes, ADR gained momentum in dealing with disputes after the 1970s. ADR is the resolution of conflicts outside of the courts. This sometimes requires the involvement of the impartial or neutral third party to facilitate resolution.

Scholars explain the emergence of ADR with the changing perception of justice. The traditional legal approach was based on distributive justice and measuring the success and failure of justice according to the fairness of the amount received by the parties (Bornstein, Brian, and Wiener, 2014; Deutsch, 1975; Folger, 1987). The concept of equity, allocation of resources in line with people's input, was the key point to measure the fairness of the outcome in distributive justice (Camp, 2011, 29).

Nevertheless, by the 1970s, the perception of fairness regarding the resolution process became more important. Studies in this era illustrate that the perception of justice was not only related to outcome, but that the perception of fairness that came from the process also created satisfaction for the parties even if they were the losing side in the dispute (Deutsch, 1975; Lind & Tyler, 1988; Thibaut & Walker, 1978). Compared to the principle of equity, procedural justice depends on equality of opportunity in achieving fair results (Stancil, 2017). This approach brings better agreements as Wagner & Druckman's recent study shows¹ (Wagner & Druckman, 2017).

The shift from distributive to procedural justice triggered quests for alternative methods of resolving disputes to increase the satisfaction of individuals in the process. In line with this demand, ADR methods such as negotiation, mediation, arbitration, facilitation-monitoring, med-arb, and ombudsman, became widespread in dealing with disputes at various levels. Although all these methods are considered as ADR, they have similarities and differences in nature. While negotiation is based on face-to-face dialogue between two parties in dispute, without the third-party involvement; mediation, arbitration, facilitation, med-arb, and ombudsman require the intervention of an impartial third party in the dispute. Another difference among these methods is the power of binding decision. Although the third party cannot enforce any decision on the parties in mediation, facilitation, and ombudsman in general, the third-party has full control over the final decision in arbitration.

¹ Wagner & Druckman's study examines the role of negotiations in ending civil wars and the contribution of peace agreements to lasting peace. The study also assesses procedural justice and distributive justice based on fifty peace agreements between 1957-2008. One of the outcomes of the study is that procedural justice might increase commitment to agreements (Wagner & Druckman, 2017).

As well as differences, these methods share similarities. Compared to traditional legal resolution, all of these methods provide a cost-friendly resolution (Susskind & McMahon, 1985, 140; Ury & Brett & Goldberg, 1988, 169). Moreover, ADR allows for parties to invest less time and effort in order to reach a satisfactory outcome (Dukes, 1993, 45; Susskind, Babbitt, & Segal, 1993, 61).

In line with the increasing use of ADR methods, ombudsman has also become an important tool for alternative resolution of disputes. Ombudsman, as one of the key concepts in understanding the relations between public institutions and citizens, attracted worldwide attention in the public sector after the 1970s, almost two centuries after its establishment. Compared to other ADR methods, ombudsman was mainly used in resolution of public disputes in the beginning. The rise of bureaucratic maladministration since the 1970s caused the emergence of ombudsman institutions in the public sector and democratic movements in developing countries after the 1990s accelerated this proliferation (Marshall & Reif, 1995: 225).

Ombudsman was firstly established in Sweden to monitor the protection of citizens' rights in administrative processes in 1809 (Abraham 1960: 152, Reif 2004: 5). After the Swedish ombudsman, the ombudsman institution of Finland was established in 1920 as the second ombudsman institution in the world and adopted the Swedish rule of law model as they were capable of enforcing their decisions legally (Remac 2013: 64). Nevertheless, with the significant growth in the number of institutions since the 1970s, the number has reached to 198 in almost 100 countries today. There has been a change in the nature of institution as a result of this rapid growth-which is called *ombudsmania*- and the function of the institution is also diversified in accordance with it (Erkkilä, 2020: 218; Lewis, 1992: 669).

As a result of this shift, ombudsman has become widely used not only in the public sector, but has also gained momentum in the private sector in local governments, trade unions, non-governmental organizations (NGOs), the private sector, and academia (Jacoby, 1999: 17; O'Brien, 2015: 73). This change also enlarged its scope and changed its internal and external structure (Hertogh & Kirkham, 2018: 1).

The rapid diversification in ombudsman mandate makes it impossible to find a universally acknowledged definition and categorization of ombudsman institutions. The historical and political context of each country and other factors determine the mandate and prevent a single and universal definition (Jacoby, 1999: 18). While some scholars classify ombudsman according to institutional design, some others categorize it according to functional diversification (O'Brien, 2018: 37-38). Various scholars use differing classifications such as classical vs. non-classical (Ayeni, 1985), public/private/organizational (Creutzfeldt, 2018), classical vs. specialty (Jacobs, 2009), single purpose vs. multiple purpose (Reif, 2004), and reactive, proactive, and variegated according to its scope and function (Stuhmcke, 2013).

Furthermore, some scholars contribute to new classifications based on the hybridization of the institution based on its capacity to perform different functions such as the parliamentary ombudsman, the quasi-judicial ombudsman, and the mixed or dual ombudsman (Castro Barriga, 2019). Some others such as Oosting, on the other hand, make a classification according to the context in which the ombudsman is established, such as level of democracy and economic development of countries (Oosting, 1999).

Classical ombudsman refers to legislative ombudsman acting under parliaments while non-classical ombudsman is defined as “those which possess varying structural, organizational and jurisdictional features from those of the classical type” (Ayeni, 1985). Another classification is based on the ombudsman’s area of jurisdiction in public vs. private sector and organizations. While private sector ombudsman deals with consumer complaints, organizational ombudsman deal with problems of employees or students in that organization (Creutzfeldt, 2018).

Special ombudsman refers to ombudsman offices established for special mandates such as university ombudsman and corporate ombudsman (Jacobs, 2009). Single purpose ombudsman is an ombudsman with a special jurisdiction while multiple purpose ombudsman has a diversified mandate (Reif, 2004). Reactive ombudsman only intervenes to dispute where there is an application, in contrary to proactive ombudsman which gets in action without requiring any application. Variegated ombudsman may adopt both methods according to the cases (Stuhmcke, 2013). Parliamentary ombudsman, i.e., legislative ombudsman, acts under parliaments to deal with disputes between citizens and administrative institutions. Quasi-judicial ombudsman has an authority to use non-legal binding power to convince the parties in agreement. Mixed or dual ombudsman have authority in both administrative and judicial monitoring (Castro Barriga, 2019).

The dissemination of various ombudsman institutions are examined under different waves by scholars such as Remac and Abraham (Abraham, 2008a; Remac, 2013). The first wave which covers the first ombudsman institutions, specifically Swedish and Finnish institutions, had a legal mandate and authority over the judiciary. The second wave comprises institutions with administrative responsibility

whose pioneers were Denmark and New Zealand ombudsman offices. The third wave includes ombudsman offices founded for human-rights protection and democracy promotion after the 1990s as “hallmark of democratic government” and “a pillar of human rights protection” (Abraham, 2008a: 683).

Although scholars classify ombudsman under different categorizations and waves, the main classification of ombudsman offices is classical/legislative vs. organizational/private ombudsman². In general terms, the aims of classical/legislative ombudsman is “the improvement of the performance of the public administration and the enhancement of government accountability to the public” (Reif, 2004: 2). Legislative ombudsman offices are also called parliamentary ombudsman and examines the wrongdoings of administrative institutions with the aim of “hold(ing) the executive to account” (Abraham, 2008a: 681). As it is independent from the executive, the office can stand against “improper pressure from the executive” (Hatchard, 1992: 219).

Organizational/private ombudsman became increasingly popular especially after the 1980s. Organizational ombudsman is originally designed as an internal dispute resolution mechanism to avoid employer-employee disputes mostly related to discrimination and monetary disagreements (Green, 1985: 253). The main duty of organizational ombudsman is providing “peace within the company (private organization) and maintenance of its favorable public image” (Carl, 2012: 208). Organizational ombudsman has more flexibility and can use informal ways more

² There are also some executive ombudsman institutions even in a few numbers. Executive ombudsman acts within the executive branch and they are directly appointed by the executive power which results in questioning its independence from the government (Hertogh & Kirkham, 2018: 21-22)

compared to classical/legislative ombudsman offices since they have to follow fewer formal procedures to solve the dispute (Rauanheimo-Casey, 2007: 248).

Organizational ombudsman is criticized for the deformation of classical ombudsman's nature by commercialization of ombudsman services (Marshall & Reif, 1995: 223). In organizational ombudsman structure, as ombudsman may be perceived as the representative of the company, this situation may deteriorate ombudsman's impartial stance (Rowe, 1991: 358). Due to this reason, the independence of organizational ombudsman has been questioned (Carl, 2012: 211-214).

Even if having a precise definition of ombudsman institution is difficult as a result of the emergence of ombudsman in various contexts, the Ombudsman Committee's definition was used in most studies to define an ombudsman institution:

An Ombudsman institution is traditionally defined as an office provided for by the constitution or by an action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or parliament; who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion; and who has the power to investigate, recommend corrective action, and issue reports (cited in Remac, 2014: 565).

As the scope of the ombudsman is enlarging, this reveals an ambiguity in the role and function of the institution. Nevertheless, as it is crucial to determine the changing roles and functions of the ombudsman in different contexts, this study attempts to analyze the varying functions of ombudsman institutions. With this aim in mind, this study analyzes the ombudsman institution along four main categories: administrative, legal, human rights, and dispute resolution functions. This categorization will help address the changing function of the ombudsman in various

contexts and the lack in understanding of the ombudsman's dispute resolution function.

2.2 The Function of the Ombudsman in the Public Sector

2.2.1 Administrative Function

Earlier studies consider ombudsman as a public administration institution. These studies discuss ombudsman around two major concepts; good governance and collaborative governance, by emphasizing *ombudsprudence*, “a body of ethical norms applied by public administration” (Remac & Langbroek, 2011: 88).¹ The term of *ombudsprudence* has been operationalized in various ways. In addition to Remac & Langbroek's definition emphasizing the adoption of ethical norms in public administration, O'Brien used this term to emphasize the ombudsman's combination of principles from different disciplines (O'Brien, 2015: 76). Gill, on the other hand, underlined the separation of ombudsman from related disciplines (Gill, 2016: 98). Castro Barriga defines it as the application of legal standards in ombudsman offices (Castro Barriga, 2019: 56). Vogiatzis used this term for all cases resolved by ombudsman (Vogiatzis, 2018). In the context of *ombudsprudence*, while bureaucracy is found “impersonal”, ombudsman is seen as a way of “humanizing” existing hierarchical and formal relations in public administration (Asper y Valdes, 1989: 2).

The first goal of the ombudsman's administrative function is good governance. Good governance has become one of the leading concepts in defining political and economic wellbeing of countries with the rise of the new public

management approach³ since the 1990s. Although the term is defined as “a notion embodying a number of general principles of government” in the wider sense, it refers to the effectiveness of democracy and human rights values in politics and administration (Reif, 2004: 63). As good governance became a conditionality for the quality of democracy in developing countries, ombudsman also became compulsory for the positive assessment of administrative structure regarding the rule of law and judicial independence (Gregory & Giddings, 2000b: 425). It is also assessed with the accountability and transparency of the system to measure necessities of the market economy (The World Bank, 1994). The concept was especially linked with the improvement of the quality of public administration since the 1980s (Sudhankitra, 2015: 33).

Good governance became a crucial point on the agendas of international organizations by the 1990s. The World Bank emphasized good governance as a prerequisite of building an environment for successful economic development in the Governance and Development Report in 1992 (The World Bank, 1992). The International Monetary Fund (IMF) also underlined the need for good governance for sustainable macroeconomic policies based on the indicators of “the transparency of government accounts, the effectiveness of public resource management, and the stability and transparency of the economic and regulatory environment for private sector activity.” (Jack Boorman, 1997). Moreover, good governance is seen as a precondition of the realization of human rights in the UN’s agenda in relation to

³New Public Management or New Public Governance is a new governance approach based on the transformation of public administration to businesslike sectors by adopting “private-sector-style management” (Ferlie, 2017). It became effective since the 1980s and proliferated through the world by the 1990s. It resulted in “the calculated economization of activities” and a change in traditional hierarchy (Nielsen & Nielsen, 2016: 244).

“democratic institutions, the delivery of state services, the rule of law, and anti-corruption measures” (United Nations, 2007: 2). The former Secretary-General of the United Nations (UN), Boutros Boutros-Ghali, emphasized the importance of good governance in providing stable democracies based on the rule of law and transparency in *An Agenda for Peace* in 1992 (Boutros-Ghali, 1992).

Along with the increasing need for good governance in building more accountable and transparent public institutions, ombudsman became one of the prerequisites for providing good governance. It is perceived as one of the best options for providing accountability by examining the acts of public decisions and transparency and exposing wrongdoings of related institutions and the implementation of good governance principles in the public sector (Castro Barriga, 2019: 20; Reif, 2004: 60). Since it also enables public institutions to review the rules and regulations based on the feedback of citizens, these institutions can improve policy implementation without any additional evaluations. As good governance culture becomes influential in public administration with the help of ombudsman, it enhances the legitimacy of both public institutions and ombudsman (Mario & Caranta, 2014: 104).

Accountability and transparency of public institutions especially in developing countries have become very important since the 1990s and ombudsman became a condition for developing countries to improve public administration services. In line with this need, the number of ombudsman institutions skyrocketed during the 1990s. The need for promoting good governance principles has been one of the key points in the establishment of these institutions.

The second goal in the administrative function of ombudsman is collaborative governance. Bingham & O’Leary define collaborative governance as “the process of facilitating and operating in multi-organizational arrangements to solve problems that cannot be solved or easily solved by a single organization” (Bingham & O’Leary, 2015, 3). By the 1990s, collaborative governance became a popular concept in public administration because of the increasing demand for dialogue and deliberation in the public sector since the capacity of governments and public institutions in problem solving via conventional methods dramatically decreased (Emerson & Nabatchi, 2015, 8). This crisis of governance created a gridlock in legislative, judicial, and administrative institutions (Dukes, 1993). Thus, collaborative governance resting on the idea of promoting active involvement of citizens in decision making process came to the forefront to empower and engage various actors in governance to overcome this crisis (Bingham, 2009: 273-275; Sirianni, 2010). Citizen deliberation, dialogue, and collaborative decision-making became crucial for introducing a collaborative governance approach in institutions (Levine, Fung, & Gastil, 2005). This approach also brings a more inclusive institutional environment that facilitates collaboration in both intra-institutional and inter-institutional levels (Freeman, 1997).

The emergence of collaborative governance led the way to the increasing use of ombudsman in public administration bodies as well as other ADR mechanisms. Ombudsman is seen as a way of improving state-citizen interaction, providing democratic governance by the enrichment of public interaction, and increasing the trust of citizens in the public sector by creating shared values (Monogioudis, 2015; O’Brien & Seneviratne, 2017). Pluralism and the existence of effective checks and balances mechanisms aided with the help of ombudsman in public administration

create a sharpened environment for collaboration in the public sector (Monogioudis, 2015). Moreover, better collaboration among stakeholders is seen as a way of increasing the legitimacy of the ombudsman in the eyes of stakeholders as they witness its objective stance over the dispute as a result of collaboration (Houk et al., 2016: 27). Thus, collaboration is seen as a way of reaching better agreements in the ombudsman context.

In terms of both the contribution of ombudsman to providing good governance and collaborative governance, the ombudsman's role in providing efficiency and accountability within public institutions is also widely discussed. Providing more accountable and efficient public institutions has always been emphasized as the main function of the institution even in early studies (Asper y Valdes, 1989; Caiden, 1983; Hill, 1974; Owen, 1990). Accountability in the ombudsman context is mostly evaluated with fighting against corruption and maladministration in state bodies. By bringing up issues regarding wrong administrative practices, ombudsman fixes administrative injustices (Hatchard, 1992; Marshall & Reif, 1995; Oosting, 1999; Wiegand, 1996). This results in preventing bureaucratic erosion especially in developing countries by ending "vicious circle of bureau-proliferation" (Ayeni, 1987: 321) and increasing the quality of public service and protecting the abuse of citizen's rights (Hatchard, 1992).

In addition to leading to more accountable administrations, ombudsman increases efficiency in public administration. Ombudsman's efficiency is mostly defined in terms of saving time and decreasing cost in problem-solving⁴. Reif

⁴Although saving time and cost are emphasized as the main indicators of efficiency, this term is ambiguous since there are not broadly accepted indicators of efficiency in ombudsman context.

underlines that promoting less time consuming and expensive solutions improves the operational efficiency of the institution (Reif, 2004). Moreover, compared to long-lasting formal procedures, the ombudsman's ability to promote quick resolutions increases efficiency in the public sector (Ayeeni, 1985).

Ombudsman as an administrative institution also has a proactive role coming from its power of initiating investigations on problematic areas.⁵ This capability is known as the "system-fixing" power of the ombudsman (Gregory, 2002: 117) or "aggressive mode of ombudsman" (Asper y Valdes, 1999: 232). Ombudsman can propose comprehensive systemic changes in existing rules and policies as a result of investigation (Stuhmcke, 2013: 3). This authority creates flexibility in its actions as the borders of investigation is decided by ombudsman itself (Castro Barriga, 2019: 70).

Although ombudsman's function in the public sector has been discussed since the early studies, the satisfaction that this institution created has been questioned. The main criticism towards the institution in this matter is its failure in fulfilling the need of the public due to "low public esteem" and "general dissatisfaction". (Kirkham & Gill, 2020). Although the expectancy from the institution regarding preventing maladministration and creating systemic change is high, ombudsman has failed to satisfy these needs due to the low level of acceptance of its decisions (Denison, 1992).

⁵Even though a significant number of ombudsman institutions have a right to initiate their own investigation without any application, some ombudsman institutions do not have this authority. For instance, Denmark and Sweden ombudsman offices holds this right while New Zealand office does not (Asper y Valdes, 1989: 115). This authority is related to whether ombudsman has a right to conduct public inspections.

The non-binding nature of ombudsman decisions is seen as the biggest disadvantage in this matter. Although ombudsman can propose solutions or convince stakeholders to reach an agreement, it does not have a binding power over public institutions subject to complaint. Even if it has authority to use power in some cases, it is reluctant to enforce its authority to protect its positive reputation in the public administration and to not to turn into a “bureaucratic bully” (Ayeni, 1985). There are different approaches concerning non-binding decision-making. The first approach claims that non-binding decisions have resulted in ineffective institutions (Reif, 2004: 18). As ombudsman cannot propose legally-binding decisions as its impact on policy change is limited (Hertogh, 2001: 52). The second approach, on the other side, underlines that even if ombudsman cannot impose any decision on public institutions subject to complaint, its decisions still create significant impact in the public sector. Scholars state that rather than using coercion over stakeholders, non-binding decision-making empowers cooperation rather than adversarial relations (O’Brien & Seneviratne, 2017; Owen, 2000) This environment helps to increase trust among institutions in the public sector (Isaacs, 2001: 170).

Some scholars pay attention to the “moral authority” of ombudsman in understanding non-binding but powerful decision-making in the public sector. The term is also called “moral persuasion” or “constitutional authority” (O’Brien, 2015). Moral authority of the ombudsman has stood out in several ways. Firstly, moral authority refers to ombudsman’s moral superiority over public institutions subject to complaint due to its relations with the parliament (Vogiatzis, 2018: 255) and the reputation of being a “people’s defender” in the public sector. The advocacy role of ombudsman regarding protecting people’s rights against public institutions

empowers the institution⁶ (Sudhankitra, 2015: 102). Secondly, moral authority derives from the neutrality, impartiality and equity of the institution (Creutzfeldt, 2018: 15). The impartial and independent position of the ombudsman ensures that both citizens and public institutions take the institution more seriously. As the protector of just and fair solutions in the public system, ombudsman is capable of making public institutions subject to complaint comply with ombudsman rule (Rowe, 1991: 358).

Another criticism towards public sector ombudsman is related to the increasing ambiguity in the ombudsman's administrative purpose (Male, 1999: 43). Indeed, the function of the ombudsman in the public sector has been described as ambiguous since the early studies (Friedmann, 1977; Harlow, 1978; Hill, 1972). Friedmann's study displays that there is confusion about ombudsman's area of activities as the survey result of the study proves that a significant part of participants define ombudsman's function as "vague" (Friedmann, 1977). Harlow defined ombudsman as an institution in searching for a role and underlined that ombudsman's function in the public sector had never been determined (Harlow, 1978). Hill underlines that the "structural and attitudinal ambiguities of ombudsman authority" lower the expectations from ombudsman in the public sector (Hill, 1972).

With the spread of private ombudsman offices and the diversification of the function of the ombudsman in the 1990s, the question of "what is the main function of the ombudsman" came to the forefront again. The establishment of ombudsman

⁶Although the ombudsman's mission to protect citizens provides moral superiority, it is argued that this situation may harm the ombudsman's neutrality and impartiality (Male, 1999: 12). It is claimed that since ombudsman protects citizens over public institutions, it cannot neutrally handle the dispute between two parties. Nonetheless, the advocacy role of ombudsman aims reducing power imbalance by functioning as a go-between mechanisms and ensuring the balance of power between the parties (Creutzfeldt, 2018: 35).

institutions with changing mandates and the increase in the number of private ombudsman offices blurred the public administrative function of ombudsman (Hirst, 2016). Increasing ambiguity in the public sector ombudsman's function resulted in lack of ombudsman strategy on the governmental level. A recent OECD survey shows that ombudsman can promote democratic values and open government via transparency, accountability, effectiveness, efficiency, and responsiveness. However, lack of strategy for implementing these values creates challenges for ombudsman institutions (OECD, 2018: 10).

2.2.2 Legal Function

The second function of ombudsman is in legal affairs. The legal approach in understanding ombudsman's function mainly focuses on ombudsman-judiciary relations to understand whether ombudsman is an alternative or complementary to traditional legal resolution (Abraham, 2008b: 538).

The first view on the issue is that although ombudsman is widely accepted as an alternative to the judiciary, it is not truly independent from traditional legal processes but rather a complementary to it. As a supporter of this argument, Remac emphasizes that ombudsman "can only act together with the courts but never against them" (Remac, 2014: 567). By acknowledging ombudsman's differences compared to the court-based judiciary, O'Brien & Seneviratne define it as a regulatory mechanism controlling and monitoring the judiciary to see whether it fulfills its duties (O'Brien & Seneviratne, 2017: 4).

The supporters of the intertwined nature of the judiciary and ombudsman define ombudsman's actions within the area of administrative justice. Adler defines

administrative justice as “a set of principles that are imposed on government departments and public bodies by institutions that are external to them, in particular by the courts but also by tribunals and agencies like ombudsmen, as a result of individual challenges to administrative decisions.” (Adler, 2003: 324).

Administrative justice investigations are useful to prevent or correct injustice actions (Longley & James, 1999: 102).

Ombudsman is perceived as a “mainstream and central element” of an administrative justice system (Buck, Kirkham, & Thompson, 2011: 9). The defenders of this idea have focused on similarities between ombudsman and the judiciary. Longley & James point to the overlapping subjects in the judiciary and ombudsman’s administrative justice actions (Longley & James, 1999: 49). For instance, like in the judiciary, ombudsman conducts investigations and provides a solution from its perspective in almost all areas except for criminal cases. According to this approach, methodological differences between the ombudsman and judiciary should not be the focus. Drewry criticizes the emphasis on the methodological differences as it is “misleading to see them (ombudsman institutions) merely as small claims tribunals, providing a cheap alternative to courts; rather, they (ombudsman institutions) should be seen as a valuable means of ... complementing judicial mechanisms of administrative justice.” (Drewry, 2009: 3).

As Remac & Langbroek emphasize, since ombudsman and judiciary have a common goal in the public sector with the “independent evaluation of a situation involving public administration and citizens and the enhancement of administrative justice”, it is not possible to draw a distinct line between ombudsman and traditional administrative justice mechanisms (Remac & Langbroek, 2011: 112). Thus, it is

possible to observe a “heterogeneous relationship” between the judiciary and ombudsman (Remac, 2018: 133) while it should not be forgotten that ombudsman is “extra judicial means of conflict resolution” (Remac, 2018: 149). Thus, this view defends that rather than being an alternative to the judiciary, ombudsman functions as “subsidiary to judicial protection” (Stelkens, 2014: 36).

Another argument on the complementary nature of relations between ombudsman and judiciary is related to the public perception of these institutions. Creutzfeldt’s study examining how ombudsman functions as a dispute resolution mechanism outside the legal system shows that people’s satisfaction from the ombudsman process and the outcome is directly related to their previous experiences in the legal sector (Creutzfeldt, 2018: 1). Hence, the boundaries between ombudsman and traditional dispute resolution mechanisms are blurred and “legal socialization” and “legal consciousness” of individuals also determine their satisfaction with the ombudsman (Creutzfeldt, 2018: 53).

The cases where ombudsman holds judicial authority is also used to underline the intertwined nature of judiciary and ombudsman. Ayeni underlined that ombudsman derives authority “either directly from a legal statute or indirectly by being an organ of a legal entity” (Ayeni, 1985). Although ombudsman is not responsible against any authority, it has to follow legal obligations (Asper y Valdes, 1989: 37). Titled as the “guardian of the law”, ombudsman holds power over the judiciary in some cases (Rowat, 1965).

There are multiple examples in which ombudsman have the authority to control the judiciary as it can impose sanctions over their decisions such as in Sweden, Finland, Czechia, and France. Both Swedish and Finnish ombudsman

institutions monitor the judiciary to enhance the protection of the rule of law (Kucsko-Stadlmayer, 2008: 26; Monogioudis, 2015: 17). For instance, Finland ombudsman has the authority to “supervise the observance of the laws in the proceedings of courts and other authorities” (Hartke, 1973: 328). Moreover, ombudsman can join legal processes and affect the court’s decisions as in the Czech case, where the authority of alternative and traditional dispute resolution mechanisms is not segregated (OECD, 2018: 4). Furthermore, the French ombudsman’s area of jurisdiction is still entitled to judicial power (Bousta & Sagar, 2014: 80-81).

The second view, on the other hand, perceives ombudsman as an alternative to judiciary by underlining their differences. The main difference between judiciary and ombudsman is the method they adopt even if there are some overlapping roles and responsibilities between the ombudsman and legal system (Abraham, 2008a; Rowat, 1965: 289).

As for methods, ombudsman provides “confidential, informal, and inexpensive” ways of access to justice in the public sector (Hatchard, 1992:215). Compared to traditional legal mechanisms, ombudsman allows all parties to follow a more flexible process (Castro Barriga, 2019: 295). One of the main differences in this line is the solution they provide. The judiciary proposes win-lose options to parties. In other words, while a party wins, the other losses in line with zero-sum decision-making (Ietswaart, 1982: 158). On the other side, ombudsman offers integrative problem solving⁷ to provide a win-win solution. This approach enables

⁷The integrative problem-solving approach requires an interest-based approach rather than position-based understanding in dealing with cases. As Fisher and Ury’s principled negotiator concept indicates, positional bargaining forces parties to “play either a soft or a hard game” resulting in victory or defeat of the sides in problem-solving (Kriesberg & Dayton, 2012: 259). Nevertheless, integrative problem-solving approach enables mutual gain by allowing “separating the people from the problem, focusing on interests rather than positions, inventing new options for mutual gain and producing objective

the ombudsman to offer solutions based on the joint benefit of parties rather than a full compromise of one party over the other, which essentially satisfies both institutions and applicants.

Another methodological difference between ombudsman and the judiciary is informality. The judiciary provides a formal resolution based on rules and regulations. Nonetheless, ombudsman use informal resolution methods without requiring parties to obey to certain rules and regulations. Informal resolution capacity also enables maintaining discussions with parties by a phone call or an e-mail rather than a courtroom (Remac, 2014: 576). Thanks to this power, while the judiciary mostly provides coercive control via authority and sanctions, ombudsman provides cooperative control via seeking common language (Hertogh, 2001). This means less time and lower cost for a resolution compared to what the judiciary will achieve (*The National Democratic Institute* 2001: 6-7).

Another difference between the judiciary and ombudsman is their level of solution. While the judiciary deals with providing individual based justice, ombudsman aims to offer solutions for fixing the system to prevent maladministration. Thus, ombudsman proposes systematic level of change. In line with this function, ombudsman also aims to change the perception citizens have towards legal and bureaucratic institutions and increase their trust of the system by removing their dissatisfaction (Danet, 1978: 364). The final difference between ombudsman and the judiciary is their position towards the parties in cases. While

criteria” (Fisher & Ury, 1991, 135-137). Thus, parties focus on maximizing their gains and minimizing the cost by focusing on their interests rather than positions. This enables them to “reconcile differences in a way that addresses parties’ most pressing needs and concerns” (Thompson, 2009, 102).

judges protect independence and neutrality in all stages, these principles do not apply to ombudsman as they protect citizens against institutions, which to some extent can question their neutrality (Drewry, 2009: 6).

2.2.3 Human Rights Function

Ombudsman's function of protecting and promoting human rights is the third approach in the ombudsman field. Although human rights protection has been one of the duties of some early classical ombudsman offices⁸, the proliferation of human rights ombudsman offices began in the 1990s (Lewis, 1992: 671-73; Pegram, 2010: 734).

There have been two major political developments that have affected the proliferation of human rights institutions. The first development was the collapse of the Soviet Union and the independence of formerly Soviet countries in the early 1990s. The second development was the breakup of the federation of Yugoslavia and the emergence of new countries in the region. These developments resulted in the need for promoting democracy and human rights for transition to democratic regimes (Christoplos, 1999: 135).

This need was also reflected in the agenda of international organizations. The Commission on Security and Cooperation in Europe (CSCE)⁹ underlined the need for "facilitate(ing) the establishment and strengthening of independent national institutions in the area of human rights and the rule of law" in 1990 (OHCHR, 1990).

⁸Reif states that the foundation of human rights ombudsman institutions can be traced back to the 1970s with the establishment of ombudsman institutions in Portugal and Spain. These institutions were established to improve democratic accountability to prevent military intervention (Reif, 2004: 8).

⁹The Commission on Security and Cooperation in Europe (CSCE) decided to change the name of the organization to Organization for Security and Co-operation in Europe (OSCE) in 1995.

The Council of Europe recommended member states to think on “establishing effective national human rights institutions, in particular human rights commissions which are pluralist in their membership, ombudsmen or comparable institutions” in the Council of Europe Committee of Ministers Meeting in 1997 (Council of Europe, 1997). In line with this aim, the Council of Europe Commissioner for Human Rights was established to “facilitate the activities of national ombudsmen or similar institutions in the field of human rights” (Council of Europe, 1999).

In this context, human rights ombudsman offices were established with the aim of improving democracy and human rights (Council of Europe, 1999) and fighting against corruption (Hertogh & Kirkham, 2018; Kansanoy, 2018). The development of democracy and human rights is considered as a package to provide better state-society relations in these countries (Monogioudis, 2015: 23). Moreover, the establishment of human rights ombudsman turned into a conditionality for these countries to become members of the European Union (EU). The European Ombudsman accepted the institution as “an icon of democracy and of the rule of law” and worked for the better function of it at the national level (Vogiatzis, 2018:60).

Human rights jurisdiction of ombudsman offices led to two new discussions in the field. The first discussion is on how human rights contribute to democratic transition of countries and promote democratic values in the public sphere. This issue is discussed to understand the ombudsman’s role in promoting democracy in general. The ombudsman reducing the power gap between the government and the governed (Jamieson, 1999: 615) and integrating citizen perspectives into the decision-making process by allowing more transparency (O’Brien & Seneviratne, 2017, 95-99) is

perceived as a way of promoting democracy. Ombudsman is also seen as a facilitator of the internalization and adaptation of human rights principles, encouraging respect for individual rights, and promoting better culture based on mutual understanding (Abedin, 2011). Ombudsman's increasing reputation in the field of democracy paved the way for its dissemination not only in Post-Soviet and Post-Yugoslavian countries but also in others such as Latin American countries for the proliferation of democratic values (Abraham, 2008a: 685).

Ombudsman has become an important icon for promoting democracy in developing countries rather than developed ones (Abedin, 2011). Various scholars examined the proliferation of human rights ombudsman offices (Ambrož, 2005; Pegram, 2010; Reif, 2004). For instance, Pegram examines the proliferation of human rights ombudsman offices under three categories. The first category consists of the offices established via coercion of external agencies especially in the post-colonial context, while the second one refers to acculturation under the surrounding political or sociological impact. The last category is persuasion in which actors "internalize the principles and rationale of the reform" (Pegram, 2010). The results of the research reflect that the internalization of democratic principles and human rights values is a critical outcome for the success of human rights ombudsman.

On the other hand, there is no consensus in this success. Erkkilä's recent study shows that most of the developing country examples failed to increase democratic standards in these countries compared to the early-established offices (Erkkilä, 2020: 51). Erkkilä claimed that politicization of ombudsman institutions in developing countries and the decrease in the accountability in bureaucracy is what caused this failure (Erkkilä, 2020: 218).

Abedin explains this situation with ombudsman's limited authority and lack of independence in a developing country context since ombudsman in these countries "is not well equipped for hunting lions, but it can certainly swat a lot of flies" (Abedin, 2006: 226). O'Brien, on the other hand, states that ombudsman shows better success in developed countries as it resolves disputes much more depending on cooperation rather than competition (O'Brien, 2018: 39). The OECD report on ombudsman's role in open government emphasizes that ombudsman shows a limited success in raising public awareness on democratic principles and offers that ombudsman's role should not be limited to monitoring and auditing the public sector's adaptation of democratic values. On the contrary, its responsibility in increasing public's awareness on these values should be extended (OECD, 2018: 3).

The second discussion in the field of human rights ombudsman is hybridity. In the ombudsman context, hybridity means the adoption of multiple functions within the ombudsman's mandate (Reif, 2004: 2). As well as variation of its function and scope, hybridity is also related to "eclectic titles of array and responsibilities, i.e. the variation in ombudsman's internal structure" (Kolb, 1988: 676). The human rights mission of ombudsman enriched its duties by bringing additional responsibilities regarding human rights issues (Castro Barriga, 2019).

There are two main discussions in the ombudsman field related to the hybridity issue. Firstly, and more commonly, hybridity of ombudsman institutions is discussed in light of whether it destructs the nature of the institution as to whether the new functions of ombudsman create deficiencies for its traditional roles (Stuhmcke, 2013). Owen underlines that these additional roles may endanger the capability of

ombudsman to work closely with public institutions by creating conflict of interest among parties (Owen, 2000).

The second discussion on hybridity pays attention to the contribution of hybrid transformation of institution for the empowerment of the institution's place in the public sector by adding extra responsibilities and enlarging its scope (Sudhankitra, 2015). This transformation and the enlargement in the scope of the institution is seen as a reflection of ombudsman's success in "adapt(ing) to changing circumstance(s), evolve(ing) and so survive(ing) in a variety of political and legal habitats" (Abraham, 2008a: 682). As the scope of the classical parliamentary ombudsman is widened with new roles and functions, ombudsman has become a more effective institution (Gregory & Giddings, 2000a: 9).

2.2.4 A Missing Piece in the Puzzle: Dispute Resolution Function of the Ombudsman

The fourth function of ombudsman, the function of dispute resolution, between public institutions and citizens received less scholarly attention compared to administrative, legal, and human rights approaches. Hence, ombudsman's dispute resolution function between public institutions and citizens is a gap in the literature and created deficiencies for understanding the institution outside the legal and administrative provisions (Sudhankitra, 2015: 57). Nevertheless, there is a growing interest in understanding the third party function of the institution since dispute resolution process of ombudsman has become more complex and the use of mediation skills in the ombudsman context has expanded (Ambrož, 2005. 148). The

OECD survey conducted in 2017 shows that ombudsman's second area of activity is mediating between citizens and public administrations (OECD, 2018).

The early studies briefly mentioning the third-party role of ombudsman do not focus directly on how ombudsman functions as a third party and what the dynamics of ombudsman's third-party role is. The third-party function of ombudsman covered in these studies identify its function in the public sector. To do so, scholars mostly focus on two questions: i) the changing function of ombudsman ii) the public perception of the ombudsman.

Hartke defines ombudsman's function as a "mediator between the citizens and his government", focusing on the differences between ombudsman and judiciary rather than its intermediary function (Hartke, 1973). Similar to Hartke, Prince's ethnographic research in Guyana conducted in 1974-1975 based on two distinctive surveys with citizens and bureaucrats also aims at understanding the mediator role of the ombudsman and defines ombudsman as "a device for mediating relations between the bureaucracy and the citizen" (Prince, 1979). Although both of these studies use the term mediation, they do not analyze ombudsman's mediation role and instead provide generic information on ombudsman. In other words, ombudsman's mediation function does not take place in these studies.

Green's theoretical study is another important study that examines organizational ombudsman as a third-party neutral both as a dispute prevention and dispute resolution mechanism. He argues ombudsman to be "an upward-feedback-mediation model" that can prevent emergence of clashes by taking measures to overcome grievances that may turn into disputes (Green, 1985: 228). Ombudsman is also a dispute resolution mechanism that combines investigatory and mediatory

functions (Green, 1985: 252). Thus, Green emphasizes both the dispute prevention and dispute resolution functions of the institution. At the same time, while examining worldwide ombudsman examples, Rowat pays attention to the increasing need for the use of mediation in ombudsman context (Rowat, 1985: 347).

Several comparative and theoretical studies were conducted to understand the public perception of the third-party function of ombudsman. Friedman conducted the first empirical comparative study on ombudsman's third-party function while examining public perception of the office in Britain and Canada. The results show that ombudsman is perceived mostly as a problem-solving mechanism. However, a significant part of society also perceives it as a mediator (Friedmann, 1977: 508). In another comparative study, Harlow's work compared world examples and underlined that while Scandinavian ombudsman offices function as a citizen defender, the French office relies more on the mediator function of the ombudsman (Harlow, 1978).

Another study by Asper y Valdes proposed a model for the Brazilian ombudsman focusing on the ombudsman's contribution to public relations. In this study, Asper y Valdes emphasizes that mediation can improve relations between the government and the governed and make the public understand the government's structure and operation better (Asper y Valdes, 1989: 278). Similar to Asper y Valdes, Owen proposes effective use of dispute resolution in ombudsman structure to improve relations between the government and public (Owen, 1990). While underlining the inefficiency of traditional legal approaches in resolving public interest disputes, he emphasizes the need for a new approach, consensual dispute resolution, which depend on collaboration rather than competition (Owen, 1990).

Ombudsman literature by the 1990s aimed to understand its third-party function focused on two main questions; i) how ombudsman differs from classical mediation ii) can it be placed among other ADR mechanisms. In answering the first question, scholars mainly examined areas of jurisdiction, resolution approach and procedure in the ombudsman system. Scholars mostly focused on differences between ombudsman and mediation. The second question is also discussed via functional and methodological aspects of ombudsman in line with its intermediary capacity.

In the first category, mediation in the ombudsman context shows significant differences compared to classical mediation techniques. As one of the leading studies, Rowe's work examines how ombudsman fit in a mediation context. As Rowe suggests, although ombudsman may intervene in the dispute resolution process as a third party, it does not use classical mediation but rather prefers to use shuttle diplomacy¹⁰ especially in organizational disputes arising from hierarchical differences between the parties (Rowe, 1991). Rowe also underlines that ombudsman cannot be classified as a single dispute resolution mechanism since it functions as "a counsellor, informal go-between, facilitator, formal mediator, informal fact-finder, upward-feedback mechanism, consultant, problem prevention device and change agent" (Rowe, 1991). Rowe also suggests that ombudsman should adopt negotiation and mediation theories to improve its practice in dispute resolution (Rowe, 2015).

Other scholars too focused on the differences between ombudsman and mediation in their scope, resolution approach, and procedure. The ombudsman's and

¹⁰Shuttle mediation, also known as indirect mediation and shuttle diplomacy, allows the third party to conduct separate meetings with the parties in dispute that prevents face-to-face confrontation of the parties (Popadak, 1995: 36).

mediator's jurisdiction differ because of ombudsman's public hearing function in the public sector. Since it is defined as a "psycho therapeutic" function of ombudsman (Utley, 1961: 9), scholars emphasize that ombudsman's public hearing function increases its contribution to grievance management compared to mediation (Abedin, 2011: 900; Kirkham & Gill, 2020: 48). As a public hearing mechanism, rather than resolving problems directly, ombudsman enables including unheard voices and facilitates mutual understanding (Abedin, 2006: 222) which also increases trust between the parties (Creutzfeldt, 2016: 475-476; Hertogh, 2013: 252).

Another difference between the ombudsman and mediation is their dispute resolution approach. Compared to mediation, ombudsman's main interest is not seen as resolving disputes, ombudsman mainly follow investigative and informative approaches (Popadak, 1995: 39). It functions more as an investigative body in government, its function between public institutions and citizens is seen as investigating wrongdoings and informing the parties (Siemiatycki et al., 2015) rather than promoting a solution. In addition to investigation and information, ombudsman's techniques for the resolution differs from classical mediation. Oosting states that ombudsman's techniques are different in terms of activity and horizontal approach. Compared to classical mediation techniques, ombudsman does not take an active role for reconciliation between the parties and does not adopt a horizontal approach since it has to follow formal rules (Oosting cited in Gregory, 2002: 112)

In terms of process, ombudsing and mediating are also different. Doyle highlights the lack of consent of the parties in ombudsman processes while differentiating ombudsman from mediation. As Doyle emphasizes, even if the method is called mediation, its origin is different than mediation since it does not

need the consent of both parties to agree upon the process and outcome (Doyle, 2003: 8-9).

Aside from differences, Moore focuses on similarities between the ombudsman and mediation asking the question “how does an ombudsman assist parties in conceptualizing problems, imagining solutions, and developing variety of ways of seeing the problem?” (Moore, 2016). Moore emphasizes that ombudsman’s mediation function contributes to build comprehensive interaction between the parties, promotes a common language to prevent misunderstandings during the process, and creates a “comprehensive narrative” for the ombudsman system (Moore, 2016: 8).

The second area of discussion on ombudsman’s third part function since the 1990s focused on its overall place in the ADR system. Some scholars emphasized ombudsman not being a classical ADR mechanism similar to the same reasons differentiating it from mediation. As an institution “investigating, reporting, or fixing systemic problems” with acknowledging investigative and informative functions, ombudsman is not a dispute resolution mechanism unlike other ADR methods (Steyn, 2002) (Brown & Marriott, 2012: 458) (Gregory, 2002: 100-101).

According to their view, the increase in ombudsman’s dispute resolution capacity and an emphasis on dispute resolution is criticized. Abraham criticizes ombudsman’s increasing focus on resolution of disputes since it deteriorates its adjudicatory capacity (Abraham, 2008b). In Abraham’s view, ombudsman should “make decisions rather than merely brokering settlements” like in ADR (Abraham cited in Hirst, 2016). Based on these differences, O’Brien & Seneviratne reject the similarities between ombudsman and ADR and proposes that ombudsman consists a

third way between judiciary and ADR mechanisms (O'Brien & Seneviratne, 2017: 95). Doyle, Bondy, & Hirst claims that it is not possible to determine ombudsman's function within ADR without clearly understanding ombudsman's process, i.e. ombudsing,:

Ombudsmen have a place in the wider ADR sphere, but perhaps as an ADR process in itself ('ombudsing'?) alongside mediation, conciliation, arbitration, and others. Unless we understand a process of 'ombudsing' as a distinct and defined process to sit alongside mediation and arbitration, for example, we have a confusing lack of clarity about what it is that ombudsman is actually offering process-wise. What is missing, and appears to be needed, is a classification of the processes used by ombudsmen and their complaint-handling cousins (Doyle, Bondy, & Hirst, 2014: 71).

Although these studies discuss ombudsman's third-party function to some extent, it was not the focus of these studies and they provided limited information on it. Moreover, these studies fail to examine ombudsman's third-party function with empirical data which allows one to see the process as well as the outcome of dispute resolution.

Another intermediary technique adopted by ombudsman called friendly settlement attracted scholarly interest in understanding the third-party function of ombudsman. Friendly settlement is the direct involvement of ombudsman as the third party by carrying mediator function in the dispute resolution process especially for small-scale conflicts (Reif, 2004: 16). Rather than conducting formal investigation, ombudsman arranges a mediation process among the parties to reach a faster solution (Langbroek & Rijpkema, 2006: 83). Friendly-settlement is conducted in three ways; bringing the parties together, organizing face-to-face or separate meetings with the parties, or negotiating over the phone. It is especially used to resolve disputes related to "personal issues, misunderstandings and failed communication" (Mackie, 2002), which are also called low-level disputes that do not require long term commitment to

provide more quick resolution and enable mutual satisfaction of parties. The method is also named¹¹ as “early settlement”, “negotiated settlement”, “resolution by mediation” (Oosting, 1999), “smart-casual third way” (Doyle et al., 2014), “early neutral evaluation” (Doyle, 2003), “informal mediation” (Doyle, 2003), and “intervention method” (Reif, 2004).

Friendly-settlement is still an ambiguous concept, there has been different definitions of the term. Doyle et al. defined it as the use of informal and interactive resolution ways including negotiation and mediation rather than conducting formal correspondence in resolution of disputes (Doyle et al., 2014: 7). Creutzfeldt and Rowat define the whole ombudsman mechanism as a friendly-settlement aiming a win-win solution¹² (Creutzfeldt, 2016: 468; Rowat, 1985: 4). Vogiatzis, on the other hand, focuses on tools used during friendly-settlement and describes shuttle and direct mediation and mediation via phone as friendly-settlement (Vogiatzis, 2018: 91). Some others focus on the capability of early resolution and quick response as main characteristics of the method (Gill, Williams, Brennan, & O’Brien, 2013). Gruppen classifies it as a different method in comparison with investigation and information functions (Gruppen, 2006). The ambiguity of the use of friendly settlement shows that there is a need of conceptualization of this term by analyzing the implementation process and which factors determine the use of it in various contexts.

¹¹As there are various denominations of friendly-settlement method, this paper will only use “friendly-settlement”.

¹²Some scholars, on the contrary, are against the idea that ombudsman provides a win-win solution for disputes. These scholars claim that rather than finding a mutual resolution, the sole mission of the ombudsman is ending the dispute (Hirst, 2016: 10).

Friendly settlement emerged in legal affairs with a special mandate to the Permanent Court of International Justice (PCIJ)¹³ in the Hague during the 1920s (*United Nations*, 2012). Friendly settlement is used especially for disputes between states to reach an early settlement such as the dispute on territorial waters between Italy and Turkey¹⁴ and the dispute between Belgium and Spain over the death of a diplomat of Belgium to Spain¹⁵. The Council of the League of Nations foresaw the use of peaceful settlement for economic disputes between states in 1932 (Hudson, 1932).

Friendly settlement has also been adopted for the resolution of human rights issues as it appeared in Article 42 of the Inter-American Commission on Human Rights' Regulations in 1980 (Inter-American Commission on Human Rights, 2018). The aim of the use of this method in legal affairs was decreasing the number of legal cases by reaching quicker and more efficient solutions (Keller, Forowicz, & Engi, 2010). It also aimed at reducing the cost of judicial proceedings and increasing the speed of judicial systems (Recommendation of the Committee of Ministers to Member States on Assistance to Victims and the Prevention of Victimisation, 1987). Especially with the increase in human rights cases after the 1990s, the method gained popularity in the European Court of Human Rights (ECHR) mandate. Article 39 of

¹³The Permanent Court of International Justice, i.e., the World Court, was an international court under the authority of League of Nations between 1922 and 1946.

¹⁴Italy and Turkey had a dispute over territorial waters between the Island of Castellorizo (belonging to Greece now) and the coasts of Anatolia during the 1920s. Both countries applied to the Permanent Court of International Justice in 1929 and arrived at a solution in 1933 (Permanent Court of International Justice, 1933).

¹⁵Known as the Borchgrave Case, the dispute between Belgium and Spain started over the death of Jacques de Borchgrave, a diplomat serving for Belgium in Spain. Borchgrave was assassinated by a leftist political organization in Spain. As the Spanish government did not take any responsibility, Belgium applied to the Court and demanded punishment for the perpetrators and compensation for Borchgrave's family. After the friendly-settlement process, both countries had an agreement on monetary compensation for the victim's family (Permanent Court of International Justice, 1937).

the Court's Statute states that “at any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto” (European Convention on Human Rights, 2021).

In addition to being used in disputes between individuals and public institutions, friendly settlement is used in state level disputes in individual vs. state and state vs. state disputes. For instance, the Inter-American Commission on Human Rights had adopted friendly-settlement in 137 human rights violation cases between 1985 and 2017 by initiating a dialogue between individuals and states (Inter-American Commission on Human Rights, 2018: 1). ECHR also used friendly settlement to resolve disputes between states and individuals in various cases including *Koksal v. Netherlands*¹⁶, *Handrabova and others v. Czech Republic*¹⁷, and *Ukrainian Media Group v. Ukraine*¹⁸. Friendly settlement in the ECHR context requires some preconditions such as confidentiality and non-violation of human rights. If the parties disclose the confidential information to get advantage for the case, the ECHR terminates friendly-resolution (European Court of Human Rights, 2011: 32-33). The consent of both parties is not a precondition as the court initiated

¹⁶Friendly-settlement process had initialized with the application of Huseyin Koksal's father and son in relation to the death of him as a result of torture supposedly committed by police officers. The parties accepted friendly-settlement and arrived at a solution on 9 February 2001. The Dutch government expressed their regret and provided monetary compensation (European Court of Human Rights, 2001).

¹⁷Dana Hadrabová and family members applied to the Court to compensate their damages as a result of a stone quarry built by a state-owned company. As the applicants broke the rule of confidentiality, the Court rejected the application in the fifth section (European Court of Human Rights, 2007).

¹⁸The CJSC, a Ukrainian Media Group, applied to the Court against Ukraine to act against freedom of expression. Although the parties submitted a friendly-settlement proposal to the Court, the Court rejected the proposal stating that the case was related to human rights issues (European Court of Human Rights, 2005).

the case without getting permission from the applicant party in “Akman vs. Turkey Case” (Erdal & Bakirci, 2006).

When it comes to the use of friendly-settlement cases between states, there are only couple of examples resolved with friendly-settlement including France, Norway, Denmark, Sweden, Netherlands v. Turkey; and Denmark v. Turkey. After the 1980 military coup in Turkey, five European states; France, Norway, Denmark, Sweden, and Netherlands, accused Turkey of violating human rights relating to the inhumane treatment of detainees and failing to inform the Secretary General of the Council of Europe about the recent measures (European Court of Human Rights, 1985). The ECHR organized a series of shuttle negotiations between the parties and the parties presented their joint proposal to the Commission and come together in later stages. The parties arrived at a solution on 5-6 December 1985 (European Court of Human Rights, 1985). The Case of Denmark v. Turkey was the second example of the use of friendly settlement between the two states. Denmark opened a case against Turkey for allegedly ill treatment of a Danish citizen in 1997. Two states proposed a joint agreement after the friendly-settlement process (European Court of Human Rights, 2000).

Friendly settlement is also a part of the UN agenda. Article 33 of the UN Charter has underlined the use of pacific methods including negotiation, inquiry, mediation, conciliation, arbitration, and judicial settlement. The UN has been using ADR methods for years. In 1980, during the 35th session of the UN General Assembly, it was emphasized that “good offices constituted a means for the settlement of disputes and presupposed at least two parties agreeing to their use”

(Ramcharan, 1982: 131). The term of good offices merely indicating the concept of friendly-settlement in nature (Standaert, 1999: 520).

By the 1990s, mediation and negotiation gained an increasing role in resolving inter and intra-state conflicts. Former UN Secretary-General Boutros Boutros-Ghali wrote *An Agenda for Peace*, a document analyzing peacemaking and peacekeeping as a UN mission in 1992. As alternative methods of resolving disputes had gained momentum in the UN, the International Court of Justice (ICJ) under UN authority also became an important entity for resolving disputes by using alternative methods. For instance, the Court resolved the dispute over passage through the Great Belt between Finland and Denmark with friendly settlement in 1991. As Denmark was planning to build a traffic connection across the Great Belt Channel, Finland applied to the Court claiming that the construction of the connection would damage the right of free passage of Finland (International Court of Justice, 1992). Both states agreed to resolve the dispute with friendly settlement and arrived at a conclusion in 1992. Different bodies under the UN also use friendly-settlement in their actions. These include the Committee on Economic, Social, and Cultural Rights and the Committee on the Rights of the Child (*Office of the United Nations High Commissioner for Human Rights*, 2013).

Friendly-settlement may eliminate grievances by compensation and restoration (Inter-American Commission on Human Rights, 2020). Moreover, the party may promise non-repetition to prevent future victimizations and make structural improvements by changing existing laws (*European Ombudsman*, 2000). Although there is a time limit for achieving friendly settlement, institutions may

extend this limit if it is required (*Guide to Friendly Settlements and Unilateral Declarations Before the European Court of Human Rights*, 2018: 3).

The use of friendly settlement in the legal and human rights area depicts that rather than being defined as a unique and singular concept, it is widely used with all alternative resolution methods including mediation, negotiation, and arbitration. Mediation and negotiation are also perceived as ways of providing friendly-settlement of disputes in general (Standaert, 1999: 520). For instance, the Permanent Court of International Justice defined negotiation as "the direct and friendly settlement of... disputes between parties" in 1929 (*Handbook on the Peaceful Settlement of Disputes between States*, 1992). The Committee of Ministers of the Council of Europe also advised member states to empower ombudsman institution to adopt friendly resolution ways such as mediation (Recommendation of the Committee of Ministers to Member States on Preventing and Combating Sexism, 2019).

Parallel to its increasing use in judiciary, friendly settlement gained popularity in the ombudsman context since the 1990s especially with the emphasis of the European Union Ombudsman's mandate (*European Ombudsman*, 2000). Article 3 Paragraph 5 of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties states that EU Ombudsman has to "seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint" (European Union, 1994). In this context, friendly settlement is defined as "look for a settlement directly with the complainant" (*European Ombudsman*, 2000). Friendly-settlement in the EU context

should be confidential and inaccessible in order for the public to enable healthy negotiations (European Union, 2012: 7).

Friendly settlement is associated with mediation in the ombudsman context. Mediation in the friendly-settlement context is conducted in different ways. Ombudsman may bring the parties together to facilitate the understanding of issues and finding common interests in dispute. Ombudsman mostly uses shuttle mediation in friendly-settlement. Shuttle mediation, also known as indirect mediation and shuttle diplomacy, allows the third party to conduct separate meetings with the parties in dispute that prevents face-to-face confrontation of the parties (Popadak, 1995: 36). In shuttle mediation, ombudsman, i.e., mediator, takes more responsibility in maintaining talks between the parties (Harter, 1987: 149). This method helps prevent further escalation of the dispute. As well as these two methods, ombudsman also provides communication with the parties over the phone. Phone calls are time-efficient and save resources used in resolution efforts.

Friendly-settlement is generally discussed with the advantages that it brought into the ombudsman context like mediation: informality, flexibility, and interaction (Levine-Finley & Carter, 2010: 116). Informality of friendly-settlement in ombudsman context accounts to the non-requirement of any formal investigation and correspondence¹⁹ during the resolution and enables ombudsman's exceeding the boundaries of formality among the parties (Langbroek & Rijpkema, 2006). Although ombudsman is an ADR method enabling informal resolution, friendly-settlement broadens the use of informal resolution methods by decreasing bureaucratic burden

¹⁹Although there is a not a need for formal correspondence in friendly-settlement, a conclusion report is written if the case has failed to provide effective resolution (Langbroek & Rijpkema, 2006: 84).

(Sudhankitra, 2015: 167). Without being required to submit official correspondence, ombudsman may resolve disputes by arranging a phone call or a separate or joint meeting with the parties. While investigation and recommendation require a load of paperwork, all details in friendly settlement are not required to be registered in the official document. Even if this brings more flexible dispute resolution processes, it also causes failure to record friendly-settlement cases that prevent further analysis of the process (Doyle et al., 2014; Hirst, 2016: 13).

Flexibility refers to the non-existence of any formal rules and regulations in friendly settlement. Investigation and recommendation processes are strictly regulated by rules, regulations, and codes. Nonetheless, there is not any single criteria in implementation of friendly-settlement and experts have a right to conduct their own resolution (Doyle et al., 2014). Flexibility also allows to design the process in accordance with the needs of parties (Green, 1985: 259).

Friendly-settlement also provides a better interaction during the resolution by increasing engagement of both individuals and stakeholders (Creutzfeldt, 2020). Mediation and negotiation allow joint decision with collaboration of both parties (Hopmann, 1996). Friendly settlement also increase interaction with the parties engaging in face-to-face dialogue to discuss issues and reach a mutually acceptable solution. The power of mediation in “develop(ing) options to reach a consensual settlement” enables a sustainable solution (Folberg & Taylor, 1984). Nonetheless, the literature is “neglecting potentially crucial interactions between ombudsman institutions and other actors.” (Monogioudis, 2015: 13). As emphasized by Jamieson, ombudsman’s administrative and legal function limits interactions since ombudsman as an administrative and legal body is not actively involved in the process (cited in

Creutzfeldt, 2020). Nevertheless, friendly settlement makes it possible to directly intervene in the process (Hertogh, 2013: 251). Hirst emphasizes that this interaction brings restoration of trust and confidence between the parties:

Complainants valuing a more personal approach such as telephone contact with ombuds staff; the direct involvement of parties in resolution helping to restore trust and confidence in an on-going relationship; a lower ‘evidential hurdle’, so reducing the burden of proof on the complainant, who may lack access to evidence; and that bodies in jurisdiction may need to invest less time by cooperating with informal resolution” (Hirst, 2016).

While discussed in terms of its positive contribution to resolution processes regarding being time and cost efficient, there is also criticism on friendly-settlement in different settings. A European Ombudsman Report suggests that friendly-settlement may omit stating maladministration in the final report to provide a constructive solution (Hirst, 2016). The same report underlines that this may result in a lack of systemic changes in the institutional context. Thus, the method cannot be effective in promoting sustainable solution for cases regarding maladministration. Furthermore, it is criticized for destructing the “formal and professional” characteristic of ombudsman resolution (Creutzfeldt, 2020: 114). Another criticism is that shuttle mediation does not bring all parties at the same table, fairness of the process is not guaranteed as ombudsman and public institutions subject to complaint may arrive at a conclusion and impose it on applicant individuals (Sudhankitra, 2015: 168). As well as fairness, Hirst underlines that this method may lack transparency as the outcomes are not frequently available to the public (Hirst, 2016: 13). Moreover, while it saves time and reduces cost of ombudsman processes, it requires decent expertise in dispute resolution and mediation.

To sum up, friendly settlement is known for features such as informality, flexibility, and interaction. It is similar to mediation in the ombudsman context due to its informal, flexible and confidential features. Even if there are various definitions on the concept, it is located on the opposite pole of investigation and information functions of ombudsman. Nevertheless, empirical examination of friendly-settlement is not easy since these cases are conducted confidentially and are not recorded in every context.

This study aims to fill this void by framing on the dispute resolution function of the Turkish ombudsman institution, specifically examining the use of friendly settlement technique. By doing this, it will contribute to the literature in the following ways: i) analyzing third-party function of ombudsman in resolution of public disputes ii) exploring facilitating and undermining factors in ombudsman's third-party function.

2.3 Conclusion

In this chapter, I analyzed the ombudsman's function in the public sector under four categories: administrative, legal, human rights, and dispute resolution functions. The review of the literature shows that while administrative, legal, and human rights functions of the institution have been the main concern and widely analyzed in studies, the function of dispute resolution received less attention although ombuds role in resolving disputes has been growing in the recent decade.

Due to the lack of knowledge about ombudsman's dispute resolution function, friendly settlement, a method enabling mediation in the ombudsman context, is also undermined in the scholarly discussions. The use of friendly-settlement within the judiciary is debated in some legal studies. Nevertheless, even if

there is an increase in the use of the method in the ombudsman context, empirical evidence is sparse in understanding why it is used. Thus, there is a need for analyzing the use of this method in the ombudsman context (Doyle et al., 2014: 5).

Since the existing studies heavily focus on the investigation and recommendation functions of ombudsman in relation to administrative and judicial authorities, the use of informal methods need to be scrutinized in the ombudsman context. Few studies focused on friendly-settlement specifically in European country contexts. There is a lack in understanding the use of the method in developing democracies rather than a consolidated one. Thus, this study also aims to fill the void in understanding the third-party function of ombudsman in a developing democracy.

The literature review also highlights that there is lack of empirical data in examining the third-party function of the ombudsman. Although studies emphasize the importance of dispute resolution function, there are only a few studies examining the process. This empirical lack in third-party function is a problem specifically in the context of friendly-settlement as these cases are not shared with the public in all contexts.

CHAPTER III

THE GENESIS OF TURKEY’S OMBUDSMAN INSTITUTION

This chapter provides the historical background of the establishment of Turkey’s Ombudsman Institution. The discussions on the establishment of ombudsman mechanism in Turkey started in the 1970s. Discussions on the ombudsman in Turkey took place in parallel with the functional evolution of the ombudsman around the world. The chapter first focuses on early discussions during the 1970s and the 1980s on the possibility of adopting ombudsman into Turkey’s bureaucracy based on ombudsman’s bureaucratic and legal contributions.

Second, the chapter elaborates on the impact of the EU acceleration process in ombudsman’s becoming a conditionality for Turkey during the 1990s. In line with the Copenhagen Criteria, ombudsman became a part of democratization and human rights discussions. Third, the chapter evaluates the conditions of the establishment of Turkey’s Ombudsman Institution in 2012 and how it functions in the resolution of public disputes. This section chiefly focuses on the adoption of the friendly-settlement method in 2017 and how it was used in the ombudsman context by enlarging third-party function of the institution. Forth, the chapter focuses on criticisms targeting the ombudsman in the Turkish context including the existence of

similarly functioning institutions, the incompatibility of ombudsman system with a central and top-down administrative approach, cultural incompatibility of the institution in Turkish bureaucratic culture, and the possibility of the deterioration of the separation of powers.

3.1 The Early Discussions on Ombudsman's Administrative and Legal Functions

An increasing concern on the possibilities and limitations of the establishment of the Turkish ombudsman institution emerged in both academic and bureaucratic circles in the 1970s. The early discussions were based on two questions; whether it is necessary to establish an ombudsman institution in Turkey and if so, which ombudsman model is best suitable for the country.

The first question specifically attracted the attention of academic circles. Baylan's study was one of the first discussing whether Turkey needs an ombudsman. In his study, Baylan criticized the lack of a well-functioning relationship between the state and its citizens in the Turkish public administration as a result of the country's central administrative and top-down public decision making approach (Baylan, 1978: 144-147). As a solution for this problem, the author proposes the establishment of an ombudsman office for both central and local administrations (Baylan, 1978: 172). In Baylan's perspective, ombudsman is useful because "with the authority it receives from the legislation, it supervises the actions and transactions of the executive branch, in broader terms, all state institutions, and thus, resolves the complaints of the citizens about the administration in the fastest and most effective way" (Baylan,

1978: 3). Baylan's approach states that ombudsman's power should not be limited to act in the public sector. According to his argument, there is also need for a media ombudsman, consumer ombudsman, and anti-trust ombudsman to improve relations between institutions and individuals in all sectors (Baylan, 1978: 183-185).

In addition to academics, bureaucrats also showed interest in ombudsman during the same period but mostly focused on possible models for the Turkish ombudsman institution. The fourth Five-Year Development Plan published in 1978 proposed for the establishment of a "State Attorney's Office", which would act as a dispute resolution mechanism in the public sector, reducing the load on the judiciary (*State Planning Organization*, 1978, 484). While the term ombudsman was not used in the plan, the proposed institution had a similar function to it.

The discussions on establishing a Turkish ombudsman institution gained momentum during the 1980s. During this time, public administration reform had been the main concern for public policymakers and for academia (Ergun, 1991). Turkey's public administration had undergone extensive modernization in downsizing state bodies and increasing efficiency in public services (Ergun, 1991). The reform efforts aimed at diffusing new public management and good governance principles in Turkish public administration. These efforts depended on the "governance rather than government" principle in public administration, and active citizen participation was a key point (Canpolat & Cangir, 2010: 32). In these discussions, ombudsman was framed as the best option for providing citizen engagement in public administration (Sezen, 2001: 72).

Following this effort, the Constitution Draft²⁰ prepared by political science and law faculty members of Ankara University in 1982 proposed the foundation of an ombudsman office based on a good governance approach (Özden, 2010: 145). This Constitution Draft proposed for the president to select ombudsman with the nominations to be made by the Turkish Grand National Assembly (TGNA), Council of State, Court of Account, The Supreme Board of Judges and Prosecutors, and the Union of Turkish Bar Associations (*Gerekçeli Anayasa Önerisi*, 1982: 138). The proposal underlined ombudsman's basic characteristics as cost-effectiveness, simplicity, efficiency, and fastness and emphasizing its enabling citizen's participation in state administration (*Gerekçeli Anayasa Önerisi*, 1982: 139).

Although the establishment of ombudsman institution proposed in the Constitution Draft was not taken into consideration by decision-makers, ombudsman continued to occupy a central place in the public administration reform agenda in the following years. The Fifth Five-Year Development Plan proposed the foundation of ombudsman to constitute "a harmonized relation" between public administration and citizens (*State Planning Organization*, 1984). Furthermore, ombudsman was also discussed in line with public administration reform in the Public Administration Institute for Turkey and the Middle East's (TODAİE) Public Administration Research Project (KAYA) conducted between 1988 and 1991. Nevertheless, the report proposed strengthening existing supervision mechanisms in the public sector rather than establishing an independent ombudsman (TODAİE, 1991: 43). For this

²⁰On September 12, 1980, the Turkish military launched a coup attempt and assumed control of all state bodies. Under military control, the military took over the parliament by passing "the Law on Constitutional Order" on October 27, 1980. In 1981, the Advisory Council of the parliament established a Constitutional Commission and prepared a draft constitution. During this period, universities and NGOs also prepared their proposals for the new constitution. Turkey's new constitution was approved with a referendum on November 7, 1982. For details of the process, see, (Gözler, 2000).

purpose, the report proposed to enhance the State Supervisory Council's authority to act as ombudsman.

In addition to the proposal in the KAYA Project, there were counter arguments for establishing a new ombudsman institution in Turkey due to a possible conflict of jurisdiction with existing supervisory institutions. The main disagreement was that since Turkey had already had the State Supervisory Council²¹, Committee on Human Rights Inquiry²², and the Petition Commission²³ in the Turkish Grand National Assembly, establishing an independent ombudsman institution was not necessary in the Turkish context (Avşar, 1999: 163-166). Those in favor of an ombudsman emphasized structural and functional differences between these institutions and the ombudsman. First, while these institutions only investigate illegal actions of public administration, ombudsman conducts its investigations not only based on legality, but also on the principle of equity (Avşar, 1999: 121-123). Second, compared to the status of these institutions in public administration arising from their dependence on higher authorities, ombudsman acts as a fully independent and neutral institution (Erhürman, 1992: 325; Sanal, 2002: 155). For instance, the Committee on Human Rights Inquiry was working under the authority of TGNA and the State Supervisory Council was acting under the Presidency of Turkey. Neither of these institutions have any independence in their actions. Moreover, the difference

²¹The State Supervisory Council was established under the 1982 Constitution with the aim of “performing and furthering the regular and efficient functioning of the administration and its observance of law” (*Constitution of the Republic of Turkey*, Article 108, 1982). It was attached to the Presidency of Turkey.

²²Committee on Human Rights Inquiry was established in 1990 to “monitor human rights issues” and “investigate the compatibility of the implementations on the human rights in Turkey” (*Committee on Human Rights Inquiry*, n.d.).

²³The Petition Commission was established under the TGNA to examine the complaints submitted by individuals.

between ombudsman and these institutions was the lack of citizen participation.

While ombudsman proceed to action after receiving a citizen application, the aforementioned state institutions are not permissible to conduct an investigation based on their own initiative (Esgün, 1996: 265-266).

3.2 The Wave of Human Rights and Democratization in the Ombudsman

Context

Turkey's EU membership process accelerated in the 1990s. The Customs Union was established between Turkey and the EU in 1995 and Turkey's acceptance as a candidate country had been evaluated during EU summits. Similar to other candidate countries, ombudsman became inseparable to the debates on Turkey's accession to the EU due to the Copenhagen Criteria²⁴ stipulating "stability of institutions guaranteeing democracy, the rule of law, human rights" for EU accession (Oğuşgil, 2015: 32). The EU established the European Ombudsman with the Maastricht Treaty in 1992²⁵. Countries aiming for EU membership began to establish their own ombudsman institutions.²⁶ In line with these criteria, ombudsman became a conditionality for Turkey's EU accession (Buhari-Gülmez, 2011: 98).

²⁴The Copenhagen Criteria consists of the rules for evaluating a country's eligibility for EU membership. These criteria were accepted in the Copenhagen Summit in 1993. The criteria are "1) the stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities; (2) the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the EU; and 3) the ability to take on the obligations of membership, including adherence to the aims of political unification as well as Economic and Monetary Union (EMU)." (*The European Commission*, 2021).

²⁵The European Ombudsman was established with the aim of receiving complaints of the citizens of member states regarding maladministration of institutions (*Treaty on European Union*, 1992). The institution began its activities in 1995 with the selection of the first European Ombudsman, Jacob Söderman.

²⁶As a part of the EU deal, almost all countries aiming to become member states established ombudsman institutions. These countries are Croatia (1994), Hungary (1995), Latvia (1995), Lithuania (1995), Malta (1995), Slovenia (1995), Bosnia and Hercegovina (1996), Macedonia (1997), Romania (1997), Moldova (1998), and Estonia (1999).

During this period, debates on ombudsman focused on two areas in Turkey: i) ombudsman's role in democratization and ii) ombudsman-judiciary relations. The first discussion was on ombudsman's possible contribution to foster a more accountable and transparent public administration. The increasing maladministration during the 1990s resulted in a lack of accountability and transparency, which were perceived as the main problems of public administration that ombudsman could resolve (Uğur, 2012: 332). Ombudsman was seen as an effective solution to corruption, clientelism, and nepotism in the Turkish public administration (Toprak, 2005: 230-234).

Within this debate, the ombudsman's role in democratization and fight against maladministration was highlighted by bureaucrats, academics and NGOs. The first concrete action for establishing ombudsman was the Ombudsman Bill prepared by the Preparatory Commission of the Ministry of Justice. However, this was not delivered to parliament (Erhürman, 1992: 156). Nevertheless, ombudsman's role in the effective resolution of disputes and its contribution to the EU process remained emphasized in the seventh and eighth Five Years Development Plans (Yağmurlu, 2009).

Besides bureaucratic and political circles, NGOs also joined the debate on ombudsman in this period. In general, reports published by NGOs underlined the importance of a transparent and accountable public administration for EU accession. TÜSİAD's report emphasized that although there were some auditing mechanisms in the Turkish public administration; neither of these institutions were independent and neutral. As a result of the lack of these principles, they could not function effectively in fighting against maladministration (TÜSİAD, 1997: 29-30). This report urged

interested parties to conduct a conference on discussing a suitable ombudsman model for Turkey. In addition to TÜSİAD, a report published by HAK-IS also discussed ombudsman's contribution to the fight against maladministration. The report emphasized that the main contributions of an ombudsman institution would include improving relations between public institutions and the general public, protecting the rights of citizens, preventing maladministration, and protecting equity (Avşar, 1999: 143-144).

While the TÜSİAD and HAK-IS reports were based on conceptual discussions on ombudsman, the Turkish Economic and Social Studies Foundation (TESEV) and the Union of Commodity and Chambers in Turkey (TOBB) proposed their ombudsman models. TESEV's model aimed at modernizing public supervision mechanisms in Turkey under EU criteria. In line with this aim, the study urged Turkey's public sector to establish a more transparent, decentralized, and participatory supervisory mechanism in Turkey (Arın, Kesmez, & Gören, 2000: 150-151). TOBB, on the other hand, emphasized the need for ombudsman in protecting citizens' rights in the public sector. TOBB's report proposed establishing both central and local ombudsman offices for efficiency in Turkey's different regions (TOBB, 2000; 138-141).

The second area of discussion on ombudsman during the 1990s and early 2000s was ombudsman-judiciary relations. Debates on ombudsman-judiciary relations revolved around whether ombudsman could be an alternative or complementary to the judiciary. Some scholars emphasized that although ombudsman was seen as a different form of dispute resolution, it should be perceived as a complementary body to the judiciary (Avşar, 1999: 106). Rather than bringing

an alternative system to the judiciary, ombudsman reduces the load of the expensive and slow judiciary (Özden, 2010: 123). Compared with other administrative justice mechanisms, ombudsman was identified with independence and efficiency (Özden, 2010: 124-128).

Opposing this argument, some scholars claimed that ombudsman was not complementary to the judiciary; it was an alternative to it due to methodological differences. The supporters of this argument were critical of ombudsman and envisaged it as an inefficient institution in dispute resolution. According to the supporters of this argument, rather than resolving disputes, ombudsman could only be effective in revealing the existence of disputes and the positions of parties (Esgün, 1996: 262).

During these years, there were incremental actions towards establishing an ombudsman at the state level. The Ministry of Justice under the 55th Government examined various cases of ombudsman and proposed a draft law to the Office of the Prime Minister, which was not submitted to the parliament in 1998 (Dursun, 2011: 383). The Draft law proposed ombudsman as an effective dispute resolution mechanism that would accelerate Turkey's EU membership (Özden, 2010: 150).

The second concrete action towards establishing ombudsman was the Ombudsman Draft Law prepared by the 57th Government in 2000. The law proposed the establishment of an ombudsman for two reasons; founding an effective ADR mechanism and accelerating Turkey's EU membership (Yağmurlu, 2018). Although the draft was sent to the TGNA, it was not discussed in commissions as the proposal was never voted in the same legislation year, hence making it obsolete.

Soon after this failed initiative, the 2003 Public Administration Fundamental Draft Law²⁷ became the first bill introduced to parliament. The law proposed the foundation of a local ombudsman office titled “People’s Ombudsman” selected by provincial councils on the local level (Public Administration Fundamental Draft Law, 2003). The president at the time called the bill inapplicable due to reasons of unconstitutionality, and hence vetoed the Law.

Although significant steps were taken to establish an ombudsman institution in Turkey during the 1990s and early 2000s, these efforts did not reach a conclusion until 2012. While the EU appreciated these efforts in their 2004 Progress Report, (The European Commission, 2004), not having any concrete progress in the establishment of the institution was criticized in the 2005 Progress Report. Moreover, the role of the institution in “improving the efficiency of public administration” and in “detecting corruption” were underlined in the same report (The European Commission, 2005: 12). In the 2006 Progress Report, the institution was clearly defined as a “priority of accession partnership”(The European Commission, 2006: 6). The EU also supported Turkey to collaborate with EU countries such as Austria and Greece for knowledge-sharing on ombudsman (Buhari-Gülmez, 2017: 98). The Council of Europe also stressed the crucial function of ombudsman in preventing corruption and improving dialogue between parliament, government, public institutions, and civil society (Ömürgönülşen, 2009: 38).

²⁷The 2003 Public Administration Fundamental Draft Law aimed at committing significant reforms in Turkey’s public administration. The law aimed to reformulate relations between central and local administrations by increasing the transparency and accountability of the system. For detailed information, see, (Public Administration Fundamental Draft Law, 2003).

3.3 The Establishment of Turkey's Ombudsman Institution

The government bill on ombudsman was approved by the parliament on 28 September, 2006. The Bill proposed the foundation of the Turkish ombudsman under the parliament and provided legal protection for the independence and neutrality of the ombudsman in its actions (*The Ombudsman Law*, 2006). Nevertheless, President Ahmet Necdet Sezer vetoed twelve articles of the bill, noting problems and inconsistencies between these articles and the Constitution (Yağmurlu, 2009: 99).

The President also objected to the foundation of a new supervisory body within the legislation based on the view that there were already supervision bodies in the constitution conducting a “non-judicial review of actions” within the executive by referring to the possible problems related to the separation of powers (Sayın, 2009: 415). The bill was then approved by the parliament for the second time, and in the end, the president reluctantly approved the bill. After this approval, the president appealed to the Constitutional Court for the repeal of the law. Finally, the Constitutional Court made its final decision for the abolishment of the law based on the application of the President Sezer in December 2008.

Following the Constitutional Court's decision that the Ombudsman Bill was inconsistent with the Constitution, it became clear that there was a need of change in the constitution for the establishment of ombudsman. The 2010 Constitutional Referendum²⁸ gave the opportunity to make the necessary changes in the constitution by adding, “right to apply to the ombudsman” in Article 74 of the Constitution.

²⁸The 2010 Constitutional Referendum in Turkey was held to change some articles in the Turkish constitution. The amendments aimed to reduce the effect of the military in politics and bureaucracy, improving economic and social rights, guaranteeing freedom of expression, and reforming judiciary. The referendum was approved by 57.88 percent of voters on September 12, 2010. For more information on the referendum, see, (Marc Herzog, 2010).

During the negotiations on constitutional amendments, some members of the parliament claimed ombudsman might not work efficiently in the Turkish system by underlining the incompatibility of the institution with the constitution and the existence of similar institutions in public administration (Turkish Grand National Assembly, 2010). The members of the ruling Justice and Development Party rejected these claims and stated that ombudsman had always been a part of Turkish state tradition. Despite the clash in perspectives, the referendum was approved by the public and the Ombudsman Law No.6328 was accepted by the parliament to establish the institution in June 2012. The law was published in the Official Gazette on 22 March, 2013.

The Ombudsman Law proposes the establishment of the legislative ombudsman functioning under TGNA, but it does not provide a direct hierarchical relation between the TGNA and ombudsman. The ombudsman's independence and neutrality are provided with Article 12 underlining that there is not any authority over ombudsman in its duty and that the TGNA cannot intervene in ombudsman's actions (*Law on the Ombudsman*, 2013). Moreover, in accordance with Article 4, the institution has a private budget. TGNA only has limited authority on ombudsman in discussing the annual report of the institution in the Joint Commission and electing the Chief Ombudsman and its deputies. The chief ombudsman and five deputy ombudsmen are directly selected by the TGNA with a two-thirds majority of MPs.²⁹ The chief ombudsman should be over 40 years, have a bachelor's degree preferably

²⁹This is valid for the first two rounds of the election. If any candidate cannot get two thirds of the total votes, the candidate reaching a simple majority is elected as the new ombudsman in the third round.

in law, economics, and administrative sciences, and have a minimum ten years of working experience.

Ombudsman does not have any limitations in its scope in the Turkish context except for the following: i) the actions of the President and the decisions and orders signed by the President ii) the actions of legislation iii) the actions of the judiciary iv) the military actions of the Turkish Armed Forces (*Law on the Ombudsman*, 2013).

Turkey's Ombudsman Institution is authorized to deal with "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" (*Law on the Ombudsman*, 2013). Ombudsman must resolve all applications from citizens within six months and all decisions must be available for public examination.

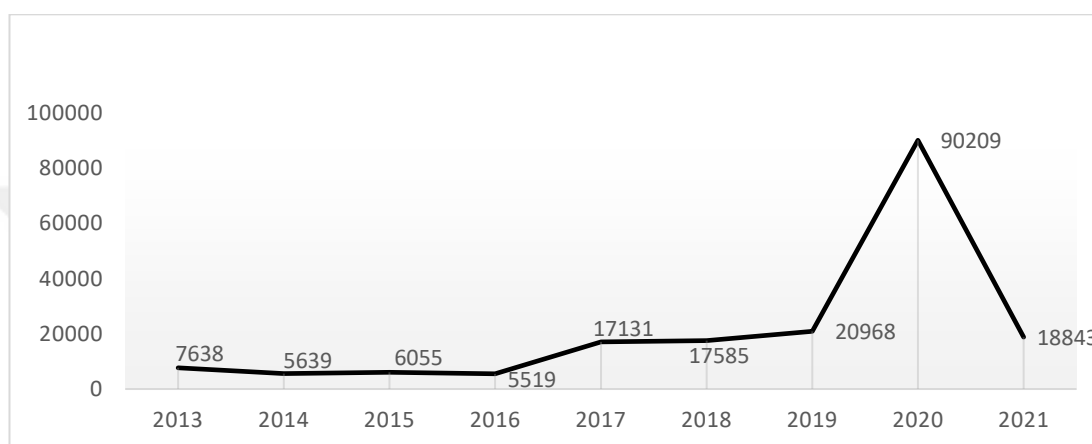
3.3.1 The Dispute Resolution Scheme of Turkey's Ombudsman Institution

After the foundation of the institution in 2012, the ombudsman began to accept applications from citizens in 2013. The institution was established in line with classical and central legislative ombudsman structure. It did not particularly receive high public attention straight after it was established. The number of applications was quite low and the public reputation of the institution did not reach the intended level.³⁰ The number of applications steadily increased after 2016 and jumped sharply after 2019 to its highest. The skyrocketed increase in the number of applications is

³⁰The annual reports of the institution during the early years were emphasizing the need for increasing public awareness on ombudsman activities. See, (*2015 Annual Report*, 2016; *2013 Annual Report*, 2014).

related to the COVID-19 pandemic as 70,440 applications out of the 90,209 were regarding credit support for businesses during pandemic (2021 Annual Report, 2022: 248).

Figure 1 Number of Applications to the Ombudsman Institution Per Year



The Ombudsman institution makes seven different decisions regarding applications. Each decision provides a different method for resolving the problems. If ombudsman decides that the application does not meet the necessary criteria, it takes a decision of non-examination. The institution can only examine applications that have already exhausted other administrative remedies. If the applications do not meet these criteria, they are sent to the relevant public institution subject to complaint. A recommendation decision is based on the ombudsman's investigation and reporting the fair and unfair practices of the public institution subject to complaint in order to identify whether there has been any violation of rights or equity. If the applicant renounces the application, it is withdrawn. When there is a partial violation of law in a case, ombudsman refuses the part that does not holding any violation. On the other side, if there is not any violation, ombudsman refuses the whole application. Lastly,

friendly settlement allows discussing possible solutions with the parties to arrive at a solution.

Table 1 Decisions Adopted by the Ombudsman Institution of Turkey³¹

Decision	Content of the Decision
Non-Examination Decision	If the application does not meet the necessary conditions, the application cannot be examined and is sent back to the applicant.
Submission Decision	For applications made without exhausting the administrative remedies, the application is sent to the relevant public institution subject to complaint.
Recommendation Decision	In case of the detection of unlawful and unfairness in the transaction and action, ombudsman offers non-binding recommendation to the public institution subject to complaint to accept the wrongful behavior, compensate for the damage, propose a legislative change, reverse, abolish, or correct the wrongful action.

³¹The author created this table by compiling the information in the annual reports. The Turkish version of this table was used in the report entitled “Türkiye’de İdari Denetim ve Kamu Denetçiliği Kurumu (Ombudsmanlık) written by the author (Duran, 2021b).

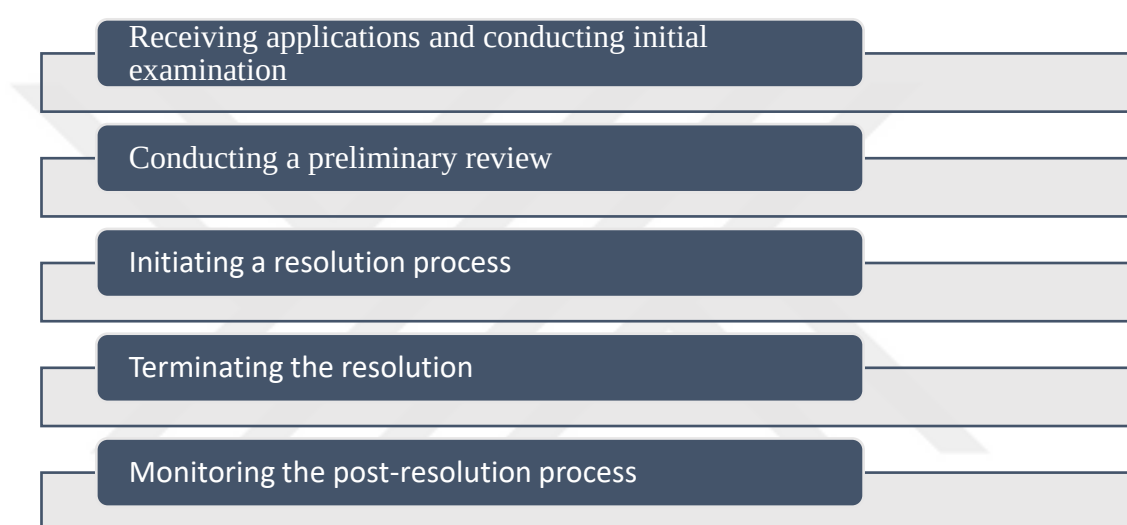
Table 1 (cont'd)

Withdrawn Decision	If the applicant withdraws the application while the examination and investigation is in progress, the application is withdrawn.
Partial Recommendation Partial Refusal Decision	If a partial violation of law and equity in the transaction and action that is the subject of the application is made, a recommendation decision is taken regarding the detected part while a rejection decision is made regarding the undetected part.
Refusal Decision	If there is no violation of law and equity in the transaction and action, the application is rejected.
Friendly-Settlement	Ombudsman invites both parties to a friendly settlement and discusses the issue with both parties to find a mutual solution.

Although experts can design their own resolution process, the main stages of the process are as follows. First, the application is reviewed after receipt, and applications containing invalid and incomplete information are returned or rejected. Second, the valid application goes through a more detailed examination and the

expert dealing with the case decides which method to solve. The expert carries out the solution process with the appropriate methods and finalizes the resolution process. Lastly, the expert monitors the post-resolution process to deal with potential upcoming problems regarding the dispute.

Figure 2 The Dispute Resolution Process of the Ombudsman



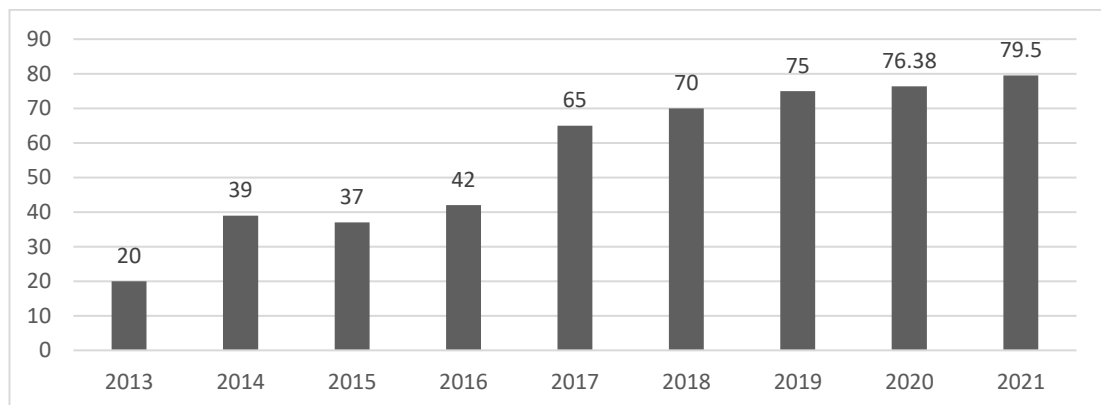
During the first years of the institution, ombudsman mostly adopted investigatory and informatory approaches and took part in searching for wrong policies of the administration. Rather than bringing the parties in dispute together or using an interactive strategy between the parties, ombudsman conducted written investigations on disputes and the interaction between ombudsman and public institutions was limited to requesting necessary documents or providing information. Thus, ombudsman had limited interaction with other public institutions during this term.

The main resolution method used by ombudsman during this period was giving recommendation to public institutions. In line with the recommendation

mission, ombudsman proposes changes in laws and regulations to public institutions subject to complaint - especially if the dispute concerns a significant number of people. In the Turkish context, after the identification of any violation, ombudsman recommends the public institution a roadmap to correct the wrong action by “withdraw, abort, change or correct” (Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution, 2013). All these methods were conducted without using informal tools that may increase interaction between the ombudsman and public institutions.

The annual reports and strategic plans of the institution underlines that they are non-binding. Since these recommendations are non-binding, ombudsman needs to convince the public institutions subject to complaint to implement the recommendation. In the first year, only 20 percent of the ombudsman’s recommendation decisions created necessary policy changes in the public sector while a significant amount of these decisions was not seriously considered by the public institutions subject to complaint. Nevertheless, the compliance rate moderately increased year by year and reached to 79.5 per cent in 2021.

Figure 3 The Compliance Rate of Ombudsman’s Recommendation Decisions by Year



What were the reasons behind the increase in the compliance rate? First, even if ombudsman's decisions are non-binding, ombudsman increased its impact over public institutions by using its power coming from its relationship with the parliament. Derived from ombudsman's relations with the TGNA, ombudsman's decisions were reflected in the scope of the parliament's right to protect people's will. By using its authority over public institutions, ombudsman used publicity as leverage over the institution. Turkish ombudsman publicizes public institutions subject to complaint not complying with ombudsman decisions in the annual reports and the TGNA invites these institutions to a meeting to ask their reasons of non-compliance. While these meetings have been organized since the foundation of the institution, the scope of these meetings have enlarged in the last years and the institutions complying with ombudsman decisions have also been invited to show appreciation (Duran, 2021b).

Second, the reputation of the ombudsman rapidly increased among public institutions. The institution acknowledged the need for increasing recognition in the public sector since its foundation in its annual reports. The emphasis on the need for increasing recognition of the institution was made in all annual reports. For instance, the 2020 Annual Report underlined that even if the level of recognition increases, it is necessary to increase it for "individuals, public institutions, NGOs, media organizations, social media platforms, external stakeholders, primary, secondary and higher education students, and citizens living abroad" (2020 Annual Report, 2021: 18). Ombudsman's effective use of the media and press to publicize its decisions contributed to the increase of public awareness towards the institution. As a result,

the recognition of the ombudsman among public institutions and citizens has expanded.

Third, the personal networks and affiliations of the ombudsman positively contributed to the acceptance of its decisions by public institutions. Since the first Chief Ombudsman of Turkey had judicial networks related to his previous experience in the judiciary, he had relatively limited relations with political and bureaucratic circles. The second Chief Ombudsman, on the other hand, had long-lasting relations with political and bureaucratic elites that enabled the recognition of ombudsman decisions. The first Chief Ombudsman of Turkey was Mehmet Nihat Ömeroğlu who previously served as a judge and member of the Court of Cassation. The second and current Chief Ombudsman of Turkey is Şeref Malkoç, the Ex-Member of Parliament who served for ten years and Ex-Chief Advisor to the President. Thus, the current ombudsman's political network may improve the compliance of ombudsman decisions as seen in other examples from across the world (Kucsko-Stadlmayer, 2008). Nonetheless, some studies underline that rather than having political affiliations, ombudsman should have a good reputation as an impartial and neutral person in the public sphere (*The National Democratic Institute*, 2001: 7). In Turkey, Article 47 of Regulation on Ombudsman Law states that "Chief Ombudsman, ombudsmen and Secretary General shall not be a member of political parties; behave in a way aiming at benefit or damage of any political parties or any group" (Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution, 2013). Thus, having such a broad political and bureaucratic network is arguably one of the reasons why there has been a significant increase in compliance with the ombudsman's recommendations during his term.

Although the acceptance rate of ombudsman decisions had increased in time, ombudsman continued searching for more interactive and informal ways of resolving disputes. There have been some initiatives to adopt more interactive and informal methods for the resolution of disputes during the first years of the institution. One of the first examples of these efforts aimed at bringing various parties together to resolve disputes arising from the Gezi Park Protests.³² After organizing separate meetings with various NGOs, representatives of citizens, and government members; the Institution also intended to organize a joint meeting with all parties which was not approved by some parties in dispute (*2013 Annual Report*, 2014: 134).

Despite failed initiatives, the institution kept to its mission of finding a new way of adopting more interactive and informal ways to reach an efficient solution. The 2015 Annual Report underlines the need for change in the rules and regulations of the institution to mediate disputes (*2015 Annual Report*, 2016: 212).

As a result of these efforts, ombudsman adopted friendly settlement as a new method in dispute resolution. With a provisional article added to the Regulation of the institution in 2017, the Ombudsman is given the authority to invite the parties to arrive at a friendly settlement of dispute (Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution, 2013). The aim of friendly settlement is described as encouraging public institutions subject to complaint and citizens to engage in dialogue rather than bureaucracy and paperwork (*2017 Annual Report*, 2018: 38) and decreasing the resolution time (*2018 Annual Report*, 2019: 201). Friendly settlement requires active involvement of the

³²The Gezi Park Protests is a series of events protesting the attempt of rebuilding an artillery barrack on Istanbul's Taksim Gezi Park. The events turned into mass protests against the government on 28 May, 2013 and continued in the following weeks.

ombudsman between the citizens and public institutions to resolve disputes without following formal and written process. It does not solely depend on the classical mediation method by bringing the parties together to find common interests and generate options for agreement, but it allows ombudsman to organize separate meetings with the parties to seek resolution. As part of this procedure, ombudsman directly intervenes in the negotiation and follows an informal go-between strategy between the parties.

Table 2 The Number of Friendly Settlement Cases and All Resolved Cases by Year

	The Number of Friendly Settlement Cases	The Number of All Cases Resolved
2017	1,575	14,746
2018	1,916	17,615
2019	1,607	21,170
2020	1,808	91,100
2021	1,928	19,740
TOTAL	8,834	164,371

Since the adoption of the friendly-settlement method, between 2017 and 2021, the institution was able to resolve 8,834 disputes using this method (2021 *Annual Report*, 2021). After receiving applications from citizens, ombudsman contacts the parties in dispute via email, phone or with face-to-face meetings with the aim to find a common ground for resolution (2017 *Annual Report*, 2018: 357).

Friendly settlement has increased the interaction between parties as it enables for the establishment of contact points³³ between public institutions subject to complaint and the Ombudsman Institution. By 2020³⁴, the Institution created sixty-four contact points for coordination with public institutions.

Friendly-settlement is seen as key to the success of the ombudsman in resolving disputes (*2019 Annual Report*, 2020). Its main contributions are providing efficient access to justice (*2020 Annual Report*, 2021: 15) and transforming dispute resolution from adversarial to cooperative means in Turkish bureaucracy (*The Ombudsman Institution of Turkey*, 2017: 55-56).

Turkey's Ombudsman institution promotes the use of mediation by public institutions rather than solely adopting mediation in a dispute resolution process in the institution. For instance, the Institution underlined the need for family mediation - especially for divorce suits³⁵ (*2019 Annual Report*, 2020: 230). In addition to promoting mediation for state institutions, ombudsman aims to increase knowledge surrounding dispute resolution in society by organizing conferences and seminars for people to inform them about friendly-settlement. In the meetings titled "Ombudsman Comes Together with The Public", participants are provided with information on friendly solution. Individuals who had previously used this service and had their

³³Contact points are informal go-between mechanisms between ombudsman institution and public institutions subject to complaint. Generally, contact points are created as a communication channel between the staff of both institutions. These staff are responsible for getting in immediate touch for disputes that require urgent action.

³⁴This data was collected from the annual reports of the Institution.

³⁵Although ombudsman foresees family mediation as a method lessening judicial load and facilitating familial disputes, representatives from the Women Associations underline that violence against women should be exempted from this proposal (Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution, 2013).

problems resolve also share their experiences during these events (2019 Annual Report, 2020).

Friendly settlement also provides collective dispute resolution for issues concerning a group of people rather than a single individual. As friendly-settlement processes convince public institutions subject to complaint to make changes in rules and regulations regarding the dispute, the outcome of these processes have the possibility to bring a solution to a problem for mass numbers of people. For instance, the application regarding the overconsumption of junk food products in schools resulted in restrictions on junk food marketing and affected almost ten million students in Turkey (2018 Annual Report, 2019: 205). Another example of the adoption of friendly-settlement in a collective dispute is the case of TODAİE. This institution was closed by an executive order³⁶ in July 2018 and students who were eligible to attend graduate programs of the institution were victimized because of the shutdown. After negotiations between the Ombudsman institution and Higher Education Council (YÖK), students were offered a right to registration in other public universities.

Although the Ombudsman institution emphasizes contributions of friendly-settlement to dispute resolution capacity, there are some objections for the use of it. Firstly, friendly settlement is criticized for not being coherent with ombudsman's obligation to protect justice and equity (*The Ombudsman Institution of Turkey*, 2019: 188). The reason of this criticism is that friendly settlement brings resolution with the agreement of parties even if justice and equity is not sufficiently provided. The

³⁶TODAİE was closed with executive order no. 703 after the de facto transition to presidential system in July 2018.

second criticism is related to lack of transparency and accountability, as in friendly-settlement processes, the conditions of resolutions are not systematically reported (Karan & Sever, 2020: 59).

3.4 Main Criticisms of the Ombudsman in the Turkish Context

Although ombudsman has been discussed in Turkey for years and attracted significant attention in academic and bureaucratic circles, why did all attempt to establish an ombudsman in Turkey fail for a long time? To understand the reasons behind the failure of the attempts, it is necessary to understand the major criticisms towards ombudsman arising from political, bureaucratic, and societal challenges.

The first criticism was the incompatibility of an ombudsman system with a central and top-down administrative approach. Turkish state and bureaucratic traditions depended on maintaining effective top-down decision-making without the intervention of outside bodies, which obstructed the foundation of ombudsman in the Turkish context (Temizel, 1997). The existence of excessive centralism in the government prevented the establishment of an independent ombudsman within the administrative structure (Temizel, 1997). This resulted in resistance to changes in Turkish bureaucracy (Özden, 2010: 182). According to a survey³⁷ inquiring the perspectives of high-ranking bureaucrats and experts about the efficiency of ombudsman in the Turkish context, one third of them expressed that ombudsman would not work efficiently in the Turkish context due to a highly centralized administration (Buhari-Gülmez, 2017: 102).

³⁷This survey was conducted with the participation of 261 high-ranking bureaucrats and experts from January to April 2010. The survey questions measured the level of support for ombudsman, the reason for supporting and opposing it, and the impact of EU membership process on the perceptions regarding ombudsman. For more details of this study, see (Kamu Yönetimi Temel Kanunu Tasarısı, 2003).

Hence, ombudsman was seen as an instrument to decentralize administrative authority. The adaptation of a decentralized ombudsman institution could spill-over and promote decentralization on the state-level (Avşar, 1999: 130). In line with this idea, the organization of the ombudsman with local branches had been proposed (Erhürman, 1992: 163). On the other hand, some scholars claimed that ombudsman could function successfully in countries that have strong administrative traditions such as Finland and France (Altuğ, 2002: 182). Governmental centralism was problematized in public administration reform and a major initiative to reform both central and local public administration was launched in 2004 (Demir, 2020: 99).

The second criticism to ombudsman in Turkey centered around its incompatibility with Turkish bureaucratic culture. In general, ombudsman was regarded as a suitable mechanism for developed countries with smaller populations (Altuğ, 1968: 172). There was common belief that ombudsman could not function sufficiently in developing countries without fully democratic institutions (Berkman, 2009: 174; Sezen, 2001: 91). Decision-makers also objected to the foundation of the institution underlining the incompatibility with the existing administrative structure and the possibility of “confusion regard to authority” (Alacaoğulları, 2000).

Another culture-based opposition to ombudsman has been the lack of transparency in Turkish bureaucracy. The tradition of secrecy in Turkish bureaucracy has affected bureaucratic behavior. As a result of this, bureaucratic institutions had adversarial relations with each other and deliberately abstained from cooperation (Sezen, 2001: 94). Moreover, citizens did not complain about state institutions with a sense of retribution from public institutions (Temizel, 1997). All

of these were brought forward as factors that may deteriorate the ombudsman's efficiency in the Turkish context (Dursun, 2011: 399; Sezen, 2001:91).

Contrary to these arguments, some scholars emphasized that ombudsman could be a game changer in transforming bureaucratic habits. It may provide trust between citizens and state institutions (Avşar, 1999: 167). By increasing trust in bilateral relations between these groups, state-society relations could develop in more cooperative directions (Özden, 2010: 122). Moreover, since each country has unique political and bureaucratic traditions, all of them reformulate ombudsman institutions in line with their own dynamics (Altuğ, 2002: 185). Thus, the establishment of an ombudsman institution in line with bureaucratic dynamics of Turkey may prevent possible complications in bureaucracy (Büyükcavcı, 2008: 11-12).

The third criticism was based on the potential of *deterioration in the separation of powers*. While independence and neutrality are the basic principles of the ombudsman, the ombudsman is also the appointee of legislative or executive branches. This ambiguous relationship between the ombudsman and legislative or executive bodies was seen as a breakdown in the *separation of powers* (Esgün, 1996: 269). Like bureaucratic circles, some political actors were also against the idea of the establishment of an ombudsman institution as it may be a political apparatus functioning in favor of the ruling government (Buhari-Gülmez, 2017: 100). Some of them underlined that there is no need to create new power groups in the political arena in Turkey (Yeni Şafak, 2000).

Within this discussion, scholars focused on how the ombudsman could act in strict neutrality in its relations with legislative and executive bodies. One proposed solution has been that since Turkey needs a constitutional ombudsman, the

ombudsman should be selected by parliament and candidates should be nominated by the President, the Constitutional Court, and other high courts (Yeni Şafak, 2000). Avşar argued that the selection of the ombudsman by the President would empower neutrality of the institution as the presidency itself had been an independent body³⁸ (Avşar, 1999: 170). Another view on this issue was that only higher judicial bodies should nominate candidates for appointment to protect the independence of the ombudsman (Erhürman, 1992: 167). Nonetheless, some others emphasized that since the independence and neutrality of the ombudsman was guaranteed in the constitution, its appointment method could not endanger the separation of powers (Mutta, 2005: 100; Özden, 2010: 181).

3.5 Conclusion

This chapter provided a historical background to the debates on the establishment of the ombudsman in the Turkish context. This chapter first elaborated on the early discussions of the ombudsman during the 1970s and 1980s. This section of the chapter depicts that the ombudsman was perceived as a bureaucratic and legal institution during these decades and was discussed with its possible contribution to

³⁸Before the transformation from the parliamentary to presidential system, the rule of nonliability of presidents in political matters prevented their involvement in disputes between governments and parliament. Moreover, presidents did not have any political and legal responsibility. This stresses a near-absolute objectivity of the presidency in the Turkish political system. Nevertheless, two major constitutional changes broke out this rule. Firstly, the Constitutional Referendum in 2007 allowed electing the president by popular vote. Secondly, the Constitutional Referendum in 2017 changed 18 amendments in the constitution and transformed the political system from a parliamentary one to a presidential one. As the new system allows presidents to maintain their political party membership and terminates the rule of nonliability, neutrality and independence of presidents are no longer available. For a detailed analysis on transformation of the Office of Presidency in presidential system, see, (Yilmaz, 2018).

the underlying problems in bureaucracy, which include the lack of relations between the state and citizens and the dominance of a top-down administrative approach.

This chapter then focused on the ombudsman discussion during the 1990s in relation with Turkey's EU accession. The fact that the Copenhagen Criteria made it compulsory for countries who wanted to be EU members to have an ombudsman office, pushed Turkey to take its first serious steps to establish an ombudsman institution. Nonetheless, early initiatives failed due to the incompatibility between the ombudsman and the Turkish Constitution. The third section of this chapter analyzes the establishment of Turkey's Ombudsman Institution after failed initiatives in 2012 and the methods of resolution used in public disputes. This section specifically focuses on the friendly-settlement method and how it contributes to the ombudsman's third-party function. Fourthly, the chapter focused on the main criticisms directed to the ombudsman in the Turkish context by elaborating critical issues such as the existence of institutions with similar functions, the dominance of a central and top-down administrative approach, the cultural incompatibility of the institution with Turkish bureaucracy, and the possibility of deteriorating the separation of powers.

The evaluation of the ombudsman in the Turkish context revealed that it had been perceived as a way of resolving structural, bureaucratic, and judicial problems in Turkey. The ombudsman had been offered as a way of reforming top-down bureaucratic administration, bringing transparency and accountability, and improving state-citizen relations. Moreover, as forming an ombudsman office became an essential factor in EU accession debates, it turned into a strategic concern for political and bureaucratic circles. Since the dominance of bureaucracy and the

judiciary presumed even after the establishment of the ombudsman, the institution adopted non-interactive and formal methods in dispute resolution.

The use of friendly-settlement after 2017 not only improved the ombudsman's sphere of influence in the public sector, but also contributed to its dispute resolution capacity. Investigatory and informatory approaches based on formal written procedures resulted in a low compliance of the ombudsman's recommendations by public institutions. Rather than depending solely on non-interactive formal resolution methods, friendly-settlement allows the use of mediation in ombudsman context. This method increased the interaction and dialogue between citizens and the public institutions subject to complaint.

CHAPTER IV

METHODOLOGICAL FRAMEWORK

This chapter presents the methodological framework of the dissertation. This study uses mixed methods research including both quantitative and qualitative data. The quantitative part of the study analyzes the 1003 friendly-settlement cases with stratified random sampling to understand the third-party function of ombudsman between citizens and public institutions subject to complaint. The qualitative part of the study is based on 24 semi-structured elite interviews conducted with experts and senior officials responsible for the friendly-settlement of disputes at the ombudsman institution. This section also discusses data analysis conducted with an SPSS software program for the quantitative data and NVIVO 12 software program for the qualitative data. After a review of mixed methods research, data collection, and sampling strategies, final section of the chapter provides information on the limitations of the research.

4.1 Mixed-Method Research Design

This dissertation is based on mixed-method research. Thus, the empirical section of the study is based on the application of qualitative and quantitative studies. First, 1003 friendly settlement cases were coded and analyzed with the SPSS software program to reveal the patterns in the resolution of disputes. It relies on descriptive statistics. The second section of the study uses 24 semi-structured interviews with experts and senior officials of the Ombudsman Institution to understand determinants in the use of friendly-settlement and how the process is conducted.

A mixed-method research design uses both quantitative and qualitative research approaches “for the broad purposes of breadth and depth of understanding and corroboration” in research (Johnson, Onwuegbuzie, & Turner, 2007: 123). It is a way of getting “a fuller, more nuanced picture using multiple perspectives” (Creswell & Plano-Clark, 2018) Mixed-method research design enables “generating meta inferences” in a research by using both quantitative and qualitative data (Guetterman, Babchuk, Smith, & Stevens, 2019: 179). Although using quantitative and qualitative methods together has been a long-lasting phenomenon in research, mixed-method became a separate discipline in science since the 1980s (Molina-Azorin, 2016: 37).

Scholars identified different types of mixed-method research design and used diversified and changing typologies to examine mixed-methods. Greene, Caracelli, & Graham classified the types of mixed method research design into five categories “triangulation”, “complementarity”, “development”, “initiation”, and “expansion” (1989) but had expanded it to seven categories in later works (Greene & Caracelli, 1997). Greene & Caracelli emphasized that rather than allowing a random

combination of quantitative and qualitative methodology, mixed method needs “careful planning and thoughtful decisions” (Greene & Caracelli, 1997). Therefore, they define the elements of mixed methods distinctively by revealing the reciprocal relationship between paradigms and practice. Other scholars also used various classifications, such as Morse’s classification; the arrow, simultaneous, and sequential; based on the time order of the research (Morse, 2003); Johnson & Onwuegbuzie’s classification based on status of qualitative and quantitative parts in the research and time order (Johnson & Onwuegbuzie, 2004); and Maxwell & Loomis’s classification based on the interactive relationships between the components of the research (Maxwell & Loomis, 2003: 245).

The most commonly accepted mixed-method research design classification is Creswell and Plano Clark’s categorization; convergent, explanatory, and exploratory (Creswell & Plano-Clark, 2018). The main difference between these categories is the time order of the research based on whether quantitative and qualitative research were conducted parallel or sequential. Convergent research design, also called “parallel”, “concurrent” and “simultaneous” (Teddlie & Tashakkori, 2015: 13), enables conducting both quantitative and qualitative research concurrently. It is based on merging “different but complementary data on the same phenomena” (Edmonds & Kennedy, 2017: 177). This design is useful for the research when both quantitative and qualitative data have the equal importance for the research and none of them explain or widen the other part (Creswell & Plano-Clark, 2018). Thus, there is not any superiority between quantitative and qualitative research in convergent research design.

The second category is the explanatory mixed method, i.e., explanatory sequential mixed method, in which qualitative research is conducted after completing the quantitative part of the research. Thus, the qualitative part of the study is heavily depending on the results of quantitative research and it “refine(s) and explains(s)” quantitative data (Edmonds & Kennedy, 2017: 196; Ivankova, Creswell, & Stick, 2006: 5). Moreover, this method enables to enrich the research by providing further explanations of the outcomes of the quantitative study (Guetterman et al., 2019: 181). While the quantitative part of the study is mostly based on post positivist perspectives of statistical assessment, the qualitative part of the study requires a constructivist perspective in order to be able to gather in-depth knowledge (Creswell & Plano-Clark, 2018).

Exploratory mixed-method research design is the third category that depends on building quantitative research as a follow-up of qualitative research (Creswell & Plano-Clark, 2018). After collecting and analyzing qualitative data, researchers build the sample of quantitative data and conduct the quantitative part of the study based on the qualitative research. Explanatory and exploratory mixed methods require more time to complete the research as both qualitative and quantitative studies should be conducted sequentially (Creswell & Plano-Clark, 2018).

Scholarship on mixed-method research design widely debates the advantages and disadvantages of mixed-method research design. The main advantage of the mixed-method research design is the increasing validity and complementarity of the research. Sieber underlines that the statistical relationships between different categories in the quantitative part of the study can be tested with the findings of the qualitative research (Sieber, 1973: 1345). Moreover, this method “has

complementary strengths and nonoverlapping weaknesses”³⁹ that enables reaching valid conclusions (Johnson, B. and Turner, 2003: 299).

Secondly, specifically in cases where qualitative data is collected via elite interviews, using mass-level quantitative data may prevent an “elite bias” in the research (Sieber, 1973: 1352). As elite interviewing acknowledges information from people with high-ranking status, their perspectives may damage the non-representation of the true characteristic of examined phenomena by excluding perceptions of individuals having low-ranking status (Sandelowki, 1986: 32).

The third advantage of the mixed-methods research design is the improvement of the generalization of the research findings. As the findings of mixed-methods research design is based on a larger sample, the findings of the research may draw broader conclusions (Guetterman et al., 2019: 190-191). Fourthly, it is perceived as more innovative and flexible in integrating quantitative and qualitative data (Creswell & Plano-Clark, 2018) and providing nuanced information on cultural dynamics influencing the sample (Moghaddam, Walker, & Harre, 2003).

The main disadvantage of the mixed-method research is the possibility of the incompatibility of quantitative and qualitative research. Scholars argue that since these two methods have fundamental differences, mixed-methods may create deficiencies for the reliability of the research (Sale, Lohfeld, & Brazil, 2002). Qualitative and quantitative studies may not intersect with each other in a research

³⁹Onwuegbuzie and Johnson contradict this argument in a late study and emphasized that “complementary strengths and nonoverlapping weaknesses” may be problematic for the validity of research and cause the problem of integration in relation to a legitimation issue in mixed-method research (Onwuegbuzie & Johnson, 2006). Due to this, they identify the issue of validity in mixed-research by combining deductions from qualitative and quantitative study under nine categories: “inside-outside, sample integration, weakness minimization, sequential, conversion, paradigmatic mixing, commensurability, multiple validities, and political validity” (Johnson et al., 2007: 126).

(Creswell & Plano-Clark, 2018). Secondly, Brewer & Hunter underline that as a “composite method”, bringing quantitative and qualitative research design together may create deficiencies for the strengths of each methods (Brewer & Hunter, 2006: 62). The research may be unsuccessful in “weakness minimization” and fail to use the strength of one method to overcome the weakness of the other (Ihantola & Kihn, 2011). Thirdly, this method increases the costs of the research as it requires more time and resources (Teddlie & Tashakkori, 2008: 19). Mixed methods also require broader skills for the use of both quantitative and qualitative methods (Creswell & Plano-Clark, 2018).

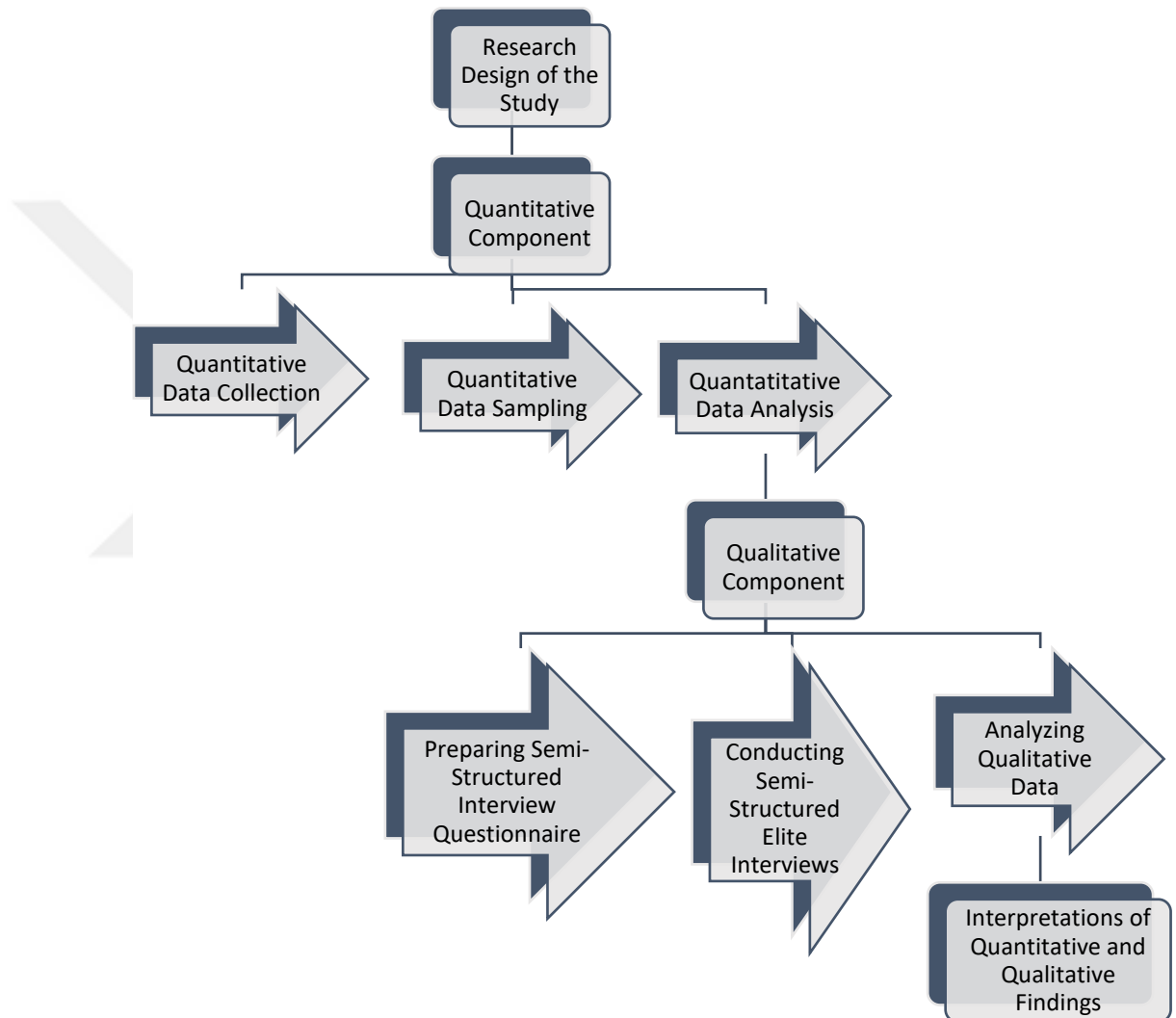
By adopting an explanatory mixed-method research model, the study first conducts quantitative research, analyzes quantitative data, and then designs qualitative research to understand and explain patterns emerging in the quantitative research. Since using this method does not aim to pursue the “same picture of a phenomenon” with different data (Creswell & Plano-Clark, 2018), I used qualitative data to explain the emerging patterns in the quantitative data. Both the qualitative and quantitative research of the study is based on an inductive approach as it aims to find patterns in both a quantitative dataset and qualitative elite interviews.⁴⁰

Inductive reasoning is the use of data to “derive concepts, themes, or a model through interpretations” (Thomas, 2006: 238). The aim of inductive reasoning is achieving generalizable findings by focusing on similarities and differences in the

⁴⁰Although there is an assumption that quantitative study should be deductive, Teddlie & Tashakkori rejects the idea by emphasizing that it can be also based on inductive reasoning in searching for patterns in datasets (Teddlie & Tashakkori, 2008).

research universe (Klauer & Phye, 2008: 86). This study aims to understand the third-party function of the ombudsman and the factors facilitating and undermining it. Inductive reasoning helps to analyze patterns and outliers.

Figure 4 Research Design of the Study



4.2 Data and Sampling

This dissertation is based on two different data types - qualitative and quantitative.

While the quantitative data is based on 1003 friendly settlement samples, the

qualitative data consists of semi-structured interviews with 21 experts and 3 senior officials involved in the resolution of these disputes.

For the quantitative part of the study, I use large-n data to understand the function of friendly-settlement. As explained in the previous chapters, friendly settlement is the method where parties in the dispute, i.e., public institutions and citizens, reach an agreement via separate or face-to-face mediation.

Although the Ombudsman Institution of Turkey records friendly settlement cases, the cases are not publicly available due to the restrictions of the law on the Protection of Personal Data⁴¹. Each document covering the details of a friendly-settlement case contains the name, identity number, residential address, and region of the applicant as well as the details of the dispute and the friendly-settlement process. These files also contain some preliminary information about the dispute, the parties, their interests, the resolution process, and the outcome. I submitted a petition to the institution in August 2019 with the research proposal for permission to use the information about friendly-settlement cases in this study. The evaluation of the request lasted for a month. The Institution gave permission for the use of friendly settlement cases with the condition of obeying the confidentiality rule of personal data.

The Institution provided the files of 3892 friendly settlement cases that were settled between 2017 and September 2019. The files were not classified and were not suitable for random selection. As the data was in raw format, I did not have enough

⁴¹ Law on the Protection of Personal Data has been authorized on March 24, 2016 and published in the Official Gazette on April 7, 2016. The Law is aiming “protect(ing) fundamental rights and freedoms of people, particularly the right to privacy, with respect to processing of personal data and to set forth obligations, principles and procedures which shall be binding upon natural or legal persons who process personal data” (*Law on the Protection of Personal Data*, 2019).

time and resource to use all without adopting a sampling strategy. With the aim of representing the research universe (3892 cases) properly, I decided to use stratified random sampling for the sample selection. Stratified random sampling is the method in which “the population is divided into subgroups and then units are randomly selected from the subgroups” (DeYoreo, 2018). The aim of stratified random sampling is proper representation of the larger universe within a smaller population. In the case of friendly settlement cases, there was a statistically significant difference in the distribution according to public institutions subject to complaint and years within the research universe. For example, while some institutions received only a few applications, 25 percent of the applications were made to the Ministry of National Education. For this reason, simple random sampling would not yield healthy results and represent the research population. Thus, I classified 3892 friendly-settlement cases into two categories; public institutions subject to complaint and the year of resolution to reflect the general characteristics of the universe.

I first distributed all case files into institutions. In order to increase the representativeness of the study, I also proportionally distributed institutions according to years. In this direction, the sample was created with a similar distribution in parallel with the distribution of institutions and years in the research universe. 1011 cases were selected in line with the equal representation of the year of resolution and the institution categories. For instance, while the cases regarding the Ministry of National Education is 1,088 in the research universe, 280 cases were selected for the sample in line with calculating the ratio in the sample. The classified cases were selected via a random number generator.

I selected the sample of the study using the sample size calculator. 1011 samples were determined from the general sample of 3892 people, with a confidence interval of 2.65 percent and confidence level of 95 percent. Although it is possible to analyze the cases with a narrower sample, the sample is set to 1011 in order to reduce sampling error.

Since the study focuses on public dispute resolution cases among the Ombudsman Institution and other public institutions, 8 cases belonging to legal and private entities were excluded from the sampling.⁴² As the number of institutions is too high to have detailed analysis and observe the relations between variables, the institutions are later categorized under four categories: 1) Ministries (all ministries except Ministry of National Education) 2) Local Government 3) Governorates 4) Education-related institutions (Measurement, Selection and Placement Center (ÖSYM), YÖK, Ministry of National Education).

⁴²Although the Ombudsman is only authorized in the field of public dispute resolution, in some cases it also accepts and examines applications related to companies with legal personality.

Table 3 Selected Cases per Public Institutions Subject to Complaint

Public Institution	Number				Sample
	of Cases	2017	2018	2019	
Ministry of Justice	90	11	44	35	24
Ministry of Family and Social Policy	14	7	5	2	4
Prime Ministry	7	0	6	1	2
Municipalities	461	64	187	210	119
Ministry of Science, Industry and Technology					
	7	2	5	0	2
Presidency	6	4	2	0	2
Ministry of Labor and Social Security	247	98	125	24	63
Ministry of Environment and Urbanization					
	65	7	54	4	17
Ministry of Foreign Affairs	2	0	1	1	1

Table 3 (cont'd)

Electricity Distribution Companies	34	11	17	6	9
Ministry of Energy and Natural Resources	3	2	1	0	1
Ministry of Youth and Sports	15	2	12	1	4
Ministry of Food, Agriculture and Livestock	6	5	1	0	2
Ministry of Customs and Trade	2	1	0	1	1
Ministry of Interior	69	27	32	10	18
Ministry of Development	5	2	3	0	2
Ministry of Culture and Tourism	9	6	3	0	3
Ministry of Finance	94	13	73	8	25
Ministry of National Education	1,088	34	1,020	34	280
Ministry of National Defense	27	11	11	5	7

Table 3 (cont'd)					
ÖSYM	295	280	10	5	76
Ministry of Health	136	50	45	41	36
Ministry of Agriculture and Forestry	22	5	14	3	6
Ministry of Transportation	82	4	13	65	22
Governorates	68	21	40	7	18
YÖK	1,008	905	86	17	259
Legal and Private Entities	30	9	13	8	8
TOTAL	3892	1581	1823	488	1011

Randomly selected 1003 cases were coded in SPSS. Firstly, the categories are derived from the content of the files of friendly-settlement cases to analyze emerging factors in a friendly-settlement process. Although the cases contain substantial information regarding the process, they provided limited information on some issues such as the socio-economic background of the applicant and in-depth information about the negotiations among the parties. All cases are coded under fifteen main categories and multiple subcategories as is illustrated in Table 4.

Table 4 Codebook for Quantitative Data

Value	Label	Description
Gender		Gender of applicants
1	Male	
2	Female	
Age		Whether participants are adult or children
1	Adult	
2	Children	
Region		Region of the applicants' residence
1	Eastern Anatolia	
2	Central Anatolia	
3	Black Sea	
4	Mediterranean	
5	Aegean	
6	Marmara	
7	Southeastern Anatolia	
8	Abroad	
Residency		Whether the applicants' residence is urban or rural.
1	Urban	
2	Rural	
Type of Application		Whether applicants make written or online application.
1	Online	
2	Mail	

Table 4 (cont'd)

Institutions Subject to Complaint		The institutions that the applicants had a dispute with.
1	Ministries	
2	Local Administrations	
3	Education-Related Institutions	
4	Governorates	
The Degree of Collectivity		Whether the dispute concerns an individual, several people, or a significant part of society.
1	Low	
2	Medium	
3	High	
Characteristic of Dispute		Whether the dispute is between two parties or multiple parties.
1	Bilateral	
2	Multilateral	
The Issue of Dispute		The content of dispute.
1	Public Personnel Management	
2	Labor and Social Security	
3	Education and Training	
4	Youth and Sports	
5	Justice	
6	National Defense and Security	
7	Local Administration	
8	Child Rights	
9	Economy, Finance, Tax	
10	Forestry and Water, Environment and Urbanization	

Table 4 (cont'd)

	11	Property Right
	12	Animal Rights
	13	Health
	14	Media and Communication
	15	Energy, Industry, Customs and Trade
	16	Registration, Citizenship and Refugee Rights
	17	Disability Rights
	18	Social Services
	19	Food, Agriculture, and Livestock
	20	Science, Art, Culture, and Tourism
	21	Women's Rights
Resolution		Whether the dispute is fully or partially resolved or does not end in resolution.
	1	Fully Settled
	2	Partially Settled
	3	Unsettled
Method of Resolution		The method used by ombudsman to resolve the dispute.
	1	Guiding
	2	Investigation
	3	Providing Information
	4	Mediation
	5	Discontinued
	6	Withdrawn
Duration of Resolution		The number of days the resolution takes.
The Year of Resolution		The year the dispute was resolved.
	1	2017
	2	2018
	3	2019

Table 4 (cont'd)

Communication Tools		Communication tools used during resolution processes.
1	Mail	
2	Face-to-Face Meeting	
3	Phone	
4	Mail+Face-to-Face Meeting	
5	Mail+Phone	
6	Face-to-Face Meeting + Phone	
Mode of Interaction		Whether the resolution of disputes is based on the interaction or non-interaction of parties.
1	Interactive	
2	Non-Interactive	
3	Mixed	

I used SPSS software program for the data analysis in order to analyze the relationship between different categories regarding friendly-settlement cases.

Descriptive statistics allow researchers to summarize dataset (Creswell & Plano-Clark, 2018). Since the data of the study mostly consists of categorical variables, cross tabulations showing relationships between different variables are used in the analyses. Descriptive and a few inferential analyses of friendly-settlement cases enabled to understand how friendly-settlement is used in the Turkish context.

After completing the quantitative data analysis, the findings showed that although the quantitative analysis of the friendly settlement cases enables understanding of the general characteristics of the dispute resolution process, this data did not provide in-depth information on which factors facilitate and/or

undermine the ombudsman's third-party function during the resolution process.

Thus, there emerged a need for in-depth information on the resolution processes of the disputes in order to fully understand the dynamics of friendly settlement in the Turkish context.

In order to better understand dispute resolution process, I collected qualitative data by conducting interviews with 21 experts and 3 senior officials dealing with friendly-settlement cases. The method of interviewing is the most suitable way of "deriving interpretations" from the subjects that are experiencing the researched topic (Warren, 2001: 83). Compared to survey methods, the understanding of interviewees on the examined issue matters more than the perception of the researcher (Rubin & Rubin, 2005).

An interview in qualitative research is a detailed process that requires the selection of interviewees, the preparation of questionnaires and interview protocol, conducting a pilot study to revise the questionnaire, and finally, interviewing. In the case of elite⁴³ interviews, this process is more complex since their position is "making their world difficult to penetrate" (Odendahl & Shaw, 2001: 299). Elite interviews are dependent on gathering information from elites to make corroboration with the previously gathered data and adding new insights to it, make inferences about elite views, and understand the logic behind the actions of elites (Tansey, 2007: 766-777).

⁴³There is no consensus in defining the borders of elite in social research. While some scholars such as Zuckerman accepts only high-ranking officials as elites (Zuckerman, 1972), Harvey underlines that job titles do not always provide the true ranking in the hierarchy (Harvey, 2010). This study accepts Hochschild's definition of elite as "a person who is chosen by name or position for a particular reason, rather than randomly or anonymously." (Hochschild, 2009).

Elite interviews may provide information for researchers that cannot be found elsewhere (Richards, 1996: 200). They acknowledge “unique experiences as ‘insiders’, enabling them to comment upon events or evidence, provide interpretations and suggest fruitful lines of further inquiry” (Moyser, 2006: 85). Although elite interviews may empower the quality of research, they also have some deficiencies. Firstly, elite interviews require more effort in order to gain the trust of the interviewees to ensure they share true knowledge. The lack of trust on the elite side may endanger the reliability of the information gathered via interviews. Nonetheless, there are some ways to overcome this problem. The researcher may underline that the transcription of the interview will be sent to the interviewee, who will have the chance to correct some parts of it (Richards, 1996: 203).

The accessibility to elites is another problem that may create problems for researchers. Nevertheless, if researchers have access to the elites, they will be able to gather information for the research and gain access to conducting interviews with other people in the same network (Beate, 2009). Moreover, elite interviews may provide accessibility to private documents, which would otherwise be difficult to gather (Moyser, 2006: 85).

Confidentiality is also another problematic issue regarding elite interviews. While it is easier to protect the anonymity of interviewees in interviews with a broader population, it is a challenging task for a researcher to protect the confidentiality of an elite, since the population is limited. Thus, the researcher should take more responsibility to provide confidentiality by not mentioning specific names and giving information on other interviewees (Solarino & Aguinis, 2020: 662).

Another problem that a researcher may face in elite interviews is related to the reliability of data. An interviewee may hide some information related to the research subject and even provide false information in order to hide true information. Additionally, although elites can be open to sharing true information, they may give it as off-the-record information that cannot be added to the research. To overcome this problem, the researcher can prepare a detailed interview protocol and assure the anonymity of the interviewee (Liu, 2018: 7).

The first phase of the elite interview design was sample. Since this study aims to understand the ombudsman's third-party function in resolving public disputes and the factors facilitating or undermining this function, the universe of the research is the ombudsman staff actively engaging in friendly settlement. The first step in determining the research sample is to define the population of research universe. Statistical information illustrates that the number of staff in the Ombudsman Institution was 273 in 2020. While 150 of them were working as experts, 50 of them were working as their deputies. Since deputy experts are not authorized to conduct friendly-settlement on their own and only deal with logistical issues, they are excluded from the sample. Among 150 experts working in the institution, approximately 40-50 of them were mainly and regularly engaging in friendly-settlement processes.

After the interview sample was determined, I contacted experts with the help of a coordinator from the institution. I provided information about the study and requested an interview. Only 21 experts responded positively to the interview request while the others either denied giving an interview or did not respond at all. A significant portion of those who rejecting the interview stated COVID-19 pandemic

conditions and intense work schedules as their reason of objection. Since the whole population of the research is very small, I ensured convenience sampling by interviewing the experts that I could reach during the process of the research in the selection of the sample.

The sample of interviewees are identified with some considerations. Firstly, as there are five departments working under five deputy ombudsmen each focusing on different areas, I conducted interviews with all the experts from all the different departments. Secondly, since there are also senior officials working in the administration of the Institution, I decided to conduct a few semi-structured interviews with these officials too in order to gain their perspectives and to enrich the quality of qualitative data.

The questionnaire for interviews was prepared based on the findings of the quantitative data. The quantitative analysis of friendly-settlement cases shows that alongside the interactive process that involves an informal dialogue between the ombudsman, public institution(s) subject to complaint, and citizens; the ombudsman still adopts non-interactive and formal dispute resolution techniques in implementing friendly settlement by not intervening in the dispute resolution process and staying in the lines of investigation and information missions. Thus, this puzzle becomes one of the main motives behind the interviews. Furthermore, since quantitative data provides limited information on the dynamics of the resolution process, interviews reveal these process dynamics.

The first version of the questionnaire for the elite interviews was based on twenty-two questions. Before testing and then reformulating questions, I applied to the Bilkent University Ethics Committee to get approval to conduct the field study.

In order to ensure this approval, I submitted an interview protocol, ethics application form and the questionnaire that was designed to be used to the Committee on September 22, 2020. On October 10, 2020, the Committee approved the application after concluding that the research was in compliance with ethical standards.

I decided to conduct a pilot of the interview protocol in order to refine the research questions. A pilot study is “a small-scale implementation of research design” to test the questions of the interviews and make necessary modifications (Teddlie & Tashakkori, 2008: 178). A pilot study also helps inexperienced researchers to become accustomed to conducting interviews (Liu, 2018: 2). In order to refine the research questions, I did a pilot study with four experts in the early stage of data collection. The pilot study showed that some questions were not clearly understood by the interviewees and that meaningful answers could not be reached by some of them. Thus, I revised the questionnaire and decreased the number of questions to be asked to eighteen.

After revising the interview protocol, I conducted interviews with 21 experts. As well as the limited sample, I paid attention to data saturation and conducted interviews until no new codes and themes occurred. Data saturation strategy allows bringing new data until it provides an in-depth understanding of the examined phenomenon (Creswell & Plano-Clark, 2018). If data saturation did not occur during the interviews, the back-up plan was to re-contact experts for the interview who had not responded before. Nevertheless, since no new codes and themes occurred in the last interviews, I ended interviewing after completing 21 interviews with the experts.

Due to the circumstances under the COVID-19 pandemic, the Institution staff were working on shifts and were obligated to follow social distancing rules. This

made it difficult to conduct face-to-face interviews. As a result of these factors, seventeen of the interviews were conducted remotely via Zoom or WhatsApp digital applications. Despite the unfavorable conditions, four experts accepted to conduct face-to-face interviews. Face-to-face interviews were conducted at the Ombudsman Institution of Turkey.

During the interviews, I asked consent from all interviewees to record the interviews electronically. Nevertheless, five interviewees did not approve recording the interviews but allowed for note taking. Although the nature of the interview questions was semi-structured, I asked all interviewees to add their comments about the issues that they want to underline and provide their perspective on possible fitting questions.

In addition to the experts, I also conducted interviews with 3 senior officials. Although I aimed to conduct further interviews with these officials, the change⁴⁴ of the senior officials of the institution did not allow for this to happen. I conducted face-to-face and open-ended interviews with these officials based on the preliminary findings of the interviews in order to gain more in-depth information. As senior officials did not want for the interviews to be recorded, I took notes instead.

After completing the quantitative analysis of the friendly-settlement cases, I analyzed the data gathered through elite interviews. I transcribed data verbatim and used NVIVO 12 software program for organizing the data into codes and categories. Qualitative data coding generally depends on three strategies: inductive coding,

⁴⁴According to Article 14 of the Ombudsman Law, ombudsman and the five deputies are selected for four years by the TGNA (*Law on the Ombudsman*, 2013). The last election was held in November 2020, when I was trying to complete my interviews. Two deputies were changed and there have been some other changes in the senior administration.

deductive coding, or hybrid coding. Inductive coding strategy is the process of creating codes, themes, and categories based on meanings derived from the text by researchers (Thomas, 2006: 241). Deductive coding strategy, on the other hand, is based on assigning a set of codes or categories derived from previous studies to the ongoing research (Fereday & Muir-Cochrane, 2006: 91). Hybrid coding strategy is the combination of both inductive and deductive coding strategies and requires using both while coding qualitative data.

By using the NVIVO 12 software program, I created initial codes based on the meanings of the text rather than implementing a set of codes from previous research. The main reason behind implementing this strategy was the lack of clearly defined set of codes in existing research in understanding the ombudsman's third-party function. This strategy paved the way for a more flexible process in coding. In order to increase the reliability of codes, I recoded all texts were for a couple of times.

Table 5 Codebook of Elite Interviews

Attitude	
Ombudsman's Attitude	The expressions on whether the ombudsman refused to take a position between the parties or favor one party over the other.
Biased	The ombudsman favors one party over the other during the resolution process.
Neutral	The ombudsman does not take a position between the parties during the resolution process.
Stakeholder Attitude	The stakeholder's attitude to the ombudsman process and their approach to collaborate with ombudsman and citizens during the resolution and

Table 5 (cont'd)

	favoring possible solutions during the process.
Collaborative	Public institutions subject to complaint have a positive attitude towards the ombudsman process; they tend to accept their wrongdoings and correct it.
acceptance of wrong administrative action	
fear of pressure	
Dismissive	Public institutions subject to complaint have a negative attitude towards the ombudsman process; refusing to share necessary information, not open to discuss issues, abstain from finding a mutually effective solution because of the common practices.
lack of trust	
prevalent maladministration	
the fear of work overload	
Authority	The power of the ombudsman over public institutions subject to complaint to enforce or direct them in accepting friendly settlement, interactively communicating and discussing possible solutions with the parties, and having an agreement.
High-Level Authority	The parties acknowledge the power of the ombudsman related to its ties with parliament, aiming to avoid parliamentary hearings, abstaining from the ombudsman's personal reputation in the public sector, and the fear of public exposure.
denouncing relations with the parliament	
parliamentary hearings	
personal power of ombudsman	
Low-Level Authority	Public institutions subject to complaint do not accept the ombudsman's power because of the non-binding nature of ombudsman decisions, low recognition of ombudsman in the public sector and incapacity of ombudsman personnel to enforce them to join friendly settlement related to the inefficiency of their titles.

Table 5 (cont'd)

inefficient titles of experts to reach higher authorities	
low recognition level	
non-binding nature of decisions	
Dispute Resolution Capacity	
Collective Resolution Capacity	Expressions of interviewees whether the ombudsman can resolve disputes associated with a group of people rather than a single individual and assist an agreement that provides resolution for all members of the group.
High	The ombudsman's resolution capacity for disputes associated with a group of people is high.
Low	The ombudsman's resolution capacity for disputes associated with a group of people is low.
Nature of the Dispute	The content of the dispute and whether it determines which direction the outcome will take.
Disable	The issue obstructs reaching an outcome.
complex disputes	
monetary issues	
Enable	The issue eases reaching an outcome.
emergency issues	
minor disputes	
Personal Traits of Experts	Whether interviewees have any training to develop skills in mediation, negotiation and/or communication.
Trainings Related to Dispute Resolution	
Trainings Related to Other Areas	
Resolution Strategy	Ombudsman's action for resolution
Directive	Ombudsman takes an initiative in proposing solution to the parties, trying to find a way for mutual agreement, following the post-agreement phase and directing the parties for alternative solutions.
Non-Directive	Ombudsman does not take an initiative in proposing solution to the parties, trying to find a

Table 5 (cont'd)

	way for mutual agreement, following the post-agreement phase and directing the parties for alternative solutions.
Flexibility	Expressions of interviewees whether ombudsman and stakeholder parties have a flexibility in framing the steps of resolution process and maintaining the procedure without having an obligation to obey any standard statement, rules and regulations. It also measures whether the public institution subject to complaint have a flexibility in accepting and implementing resolution.
High-Level Flexibility	Ombudsman and stakeholder parties have a flexibility in framing the steps of resolution process due to the non-existence of any protocol limiting the process, the requirement of less paperwork and bureaucracy in comparison to the legal process, and the ability of experts to follow their own procedure.
the ability of experts to follow their own procedure	
less paperwork and bureaucracy	
non-existence of protocol	
Low Level Flexibility	Ombudsman and stakeholder parties do not have flexibility during the entire process because of their obligation to follow legal rules and regulations and public institutions demanding written proof in each stage.
demanding written proof	
obligation to follow legal rules	
Network	The ombudsman's ties and relations with public institutions subject to complaint on an individual and/or institutional level that are effective in the resolution of dispute.
Strong Networks	The ombudsman has strong relations with public institutions subject to complaint due to the existence of institutional contact points, good relations between higher officials of the ombudsman and public institutions subject to complaint, and individual relations between

Table 5 (cont'd)

	ombudsman staff and the staff of public institutions subject to complaint based on their previous work experience.
institutional contact point	
relations between higher officials	
relations with previous colleagues	
Weak Networks	The non-existence or low-level existence of relations with ombudsman and public institutions subject to complaint.

4.2.1 Limitations and Ethical Considerations of the Research

The COVID-19 pandemic broke out in in December 2019. The pandemic proliferated throughout the world in the following months and affected all countries including Turkey. Due to pandemic conditions, face-to-face education had been terminated in almost all countries and online learning did not provide satisfactory solution to the problem (Andreas Schleicher, 2020: 10). Moreover, the pandemic severely affected research projects and academic studies (Kasymova, Place, Billings, & Aldape, 2021). In this case, I needed to reorganize the timeline for interviews. Although I planned to begin conducting interviews by May 2020, it became impossible due to pandemic conditions. Since all staff of the Ombudsman Institution were working remotely, it was not possible to conduct interviews during the first months of lockdown. Moreover, it was not possible to apply to the Ethics Committee Approval and start face-to-face interviews in time. Due to this reason, there have been two major changes in the timing of research. Firstly, data collection for interviews had to be postponed for approximately six months. I conducted interviews

from September 2020 onwards. Secondly, as the pandemic was still creating danger for people's health, it becomes impossible to conduct face-to-face interviews. Thus, with the approval of the Ethics Committee, I conducted a majority of the interviews online.

In line with the ethical considerations of the research, I gave special attention to the confidentiality and anonymity of interviewees. In line with the rule of confidentiality, the ombudsman protects the privacy of the process and does not share any information with other parties (Rowe, Simon, & Bensinger, 1993). In the Turkish context, the institution did not allow for the observation of a friendly settlement process, which would have allowed for the recording of first-hand data. Moreover, as experts take the rule of confidentiality very seriously, they hesitate to share in-depth information on the cases in some situations. In order to ensure the confidence of the interviewees, I provided them detailed information about the scope of the research. I also reassured them that the data obtained would be used only anonymously in this research.

Moreover, in order to protect the anonymity of interviewees, I assigned an ID number to each interviewee. I refrained personal information that could reveal their identity from being used. In order to achieve this, I coded the demographic information on participants, including their gender, age, occupation, and education background individually.

4.3 Conclusion

This chapter provides detailed analysis on the methodology used in this study. The chapter firstly introduces mixed-methods research as the method used in the

study and presents theoretical information on mixed-methods research design by underlining its advantages and disadvantages. The chapter proceeds with data collection and sampling strategy. As the study is based on mixed-methods research design, both quantitative and qualitative data is used. The quantitative part of the study is based on the analysis of friendly-settlement cases. The qualitative part of the study contains semi-structured elite-interviews with experts conducting friendly-settlement between citizens and public institutions subject to complaint. The sampling strategy of quantitative data is based on stratified random sampling. Nonetheless, since the research universe of qualitative study is limited, this part of the study is not based on a specific sampling strategy. This chapter also provides information on the analysis of quantitative and qualitative data via SPSS software program and NVIVO 12 software program.

After completing data collection and sampling, this chapter briefly analyzes the limitations of research, especially the impact the COVID-19 pandemic had on the timing of this study, and ethical considerations.

CHAPTER V

THE USE OF FRIENDLY-SETTLEMENT IN RESOLVING PUBLIC DISPUTES

This chapter provides the results of the empirical analysis of friendly settlement cases. Presented firstly are the results of the descriptive analysis of 1003 friendly settlement cases resolved between 2017 and September 2019, which were selected with stratified random sampling among 3892 cases. 3892 cases were classified in two categories before choosing 1003 friendly settlement cases to reflect the general characteristics of the research universe in sample: institutions subject to complaint and the year of resolution. Based on the sample, this chapter analyzes friendly settlement cases based on the following categories: gender, participant profile, region, residency, type of application, public institution subject to complaint, the degree of collectivity, characteristic of dispute, the issue of dispute, resolution, method of resolution, duration of resolution, the year of resolution, communication tools, and the mode of interaction to identify general patterns in friendly settlement context.

The second part of this chapter analyzes the third-party function of ombudsman in resolution of public disputes. Based on the interviews conducted with

experts and senior officials of the ombudsman institution, this section analyzes the factors determining the ombudsman's third-party function during resolution of disputes. The preliminary analysis shows that the friendly settlement method, which is called an informal and interactive method, is still carried out in a non-interactive and formal way in Turkey. While trying to understand how ombudsman function as the third-party in a friendly-settlement context, this chapter also analyzes the dynamics turning friendly settlement into a formal and non-interactive resolution in the Turkish context under five categories.

5.1 The Quantitative Analysis of Friendly-Settlement Cases⁴⁵

I begin this section by examining the demographic dynamics of friendly settlement. One of the discussed issues in ombudsman literature is whether demographic indicators are effective in the resolution. There is an assumption that socio-economically disadvantaged groups rarely use public complaint services (Kirkham & Gill, 2020: 81-82). Although one of the objectives of the ombudsman is providing equal services for all citizens, disadvantaged groups do not use these services as much as intended (Roosbroek & Walle, 2008: 292). Even though there is no comprehensive data on the socio-economic background of applicants in the Turkish context, the existing data on gender, age, region, and residency of applicant reflects that there is not a homogenous distribution. While 56.7 percent of the applicants of friendly settlement are female, 43.3 percent are male. This shows that women use friendly settlement more compared to men. In contrast to the general tendency that

⁴⁵Part of the data and arguments proposed in this chapter was accepted for publication in (Duran, 2021).

men use ombudsman services more (Creutzfeldt, 2018: 158), the rate of women using friendly settlement is higher in the Turkish context. Nevertheless, neither quantitative data nor any other factor can explain the reason behind relatively higher female application to the ombudsman in the Turkish context.

Table 6 Applicant's Profile⁴⁶

Applicant's Profile		Frequency (<i>f</i>)	Percentage (%)
Gender	Female	569	56,7
	Male	434	43,3
Profile	Adult	965	96,2
	Children	38	3,8
Region	Eastern Anatolia	100	10
	Central Anatolia	222	22,1
	Black Sea	111	11,1
	Mediterranean	102	10,2
	Aegean	141	14,1
	Marmara	276	27,5
	Southeastern Anatolia	49	4,9
	Abroad	2	0,2

⁴⁶ Percentages in the tables may not sum to 100 due to rounding.

Table 6 (cont'd)

Residency	Urban	734	73,2
	Rural	269	26,8

Another indicator regarding the profiles of applicants is the distinction between adults and children. Separate ombudsman institutions for children have been established since the 1970s (Reif, 2004: 288). Although children can be subject of discussion in family mediations and the ombudsman serves to protect children especially against child abuse and violence (Bennett, 2014: 37), children can also apply directly to the ombudsman for grievances in the Turkish context.⁴⁷ The data displays that a small number of children also resolve their problems with friendly-settlement as 38 out of 1003 applicants are minors. The detailed examination of cases illustrates that children mostly apply to the ombudsman because of bullying and domestic violence.

Another demographic indicator is the residency of applicants. The population was divided into urban and rural residency and data provides the conclusion that the ombudsman receives fewer applications from rural areas (26,8 percent) compared to urban areas (73,2 percent). This result reflects the general tendency in the world examples as ombudsman serving more for people living in urban areas (Monogioudis, 2015: 141; Scott, 1984: 219).

⁴⁷<https://kdkcocuk.gov.tr/> was founded in order to receive direct applications from children to the ombudsman. The website offers preliminary knowledge on children rights, violence against children, and bullying. It also contains books and brochures aiming to increase awareness among children for their rights.

Data on whether there is regional diversity in the use of friendly settlement or not indicates that most applicants apply from the Marmara region (22,1 percent) while fewer applicants are from Southeast Anatolia (4,9 percent) alongside with a few applicants from abroad (0,2 percent). Other applications are from Central Anatolia (22,1 percent), Aegean (14,1 percent), Black Sea (11,1 percent), Mediterranean (10,2 percent), and Eastern Anatolia (10 percent). In comparison to all applications to the Ombudsman Institution, regional diversity of friendly settlement shows the same trend as the Ombudsman Institution receives least application from Southeastern and Eastern Anatolia and most from Marmara and Central Anatolia.⁴⁸

As the use of online dispute resolution (ODR) has increased throughout the world in recent years, online applications become a mainstream way to receive service from the ombudsman. ODR is the emerging method in dispute resolution allowing the use of online channels in discussing and arriving at a solution (Moore, 2003). “The use of chatrooms, decision rooms with multiple linked terminals, electronic mechanisms to collect input and identify areas of consensus, electronic voting (straw or weighted), and face-to-face videoconferencing and asynchronous communications such as e- mail or Web-based messaging” are some of the tools used during this resolution process (Moore, 2003). Online dispute resolution has also been used in recent years by international organizations such as the EU (Moore, 2003). The aim of ODR regulations are defined as bringing the complainant and the related ADR body together efficiently (*Regulation EU No: 524/2013 of the European*

⁴⁸The Annual Reports of the Ombudsman Institution in the last five years show that the institution gets more applications from Marmara and Central Anatolia while receiving fewer applications from Eastern and Southeastern regions.

Parliament and of the Council, 2013). It is widely used, especially in commerce disputes (Rainey & Tidwell, 2018).

Analysis shows that rather than designing an online conflict engagement process, the ombudsman uses online tools only for receiving applications and informing the parties about the process by e-mails. Results indicate that at least 51 percent of applications to the ombudsman were submitted electronically⁴⁹ while only 10, 4 percent of the applications were submitted by mail. The main application to the ombudsman is online in the Turkish context.

Table 7 Type of Application for Friendly-Settlement Cases

Type of Application	Frequency (f)	Percentage (%)
Online	512	51
Mail	104	10,4
TOTAL	616	61,4

Demographic information demonstrates that apart from gender, all dynamics are compatible with the general tendency in the world. The Turkish ombudsman receives more applications from people living in urban areas. This trend could be related to the educational level of people living in these areas or to their legal knowledge. Nevertheless, since friendly-settlement cases do not provide the socio-economic background of applicants, the reasons leading this dynamic cannot be clearly understood.⁵⁰ Moreover, although the rate of online applications is high, the

⁴⁹As 39,6 percent of case reports do not provide any information on the application method, statistics belonging to these cases are not included in this study.

⁵⁰During the pilot interviews, I asked the experts whether they have data on socio-economic background on applicants and whether there is a pattern on it. Nevertheless, interviewees explained that they did not collect any data on demographic information of applicants except gender and

use of online methods is limited to receiving applications and sending e-mails concerning the process. There is not an example of a case that used online methods, such as online meetings and videoconferences, for resolution.

Which public institutions are more open to collaboration with the ombudsman in friendly settlement? The Turkish Ombudsman Institution is authorized to solve disputes concerning “public administration under central government and social security institutions, local administrations, affiliated administrations of local administrations, local administrative unions, organizations with the circulating capital, the funds established under laws, legal public organizations, public economic enterprises, associated public organizations, and their affiliates and subsidiaries, professional organizations with public institution status” (Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution, Article 4, 2013). Individuals too can apply to the ombudsman disputes regarding “private legal entities” partly serving public service.

The table below provides information that the ombudsman uses friendly settlement in disputes with education related institutions (61,3 percent), ministries (24,1 percent), local administrations (12,8 percent), and governorates (1,8 percent) in order. This data proves that friendly settlement is mostly used to resolve disputes with education-related institutions. This draws the conclusion that most of the disputes that the ombudsman resolve are regarding three institutions - ÖSYM, YÖK, and the Ministry of National Education. The detailed examination of friendly-settlement cases depicts that one of the reasons of this fact is the prevalent use of

residency, so they do not know whether it is determinant on resolution process. Thus, I removed this question.

ombudsman services by university students and unappointed teachers⁵¹. A large number of unappointed teachers applied to the ombudsman and demanded an increase in the current quota for teacher appointments and also advocated for an additional quota. University students also applied to ombudsman to demand additional exam rights and for summer school course requests.

Table 8 The Number and Percentage of Public Institutions Subject to Complaint Using Friendly-Settlement

Public institutions Subject to Complaint		
Complaint	Frequency (f)	Percentage (%)
Ministries	242	24,1
Local Administrations	128	12,8
Education-Related Institutions	615	61,3
Governorates	18	1,8
Total	1003	100

The ombudsman has three main parties in the dispute resolution process: ombudsman, institutions subject to complaint, and citizens. Nonetheless, the stakeholder party may consist of two or more parties. The applicant may have problems with more than one administration. The table below highlights that 97,9 percent of the cases are bilateral while only 2,1 percent of them are multilateral. This shows that friendly-settlement process in this context concerns mostly one public

⁵¹ The term of unappointed teachers refers to the graduates of faculty of education who cannot be appointed to public schools due to insufficient quota for appointment.

institution subject to complaint. Multilateral cases involve more than one institution subject to complaint. For instance, in the case of monetary issues, the applicant may involve both the Ministry of Finance and Ministry of Labor and Social Security. Nonetheless, after the preliminary examination, the ombudsman includes one institution responsible for the grievance to reach an effective solution. Moreover, as the dispute between citizens and public institutions subject to complaint may concern the rest of the public, the applicant party may bring a foundation or an NGO to the table as in other public dispute resolution cases (Salacuse, 2008: 45). However, Turkey's Ombudsman Institution accepts individual applications. Although the applications have to be made individually, the ombudsman can invite NGOs and other parties to the meeting if necessary.

Table 9 Characteristics of a Dispute in Friendly Settlement Cases

Characteristic of Dispute	Frequency (f)	Percentage (%)
Bilateral	982	97,9
Multilateral	21	2,1

As the table above depicts, friendly-settlement is mostly used in disputes between citizens and education-related institutions. Data listed in Table 10 also reveals that a significant number of cases resolved via friendly settlement is on education and training issues (55,8 percent). Disputes related to women's rights have the lowest application rate (0,1 percent). Why are education-related institutions more open to handle disputes with friendly settlement? Do some conditional factors promote friendly settlement in disputes regarding education-related institutions? As

mentioned, the significantly higher application rates regarding university students and unappointed teachers are one of the reasons for a high number of applications to the ombudsman regarding educational issues. Another reason why applications on issues of training and education are so high in comparison to other fields is due to the fact that unlike other countries, Turkey does not have a separate college/university ombudsman office. There is an increasing trend across the world where ombudsman offices are being established in universities. Although the first university ombudsman was founded in 1966 at Eastern Montana College in the USA (Bennett, 2014: 17), the number of these offices increased across the world by the 1980s to resolve disputes between students, academics, and administrative staff.

In the Turkish case, there has been some initiatives to establish university ombudsman offices. Muğla University prepared a draft on this subject a few years ago (*6. Yılında Ombudsmanlığın Dünü Bugünü Yarını Sempozyumu*, 2019: 250). Istanbul Medipol University established the Office of the Ombudsman for the Prevention of Discrimination and Equality in July 2021 (Medipol, 2021). These are the only two examples of efforts to establish a university ombudsman. Due to the absence of such offices, the Turkish Ombudsman receives such a high number of applications regarding education.

Table 10 The Issue of Dispute

The Issue of Dispute	Frequency (f)	Percentage (%)
Public Personnel Management	96	9,5
Labor and Social Security	61	6,1
Education and Training	560	55,8

Table 10 (cont'd)		
Youth and Sports	3	0,3
Justice	15	1,5
Local Administration	69	6,9
Child Rights	7	0,7
Economy, Finance, Tax	73	7,3
Forestry and Water, Environment and Urbanization	29	2,9
Property Right	5	0,5
Animal Rights	1	0,1
Health	10	1
Energy, Industry, Customs and Trade	12	1,2
Registration, Citizenship and Refugee Rights	9	0,9
Disability Rights	13	1,3
Social Services	10	1
Food, Agriculture, and Livestock	2	0,2
Women's Rights	1	0,1
Other Issues and Rights	27	2,7
TOTAL	1003	100

There is significant variance in the duration of the resolution of these disputes. The average duration of a resolution is 76.26 days while the ombudsman is obliged to reach an outcome for cases in 180 days. As one of the reasons to use

friendly settlement is to save time by decreasing the duration of the resolution (Vogiatzis, 2018: 91), this data displays that this method serves its purpose. The resolution capacity of Turkey's Ombudsman Institution increases by using this method. Moreover, the average duration of resolution differs according to public institutions subject to complaint. A one-way ANOVA test shows that there is a significant difference in terms of the duration of resolution on an institutional level. While the mean duration of resolution for ministries is 86,51 days, it takes 74,75 days in average for education-related institutions. Thus, except from a limited number of cases resolved with local administrations and governorates, the duration of resolution is relatively shorter for education-related disputes. This result proves that education-related institutions are more open to collaboration with ombudsman compared to ministries.

Table 11 Relationship between the Duration of Resolution and Public Institutions Subject to Complaint

Public Institutions				
Subject to Complaint	N	Percentage (%)	Mean	Std. Deviation
Ministries	242	24,01	86,51	58,204
Local	128	12,01	66,69	50,617
Administrations				
Education-Related	615	61,3	74,75	35,669
Institutions				

Table 11 (cont'd)

Governorates	18	1,08	58,17	45,334
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Although parties in dispute reach a conclusion during the friendly settlement of disputes, this conclusion means closure rather than settlement of disputes in cases. The parties may decide to end the resolution process by not reaching a satisfactory solution for all parties. In the Turkish case, friendly-settlement processes may end in three ways. If the dispute is entirely resolved it shows that the process ended in an agreed full settlement of the dispute. If public institutions subject to complaint accept the grievance and promise to resolve it soon, it means that the process ended in partial settlement. If the institution subject to complaint does not comply with the applicant's demand and does not arrive at any solution and the case closes, it becomes an unsettled dispute. The result of descriptive statistics illustrates that while 76,1 percent of disputes are entirely resolved, 5 percent of them are only partially resolved. 18,9 percent of disputes, on the other hand, do not arrive at any solution. This data means that an outnumbered number of cases are resolved entirely using the friendly-settlement method. Data also depicts that one fifth of cases do not reach a solution. This fact implies that institutions subject to complaint resist to arrive at a solution with the friendly-settlement method. Although friendly-settlement enables reaching a solution in most cases, this method does not satisfy the needs of the applicant all the time.

Table 12 Resolution

Resolution	N	Percentage (%)
Fully Settled	763	76,1
Partially Settled	50	5
Unsettled	190	18,9
Total	1003	100

The ombudsman uses different methods in the resolution of disputes. The literature on ombudsman focuses on providing information, consultation, investigation, and the mediation functions of the ombudsman in terms of resolution methods (Hill, 1976; Rowe, 1991; *OECD*, 2018). Analysis on friendly settlement cases show that the main methods used by ombudsman in friendly settlement are providing information (38,7 percent), investigation (33,4 percent), mediation (15,3 percent), and guiding (0,9 percent). Providing information refers to the ombudsman enlightening citizens on the rules or regulations of the public institution subject to complaint- when there is a lack of knowledge on these issues. The investigation method is where the ombudsman conducts a preliminary or full investigation towards the case to decide which party is right. Mediation is the method which involves the ombudsman organizing separate or joint meetings to discuss the dispute and possible solutions. Guiding is defined as assisting the applicant party to apply to the judiciary after the preliminary investigation. Cases where disputes are resolved by public institutions subject to complaint during the early phases of the process without any initiation of ombudsman are categorized as discontinued (8,9). Lastly, if the

applicant party withdraws the application without the resolution of dispute, these cases are called withdrawn (2,9 percent).

Table 13 Method of Resolution Used in Friendly Settlement Process

Method of Resolution	Frequency (<i>f</i>)	Percentage (%)
Guiding	9	0,9
Investigation	335	33,4
Providing Information	388	38,7
Mediation	153	15,3
Discontinued	89	8,9
Withdrawn	29	2,9

As the table above shows, providing information and investigation are the main methods of resolution in friendly-settlement process adopted by the Turkish Ombudsman Institution. In parallel to the widely used methods of resolution by ombudsman, friendly settlement is also mostly based on providing information and investigation methods. In most cases, rather than mediatory talks between the parties, these methods allow the ombudsman to inform citizens or public institutions subject to complaint about the disputed issue or inform the citizens or institutions about the ombudsman's perspective on it. In the Turkish case, a significant amount of these cases is completed without any interaction between the parties as both these methods are usually based on leading formal correspondence between the parties without the ombudsman's broad intervention to the process. Thus, this data highlights that while

friendly settlement is based on the interactive and informal dialogue between the parties in theory, the Turkish case shows divergence from general principles of friendly settlement.

This data also proves that the ombudsman still has more responsibility in investigating the dispute and informing the parties on the background and guiding them. One of the reasons of this outcome could be related to the lack of any guiding document directing experts on how to use friendly-settlement. Experts do not have a guiding document in adopting friendly-settlement and other ADR methods in the Turkish case. The law and regulation of the ombudsman institution covers its area of jurisdiction, authority, and method of election. Nonetheless, a document dictating the fundamental rules on selecting the right method and which cases could be resolved better with mediation mostly facilitate using mediation (UNDP, 2006: 50).

The adopted method changes according to the institution in question. Table 14 reflects that mediation is statistically significant in education-related institutions in comparison to ministries, local administrations, and governorates ($p < .05$). Nonetheless, disputes with education-related institutions are also mostly resolved with investigation (42 percent) and providing information (38,5 percent). Ombudsman uses investigation and providing information methods in resolution of disputes with ministries. In matters of resolving disputes related to local administrations, the ombudsman is likely to be limited to only providing information to citizens. This shows that although the number of mediation cases is highest in education-related institutions (90 cases), the rate of mediation cases is highest in ministries (21,5 percent).

Table 14 Relationship between the Method of Resolution and Public Institutions Subject to Complaint

Method of Resolution	Education-Related							
	Local							
	Ministries		Administrations		Institutions		Governorates	
	N	%	N	%	N	%	N	%
Guiding	3	1,2	3	2,3	3	0,5	0	0,0
Investigation	52	21,5	21	16,4	258	42,0	4	22,2
Providing Information	77	31,8	69	53,9	237	38,5	5	27,8
Mediation	52	21,5	7	5,5	90	14,6	4	22,2
Discontinued	45	18,6	14	10,9	25	4,1	5	27,8
Withdrawn	13	5,4	14	10,9	2	0,3	0	0,0
TOTAL	242	100	128	100	615	100	18	100

Although the nature of friendly settlement depends on the interaction between parties, only 15,3 percent of the cases are dealt solely with mediation; this method provides direct engagement of parties to the process in the Turkish context. Turkey's ombudsman institution conducts mediation in two ways. First, joint meetings between the ombudsman, public institution subject to complaint, and citizens, are organized to discuss possible solutions. NGO's, foundations, or associations are also invited if disputes concern a significant number of people. Second, the ombudsman

uses shuttle mediation and hold separate negotiations with the parties in dispute. This method is much more preferred by the Turkish Ombudsman Institution.⁵²

Mediation in friendly settlement is conducted in different ways, as there is not a document framing how ombudsman should mediate. Article 27 of the Regulation states that ombudsman may invite the parties to a friendly settlement while the examination and investigation continues. However, no further detail on how to use this method is provided. In practice, even if both classical and shuttle mediation is used, the latter is much more preferred in the Turkish case. Shuttle mediation brings both advantages and disadvantages in resolution. The mediator may prevent further escalation of dispute by coordinating the process and make the parties clearly understand each other's position (Hiltrop, 1987: 17). If it is conducted with a pre-joint session, it may result in better success (Wall, Beriker, & Wu, 2011: 145). In shuttle mediation, the ombudsman may record testimonies and demands to prevent denials. At the same time, this method contributes to the ombudsman's fact-finding mission (Rowe et al., 1993: 335). The ombudsman may also add its own interpretations to documents (Rowe et al., 1993: 336). Nonetheless, as the process depends on the ombudsman's personality and moral values, this may prevent trust towards the ombudsman (Gill, 2018).

Although mediation is not widely used compared to conducting investigation and information missions, it is crucial to understand the leading dynamics in mediation cases resolved under friendly-settlement norms. Cross-tabulation of mediation and gender illustrates that mediation is used twice as much among male

⁵²Although it might be useful to analyze the relations between joint or separate mediation processes and the success of mediation, data on cases do not provide clear information in each case on whether the mediation process is conducted jointly or separately.

applicants compared to female applicants. In other words, there is a statistically significant relationship between the use of mediation between male and female applicants. ($p < .05$).

Table 15 Cross Tabulation of Mediation and Gender

	Gender			
	Male		Female	
	N	%	N	%
Mediation	98	64,1	55	35,9

Which issues are mostly resolved by mediation? Descriptive statistics show that 51,6 percent of mediation cases are related to education and training issues. In other words, more than half of mediation cases are on education and training issues. Although only 15 cases are resolved by mediation concerning disputes about economy, finance, and tax; it reflects that 9,8 percent of all cases regarding monetary issues are resolved by mediation. While mediation is rarely used in disputes related to other issues; none of the cases regarding justice, food, agriculture, and livestock, and women's rights are resolved by mediation. Thus, mediation as a method of resolution is widely limited to education and training, public personnel management, labor and social security, economy, finance, and tax issues.

Table 16 Cross Tabulation of the Issue of Dispute and Mediation

	Mediation	
	Frequency (f)	Percentage (%)
Public Personnel Management	14	9,2

Table 16 (cont'd)

Labor and Social Security	17	11,1
Education and Training	79	51,6
Youth and Sports	2	1,3
Local Administration	3	2
Child Rights	3	2
Economy, Finance, Tax	15	9,8
Forestry and Water, Environment and Urbanization	2	1,3
Property Right	1	0,7
Animal Rights	1	0,7
Health	4	2,6
Energy, Industry, Customs and Trade	2	1,3
Registration, Citizenship and Refugee Rights	2	1,3
Disability Rights	3	2
Social Services	1	0,7
Other Issues and Rights	4	2,6
TOTAL	153	100

One of the reasons for the prevalent use of mediation in resolving educational issues could be that these disputes concern large masses. As mentioned before, the resolution of educational disputes, which constitutes about a quarter of the entire

sample, affects not only the applicants, but also a large section of society. The resolution of issues such as increasing the quota for teacher appointments, extending the exam application period, and opening a summer school not only impact the applicants, but many other people too. This may lead to widespread use of mediation in educational disputes as mediation provides a more effective solution.

The success of mediation in providing a full settlement of cases also supports this argument. The table below shows that 94,1 percent of the cases resolved by mediation arrive at full resolution. This shows that almost all cases where mediation is used are fully resolved and there is not an unsettled case where mediation is used as the resolution method. In other words, mediation brings full-settlement and a better success in resolution. 93,8 percent of the cases resolved by providing information mission are also fully resolved. One of the eye-catching results is that 47,5 percent of the cases that ombudsman have investigatory mission are unsettled. This data shows that in almost half of the cases that the ombudsman adopts investigatory function, it fails to reach any solution.

Table 17 Cross Tabulation of Resolution Success and Method of Resolution

Resolution	Method of Resolution					
	Guiding	Investigation	Providing Information	Mediation	Discontinued	Withdrawn
	N	N	N	N	N	N
	%	%	%	%	%	%
Fully	6	157	364	144	89	3
Settled	66,7	46,9	93,8	94,1	100	10,3
Partially	1	19	21	9	0	0
Settled	11,1	5,7	5,4	5,9	0	0
Unsettled	2	159	3	0	0	26
	22,2	47,5	0,8	0	0	89,7

The relationship between resolution and public institutions subject to complaint shows that the majority of the cases reaching full settlement is resolved with education related institutions. Nevertheless, although these cases consist the majority among the full-settled cases, they also make up the majority of unsettled cases. The cases resolved with ministries also show a better success in reaching a full settlement.

Table 18 Cross Tabulation of Resolution and Public Institutions Subject to Complaint

Resolution	Institution Subject to Complaint			
	Ministries	Local Government	Education-Related Institutions	Governorates
Full Settlement	208 27,3%	95 12,5%	443 58,1%	17 2,2%
Partial Settlement	20 40,0%	19 38,0%	10 20,0%	1 2,0%
Unsettled	14 7,4%	14 7,4%	162 85,3%	0 ,0%

Does friendly settlement provide a resolution to collective disputes?

Collective bargaining has become an important way of resolving disputes concerning many people as cases such as labor disputes require to resolve the issue with a collective bargaining agreement (Bingham, 2009). In the Turkish ombudsman context, collectivity is measured with the number of individuals experiencing the same problem. As previously mentioned, Turkey's Ombudsman Institution receives individual applications. However, it can provide collective resolution as the application made on the same subject is discussed collectively with the relevant institution. The resolution of one case may provide solution for other people suffering from the same problem. This is applicable to cases that have ended in a change of existing rules and regulations, which then bring a solution for other people too.

Considering this information, the cases in this study are classified under three categories based on their collective characteristics: low, medium, and high collective

disputes. While coding these cases, I paid attention to the content of dispute in order to fully understand how many people were interested in the issue. If the case concerns an individual, I coded it low while coding the ones concerning a few people medium. For instance, a person's application for an insurance miscalculation was coded as low because it concerns only that person. However, the request to change water meters in a street is coded medium as it only affects the people living on that specific street. Cases concerning a significant number of people, i.e., public recruitments, exams, personnel rights, etc. are coded high. Events where the same subject has received numerous applications is also coded high, as this indicates the fact that a significant amount of people are affected by the dispute. Table 18 shows that ombudsman mostly resolve disputes that have medium level collective victimhood (47,1 percent). 32,2 percent of cases are regarding single individuals while 20,7 percent of them are concerning a significant number of people. Thus, the degree of collectivity in friendly-settlement cases in the Turkish context is diverse but only 20,7 percent of the cases concern a significant number of people.

Table 19 The Degree of Collectivity

	Frequency (f)	Percent (%)
Low	323	32,2
Medium	472	47,1
High	208	20,7

Does the degree of collectivity have a relationship with the method of resolution? Table 20 shows that the rate of high collective disputes is the highest in the cases resolved with mediation (58,8 percent) and the lowest in the cases resolved

with providing information (5,4 percent), withdrawn (13,8 percent), and investigation (15,8 percent). It is found that a high degree of collectivity is statistically significant in mediation rather than providing information and investigation ($p < .05$).

As seen in the Table below, mediation is a suitable method for resolving disputes concerning a significant number of people. 90 out of 153 mediation cases deal with issues concerning a significant number of people. This data also proves that mediation in the Turkish ombudsman context is used for collective disputes and that the ombudsman adopts more interactive resolution methods while it pursues limited engagement with parties if the dispute concerns individuals or a small number of people.

Table 20 Cross Tabulation of the Degree of Collectivity and Method of Resolution

		Method of Resolution											
		Guiding		Investigation		Providing Information		Mediation		Discontinued		Withdrawn	
		N	%	N	%	N	%	N	%	N	%	N	%
The Degree of Collectivity	Low	2	22,2	228	68,1	36	9,3	19	12,4	22	24,7	16	55,2
	Medium	3	33,3	54	16,1	331	85,3	44	28,8	31	34,8	9	31,0
	High	4	44,4	53	15,8	21	5,4	90	58,8	36	40,4	4	13,8

Which communication tools do the ombudsman use during the resolution process? Ombudsman can use plenty of tools to communicate with applicants and institutions subject to complaint. Communication tools are used both in ensuring access to the parties and conducting the resolution (Castro Barriga, 2019: 297-299). Using tools such as telephones increases the accessibility in mediation (SchWeber, 1989). In relation with the resolution method, communications tools determine interaction among the parties. Turkey's Ombudsman Institution use a wide range of communication tools. Descriptive data on cases illustrate that the ombudsman mostly uses mail during the process to get in touch with the parties (50,5 percent). Mail is also widely used in addition to face-to-face meetings and phone negotiations. Although friendly settlement facilitates the direct intervention of the ombudsman, data displays that face-to-face interaction with the parties may not be solely effective in arriving at a solution. While 8,3 percent of the cases are finalized with face-to-face meetings, 30,1 percent of the cases require mail, i.e., official correspondence, alongside face-to-face meetings. As shown in Table 21, the resolution process of the 86 percent of the cases partially or fully requires official correspondence among the parties.

Table 21 Communication Tools Used by the Ombudsman during the Process

Communication Tools	N	Percentage (%)
Mail	507	50,4
Face-to-Face Meeting	83	8,3
Phone	33	3,3

Table 21 (cont'd)

Mail+Face-to-Face	300	30
Meeting		
Mail+Phone	54	5,4
Face-to-Face Meeting +	26	2,6
Phone		
TOTAL	1003	100

At this point, it is necessary to emphasize that face-to-face meetings in the friendly-settlement context is not mostly conducted with the aim of mediation. If this was not the case, the rate of mediation should be higher as face-to-face meetings are a preferred method - one of the methods in 40,9 percent of the cases in this context. Friendly-settlement cases show that face-to-face meetings between the ombudsman and citizens and institutions are conducted mostly for investigatory and informatory missions. There are several motivations behind face-to-face interaction. First, applicants can visit the ombudsman to provide more detail for the investigation of the dispute or to receive information. Second, ombudsman can visit public institutions subject to complaint in order to conduct an on-site investigation or to give more information about the problem. Article 25 of Ombudsman Regulation states that the Chief Ombudsman or deputies are authorized to hear relevant persons for investigating the dispute by getting in touch directly (Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution, 2013). Although these activities provide interaction, they are not included in the

scope of mediation in all cases. Thus, not every face-to-face meeting can be defined as mediation.

The level of mode of interaction in friendly-settlement cases classifies communication tools in accordance with their contribution to interaction. The level of interaction is based on the ways of communication among the parties to reflect their engagement level. Cases that are resolved with face-to-face talks, separate negotiations, or phone calls are coded interactive, while the ones that do not require direct engagement of all parties based on official correspondence are coded non-interactive. Interactive cases are the ones in which parties have verbal communication. In non-interactive cases, the parties do not have any verbal communication. They do not talk over the phone and do not conduct face-to-face meetings. In mixed cases, the parties follow both verbal communication and official written correspondence. The table below shows that ombudsman uses non-interactive methods (50,5 percent) more compared to interactive (14,2 percent) and mixed (35,3 percent) ways of resolution.

Table 22 Mode of Interaction

Mode of Interaction	N	Percentage
Interactive	142	14,2
Non-Interactive	505	50,5
Mixed	356	35,3
TOTAL	1003	100

This result shows discrepancy between general trends and the Turkish context as friendly-settlement is based on direct interaction between the parties (Doyle et al.,

2014; J. A. Wall & Chan-Serafin, 2014). Indeed, Turkey's ombudsman institution pays attention to providing interaction among the parties. The 2018 Annual Report published by the Turkish Ombudsman states that "When the individuals are directly contacted, they feel that their complaints are paid attention by the relevant authorities and therefore they feel satisfied. Establishing an active and continuous communication between the State and society will contribute to eliminate the popular belief that the administrations are inaccessible, and they don't care about the complaints." (2018 Annual Report, 2019: 24). Data shows that despite the efforts to increase interaction between the parties, ombudsman still follow non-interactive methods. Even in some mediation cases, ombudsman also use non-interactive methods alongside face-to-face communication as fully-interactive cases consist of 14,2 percent of all cases while 15,3 percent of cases are conducted with mediation. Nevertheless, quantitative data does not explain the reasons of this phenomenon in detail.

When the mode of interaction is cross-tabulated with public institutions subject to complaint, it is seen that interactive cases are commonly resolved in order with education-related institutions (61, 3 percent), ministries (31, 7 percent), local administrations (4, 9 percent), and governorates (2,1 percent). Only 3 of the interactively resolved disputes are regarding governorates. This data also proves relatively limited interaction between ombudsman and local administrations and governorates. Only 7 out of 128 cases are interactively resolved with local administrations. The reason of this may be related to the non-existence of local ombudsman offices in Turkey. Local ombudsman offices are effective in building a direct relationship between the institutions subject to complaint and citizens (Gill,

2016: 97). As Turkey has a central ombudsman institution that does not have local branches, the ombudsman interactively deals with cases in specific circumstances.

Table 23 Cross Tabulation of Public Institutions Subject to Complaint and the Mode of Interaction

Public Institutions Subject to Complaint	Mode of Interaction					
	Interactive		Non-Interactive		Mixed	
	N	%	N	%	N	%
Ministries	45	31,7	123	24,4	74	20,8
Local Administrations	7	4,9	110	21,8	11	3,1
Education Related Institutions	87	61,3	265	52,5	263	73,9
Governorates	3	2,1	7	1,4	8	2,2
TOTAL	142	100	505	100	356	100

Which cases are resolved through an interactive process? In terms of the degree of collectivity, Table 23 proves that 64,1 percent of interactive cases have a high degree of collectivity. In other words, when the degree of collectivity increases, the ombudsman increases its use of communication. This result can be related to the need for bargaining in collective disputes compared to others. As the solution of a case affects many people, both ombudsman and institutions subject to complaint dedicate more efforts and prefer direct engagement.

It is found that a high degree of collectivity is statistically significant in interactive cases than both non-interactive and mixed cases ($p < .05$). When it comes to non-interactively resolved cases, 73,9 of them have medium degree of collectivity. 67,1 of mixed mode interaction cases are have a low degree of collectivity. This shows that while most of the interactively resolved cases belong to a high degree of

collectivity, non-interactive and mixed cases do not show a linear relationship in this indicator.

Table 24 Cross Tabulation of the Degree of Collectivity and Mode of Interaction

The Degree of Collectivity	Interactive		Non-Interactive		Mixed	
	N	%	N	%	N	%
Low	15	10,6	69	13,7	239	67,1
Medium	36	25,4	373	73,9	63	17,7
High	91	64,1	63	12,5	54	15,2
TOTAL	142	100	505	100	356	100

Another indicator having a significant relationship with the mode of interaction is method of resolution. When these two indicators are cross tabulated, it can be seen that mediation is statistically significant in interactively resolved cases in comparison to cases resolved by a mixed mode of interaction ($p < .05$). As 71,1 percent of interactive cases are resolved with mediation, mediation dominates interactive cases. Moreover, 69,7 percent of non-interactive cases use information provided as a method of resolution. It is found that providing information is statistically significant in non-interactive cases than both interactive and mixed cases. ($p < .05$). This data depicts that the providing information method is mostly used by formal correspondence. Investigation, on the other hand, is handled by the engagement of both parties to the process and uses formal correspondence simultaneously.

Table 25 The Relationship between the Method of Resolution and Mode of Interaction

		Mode of Interaction					
		Interactive		Non-Interactive		Mixed	
		N	%	N	%	N	%
Method of Resolution	Guide	2	1,4	4	0,8	3	0,8
	Investigation	18	12,7	56	11,1	261	73,3
	Providing Information	5	3,5	352	69,7	31	8,7
	Discontinued	14	9,9	68	13,5	7	2,0
	Withdrawn	2	1,4	25	5	2	0,6
	Mediation	101	71,1	0	0	52	14,6
	TOTAL	142	100	505	100	356	100

5.2 Determinants of the Use of Friendly-Settlement in the Turkish Context

The quantitative analysis of friendly-settlement cases provides significant findings for the Turkish context. Firstly, the use of mediation within Turkey's Ombudsman Institution is limited, investigation and missions focused on providing information dominate the friendly-settlement context. In line with this finding, the ombudsman widely uses non-interactive communication tools in friendly-settlement which, indeed, should be interactive. Official correspondence is partially or completely used in the resolution of 86% of the cases. Thus, although friendly-settlement aims to provide interactive and informal resolutions in nature, why does it fail to turn the ombudsman processes into an interactive and informal way in the Turkish context? As quantitative data cannot provide satisfactory information on this

phenomenon, I collected qualitative data based on semi-structured interviews with experts and senior officials dealing with friendly-settlement cases in order to understand which dynamics regarding friendly-settlement affect the resolution and result in non-interactive and formal processes.

I analyze the facilitating and undermining factors in interactive and informal dispute resolution in the Turkish context in this section. Based on the findings of semi-structured elite interviews with experts and senior officials dealing with friendly-settlement cases, this chapter attempts to identify dynamics that facilitate and undermine the ombudsman's selection of third-party strategy.

Analysis of interview data revealed five major factors that determine the ombudsman's third-party function; authority, flexibility, network, dispute resolution capacity, and attitude. In the case of Turkey's Ombudsman Institution, even though some of these factors facilitate the ombudsman's intervention to the resolution to some extent, they do not bring informal and interactive resolution. Thus, while discussing the advantages of some of these factors to the ombudsman's intervention capabilities, I also analyze the reason of the failure regarding these issues.

5.2.1 Authority

Authority is one of the major issues affecting the ombudsman's third-party function during the resolution process and undermining the selection of interactive resolution techniques. In this study, I define authority as the power of the ombudsman over institutions to enforce or direct them in accepting friendly settlement, interactively communicating, and discussing possible solutions with the parties, and reaching an agreement. In ombudsman literature, ombudsman authority

is questioned in several ways. Not having binding power in its decisions is discussed as a factor that decreases the ombudsman's authority. On the other hand, scholars emphasize various factors increasing the ombudsman's authority in the public sector. Remac underlines the "persuasive authority" of the ombudsman rooted in experiences of the ombudsman and its unique position in the system (Remac, 2013: 75). Some others highlight "moral authority" as a factor increasing ombudsman's power. Vogiatzis claims that ombudsman-parliamentary relations is the source of moral authority (Vogiatzis, 2018: 255).

Another argument on ombudsman's authority is related to the ombudsman's norms. As ombudsman represent norms such as human rights, equity, and good governance; it becomes the representative of good will in the public sector. Creutzfeld states that by representing people's will and being fair and just in the public system, ombudsman has a unique authority (Creutzfeldt, 2016: 468). Their power of preserving and developing these norms result in the "unique constitutional position" of the ombudsman (Remac & Langbroek, 2011: 88).

Several factors emerged in the interviews related to the ombudsman's authority during the resolution process. Multiple interviewees referred to the ombudsman's power over the public institutions. According to a significant number of interviewees, the ombudsman's power in the public sector is directly related to its relations with the TGNA. Although the ombudsman is an independent⁵³ institution, it

⁵³Despite acting under the parliament, the ombudsman's independence is widely discussed. Independence is related to the lack of control of executive power, i.e. government, over the ombudsman. (Marshall & Reif, 1995: 220). The ombudsman does not have any responsibility against executive and judicial powers. Moreover, parliament cannot limit or control the ombudsman's power. Nevertheless, there are some executive ombudsman offices functioning under executive bodies. Executive ombudsman offices are criticized for not being able to take necessary action towards executive bodies they open investigations about (Gregory, 1999:134).

acts under the control of the parliament. Interviewees emphasized that acting under the parliament creates a leverage over institutions and enforces them to cooperate with the ombudsman, and claimed that this is necessary for friendly settlement of disputes. Some interviewees provided examples of this by further underlining that they receive higher positive responses from institutions they get in touch with if and when they stress that they were calling from “the TGNA Ombudsman Institution”. Thus, existing relations with the parliament facilitate receiving positive responses in friendly-settlement cases as the parliament represents the will of people. An interviewee noted that:

When I pick up the phone, I say that I am calling from the Ombudsman Institution of the Grand National Assembly of Turkey. The institution has an impact when the name of the Assembly is mentioned first... It is much more effective when we name the Assembly.⁵⁴

Another point regarding authority related to the Ombudsman-TGNA relations is parliamentary hearings where the ombudsman denounces institutions not responding to the ombudsman’s invitation for settlement. The TGNA invites representatives of institutions and asks them why they did not collaborate with the ombudsman institution. The first meeting at the TGNA was held in February 2015 with the participation of the Ministry of Labor and Social Security, Ministry of Finance, YÖK, ÖSYM, and various branches of these institutions. These meetings started to be held regularly each year in line with the “carrot and stick approach” to reward institutions complying with ombudsman decisions and punish ones that did not accept the decisions. This approach was first emphasized in the 2015 Annual

⁵⁴Interview number 3.

Report (2015 Annual Report, 2016: 217). The Institution also established the Tracking and Evaluation Office in 2017 with the aim to monitor institutions not complying with the decisions. The Ombudsman Institution also began to provide a list of these institutions in its Annual Reports by using naming and shaming technique.

During these meetings, the institution brings to the table the proposals that institutions do not comply with. For instance, under the moderation of an MP; the representatives of public institutions subject to complaint, the Ombudsman Institution, the TGNA, and relevant organizations came together in 2017 to discuss the reasons of non-compliance. Although institutions emphasized various reasons for not accepting the solution, some of them were convinced to re-evaluate their previous decision. The institutions emphasized incompatibility between the ombudsman proposal and existing rules and regulations, complex bureaucratic processes, and maladministration as their reasons of non-compliance.

The ombudsman also created a rewarding mechanism for the institutions complying with decisions. These institutions are appreciated for their efforts for collaboration in two ways. Firstly, they are invited to the TGNA to be praised for their efforts. Secondly, the list of these institutions is provided in both annual reports and case texts. Thus, this action becomes an informal leverage mechanism enforcing public institutions subject to complaint to collaboration. An interviewee explained the effect of this process on settlement as the following:

We also come together with institutions at the parliament and raise problems regarding them. If there is something good that they do, we also mention that. Therefore, they also hear their contribution. For example, announcing

“Administration X accepted this friendly settlement decision” is also good for these institutions.⁵⁵

The ombudsman also uses media to increase its influence over the public institutions in general (Monogioudis, 2015). In the Turkish case, the ombudsman acknowledges the power of the press by serving news on both institutions complying and not complying with ombudsman decisions. For example, there was an instance where the exam of a female candidate taking the Academic Staff and Graduate Education Entrance Examination (ALES) was deemed invalid as she wore a "metal-containing accessory" because of the needle she used to pin her hijab. Although the ÖSYM refused to accept the ombudsman's initiatives to solve the problem, it took all necessary actions for a solution after this incident was published in the media. The expert dealing with the case emphasized that the power of the press positively affected the attitude of the public institution subject to complaint.⁵⁶

Authority is also discussed in line with the personal power of chief ombudsman and deputies. As is discussed in the mediation literature, the mediator's reputation and personal and institutional status are one of the determinants of the success of mediation (Kleiboer, 1996: 373). Even if the ombudsman cannot enforce any decisions on public institutions subject to complaint, the personal relations of the chief ombudsman and their reputation in the public sector increases dispute resolution capacity. Due to this, the ombudsman's good reputation in the public sector is a prerequisite in a lot of countries (Kucsko-Stadlmayer, 2008: 465). During the semi-structured interviews, the ombudsman's personal reputation is stressed as a

⁵⁵Interview number 9.

⁵⁶Interview number 17.

factor increasing the ombudsman's impact over public institutions subject to complaint. Interviewees used the terms "respectable", "dignified", "powerful", and "recognition" to define the ombudsman's personal aspects affecting the resolution. In the words of an interviewee:

We're stronger than we've ever been, thanks to the new chief ombudsman. It is incredible that they (public institutions subject to complaint) know us now. What we want is not to scare them. However, they are afraid of the Chief Ombudsman. This institution is now seen as more reputable and powerful. ... Our Chief Ombudsman has an incredible reputation. They (public institutions subject to complaint) shy away from us when they hear his name.⁵⁷

Another interviewee referred to the positive effect of the Chief Ombudsman's personal reputation on the recognition of the institution in public:

The Chief Ombudsman has certain qualifications. Other institutions necessarily respect when there is such an ombudsman. Citizens' applications to the ombudsman are also affected by the reliability, qualifications, and personality of the Chief Ombudsman. Therefore, the greater the recognition of the person sitting in that office, the more citizen apply here with that sense of expectation.⁵⁸

These statements reflect that the ombudsman's personal reputation eases the collaboration between the ombudsman institution and stakeholders. Nevertheless, even if ombudsman-parliament relations and personal reputation of the ombudsman in the public sector increases its authority in the public sector, why is there still lack of interaction between the ombudsman and public institutions subject to complaint? Why do public institutions subject to complaint not respond to the ombudsman's call

⁵⁷Interview number 17.

⁵⁸Interview number 8.

for collaboration as much as intended? Interview data suggests that there are several factors behind this limitation. A significant number of interviewees underlined the non-binding nature of the ombudsman's decisions as a factor limiting interaction. As discussed above, the ombudsman's non-binding nature creates restrictions in the adaptation of ombudsman decisions by public institutions subject to complaint. In the Turkish context, despite existing informal leverage mechanisms, institutions are not open to collaboration in some cases regarding non-binding characteristics of decisions. In the words of an interviewee: "Our decisions are non-binding. Indeed, this is our biggest problem... Because we cannot take an executive decision, we can only give advice... Some administrations comply, some do not"⁵⁹. Another interviewee also pays attention to this issue:

The absence of binding power creates a negative perception in terms of the balance of power. In other words, we say, "Yes, you are right, I think you are right", we write a recommendation. However, the public institution subject to complaint may not implement it. That's the argument. When you say, "This decision has no binding power", it turns to be negative.⁶⁰

Lack of recognition towards the Ombudsman Institution is another factor that is pointed out during the interviews. As emphasized by a senior official, the Ombudsman Institution could not create the intended impact in the public sector due to low recognition soon after its establishment. Institutions showed resilience against the ombudsman's non-binding decisions. Research shows that as well as the public institutions, ombudsman had a low recognition among the public (Dursunoğlu et al., 2021). Public institutions subject to complaint did not reply to the ombudsman's

⁵⁹Interview number 8.

⁶⁰Interview number 14.

demands and even got in contact with officials was a serious problem.⁶¹ The institution invested its resources on increasing the recognition. Nevertheless, as pointed out during the interviews, the recognition level did not reach the intended level, and this affects the success of friendly-settlement cases. As noted by an interviewee:

While I was trying friendly settlement, when I first opened the phone, I said I was calling from the ombudsman institution and could not get into the matter. I was trying to explain the institution for 15 minutes.⁶²

A significant number of interviewees made references to the problems related to the personnel status of ombudsman. Although the Ombudsman Institution is independent and carries a unique function in the public sector, the organizational and personnel structure of the institution adopts a traditional bureaucratic structure⁶³. Thus, staff responsible for resolving disputes hold an “expert” title and senior officials of public institutions subject to complaint do not take them seriously, as it is not a distinctive title in Turkish bureaucracy. The Ombudsman Institution proposes the adoption of “rapporteur” title for the personnel to increase their influence (*Strategic Plan 2017-2021*, 2017: 74). A senior official gave the example of Supreme Court rapporteurs and underlined that this revision would significantly increase the power of the ombudsman institution among public institutions.⁶⁴ Another interviewee noted this problem as follows:

⁶¹Interview number 24.

⁶²Interview number 17.

⁶³State Personnel Law no. 657 regulates the employment of public personnel in Turkey. The Public Personnel System is designed according to the promotion and appointment of personnel according to a unified hierarchical structure. The Ombudsman Institution of Turkey also belongs to the same system.

⁶⁴Interview number 23.

There are some public institutions subject to complaint that are willing to compromise so that a friendly settlement can be made, but there are some that do not. I can act on behalf of the deputy ombudsman as the legislation gives that authority to me. Nonetheless, the official who will respond to my demand in the public institution subject to complaint is often not an expert. I need to meet with someone who is authorized to make decisions so that the problem can be solved. In most cases, this person is head of department, general manager, rector, or dean. Now when I call and talk to this person or get together, I have trouble with my title. When they learn you are an expert, they act as if you are an ordinary expert in any ministry. Indeed, we are not. The title is challenging in this sense.⁶⁵

A senior official stated that although the institution works towards increasing its influence in the public sector, the organizational and personnel problem of the institution decrease its impact:

Despite all efforts, we did not reach the intended level yet. The experts of our institution are not taken seriously when they try to reach senior officials. Nevertheless, when you examine examples from around the world, you see that ombudsman personnel holds a distinctive title and have a high reputation in the public. We try to fix this problem. However, our distinctive role has not yet been understood.⁶⁶

Overall, authority or lack thereof is one of the factors affecting the ombudsman's third-party function during the settlement of disputes. As revealed during the interviews, one of the reasons of the rare use of mediation is the lack of authority of the ombudsman over public institutions subject to complaint. Public institutions subject to complaint are not open to collaboration with the ombudsman institution although there are some incentives for it. Even if the ombudsman's "moral authority" arising from its relations with the TGNA and the chief ombudsman's good reputation in the public sector as well as the existence of informal leverage

⁶⁵ Interview number 17.

⁶⁶ Interview number 24.

mechanisms including parliamentary hearings increase its power, the non-binding nature of ombudsman decisions, the lack of recognition, and the inefficiency of the expert title undermines the ombudsman's authority in the public sector. Public institutions subject to complaint not engaging with the ombudsman creates lack of interaction.

5.2.2 Flexibility

Regarding the ombudsman's third-party function in dispute resolution, one major perspective of interviewees is the effect of flexibility in the Turkish ombudsman context. I described flexibility in this study as the expressions of interviewees whether the ombudsman and stakeholder parties have an adjustability in framing the steps of resolution process and maintaining the procedure without having an obligation to obey any standard statement, rules, and regulations. By this definition, I also try to measure whether the public institution subject to complaint has a flexibility in accepting and implementing resolution.

In general, the ombudsman adopts a more flexible approach in resolving disputes compared to traditional dispute resolution (Pino, 2011: 445). Lewis defines ombudsman as "public administration's flexible friend" (Lewis, 1992: 674). The flexibility of the ombudsman institution is often evaluated with informality (Abedin, 2006: 225). As citizens and states get in confrontation in a much more informal environment, the flexibility of the ombudsman becomes more important (Creutzfeldt, 2018: 34). Nevertheless, some ombudsman institutions have a more legalistic approach (Drewry, 2009: 3).

Interviewees underlined the importance of the flexibility in the Turkish ombudsman context enabling adopting friendly settlement of disputes to some extent. The most repeated issue is flexibility regarding the dispute resolution process. A significant number of interviewees underlined that the ombudsman did not have any protocol regarding the process and experts had a full control over the process. The Law on the Ombudsman and Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution does not impose any requirements for the adoption of friendly settlement. In other words, there is no document directing the ombudsman on how to govern the process. Thus, the process is dependent on individual choices of experts working at the institution. An interviewee stated that:

This is an individual decision based entirely on individual initiative at the point. How you see it, your current interest, your professional background on that subject determines it. It depends on the employee's own initiative, with their own opinion, making a decision that could be resolved with friendly solution or may require something else.⁶⁷

Similarly, another interviewee explained the capability to take individual initiative during the process as there is not any document directing the procedure:

We have nothing to guide us during the process. In the regulation, there is some information only on how the parties can call for friendly settlement, which arrangements exist, which stages there are, and what decision will be made. That process proceeds entirely on our initiative.”⁶⁸

Another interviewee underlined that experts could follow their own ways even if they were not compatible with the thoughts of senior officials:

⁶⁷Interview number 7.

⁶⁸Interview number 8.

We have five deputy ombudsmen, as you know, the way of working of each one is different. Our deputy ombudsman takes notes on each case to ensure fairness. They read first, because this is essential, this is a preliminary examination. The case reflects his opinion. Of course, we are not affiliated with him, but we can see our deputy ombudsman's thoughts on a file. Then we read and if we agree, the case evolves accordingly.⁶⁹

In line with this fact, institutions with an informal and flexible dispute resolution process do not generally have any written criteria for directing the process (Bondy & Doyle, 2018: 489). Gill claims that this may cause a lack of “principled approach” in ombudsman processes by not acknowledging any rule and regulation in the process (Gill, 2018: 304). In the Turkish case, as friendly-settlement provides full control for experts working at the institution, it also provides flexibility by not requiring much paperwork and bureaucracy. An interviewee stated how this was useful for the parties in dispute:

Of course, friendly settlement is also beneficial for public institutions subject to complaint, and it eliminates bureaucratic processes. So, as I just said, we finish the process with a phone call. Otherwise, I will write an official letter, the public institution subject to complaint will read, examine, research, and reply to it. Maybe I will need to write another one based on the response. This process just ends with this method.⁷⁰

Despite the existing factors allowing a flexible dispute resolution process, why does the Turkish ombudsman widely follow a non-interactive and formal process in adopting friendly settlement? As revealed by the interviewees, this is related to settled practices in Turkish bureaucracy. Although friendly settlement foresees the flexible and informal solution of disputes without requiring paperwork, public institutions subject to complaint mostly prefer to engage in formal

⁶⁹Interview number 13.

⁷⁰Interview number 14.

correspondence due to the lack of trust against informality in the Turkish bureaucratic context. Turkey's bureaucratic tradition is based on "strong, centralized, and highly bureaucratic state" (Soyaltın, 2016: 137). Özen claims that rather than taking initiatives in bureaucratic processes, Turkish bureaucrats control the compliance of all actions with rules and regulations (Özen, 1996: 23-24). This brings a centralized decision-making and law-oriented approach to Turkish bureaucracy (Özen, 1996: 30). Without adopting a flexible approach, bureaucracy maintains a top-down decision-making approach dominated by rules and regulations (Sozen & Shaw, 2002). As interviewees indicated, this understanding of bureaucracy prevents flexible and informal processes. An interviewee noted that:

The case cannot be finalized without receiving a written response from the administration or the citizen stating that the complaint has been resolved. Due to the binding nature of a written response, it is preferred to invite the administration to a friendly solution through official correspondence without verbal contact. After receiving the official letter from the administration noting that the problem has been resolved, the case is closed.⁷¹

As an interviewee underlines, public institutions subject to complaint insist on receiving formal letters as it provides the feeling of safety on their side:

For example, we talk on the phone, we agree with the public institution subject to complaint, but we still repeat this on paper. They say "OK, send us a letter", and we send it. In other words, formal correspondence gives confidence to the public institutions subject to complaint, as they are public administrations. Of course, people know and understand that correspondence is the most accurate and safest method.⁷²

In line with this fact, public institutions subject to complaint attach importance to official correspondence in dispute resolution. Although the

⁷¹Interview number 5.

⁷²Interview number 16.

ombudsman gets in direct contact with public institutions subject to complaint, a significant number of cases contain the written demand of public institutions. The statements of interviewees show that implementing flexible and informal dispute resolution is not widely accepted by public institutions subject to complaint due to common practices. As verbal agreement causes feelings of vulnerability and insecurity, stakeholders are not familiar with solving disputes without demanding an official letter. Nonetheless, although interviewees criticize this behavior as an undermining factor for the ombudsman's function, they admit that they also prefer to receive an official letter rather than directly engaging with the parties. The most debated reason of this is the lack of trust towards public institutions subject to complaint. Interviewees prefer to receive written correspondence from the public institution subject to complaint upon the demand of the citizen and prefer to have written documents on the process in general. Even if basic disputes can be resolved via verbal agreements without requiring a written protocol, interviewees prefer to have written proof. It is perceived as a promise of the public institution subject to complaint to solve the dispute. An interviewee stated that:

Institutions say "We will make a general assessment in February. Let's evaluate this person's request." And I say to them; "At least send me an e-mail and tell me about it. Spoken words fly away, written words remain." A promise should be made for the future. When this is something that will be fulfilled, even it is not a very official letter, I prefer even receive an e-mail and information about the situation.⁷³

This shows that the nonexistence of any protocols and binding documents cause mutual mistrust among the parties. Thus, rather than engaging with face-to-

⁷³Interview number 3.

face meetings and solving disputes informally, both the ombudsman and public institutions subject to complaint prefer to follow the process via official correspondence. Even for disputes resolved through face-to-face and phone meetings, the parties seek for a way for documenting it. As noted by an interviewee:

First, I prefer to talk on the phone, but then it is necessary to put it in writing... Nothing becomes clear until we receive a letter. We also talk about this on the phone, but we always put it in writing.... We want to get the things that we talk about on paper, and they get back to us. Depending on the official response of the public institution subject to complaint, we prepare an official document underlining “such a response came from the administration, so the citizen's demand has been fulfilled.”⁷⁴

There is a significant number of examples where parties demand a written document even when the problem is resolved over the phone. For instance, a problem regarding the pension salary of a retiree had been solved with the mediation of ombudsman, senior officials from SGK and the applicant. Nonetheless, although the problem had been resolved, the parties demanded an official document stating the official resolution.

Thus, although friendly settlement allows parties to adopt more flexible and informal methods for resolving disputes, the parties hesitate to adopt these methods without using formal correspondence as it is a settled practice in bureaucratic behavior. The parties do not trust each other without receiving an official letter in each stage of the resolution. Even while adopting informal dispute resolution, the parties may demand following official correspondence to record the process, which makes informality a complementary rather than a sole practice in these cases.

⁷⁴Interview number 9.

Another issue preventing interaction and the adoption of informal procedure is the dominance of legal rules and practices. Based on a central administrative structure, Turkey's public institutions are ruled by strict legal rules and regulations. All elements of administration must act in accordance with these rules and regulations. Turkish bureaucratic institutions act in accordance with bureaucratic legalism. According to the Weberian definition of formal and hierarchical bureaucracy, bureaucratic legalism is the uniform adaptation of rules and regulations in bureaucratic processes (Barnes & Burke, 2015: 8). As Kagan clearly defines, bureaucratic legalism does not allow bureaucratic institutions to adopt flexible and negotiated policymaking that requires informal and participatory policy implementation and dispute resolution approaches (Kagan, 2001: 10).

Table 26 Modes of Policy Implementation and Dispute Resolution (Kagan, 2001)

Organization of Decision-Making Authority	Decision-Making Style	
	Informal	Formal
Hierarchical	Expert or political judgment	Bureaucratic legalism
Participatory	Negotiation/mediation	Adversarial legalism

Kagan defines mediation in policy implementation as the existence of an official third-party trying to convince disputing parties on a policy without “imposing a settlement based on law or official policy” (Kagan, 2001: 10). Varol underlines that “the legalistic state tradition” in Turkey prevents flexibility in government bodies (Varol, 2015). The outcomes of interviews reflect that the dominance of bureaucratic legalism in Turkey’s bureaucratic culture prevents interaction between the ombudsman and public institutions subject to complaint. Although friendly settlement depends on flexibility and informality, public institutions subject to complaint demand a legal basis for the resolution of disputes. As an interviewee underlines:

Now there are officials in different profiles. For example, there is a common method. Officials somehow evaluated an article in a law in a certain way. They have always implemented it that way. They benefit from the presumption of legality in administrative proceedings... They say, “Let citizens file a lawsuit, if the court cancels, we will do what is necessary.”⁷⁵

Public institutions subject to complaint demand a legal basis to resolve disputes especially for monetary issues. As all public institutions are exposed to the financial audit of the Court of Accounts, they fear from having a budget deficit due to resolving monetary disputes with citizens. There are many cases where stakeholder parties demand a legal basis in order for them to get into action. For instance, while there is a dispute regarding receivables and payables, public institutions subject to complaint tend to ignore the demand of citizens by underlining the danger of a drain on the budget. Because of this reason, it is stated during the

⁷⁵Interview number 16.

interviews that friendly settlement is a suitable method in resolving “soft dispute” issues such as human rights, youth, or education; but it is much more difficult to solve monetary and financial disputes. An interviewee gives information on the reason of this pattern:

The Ombudsman Institution did not exist in the past. The Court of Accounts has always existed, the audit of the Court of Accounts has always existed. The civil servant has always had administrative responsibility. Now the Ombudsman Institution has been established. It makes a recommendation. “Friend, you should do it like this,” the (Ombudsman) Institution advises. But the officials of public institution subject to complaint say, “If I do this, will anything happen to me tomorrow?” For example, we see this mostly in monetary and financial matters. According to which base will the money come out of the budget? According to the decision of the Ombudsman Institution... There is also the administrations’ sloppy, “if you don't like my decision, apply to the court” mentality.⁷⁶

Just like public institutions subject to complaint, the ombudsman also uses legal norms in dispute resolution. As interviewees underline, legal norms and jurisdiction are used as a leverage mechanism to convince the parties for resolution. During the talks between ombudsman and public institutions subject to complaint, the ombudsman stresses violations of law by public institutions subject to complaint and warn them to correct wrongdoings before citizens apply to court. Thus, although friendly settlement does not require bringing legal norms into the picture, the ombudsman uses legal norms to persuade the public institution subject to complaint a resolution. An interviewee noted the following words:

By law. That is, we are trying to explain legally why the dispute should be resolved. It is also necessary to know the legal practice here. If there is resistance, we reveal the latest judicial decisions. We are trying to persuade them with arguments such as “Look, there is such a decision of the

⁷⁶Interview number 13.

Constitutional Court or the Supreme Court. By not doing this, you seem to be defending the state, but you are harming the state. As a result of these proceedings, when you go to court, you will also be charged with legal expenses”.⁷⁷

The dominance of legal concerns is clearly observed from the fact that they cover a significant part of the case files. Almost all case files, including the ones resolved with interactive methods, covers the legal background of the problem and how the judiciary foresees a solution for it. Thus, there are outnumbered references to existing rules and regulations. A senior official underlined that without the legal leverage, ombudsman cannot convince the public institutions subject to complaint to accept the solution. Thus, they inform the parties on the outcomes of a legal process in advance if they do not acknowledge friendly-settlement.⁷⁸

Thus, although in theory the actions of interviewees during the resolution is not restricted with a protocol and they have full control over the process without requiring so much paperwork and bureaucracy, both public institutions subject to complaint and the ombudsman prefer to follow formal correspondence during the resolution in practice. For example, in the case of an application regarding a resignation from the public service, ombudsman demanded official documents and information from the public institution subject to complaint while carrying out a mediation between the parties. Interviews show that the main reason of this demand is the lack of trust among the institutions and settled practices in bureaucracy. Moreover, even if it is not compulsory during the resolution process, both public institutions subject to complaint and ombudsman use legal norms and jurisdiction to

⁷⁷Interview number 20.

⁷⁸Interview number 23.

convince the other party for a resolution that decreases the informal characteristic of the process. The reason of this is mainly related to bureaucratic legalism that foresees the dominance of legal rules and regulations in bureaucracy. Bureaucratic legalism is especially effective in the resolution of monetary and financial disputes, as it triggers the fear of a budget deficit due to compensating monetarily for grievance.

5.2.3 Network

Network is another issue that was discussed as a factor determining the ombudsman's third-party function. I define network as the ombudsman's ties and relations with public institutions subject to complaint on both individual and/or institutional levels, which is effective in the resolution of a dispute. In general, interviewees underlined the fact that although the ombudsman institution is developing institutional networks with public institutions subject to complaint, the main facilitating factor on dispute resolution capacity of the institution is interpersonal relations among the officials of ombudsman and public institutions subject to complaint. Nevertheless, in comparison to what is intended, interpersonal relations are insufficient in bringing informality to the resolution process.

Regarding the debate on network, a significant number of interviewees pointed out the importance of institutional contact points between ombudsman and stakeholders. Contact point is an informal network mechanism between the Ombudsman Institution of Turkey and public institutions subject to complaint to exchange information during the resolution process. Contact points are mostly set up between two people from each institution. By 2020, the Ombudsman Institution set

up sixty-four contact points with public institutions subject to complaint as emphasized by a senior official.⁷⁹ Although the ombudsman does not require any additional protocol to get in contact with public institutions subject to complaint, the institution started to build unofficial institutional contact points with these bodies. In accordance with the aim of saving time and building healthy relations with public institutions subject to complaint, the ombudsman has a direct communication channel with public institutions subject to complaint. An interviewee highlighted that:

For example, we have a contact point at the Higher Education Institution. It is clear whom to contact with human resources related issues. Or it is clear whom to contact with education related disputes. This allows faster exchange of information. There are certain contacts points in the Social Security Institution (SGK). When there is an issue about the General Directorate of Retirement Services, we know what we will ask for and how the process will proceed. Those people know us, and we know them. We make easier progress. However, these contact points are not official.⁸⁰

The cases show that the existence of contact points creates faster and more efficient resolution. In the case files regarding the SGK, the importance of these contact points are underlined, as “The dispute has been resolved with the rapid response to our institution’s demand for cooperation. For this reason, the SGK’s cooperation with the Ombudsman Institution is welcomed.” In addition to this, some interviewees referred to the importance of irregular meetings with the officials of public institutions subject to complaint. In order to maintain existing relations, the officials of ombudsman institutions made visits to the public institutions subject to

⁷⁹Interview number 24.

⁸⁰Interview number 3.

complaint. A senior official stated that education-related institutions are more open to conduct these meetings and to discuss general problems. These meetings are perceived to be necessary and productive in order to increase interaction between the ombudsman and institutions subject to complaint and increase the ombudsman's recognition. An interviewee explained "Especially in recent years, with the contribution of our chief ombudsman and his deputies, more people know us, as more promotion meetings, conferences, etc. have been held with the private sector and NGOs."⁸¹

Despite the existence of institutional contact points between the ombudsman and stakeholders, relations between these parties are mostly based on interpersonal relations. Interpersonal relations determine the resolution process in two levels. Firstly, interpersonal relations between senior officials of public institutions subject to complaint and ombudsman officials facilitate collaboration during the resolution. As the chief ombudsman and his deputies had served in various public institutions before their current posts, their relations with other officials enable the resolution of disputes. An interviewee stated that when the resolution is at stake, the deputy ombudsman intervenes to the process and talks to the officials of the public institution subject to complaint that bring the resolution: "Now, in such cases, we, as experts, cannot be very effective. Then we go to the deputy ombudsman. His communication is more effective in terms of getting results."⁸²

Secondly, personal relations between senior officials of public institutions subject to complaint and experts of the ombudsman institution enables the resolution

⁸¹Interview number 12.

⁸²Interview number 8.

of disputes. Although institutional relations are effective in getting in contact with public institutions subject to complaint, personal relations matter more in the ombudsman context. The impact of personal relations come to the picture in various ways. Most of the interviewees had worked in other public institutions before starting to work at the Ombudsman Institution. Their relations with their previous colleagues positively contribute to the resolution of disputes. An interviewee gives the following example:

As I come from the SGK, I have very close connections there. I know almost everyone. They also know me. I take advantage of this very well... The reason that I can conduct face-to-face meetings is that I worked in that institution before. I still have relations with the staff there. In that way, I can go there and have a conversation with them. I usually take assistant experts with me so that they can learn and develop relations. I think this is very important... When you go, it would be more appropriate for you to meet with an expert in an administration, wouldn't it? With someone on the same level. I meet with the head of department. The head of the department is my ex-colleague. I can do this because of this relation. But a person who does not have these relationships has a hard time finding a gatekeeper. Even if the person finds it, they cannot insist on a solution.⁸³

Thus, interpersonal relations between interviewees and the officials of public institutions subject to complaint facilitate the resolution of disputes. It also contributes to conducting face-to-face meetings and provides better interaction during the resolution. Interpersonal relations increase the interaction between parties and allow for a more informal and interactive dispute resolution. An interviewee stated that:

Since I previously worked at the SGK, I understand from the feedback I receive from friends and other supervisors that there is a good perception on

⁸³Interview number 20.

the issues resolved with a friendly settlement.... This comes from my experience in that institution... This is an advantage. Without us, these relations would have been established much more slowly, or even could not have been established at all. To reach a friendly settlement, much more effort is required, and sometimes it cannot be done. You must write an official letter and wait for a response for the event that you can solve with just one phone call. It is necessary to strengthen the advantages of face-to-face meetings... I push solutions to the last point due to my relations with the SGK. I meet with them (officials) several times. Sometimes I meet with experts or the branch manager who performs the transaction. If they say that an initiative should be taken, I talk to the head of department.⁸⁴

Thus, rather than institutional relations, personal relations between officials of public institutions subject to complaint and senior officials or experts of the ombudsman institution facilitates the friendly settlement of disputes. Nevertheless, communication on an interpersonal level may create deficiencies for the institutionalization of relations. An interviewee stressed that “This is said a lot. If our deputy ombudsman is dismissed and the one who has no relationship with institutions replaces him, can a friendly settlement be made like this?”⁸⁵ While communicating and convincing public institutions subject to complaint with interpersonal relations increases interaction during the resolution and eases reaching an outcome, as an interviewee pointed out, the lack of this relation creates problems for resolution:

Here, we have a problem in finding a gatekeeper regarding a decision that we put forth with great devotion and diligence. In other words, we cannot deal with a person from the relevant institution who will read and understand our decision. We write the decision and search for the person who received it. For instance, it is sent to a Directorate or Chief of Ministry X. However, she/he is not the person we should be dealing with and the one capable of solving this problem. That person is not the one capable of taking the initiative.⁸⁶

⁸⁴Interview number 14.

⁸⁵Interview number 16.

⁸⁶Interview number 8.

As is discussed during the interviews, interviewees who do not have any relations with the officials of public institutions subject to complaint do not prefer interactive solutions and follow formal correspondence as a way of solution. Thus, although having a network facilitates adopting more informal and interactive resolutions based on personal relations, it does not entirely depend on relations on the institutional level. This creates the problem where temporary relations may facilitate the resolution of disputes in the short term but may not bring any advantage in the long term.

5.2.4 Dispute Resolution Capacity

In this study, I refer to dispute resolution capacity as the “institutional, personal, and procedural capability of the ombudsman in handling disputes”. The interviews reflect that there are four factors regarding dispute resolution capacity: personal traits of experts, nature of the dispute, resolution strategy, and collective dispute resolution capacity. Interviewees frequently refer to these factors as determining the ombudsman’s interactive and informal resolution in friendly-settlement context.

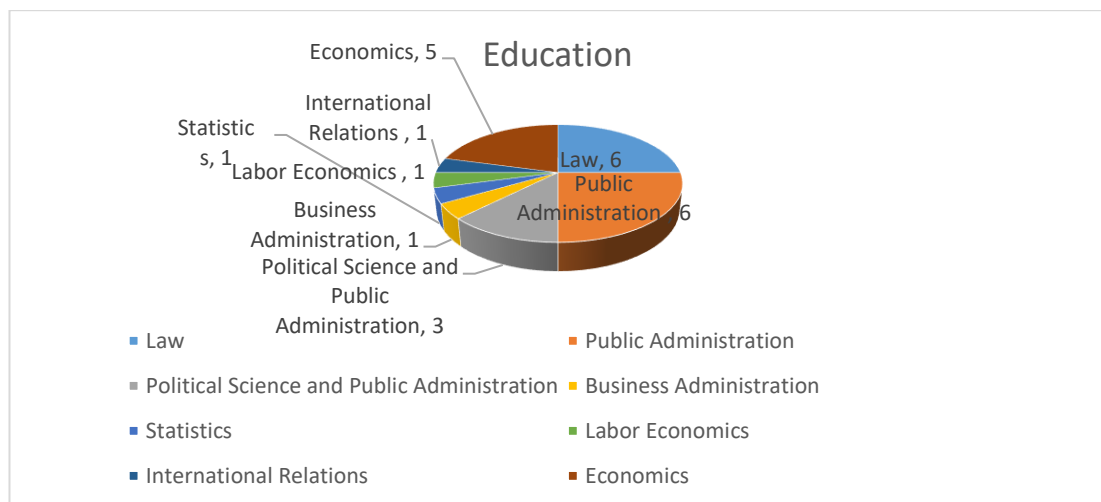
5.2.4.1 Personal Traits of Experts

Another element deteriorating the interactive and informal dispute resolution process is personal traits of experts that resolve friendly-settlement cases. Mediators are expected to have satisfactory skills in “communication”, “managing the

process”, and “personal awareness” (Zelizer & Chiochetti, 2017: 11). While some scholars observe education and trainings to be more determinant on developing mediation skills (Sullivan, 1984: 154), some others pay attention to life experiences (Moore, 2003) or personal qualities (Bowling & Hoffman, 2000: 6).

The personnel traits of the ombudsman are also determinant on the success of dispute resolution. Personal traits and characteristics are perceived to be important especially for organizational ombudsman (Ziegenfuss & O’Rourke, 2011: 86). The outcomes of interviews reflect that personal trait of interviewees takes an important role in how they resolve disputes. The first important element is the interviewees’ education background. The education background supports the dominance of a legalistic approach among interviewees. As shown in Figure 5, six of twenty-four interviewees graduated from law, six from public administration, three from political science and public administration, five from economics, and the others from international relations, business administration, labor economics, and statistics. Thus, one fourth of all interviewees graduated from law and a significant amount of them graduated from departments comprehending legal areas in their curriculum.

Figure 5 Education of Interviewees



13 out of 21 experts have a professional background in the public sector.

Three of them worked at the Social Security Institution, two of them worked at the Ministry of Finance, two of them for the Ministry of Industry, and the others worked in institutions such as the Turkish Statistical Institute, State Personnel Administration, Ministry of Foreign Affairs, Family and Social Policy, General Directorate for Foundations, and an academic institution. When it comes to senior officials working at the institution, their previous experiences are more diversified. All of them worked in middle and high-level positions in public institutions for years. Although not all experts use their previous networks in dealing with cases, while only 7 of 13 experts use their networks to get more effective interaction, all three high level officials use their previous networks. In summary, the Table depicts that out of 16 interviewees including experts and senior officials, only ten of them declared that they use their network to resolve disputes.

Table 27 Cross Tabulation of Benefitting from a Network of Former Colleagues and the Professional Background of Experts and Senior Officials

Code	Experts and Senior Officials with Professional Background (n=16)
Benefitting From Network with Former Colleagues	10

As well as educational background, the trainings that interviewees received in the Ombudsman Institution also seem to be an effective factor on the legal driven approach. The Ombudsman Institution has been organizing various trainings for its

staff since its foundation.⁸⁷ After starting to work at the Ombudsman Institution, interviewees received regular trainings in various topics. Table 27 shows that only less than half of the interviewees, 11 out of 24 had solid knowledge on dispute resolution methods including mediation, negotiation, and arbitration. 17 of the interviewees stated that they got trainings related to other areas including law, human rights, and public administration. 3 interviewees mentioned that they did not undergo any trainings. Thus, less than half of the interviewees has a knowledge on ADR methods.

Table 28 Trainings of Interviewees

Trainings	Total (n=24)
Trainings Related to Alternative Dispute Resolution	11
Trainings Related to Other Areas	17
No Trainings	3

When it comes to the intensity of trainings, interviewees received trainings for a very limited time period and their knowledge on alternative dispute resolution is very restricted. An interviewee explains that:

We took it (training) in 2014. We were informed about mediation. A teacher taught us on how a mediation process should be managed. How a mediator should approach the parties and what should the mediator's position be? It is a system based on mutual understanding. You know, the basic principles of mediation were explained to us through this.⁸⁸

⁸⁷The information on some trainings can be found in the annual reports.

⁸⁸Interview number 8.

Except one, all other interviewees admitted that they usually do not use their knowledge on ADR and mediation to resolve disputes. An interviewee with a particular interest in mediation underlined that he used mediation skills to resolve disputes. He gave an example on how he used “Best Alternative to a Negotiated Agreement” (BATNA)⁸⁹ in resolving an intractable long-lasting dispute:

I especially remember BATNA, it was emphasized a lot. I use BATNA during friendly settlement.... There was a million-dollar debt between a public institution subject to complaint and a cooperative. We held separate meetings with the stakeholder side and then with the cooperative officials... This case was the case that I used BATNA the most. The public institution subject to complaint cut off the electricity of the cooperative. The cooperative could not work at all... We made a payment schedule. They can pay by installments... We said to the stakeholder; “you can't collect your debt” and to the cooperative “you cannot pay your debt in this way”. We said that both parties should win and when the electricity of the cooperative is turned on, they can earn money and pay the debt. At first, this was not accepted. More payments were made during the harvest periods in 3-month installments. Electricity was turned on and the debt was paid. We received thanks from both sides.⁹⁰

A senior official states that there are a few experts with a personal interest in learning dispute resolution and mediation and they are more successful in resolving disputes.⁹¹ Nevertheless, as their number is too low, they do not necessarily influence the working environment in a positive way.

Nonetheless, the use of dispute resolution skills was not common during the resolution process. Interviewees received more intense trainings on other areas for years, such as types of law including administrative law, civil law, obligations law,

⁸⁹Best Alternative to a Negotiated Agreement (BATNA) is the best alternative option for the other party if negotiation/mediation fails. The parties should decide their BATNA based on objective factors and should assess it during negotiation/mediation for the success of the process (Thompson, 2009).

⁹⁰Interview number 15.

⁹¹Interview number 24.

contract law, land and estate law, international law, and human rights. This strongly reflects the domination of a legal approach over the ombudsman institution.

Interviewees also argued that they required legal perspective and legal knowledge in their work. An interviewee noted that:

At TODAİE, we received trainings on human rights, constitutional and administrative law. The staff working at the institution mostly graduated from law and law-related majors. When we started to work at the institution, we took comprehensive trainings. We received training in administrative law, civil law, law of obligations, and commercial law at Hacettepe University. These are the subjects within our area of interest that citizens can apply.⁹²

The interviews show that obligation to obey legal principles and knowledge of legal information is seen as a *sine qua non* for ombudsman personnel. While enhancing dispute resolution skills is deemed to be important by most interviewees, knowledge of legal information is given top priority. Nevertheless, there are a few criticisms of the dominance of legality in the ombudsman context that prevent thinking out of the box. An interviewee working as a senior official at the Ombudsman Institution stressed that the texts of friendly settlement decisions look like classic legal-style texts, containing so many legal terms and judicial explanations: “Since the administration is dominant in Turkey, we have to stay in line with a legal framework. However, it could have been more productive if we can stay outside the frame. We could draw a frame on mediation”⁹³. The intense trainings and strong backgrounds of interviewees in legal affairs is reflected in their statements

⁹²Interview number 15.

⁹³Interview number 22.

during the interviews. Interviewees broadly used legal terminology and made references to the concepts of traditional dispute resolution.

Table 29 Number of References to Traditional Dispute Resolution

Method	Number of References	Number of Sources
	Coded	Coded
Judiciary	29	13
Court	23	8
Court Order	5	4
Lawyer	2	2
Judge	1	1
Prosecutor	1	1
Legal Regulations	69	16

Table 29 illustrates that interviewees frequently referred to traditional dispute resolution methods. 13 interviewees made references to the judiciary and 8 of them to the court, 4 interviewees referred to court order, two to the lawyer, one interviewee referred to the judge and prosecutor. Additionally, interviewees made references to various legal regulations while analyzing specific cases that resolved. This shows that while examining friendly-settlement cases, interviewees still pay attention to the concepts of traditional dispute resolution. While it is compared with references to ADR, the effect of legalism during dispute resolution can clearly be observed. Except mediation, they do not give reference to ADR as frequently as they do to the judiciary.

Table 30 Number of References to ADR

Method	Number of References Coded	Number of Sources Coded
Mediation	34	14
Facilitation	7	4
Negotiation	6	4
ADR	6	2

Both the education and training background of interviewees affect their legal approach. In relation to this phenomenon, interviewees do not perceive the ombudsman process as an ADR method and make distinct differentiations between ombudsman and mediation. While making references to ADR and traditional dispute resolution, a significant number of interviewees underline the differences between ombudsman and these methods. There are two main approaches emerging from the interviewees' positioning of the ombudsman in relation to these methods. A significant number of interviewees stressed that the ombudsman did not mediate disputes as in classical mediation. The defenders of this approach did not perceive ombudsman as an ADR method but emphasized the complementary aspect of it to traditional dispute resolution. Thus, they position ombudsman as an in-between to both. An interviewee stated that:

We find the relevant administrator, bring that event up, bring the parties together when necessary, and try to put them into practice through senior executives. I think this is very important because even the courts cannot do this. The court makes its decision. It is again left to the initiative of the relevant department whether to implement it or not... Also, the court decision only

binds those parties, but as I said, here, by changing this rule and practice, we are making friendly settlement for many similar disputes apart from that person. It is also very important in this respect. This is another difference from judicial decisions.⁹⁴

Why did interviewees differentiate ombudsman from ADR mechanisms, especially mediation? The first reason of this is related to the perception of mediation. Almost all interviewees have a legalistic approach towards mediation. This approach rests on a conception of mediation centered on legal mediation compulsory for labor and commercial disputes before going to court in Turkey. The Law on Mediation in Civil Disputes, no. 6325, entered into force in 2012. Although there was a discussion on allowing civil people to become mediators, the Bar Associations were strongly against the idea and enforced bureaucracy and the judiciary to give authority to only graduates of law school to be mediators (Kalem, 2010). Mediation has been used in labor and commercial disputes in the Turkish context for years. When sharing their opinions about mediation, almost all interviewees compared it with legal mediation:

There is a difference between mediation and what we do. It is also different from facilitation. It overlaps in terms of general logic, but its details are different. In mediation, you bring the parties side by side; you see the right and wrong without directing them...⁹⁵

Consequently, personal traits of interviewees show that their education and training backgrounds are effective on their dispute resolution skills and their perception over the ombudsman process. Although interviewees also received trainings in ADR and mediation, they had more intense trainings in legal affairs.

⁹⁴Interview number 20.

⁹⁵Interview number 18.

They use their legal knowledge based on their education and trainings widely during the resolution. In relation with this phenomenon, they referred to traditional dispute resolution methods more than ADR. They also do not see the ombudsman as an ADR and mediation by comparing it with legal mediation.

5.2.4.2 Nature of the Dispute

As aforementioned, Turkey's ombudsman institution does not have a limited scope in terms of areas of activities. Nevertheless, as it is revealed during the interviews, the nature of the dispute between citizens and public institutions subject to complaint affects the ombudsman's dispute resolution capacity. The nature of the dispute emerged as a crucial factor in enabling or disabling the ombudsman's resolution capabilities by determining interaction among the parties.

Several quotes from the interviews reveal that the parties are open to collaborate for the resolution of minor disputes. As well as requiring less time and effort for resolution, minor disputes are resolved interactively most of the time. Thus, they increase interaction among the parties. As an interviewee noted:

Whether the request will be fulfilled quickly or not is an issue. Sometimes there is a simple thing, if you talk to the public institution subject to complaint, the issue will be resolved. An applicant says that the institution he worked did not give him a computer. Now why should I get up and solve it via official correspondence? I make a phone call and ask why they don't give a computer to that person. "What is the problem? Give a computer to that person, he wants to work." As I said, the nature of the dispute is effective in terms of whether a friendly settlement can be made.⁹⁶

Minor disputes can be related to various issues. For instance, there are a significant number of cases regarding information request from public institutions

⁹⁶Interview number 3.

subject to complaint regarding a problem. Those who do not receive a response to their petitions usually apply to the ombudsman. Thus, rather than demanding a comprehensive resolution, these cases are built on a response to information request. In most of these cases, ombudsman make phone calls rather than face-to-face meetings or following official correspondence. As well as minor disputes, the ombudsman adopts more interactive resolution techniques in resolving emergent disputes. Ombudsman receives applications related to emergent issues such as violence and health problems and the necessity of interaction between the parties in these cases:

A teacher has not been appointed for the education of a disabled child. At this point, I am looking at the legislation. I call the public institution subject to complaint immediately and solve it. If they give a reason that makes it difficult to solve the problem, I also solve it... If there is an urgency, we are directly dealing with the issue. We are in direct contact with the public institution subject to complaint to act faster in emergent issues... In cases related to women's rights or violence, I call the stakeholders immediately, even if I am not responsible for that case... Depending on the urgency, I can call or directly bring the parties together. Sometimes there are things that need to be solved within a certain period; the problem needs to be solved for the citizen as soon as possible. In such cases, we call directly (public institution subject to complaint) in order not to be late. Alternatively, the problem is solved via direct negotiations between the deputy ombudsman and institutions subject to complaint.⁹⁷

In accordance with this issue, the ombudsman can intervene directly in different emergent issues and communicate with relevant institutions. For instance, a significant number of individuals applied to the ombudsman by stating that they had missed the 2017 Public Personnel Selection Examination (KPSS) application deadline and demanded an extension and compensation for their grievances. The officials of the Ombudsman Institution held an emergency meeting with the

⁹⁷Interview number 18.

President and Vice-Presidents of ÖSYM, conveyed the demands on this issue and suggested extending the application period. The ÖSYM took the necessary action in this regard and extended the application period for the exam.

The ombudsman intervenes more directly when there is a deadline for the resolution. For example, a high school student was victimized by the Ministry of National Education's miscalculation of his graduation GPA. Due to this reason, he received a lower score for his university applications. The ombudsman immediately took action and conducted face-to-face meetings with the representatives of public institutions subject to complaint, the Ministry and the ÖSYM. Both institutions took the necessary steps and corrected the mistake, and the student was able to apply to university.

Although the ombudsman is open to the quick resolution of minor and emergent disputes and contacts the public institutions subject to complaint and citizens to do so, interaction among the parties is still limited. The first and foremost reason of this is related to the public institutions subject to complaint abstaining from collaboration to resolve complex issues that may require longer dedication and commitment. As an interviewee stated, “The administration is not open to the resolution of very complex and detailed issues. The content of the case can be very comprehensive. We cannot do anything with such cases.”⁹⁸ Since the resolution of these cases require time and effort commitment, public institutions subject to complaint abstain from face-to-face meetings. Rather, they direct citizens to apply to the judiciary. An interviewee noted that:

⁹⁸Interview number 10.

If the conflict is too comprehensive, it becomes more difficult to resolve. It also requires other actions. If it becomes so complex, it is very difficult to resolve. The administration probably comes to the stage of saying that I can accept the resolution only if I get a judicial demand. Thus, friendly settlement becomes difficult.⁹⁹

Especially for comprehensive and complex cases, public institutions subject to complaint do not prefer to engage with the parties. They prefer to follow official correspondence rather than starting informal talks. Thus, although it is easier to follow an interactive dispute resolution process by face-to-face meetings or by phone calls, comprehensive and complex disputes can be resolved mostly with an official correspondence if public institutions subject to complaint agree on it. The cases are mostly directed to the judiciary if public institutions subject to complaint abstain from collaboration.

5.2.4.3 Resolution Strategy

The ombudsman's resolution strategy during friendly settlement determines its function during the resolution. Resolution strategy is determinant on "whether ombudsman takes an initiative in proposing solution to the parties, trying to find a way for mutual agreement, following the post-agreement phase and directing the parties for alternative solutions". During the interviews it is revealed that the ombudsman uses directive resolution strategy more rather than non-directive strategies and it decreases interaction among the parties. Rather than negotiating possible resolutions with the parties, the ombudsman make its own decisions on a

⁹⁹Interview number 17.

significant number of cases and directs the resolution to the parties. While this strategy increases the ombudsman's one-sided intervention to the dispute, it does not bring further interaction among the parties.

Although friendly settlement depends on non-directive resolution strategy in general, the ombudsman uses directive strategies more in the Turkish case. At the first glance, this seems like a paradox, particularly because the ombudsman does not have any formal leverage against public institutions subject to complaint.

Nonetheless, as was implied during the interviews, one of the reasons of this phenomenon is the difficulty of adopting integrative problem-solving¹⁰⁰ depending on a win-win approach. Interviewees perceive dispute resolution as an adversarial process. A significant number of interviewees underline that the ombudsman cannot find a middle ground for both parties. Thus, the resolution should be directed for the parties even if their demands are also taken into consideration. As an interviewee implies:

Now, when you say settlement in interpersonal disputes, it seems to be understood that two people in dispute are at two points far from each other. Thus, there should be an effort to find the middle ground and reconciliation. Both parties should give up something, accept some others and find a middle ground. But this is not possible in our legislation and administrative law.¹⁰¹

¹⁰⁰The integrative problem-solving approach depends on the idea of "nonobvious solutions to conflict that reconcile the parties' interests and yield a higher joint benefit than a single compromise could create" (Bazerman, 1983). In the integrative problem-solving approach, the interests of parties rather than positions became important. Rather than maximizing one party's gains that result in imposed oppressive outcomes; the integrative problem-solving approach creates mutually acceptable solutions (Kriesberg, 2012). It brings mutual gains by "separating the people from the problem, focusing on interests rather than positions, inventing new options for mutual gain and producing objective criteria for problem-solving" (Fisher & Ury, 1991, 135-137). Thus, parties focus on maximizing their gains and minimizing the cost by focusing on their interests rather than positions. This enables them to "reconcile differences in a way that addresses the parties' most pressing needs and concerns" (Thompson, 2009, 102).

¹⁰¹Interview number 16.

Another issue regarding directive resolution strategy is directing the parties in each step during the resolution. Although the ombudsman cannot enforce parties to accept any solution, it directs the parties in each step by telling them what they should or should not do. An interviewee stated that:

We are calling to inform the citizen. We say: “We talked. Your problem will be resolved, they will contact and inform you. You should follow the process. If your problem is resolved, inform us.” When the applicant returns, we are also relieved. We say “OK, let’s close the case” ... If the stakeholders do not comply with the decision, we call the citizens and say: “You can apply to the relevant judicial branch and open a lawsuit.” We give advice. Moreover, if the process takes longer, we inform the citizens: “Your litigation period has started, we are still investigating, but the time limit to apply to the judiciary has been activated. If you want to file a lawsuit, you should do so in order not to lose your right.”¹⁰²

As well as directing citizens, the ombudsman convinces and directs public institutions subject to complaint to accept the solution regarding their investigation and providing information functions. In general terms, one of the major functions of the ombudsman is investigating wrongdoings of public institutions and providing necessary information to the public (OECD, 2018). It is revealed during the interviews that the Turkish ombudsman is broadly adopting investigation and providing information missions during the friendly-settlement process. This decreases interaction between the parties by allowing the ombudsman to investigate wrongdoings, offer possible solutions to parties and inform the stakeholders and citizens during every stage of the process. Interviewees reveal that the ombudsman conduct a comprehensive investigation to understand the root causes of the dispute. An interviewee stated that:

¹⁰²Interview number 2.

I get to the investigation and research phase. I demand information and documents from the administration. For example, the citizen applying to us claims that she/he has been victimized. We ask the administration. Then we get the insight information about the affair. The citizen does not provide some details. For example, she/he says, "I was not appointed to a position while someone else was". I am investigating. Then I find out that the spouse of the appointed person was cancer, his place of duty has been changed because of this reason. When I find out the truth, I inform the applicants accordingly.¹⁰³

In the same direction, another interviewee pointed out that the ombudsman conducts comprehensive investigation to eliminate misunderstandings between the public institutions subject to complaint and citizens:

Sometimes this happens: the situation expressed by the citizen does not coincide with the case. Then friendly settlement becomes hardly possible... Generally, my main concern is what the citizen wanted to say. I try to understand what the problem was and why the citizen felt aggrieved. Of course, then I try to find the legal justification for this and talk to the administration... I am trying to understand whether this is the truth of the matter, no matter how aggrieved the person feels, or whether there is a mistake in the administration's action.¹⁰⁴

As ombudsman investigates the dispute, it also directs the resolution to the parties. After completing the investigation stage, ombudsman works on the possible solutions for the dispute. If there is a grievance for the citizen, the ombudsman tries to convince public institutions subject to complaint to correct wrongdoings. On the other side, if the public institution subject to complaint does not violate the rights and equity of the citizen, ombudsman explains the reasons of why the dispute is not resolved for the good of the citizen. An interviewee explained that:

¹⁰³Interview number 3.

¹⁰⁴Interview number 14.

When we understand the issue after examining the file, we say, "this is the legislation of this issue, the administration may have made such a mistake regarding this issue". When we talk to the administration officials, we say, "Although you have always solved this issue in this way, there may have been an error or mistake here, re-evaluate".¹⁰⁵

The dominance of investigation and providing information functions during the friendly settlement of disputes increases the ombudsman's one-sided intervention to the process. Although the ombudsman's one-sided intervention to disputes may not bring a resolution in every case, it still creates satisfaction for citizens in the sense that their voice is heard. Citizens become satisfied with discussing their problems and getting a response from the public institution. As an interviewee exemplifies:

Sometimes you can also see this. Citizens may be wrong, but we have examined and investigated the case. We wrote a convincing reply to them. Despite the rejection decision, they may still be satisfied. Because they see that they are taken seriously and cared by the state. For example, the citizen went to the government office, no one listened to their problems properly. In fact, if this citizen finds a public official who listens and understands the problems there, and explains it to him in an understandable, convincing, and reasonable way, it will not be a problem. Maybe he won't apply to the ombudsman. Maybe he will not sue. However, there are many people who cannot find this unfortunately.¹⁰⁶

As well as facilitating hearing the voices of citizens, the ombudsman's intervention to the process and dealing with their problems increases the trust in state and public institutions. An interviewee explains that:

¹⁰⁵Interview number 15.

¹⁰⁶Interview number 16.

It increases the trust of citizens in the government. We listened to the citizen, and we dealt with the problem quickly. I saw many applications where citizens said such words: “I am not alone now. Nobody answered me, nobody listened to me. You did, God bless you. When you listened to me, I felt that I was not alone.” Moreover, if the administration solves the problem, they say, “So the state does not always say ‘no’ to us”. Their trust in the state increases in terms of both ombudsman and the administration.¹⁰⁷

As seen above, the ombudsman’s selection of directive resolution strategy and the use of non-interactive techniques in resolution of disputes mutually feed upon one another. As the ombudsman carries the function of investigating the dispute and directing possible solutions to parties rather than finding a common ground, the interaction among ombudsman, public institutions subject to complaint and citizens become limited. One of the reasons of this behavior is the fear of manipulation of one of the parties in dispute. Some interviewees insisted that the ombudsman should not conduct joint or separate meetings with the parties. A senior official states that, “We need to be careful in our relations with the parties. As we get in more direct engagement, they want us to support their position in the case. Due to this reason, I always pay attention to keeping a distance.”¹⁰⁸

Another issue brought to the fore during the interviews is the ombudsman guiding citizens to make use of other resolution methods. Although the public institutions subject to complaint do not accept the proposed solution, ombudsman guides the parties to apply to the judiciary. Some interviewees stated that they asked the citizens to inform them about the outcome of the judiciary. Thus, they may develop a personal interest about the case and act as an unofficial guide. An interviewee stated that:

¹⁰⁷Interview number 18.

¹⁰⁸Interview number 24.

Of course, you should follow the court decisions. In other words, it is very important that you can predict the possible results in case this matter goes to court... I know that the citizen will sue in this case because we are in constant contact with the citizens. I say, "Please let me know the outcome when you file a lawsuit. Let us see what the court will decide."¹⁰⁹

As public institutions subject to complaint pay more attention to legal proposals, ombudsman offers legal basis for the solution. As an interviewee noted:

First, we tried to reveal the dispute. What is the applicant's request here? What is the action taken by the public institution subject to complaint? What legal grounds did the stakeholder base this on? We are trying to figure this out. We are preparing... We are looking at the previous high court decisions on similar issues. We examine the decisions of the Constitutional Court, the Supreme Court, the Council of State, or the European Court of Human Rights. We strengthen our hand with these decisions... It is difficult to convince the administration, but if there are previous court decisions on matters that the administration does not accept, it becomes a little easier to convince the administrators.¹¹⁰

Although a significant number of interviewees underlined that they direct the citizens in each step of the process, some of them said that they stay in their area of responsibility. These interviewees stated that they should not direct any solution to the parties, but that they must find a middle ground for them. In this perspective, it is possible to find a middle ground by convincing the parties and satisfying their primary needs. For a resolution of a dispute regarding monetary debt, an interviewee was able to find middle ground between the parties by making them a part of the solution. The interviewee convinced the creditor to settle debt and initiate facility for payment while also persuading the debtor to pay the debt in installment:

¹⁰⁹Interview number 20.

¹¹⁰Interview number 21.

They started to think that we are a part of the solution, and we can make the solution. In other words, they had an expectation that we (ombudsman) try to solve it in the way they wanted. There was such a belief. As a result, since they already believed in this, both parties said that ‘I will get what I want most’. So, there was a win-win situation. Considering that everyone is winning to some extent, I can say that the problem was solved in a better way”¹¹¹

It is revealed during the interviews that the ombudsman uses non-directive strategies in joint meetings if the topic of dispute is concerning a significant part of society and is a sensitive issue. In these cases, the ombudsman allows the parties to find a middle ground. This shows that the ombudsman adopts interactive strategies while the dispute concerns a group of people rather than a single individual. While mediation is conducted for intractable and collective disputes, emergent disputes regarding individuals are resolved via shuttle mediation. If there are a high number of applications on these disputes, the ombudsman organizes a workshop and invites all parties to discuss possible solutions. During these workshops, the ombudsman mostly holds a facilitative function. An interviewee pointed out that:

We organize workshops for some issues such as women's rights and animal rights. The applicants are generally people from non-governmental organizations. We invite officials of civil society organizations (NGOs), related administrations, and the press. These are activities that everyone can express their opinions without hesitation. Especially NGOs and citizens can openly make declarations since everyone has the right to speak on that issue. We don't really get involved in discussions. Both before and during the workshop, we just listen, collect information, get their opinions, and then prepare a report. We put forward the views of both sides, and finally we express our own opinion. In that respect, I think it is very useful.”¹¹²

¹¹¹Interview number 15.

¹¹²Interview number 20.

The ombudsman tries to offer changes in disputes regarding structural problems. For instance, although the number of applications on women's rights is low, the ombudsman organized workshops on combating against violence and discrimination against women in 2017. This workshop brought all related public institutions subject to complaint and NGOs and the parties proposed their solution on this issue (*Kadın Hakları ve Ombudsmanlık (Workshop Report)*, 2017). The ombudsman tried to help the parties understand each other's positions without directing them with any resolution. These kinds of meetings empower the ombudsman's function in facilitation and communication as it provides a place for parties to come together and listens to them without intervening in the process. Nevertheless, in addition to providing communication and facilitation, it also gives suggestions for the resolution of the dispute without enforcing the parties to accept the solution. As underlined by an interviewee:

Because in such meetings, everyone can express their opinions without hesitation. Especially NGOs and citizens openly express their views on the subject. We do not really get involved there... We just listen, get opinions, and then prepare a report. We present the views of both sides. Finally, we state our opinion. In that respect, I think it is very useful.¹¹³

When there is an issue in dispute, the ombudsman helps the parties to comprehensively understand the root causes of dispute and each other's perspectives on the solution. The facilitative function of the ombudsman in a joint meeting in the case of 28 February Process¹¹⁴ exemplifies the issue. People dismissed from their

¹¹³Interview number 20.

¹¹⁴The February 28 Process started with the decisions announced as a result of the National Security Council meeting on February 28, 1997 in Turkey. The Turkish military intervened into the state and bureaucracy and the government resigned due to military pressure. This process created an impact especially on higher education as women in headscarves were not allowed to enter university campuses. They were also no longer allowed to work in public institutions. A significant number of women were

jobs during that period applied to the ombudsman for the compensation of their rights. An interviewee describes the meeting as follows:

The parties came together for the February 28 Process. The Ministry of National Education, the State Personnel Department and the applicants came together. The chief ombudsman moderated the meeting. He listened to the parties, and he was in control of the situation. There was also a member of the Human Rights Commission. First, everyone spoke in order. The Ministry of National Education and the State Personnel Presidency took the floor. The possible solutions were jointly discussed. The applications to the European Court of Human Rights (ECHR) were also examined. The intention was finding a middle ground. The applicants wanted to secure jobs for 20,000 people in the public sector. The relevant Ministry offered a 3 percent quota for the recruitments for the next two years. The applicants accepted that offer as it may solve the problems of some people who suffered.¹¹⁵

The ombudsman ensures equal representation of the parties during joint meetings. The ombudsman invites both parties and offers the same chair for both. The disputed issues and demands are discussed to provide equality. An interviewee underlined that:

First, we decided to meet at the Ombudsman Institution. We also had a meeting at the table where the parties were sitting in the same kind of chair. First, I explained the situation and then gave the floor to the applicant and the administration officials in turn. They also presented their approaches to the subject, their demands and suggestions.¹¹⁶

Nevertheless, as is revealed during the interviews, cases where the ombudsman adopt non-directive resolution strategy are limited. Ombudsman does not bring the parties together commonly and allow them to jointly or separately discuss possible solutions in most of cases. One of the reasons of this limitation is the

victimized due to these practices. For more information on the February 28 Process, please see (Aslan, 2016).

¹¹⁵Interview number 6.

¹¹⁶Interview number 5.

limited resources of the institution. Interviewees underlined that it is not suitable to find enough resources to bring the parties together or organize individual face-to-face meetings. An interviewee stated that: “Our workload is overwhelming as we resolve disputes regarding all public institutions. When a single ombudsman institution deals with all public institutions, the function of mediation falls behind. We must reach quick resolution.”¹¹⁷ Another interviewee also brought logistical problems to the forefront:

In mediation, you bring the parties together. You show them the right and wrong. But in our work, we cannot always bring the stakeholders and the citizens together. First of all, not all administrations are based in Ankara. I can't go to Istanbul or Tokat. I'm not going to the countryside.¹¹⁸

In summary, it is revealed during the interviews that Turkish ombudsman uses directive strategies more compared to non-directive strategies during the resolution. One of the reasons of the application of directive strategies is the difficulty in adopting an integrative problem-solving approach and finding a satisfactory solution for all parties. As the ombudsman is perceived as an adversarial process by the interviewees, finding a mutual solution is not the first option for them. Moreover, ombudsman adopts investigation and providing information functions in dispute resolution and these functions cause one-sided intervention of the ombudsman to disputes. In relation to these functions, ombudsman conducts its investigation, informs the parties about the outcome of the investigation, and directs a non-binding solution for public institutions subject to complaint. Although all cases

¹¹⁷Interview number 19.

¹¹⁸Interview number 18.

cannot be resolved with this method, it nonetheless allows for the ombudsman to enable a platform where the voices of the citizens can be heard in the public space. Nevertheless, the ombudsman partially uses non-directive resolution strategies especially for disputes concerning a group of people rather than individuals and when it is a sensitive issue such as human rights, women's rights, and animal rights. In these cases, the ombudsman adopts a facilitative function and bring parties together or organizes separate meetings, i.e., shuttle mediation. During these meetings, the ombudsman allows the parties to discuss the issue and find a mutual ground for possible long-term solutions.

5.2.4.4 Collective Dispute Resolution Capacity

Friendly-settlement is associated with simple cases involving individuals rather than a group of people (Doyle et al., 2014: 33). In this approach, each case should be resolved independent of each other, and individuals need to apply to the ombudsman separately. The Turkish ombudsman institution receives applications per person and opens a separate investigation even if the cases are similar to each other. Nevertheless, if a change in law occurs as a result of resolution, that resolution affects many people and not just an individual. The Turkish Ombudsman Institution receives a significant number of applications for disputes concerning a group of people. Numerous interviewees underlined that although they opened a separate investigation for each dispute, they negotiated with public institutions subject to complaint for similar disputes collectively. An interviewee exemplifies that:

Although it statistically seems that I have resolved around 200 disputes, it would be more accurate to multiply it by 20-30 or even 100. For example, I resolved a case. The applicant was in his 70s, his salary was cut, and he was highly indebted for a mistake that happened 20 years ago. We solved that dispute, but there were many applications like this. As it was also published in the press, there were 700 thousand people in the same situation. The SGK made changes in the regulation for indebtedment. Thanks to these regulation changes, debt is not issued before services are neglected.¹¹⁹

Even if the applications are made on individual bases, the ombudsman settles meetings with public institutions subject to complaint if the dispute concerns a significant amount of people. As the parties' agreement may bring solution for the problems of all people, these meetings are important for increasing the ombudsman's resolution capacity. The issues regarding education and exams are good examples showing this capacity of the institution. An interviewee underlined that:

...We inform the administration that there is such a situation. For example, if it is related to ÖSYM, when there are problems with the application of the exams, it affects so many people. The Chief Ombudsman especially talks with stakeholders (in these cases). There were several meetings with ÖSYM. We received many applications regarding the 15-minute rule in the exams. ÖSYM officials were called to the institution and there had been ongoing talks. For example, one thousand applications were received, all on the same subject. "Look, such a general grievance has occurred" we say to the institution to take this issue into account.¹²⁰

The case regarding the 15-minute rule is a good example of collective dispute resolution. The 15-minute rule enforces candidates to be at the exam building for ÖSYM exams at least 15 minutes before the exam begins. Once this rule had been enforced, some candidates became victims as while they arrived at the place where the exam was to take place, they could not enter the building. This victimization was

¹¹⁹Interview number 20.

¹²⁰Interview number 2.

also featured frequently in the press and among public discussions. Victimized candidates applied to the ombudsman. The Ombudsman Institution organized meetings with ÖSYM representatives to relieve the grievance of victims in 2017. The argument of the Ombudsman Institution was that the candidates who were not admitted to the exam building despite being present before the exam started had been victimized by the wrong action of the public institution subject to complaint- the ÖSYM. Thus, their victimization should be eliminated in a way that would not cause new grievances for the candidates who were entitled to take the exams. Ombudsman also underlined that the ÖSYM's action involved a disproportionate intervention to the fundamental education right. The ÖSYM, on the other hand, stated that this rule was introduced in accordance with the principles of necessity, convenience and proportionality, which were among the general principles of the law, because exam security is duly fulfilled, and the pre-exam procedures are completed before the exam starts. After a long-lasting process, the ÖSYM accepted the ombudsman decision and lifted the rule. This rule was concerning millions of people attending ÖSYM exams. Thus, this is an example of the success of the ombudsman in collective dispute resolution.¹²¹

This example emphasizes that officials from both the ombudsman and public institutions subject to complaint take disputes concerning a large group of people more seriously. These cases also bring senior officials, who facilitate the resolution, into play. As underlined by an interviewee: "Then I inform the deputy ombudsman. Sometimes I even call the chief ombudsman. I know that the chief ombudsman attaches great importance to friendly settlement. Especially if it is a single case but

¹²¹The ÖSYM, on the other hand, brought the 15 minutes rule back in 2018.

the solution may affect many people, I am trying to inform them so we can find a way.”¹²²

Although the ombudsman does not bring citizens and public institutions subject to complaint together and prefers to organize separate meetings with the parties, there are some examples of joint meetings for collective and emergent disputes. An interviewee talked about a dispute concerning a local administration and a group of citizens and how a joint meeting with the parties resolved the dispute:

It was a problem between a municipality and citizens. Citizens living in the slum had applied collectively. A housing project was being built by the municipality where their own slums were located. Citizens did not like the housing options offered to them. A meeting was held regarding these issues... The meeting was moderated by the Chief Ombudsman. I also joined to the meeting. Both parties also attended... Although the parties were aware of the issue, we first conveyed the wishes of the parties to the municipality. They said that they could find a suitable solution and a middle ground... After receiving a positive response from the public institution subject to complaint, we settled the case through mediation. We had positive results. At the meeting, we informed the parties about the subject, what could be done, how the administration could follow its way, and how to find a middle ground. Both sides expressed their demands. They discussed the possibilities. It was a very productive and positive meeting.... As a result, both parties were satisfied. The administration was somehow convinced. It even kindly helped the citizens. The problem was positively resolved.¹²³

Thus, disputes regarding a group of people rather than single individuals enable interactive resolution. Nevertheless, resolving disputes collectively is criticized for being against the ombudsman’s rule. Some interviewees differentiate collective and individual dispute resolution and underline that the ombudsman must deal with applications on an individual basis. An interviewee put forward that: “There is a legal rule: the annulment decision only binds individuals, not all people. I

¹²²Interview number 17.

¹²³Interview number 9.

think this was our starting point. If a decision is taken, it has to concern only the applicant.”¹²⁴

Another difficulty regarding collective dispute resolution is the failure of public institutions in cooperating for collective disputes if it requires a change in existing rules and regulations. As the change in rules and regulations require a long-lasting process, stakeholders become resilient against the resolution of these disputes even if they recognize the victimhood of citizens regarding wrongdoings of the institution. In the words of an interviewee: “Public institutions subject to complaint solve an individual dispute more easily. However, they demand a formal document from us on a regulation change that will affect everyone.”¹²⁵

Thus, although the ombudsman does not have a collective dispute resolution authority in its jurisdiction, it *de facto* uses collective dispute resolution in practice. The issues concerning a significant number of people are resolved with collective negotiations. Although individuals can apply to the ombudsman on their own, the problem of people experiencing the same problem can be discussed collectively as the ombudsman organizes meetings for them. Due to this, collective dispute resolution increases informality and interaction in the ombudsman context even if it is used limitedly.

5.2.5 The Attitude of Parties to Friendly-Settlement

¹²⁴Interview number 13.

¹²⁵Interview number 18.

5.2.5.1 Ombudsman's Attitude

The ombudsman's function in the public sector has always been a puzzle. Although it is an independent and neutral body, its relations with the public sector is not clearly defined. How does the ombudsman stay neutral to public institutions even though it is also a part of the public administration system? Should the ombudsman favor citizens- a less advantageous party in dispute- against public institutions to remove inequality between the parties? As is observed in the Turkish case, the ombudsman does not have a singular position against public institutions subject to complaint and citizens during the process. The ombudsman's attitude to the parties changes according to some factors.

One of the determinants of the changing attitude is the ombudsman's position during the resolution of the dispute. A significant number of interviewees stated that although the ombudsman is independent and neutral, the power imbalance between the parties, i.e., public institutions subject to complaint and citizens, enforces them to make positive discrimination towards citizens. These interviewees underline the ombudsman's advocacy function that protects the rights of citizens against powerful public institutions. These interviewees defined the ombudsman as the "people's lawyer":

Public institutions subject to complaint are always stronger, but the function of our institution emerges at this point. We act as a bridge between the government and the citizens. When we convince both sides of the dispute, public institutions subject to complaint begin to compromise its power. In other word, they compromise. Ultimately, this process starts working in their favor, too. Even if they don't say it, they show it with their actions. The citizen is

weak at first, but with our support, the problem is solved... the citizen also comes to a stronger position from the weak position.¹²⁶

Some interviewees say that they feel a personal connection to some citizens due to their similar backgrounds. The social status of citizens may create a closeness between them. With this, they dedicate more time and energy to solve the disputes.

An interviewee stated that:

I have always and without exception felt closer to the citizen. Because no one gets into action without a problem. Something has happened. Applications for exams come to me in this unit, and I generally receive applications about the Credit and Dormitories Institution. I was a student until recently. I feel such closeness. I love that subject very much and I always think about how I can contribute to students. I am working on how I can solve the student's problem in this case... there were cases where I spent more time because of it.¹²⁷

In line with ombudsman being the “people’s lawyer”, some experts emphasize that they have a biased approach towards the parties during the dispute. As they try to defend one party over another, they are not impartial and neutral as the ombudsman. An interviewee indicates on the issue as follows:

Let me also say that it is not a mediator activity. It is a little confusing. Because the mediator has nothing but brings the parties together and waits for their agreement. We do not do that, we act as a party, of course, not in every case, but in a sense, we act as a citizen's advocate in cases where we think the citizen is right.¹²⁸

Nevertheless, almost half of the interviewees think that they act impartial and stay neutral during the resolution of disputes. These interviewees frequently quoted a

¹²⁶Interview number 15.

¹²⁷Interview number 13.

¹²⁸Interview number 20.

phrase of the Chief Ombudsman: “We are with the citizens but not against administrations”. An interviewee underlined that they should stay neutral to protect objectivity:

I think we are equal on both sides. In other words, we are neither on the side of the citizens nor on the side of the institutions. We examine applications completely objectively. We see whether the person is right, or the institution is right. That is, we stand on the side of the administration if priority should be given to the administration, and on the side of the citizen if the citizen is right. We act with this principle in our decisions. Therefore, I would not say that we are with this or that.¹²⁹

A significant number of interviewees used the words of “being reasonable” and “fairness” while describing the ombudsman’s approach to the parties. They underlined that they did not favor one party over the other in general, but that they were more protective towards the victimized party as it was related to the principle of equity. Thus, although they paid attention to the principles of impartiality and neutrality, they thought that the ombudsman should protect the rights of the victimized party in the dispute in accordance with equity, which is among the principles of the institution. An interviewee said that:

I am on the side of the party that the law and justice is with. I see the institution objectively in this sense. We must be objective anyway. Nevertheless, while being objective, there are things that differ us from the judiciary. Most importantly, we not only look at the law, but also at compliance with equity. This is the reason why the ombudsman is called “the people's lawyer”.¹³⁰

¹²⁹Interview number 8.

¹³⁰Interview number 18.

Another interviewee was against the definition of “people’s lawyer” and underlined that the ombudsman does not take any side during the resolution:

We are an in-between institution. But we are neither against the government nor the citizens. We are not the citizen's lawyer. We do not look at it from one side... We seem to be on the side of the citizens, but I think we are not on either side. In fact, the place where we try to stand the most is where justice and law lies.¹³¹

To sum up, the ombudsman’s attitude towards the parties change according to individual approaches. Some interviewees see the ombudsman as the people’s lawyer and are more protective towards citizens than public institutions subject to complaint. Their personal experiences and closeness with citizens are also determinant on favoring citizens during the resolution. Nonetheless, some interviewees underlined that the ombudsman should protect the principles of equity and act in line with them. Although unconditional impartiality and neutrality is difficult to achieve in the Turkish ombudsman’s context, the principle of equity should be provided to protect fairness in resolution. Thus, while examining the third-party function of the ombudsman, it is seen that the institution does not fully act neutral and even favors one party over the other.

5.1.1.1 The Attitude of Public Institutions

The outcomes of interviews depict that the attitude of public institutions during the resolution is another factor undermining the ombudsman’s dispute resolution capacity. As Turkey has other public auditing institutions, public

¹³¹Interview number 14.

institutions subject to complaint cannot comprehend the function of Turkey's ombudsman institution.¹³² Public institutions subject to complaint did not collaborate with the ombudsman especially during the early years of its foundation. The most common reason of the dismissive attitude, described by the interviewees, is prevalent maladministration in public institutions. These institutions fail to take any action to correct their unlawful actions and wrongdoings as they have been implemented for a long time. Since these actions and practices become the rule for the institution, they do not accept any recommendation to correct them. An interviewee stated:

As I just said, if there is something that the administration has a general practice in the first place and that the administration does not have the willingness to change, we cannot proceed much with friendly settlement. The administration may have established practices or ongoing practices despite judicial jurisprudence. However, we write the decision... The administration says that even if it is based on very clear jurisprudence, "the practices and legislation are like this, I can't fix it"... I am sure that there are times when we have very strong decisions, but there are times when the common administration practice cannot be implemented because it is otherwise... There are many applications about social security. The established practices of the administration are main obstacles to this. Even established jurisprudence can be the exact opposite of the administration's practice. If the administration has adopted the practice, if it has continued to implement it despite a long time having passed, it is very difficult to convince those who implement it otherwise. This is the biggest obstacle.¹³³

¹³²There are various public institutions in Turkey auditing the public sector. The State Supervisory Council of Turkey has a right to "conduct all administrative investigations, inquiries, investigations and inspections of all public bodies and organizations" (Article 108 of Constitution of Republic of Turkey, 2017). The TGNA also has a power for "obtaining information and supervision by means of parliamentary inquiry, general debate, parliamentary investigation and written question (Article 98 of Constitution of Republic of Turkey, 2017). The Court of Accounts is "charged with auditing, on behalf of the Grand National Assembly of Turkey, revenues, expenditures, and assets of the public administrations" (Article 160 of Constitution of Republic of Turkey, 2005). Public institutions are also supervised by judicial bodies (Şen, 2013). Nevertheless, the ombudsman is the only institution in Turkey that has the right to start an investigation with the application of citizens.

¹³³Interview number 14.

Another interviewee said that public institutions subject to complaint occupy the ombudsman institution by not answering the demands properly when corrections of their wrongdoings are demanded:

The administration has an established practice. We had a lot of contact with this... The administration gave a positive answer at first, saying "I will ask my manager". We put that file on hold. We wait, a week passes, two weeks pass, if there is no result, we ask again by phone. Or by e-mail. Here, it is obvious that the administration will or will not solve the problem... Those who do not do so are in the way of postponing: "We will send it today", "we will send it tomorrow", "it happened, it will happen like this".¹³⁴

Another reason of the negative attitude is the fear of work overload. As underlined by interviewees, public institutions subject to complaint have a fear of work overload if they start to correct their wrongdoings. They fear that these corrections may set an example for other cases, and that they will have to resolve all disputes related to the same issue. An interviewee gives an example of a case that the public institution subject to complaint did not collaborate because of it:

The lady who examined the file thought that it was a large-scale thing, and she didn't give up on her idea... For example, I can say this in the case of ÖSYM or very large administrations. They are very afraid that once this road is opened, it will not end. "We're going to do this to a citizen, it's exceptional, but what are we going to do when others ask for it." they say... They also say, "This will pave the way for other solutions we've made. We can't handle this as a workload."¹³⁵

It is underlined that the attitude of the public institutions subject to complaint is more positive as the recognition of the ombudsman increases. Another factor

¹³⁴Interview number 13.

¹³⁵Interview number 17.

promoting positive attitude on the stakeholder side is the existence of executives adopting a cooperative approach and breaking customary practice in the institution.

For instance, the approach of the Ministry of Finance is almost the same as it was in 1980. There is a customary practice in the institution. It is hard to break it. The Ministry of National Defense has the same problem. Nevertheless, executives have a more flexible approach in some institutions. When things are blatantly wrong, they could say let's do it for this time.¹³⁶

Another issue increasing the positive attitude of public institutions subject to complaint is related to the division of public administration in Turkey as powerful center and weak periphery. A significant number of interviewees stated that local public institutions subject to complaint are more open to collaborate with the ombudsman. As an interviewee underlined, the fear from central administrations is the main motivation of this attitude: "Local government administrators are relatively more accountable. They prefer this method because they are afraid of public pressure"¹³⁷. Another interviewee gave an example of a case where she called a local official who started crying after hearing the application of the citizen regarding his/her wrongdoing¹³⁸.

As a result, although the attitude of the public institutions subject to complaint towards the ombudsman is changing positively, they are still not open to collaborating in the resolution of disputes as intended. The major reason for this dismissive attitude is prevalent maladministration that causes failure in taking any action to correct unlawful actions and wrongdoings by public institutions subject to

¹³⁶Interview number 2.

¹³⁷Interview number 1.

¹³⁸Interview number 13.

complaint. Another reason of this behavior is the fear of work overload related to the increasing demands for corrections of all wrongdoings as the resolved cases may set an example.

5.3 Conclusion

This chapter provides an analysis of the use of friendly settlement in the Turkish context. The first section of the chapter covers the quantitative analysis of 1003 friendly-settlement cases in order to be able to observe the patterns of the resolution. The analysis illustrates that Turkey's ombudsman institution diverges apparently from general trends of the use of friendly settlement. Although it is a method allowing for the informal and interactive resolution of disputes based on the direct engagement of all parties in the process by not requiring long-lasting formal correspondence, the use of friendly settlement in the Turkish context depends on formal correspondence with a limited use of mediation and negotiation during the resolution process.

Although data provides limited information on the applicants' profile, the Turkish Ombudsman Institution serves for a more divergent population. The rate of female applicants is higher than males, and applications from children are low. Nonetheless, when it comes to region and residency, there is not the same divergence in the cases. The ombudsman serves for urban residents coming from highly populated western regions of Turkey in friendly-settlement cases.

As was discussed earlier in this chapter, friendly-settlement cases resolve disputes with education-related institutions more compared to others. It is also

limitedly used for disputes with local administrations. This may bring the conclusion that the relationship between central and local administrations are more limited or it is difficult to engage in an interactive dialogue with local administrations because of physical distance. Nevertheless, when I analyze the duration of resolution with local administrations, I see that although the cases resolved with local administrations only consist of 12,01 percent of all cases, they are resolved in 66,69 days in average by decreasing 76,26 days in average for all cases. This shows that local administrations arrive at a solution with ombudsman and citizens faster compared to central administrative institutions.

The cases also show that although friendly settlement promotes informal and interactive resolution methods such as face-to-face meetings or shuttle mediation and negotiation in nature, providing information and investigation are the most used methods in the Turkish case. Only 15,3 percent of the cases are resolved with mediation. The use of mediation is mostly limited to education and training and economy, finance, and tax issues. Although there is a limited use of mediation, this method provides a better solution of disputes as 94,1 percent of mediation cases arrive at a full solution. Moreover, mediation is mostly used for the disputes that concern a significant number of people as 90 percent of mediation cases have a high degree of collectivity.

The lack of interactive communication is also observed in the use of resolution tools. Rather than engaging with face-to-face meetings or phone negotiations, ombudsman uses mails to get in contact with public institutions subject to complaint and citizens. 86 percent of the cases depend on official correspondence to a certain extent. In accordance with the broad use of non-interactive tools during

the process, 50,5 percent of the cases are entirely based on a non-interactive mode of resolution, while only 14,2 percent of them are organized as a fully interactive resolution process. As education-related institutions use mediation more often to resolve disputes, the number of interactive cases are higher in these institutions.

The second part of this chapter analyzes the factors determining the use of friendly-settlement in the Turkish context. As quantitative analyzes reflect that friendly settlement does not bring the dominance of interactive and informal resolution in the end, qualitative data provides further explanation on this phenomenon. I analyze qualitative data via five main factors determining the ombudsman's interactive and informal dispute resolution function as the third party. These are authority, flexibility, network, dispute resolution capacity, and attitude. All of these factors determine the ombudsman's dispute resolution capacity to some extent. As the ombudsman does not have a binding power over public institutions subject to complaint, it uses some informal leverage mechanisms including its moral authority arising from its relations with the TGNA, parliamentary hearings, and the chief ombudsman's positive reputation to increase its power. Nonetheless, the non-binding decision-making of the ombudsman, the lack of recognition towards the institution in the public sector, and the inefficiency of the 'expert' title in bureaucracy are the reasons of low intervention capacity of the ombudsman.

In terms of flexibility, the ombudsman has a right to follow informal and flexible resolution processes. There is not any protocol limiting the use of these methods. Experts also do not have to follow formal correspondence. Nevertheless, ombudsman mostly follow formal correspondence due to the lack of trust and settled practices in bureaucracy. The dominance of bureaucratic legalism paves the way for

using legal rules to convince the parties rather than finding mutual interest in most of the cases.

Network is another major issue influencing the ombudsman's interactive and informal dispute resolution function. As the ombudsman is a newly established institution, it has not yet built powerful networks with other public institutions subject to complaint. Thus, individual networks between senior officials and experts of the institution with the stakeholders are more effective in resolution. Although individual networks facilitate interactive resolution in some cases, it does not help adopting interactive approach in all cases. The lack of powerful institutional relations creates deficiencies for interaction between the parties.

Dispute resolution capacity comes to the forefront around four factors: personal traits of experts, nature of the dispute, resolution strategy, and collective dispute resolution capacity. Personal traits of interviewees show that experts having intense training in legal affairs and using legal knowledge more in the resolution of cases causes the dominance of legality in the ombudsman case. Rather than having an ADR-oriented perspective, staff evaluate the ombudsman process as the complementary of judicial process. The nature of dispute is important in adopting informal and interactive resolution as comprehensive and complex issues require formal correspondence and public institutions subject to complaint tend to resolve minor and emergent issues more with friendly settlement. When it comes to resolution strategy, the ombudsman uses directive strategies more due to the lack of a mutual problem-solving approach. The lack of this approach results in adopting investigatory and informatory functions rather than mediation. Nonetheless, when it comes to comprehensive or structural problems on the rise, such as women's rights

and animal rights, the ombudsman adopts more interactive methods. The limited collective resolution capacity of the ombudsman also causes a lack of interactive and informal solution. Even if the ombudsman cannot resolve disputes collectively due to legal restrictions, it discusses the cases on the same issue collectively. Even if this practice increases collective dispute resolution capacity, it cannot be used for all cases.

The final issue is attitude. The attitude of the ombudsman and public institutions subject to complaint also influences the resolution process. On the ombudsman side, some experts have a biased approach rather than a negative attitude towards the parties. This increases the ombudsman's advocacy rather than intermediary capacity. On the stakeholders' side, prevalent maladministration causes negative attitudes to collaborate for resolution. They do not want to change existing rules and regulations as they have been implemented for a long time. Moreover, since they have a fear of work overload, they do not want to get in collaboration with the ombudsman. Even though the ombudsman's increasing recognition decreases negative attitude to some extent, it has not yet created the intended result.

CHAPTER VI

CONCLUSION

In this chapter, I conclude the study by discussing the reflections of the findings of the study. In the first part of this chapter, I discuss the factors affecting the ombudsman's third-party function in friendly-settlement cases in relation with their influence over informality and interaction in the Turkish context. In this section, I also evaluate the effect of bureaucratic legalism in Turkey over the ombudsman's use of interactive and informal dispute resolution in detail. The findings of this study depict that in relation to the factors regarding the ombudsman's institutional deficiencies, the legalistic bureaucratic tradition in Turkey limits the ombudsman's informal and interactive resolution capacity. In the second part of the chapter, I evaluated how the findings of this study contribute to ombudsman literature and also made suggestions on future research directions. In the third section of this chapter, I tried to frame policy implications for overcoming restrictions in Turkey's Ombudsman Institution. In addition to policy implications on changes on an institutional level, this section also offers changes in the public administration system to overcome system-oriented limitations.

6.1 Discussion of Findings

In this study, I focus on how the ombudsman functions as the third party based on the following questions: “*How does the ombudsman function as a third-party between public institutions and citizens in Turkey?*” and “*Which factors facilitate or undermine the ombudsman’s third-party function?*” In accordance with the aim of understanding the ombudsman’s third-party function, I firstly focus on the ombudsman’s diversifying function since the 1970s. Although it has been established as an institution dealing with public disputes to increase accountability in public services and bringing good governance and collaborative governance principles, the ombudsman also had a legal function in relation with its position against legal affairs. Nonetheless, its diversifying role since the 1990s brought the human rights function of ombudsman to the forefront. The ombudsman’s role in promoting democracy in developing countries is discussed in relation with the institution’s human rights function.

Long-lasting discussions on ombudsman in the Turkish context varied in line with the ombudsman’s changing function in the world. The early discussions during the 1970s and 1980s focused on the ombudsman’s contribution to build more accountable and transparent public administrations and fight against corruption. Moreover, the ombudsman’s contribution to reduce the workload of the judiciary was underlined as an advantage. By the 1990s, the ombudsman’s contribution to democracy and human rights was the main focus.

The dispute resolution function of the ombudsman did not draw attention for a long time in Turkey or across the world. Although some early studies mentioned

the dispute resolution function of the ombudsman briefly, it has not been the main focus of the studies. One of the reasons for this situation was the difficulty of accessing empirical data to examine this function in detail. Confidentiality of ombudsman cases made it difficult to observe the process and access cases. Despite all the difficulties, interest in the dispute resolution function of the ombudsman has increased. As a public agent, the ombudsman is an important way of resolving disputes regarding public administrative issues.

In Turkey, the Ombudsman Institution began to discuss methods to increase the dispute resolution function of the ombudsman since its foundation. In this direction, friendly settlement has been used as a new method since 2017.

The quantitative analysis of friendly-settlement cases reveals a puzzle. While friendly-settlement foresees informal and interactive dispute resolution methods in the ombudsman context, the Turkish case shows difference by bringing a formal and non-interactive solution to the picture. Quantitative data shows that a significant majority of the cases are fully or partially resolved with official correspondence. Thus, formality is the prerequisite for the administrative process in the Turkish case and the number of fully interactive cases are limited. Since quantitative data cannot provide an explanation to this puzzle, semi-structured interviews with experts and senior officials helped to explain the factors causing deviations from the general trend. Furthermore, empirical data also enables to understand the ombudsman's third-party function in dispute resolution that is not studied widely in the literature due to a lack of data.

This study shows that the assumption in the literature that friendly-settlement brings informality and interaction is not always valid. Although scholars such as Levine-Finley & Carter, Langbroek & Rijpkema, Doyle et al. associate this method with informality and interaction, the findings of this study reveal that friendly-settlement is not always an informal and interactive method. The analysis emphasizes that the ombudsman's third-party function is dominated by its investigatory and informatory roles rather than mediation in friendly-settlement context.

The factors creating this phenomenon is not only related to the ombudsman's own characteristics, administrative culture and the bureaucratic culture in which the institution takes place are also effective. Data shows that there are a couple of factors behind the wider use of non-interactive and formal dispute resolution methods. I discussed these factors under five categories; authority, flexibility, network, dispute resolution capacity, and attitude. Ombudsman literature widely problematized the lack of authority (Hill, 1974; Rowe, 1991). Nevertheless, ombudsman's authority is entitled as "moral authority", "legal authority", or "constitutional morality" arising from its relations with the parliament and being a "people's defender" in the public sector (Creutzfeldt, 2016; O'Brien, 2015). Hill referred to this as "apparent effectiveness despite minimal coercive capabilities" (Hill, 1974). Data illustrates that although Turkish ombudsman widely uses moral authority, this only contributes to the ombudsman's dispute resolution capacity to a limited extent. Ombudsman's relations with the parliament and the personal power of the chief and deputy ombudsmen contribute to the institution's authority to some extent. The ombudsman adopts naming and shaming techniques by inviting public institutions subject to

complaint not complying with ombudsman decisions to a meeting in parliament. Moreover, the ombudsman praises public institutions subject to complaint collaborating in the process in both annual reports and parliamentary meetings with the aim of encouraging them. Nevertheless, these kinds of informal leverage and incentive mechanisms are not enough to overcome resilience in Turkey's bureaucratic tradition. The ombudsman's lack of authority results in less interaction between the ombudsman and public institutions subject to complaint. As the ombudsman's decisions have no binding power over public institutions subject to complaint, institutions abstain from cooperation. The lack of legal coercive mechanisms leads to a low recognition of ombudsman in the public sector.

Another reason for the lack of interaction and informality is flexibility. Flexibility empowers resolution capacity in dispute resolution by enabling the use of multiple strategies (Wall & Kressel, 2012: 407). Ombudsman can design resolution processes in which parties do not have to deal with paperwork and bureaucracy. A USA ombudsman summarizes this situation by stating: "There are few professions in the world that are so affirming and have no paperwork." (Levine-Finley & Carter, 2010: 138).

Turkey's Ombudsman Institution can design its own resolution without necessarily requiring any formal contract. There is no requirement for official correspondence in the resolution process, as verbal discussions are enough for this stage. However, flexibility is not adopted in the resolution and is not widely approved by public institutions subject to complaint in the Turkish case. My analysis highlights that the main reason of the low approval of flexibility is mainly related to bureaucratic legalism in Turkey's public administration. Kagan defines bureaucratic

legalism as “a policy-implementing or decision-making process characterized by a high degree of hierarchical authority and legal formality” (Kagan, 2001: 11). It is the opposite of a negotiation/mediation decision-making style based on an informal and participatory process. As Kagan underlines, it is much more based on “hierarchical modes of policy implementation and dispute resolution” (Kagan, 1999: 220). Meyer, Egger-Peitler, Höllerer, & Hammerschmid state the core values of the legal approach as continuity and stability rather than change, flexibility, and innovation (2014: 866).

In line with this approach, legal rules and practices are the main dominating factors in the administrative processes. Due to prevalent bureaucratic legalism, public institutions subject to complaint show resilience against being contacted in informal ways. In line with this bureaucratic tradition, rather than using the advantages of friendly-settlement regarding flexibility, public institutions subject to complaint demand following formal procedure. Although the ombudsman can design a flexible process, bureaucratic legalism prevents putting this into practice. Thus, as the third party, the ombudsman turns into an investigatory and informatory mechanism in the Turkish context although it is based on informal and interactive resolution methods including face-to-face or shuttle mediation or phone-diplomacy in nature.

Lack of flexibility in context determines the success of friendly-settlement. Quantitative data shows that interactive and informal resolution brings the full settlement of disputes compared to non-interactive methods. Although limited in number, cases resolved with interactive methods brought full settlement. Nonetheless, almost half of the cases where the ombudsman adopts an investigatory function fails to reach any solution. This shows that the lack of interaction between the parties causes failure in this process.

The flexibility problem also points out the lack of trust among public institutions that affect their behavior (Kroegeer, 2012). If trust and fear problems cannot be overcome by the parties, the process may not end in positive results (Chigas, 2005). In mediation, the mediator can build trust among the parties by adopting a less directive and more facilitative stance (Kydd, 2006: 459). As the third party, the ombudsman can facilitate triadic relations between the parties. Nonetheless, while the ombudsman's status in the public sector is blurred, public institutions subject to complaint refrain from informal negotiations.

The lack of trust among public institutions also prevents cooperation in resolution. Not only public institutions subject to complaint, but the representatives of the ombudsman institution also perceive a formal process safer compared to mediation. Interviews highlight that verbal agreement causes vulnerability and insecurity among the parties. Due to this reason, they prefer to follow official correspondence by emphasizing “Verba volant, scripta manent”¹³⁹

One of the major reasons preventing informal solution is the responsibility of accountability regarding monetary issues. In Turkey, the Court of Accounts is responsible for controlling the accounts of public institutions. This institution is responsible for financial controlling consisting “an evaluation and an opinion on the accuracy of public administrative bodies' financial reports and statements, and whether or not those bodies' financial decisions and transactions and any programs and activities are compliant with the law” (*Functions of the Turkish Court of Accounts*, 2021). If the institution identifies public loss regarding financial issues, the

¹³⁹It means “Spoken words fly away, written words remain”

responsible individuals are prosecuted (*Law on Public Financial Management and Control*, 2010).

As public institutions subject to complaint fear from bringing additional financial burden as a result of resolving disputes, they prefer to follow formal process rather than engaging with the ombudsman. They even prefer to obey traditional legal methods rather than alternative ones. As bureaucratic institutions have a wide range of responsibility in the central administrative structure, they tend to abstain from undertaking new duties. This habit causes hesitation during collaboration in the ombudsman process. Rather than engaging in informal talks, these institutions prefer to have legal obligations to implement their decisions.

Network is another determinant issue in friendly-settlement in the ombudsman context. In dispute resolution literature, good relations between the third party and conflicting parties are perceived as one of the factors creating positive impact in reaching a successful outcome. Wehr and Lederach underlines that insider-partial third-party having previous relations with a party/parties may increase trust in the dispute (Wehr & Lederach, 1991). Data on Turkey's ombudsman institution states that the experts of the ombudsman institution use their personal relations with personnel from other public institutions subject to complaint. This is one of the factors facilitating dispute resolution process in some cases. Nonetheless, personal relations may endanger the establishment of institutional relations that prevents maintaining existing ties in the long run.

The Turkish case illustrates that when the recognition of the ombudsman is quite low, the institution's political and personal relations increase compliance with ombudsman decisions and increase interactive resolution. Indeed, the significant

difference between the compliance rates under the presidencies of the two chief ombudsmen boldly shows the difference. Interviews reflect that coming from the judiciary, the first chief ombudsman had limited relations with the administration compared to the second chief ombudsman, who has a long-lasting administrative-bureaucratic and political career. The second and current chief ombudsman has been using his network in reaching public institutions subject to complaint to convince them into informal and interactive resolution. As the institution does not have a strong influence within the existing bureaucratic hierarchy, the personal power of the ombudsman increases its authority in the public sector to some extent.

However, the current situation regarding network shows that existing ties are not enough to increase levels of interaction and informality to the intended level. There are a couple of reasons behind this situation. First, the non-institutionalization of existing relations causes a failure in reaching public institutions subject to complaint in each case. Although personal relations between officials of public institutions subject to complaint and experts of the ombudsman institution are determinant in friendly-settlement, there is a lack of relations on an institutional level. To overcome this difficulty, contact points are established between ombudsman institutions and public institutions subject to complaint. Contact points are efficient communication mechanisms in handling the existing problems and preventing further disputes (Buhmann, 2018: 391). Nonetheless, they do not create the intended impact in the Turkish case. Firstly, the number of contact points is still very low. Secondly, as the scope of the ombudsman institution is very comprehensive, it is not possible to assign a few people responsible for all cases. These factors limit the ombudsman's sphere of influence in the public sector.

Second, data shows that personal relations between experts and senior officials of ombudsman institutions and representatives of public institutions subject to complaint are mostly based on previous political and bureaucratic ties. These relations may be effective in some cases. When officials of ombudsman institutions reach the representatives of public institutions subject to complaint, they can convince them for resolving cases and fulfilling the demands of citizens. Meanwhile, these personal relations are not enough in resolving cases regarding a significant number of people or bringing financial burden to institutions. Thus, network in the ombudsman context creates limited impact in the resolution of cases. As institutional networks are limited, ombudsman may reach to public institutions subject to complaint and convince them into friendly-settlement. However, representatives of institutions still demand following formal procedure to prevent any future investigation.

The other factor determining the use of friendly-settlement in the Turkish context is the dispute resolution capacity of the ombudsman institution. Both quantitative and qualitative data shows that the use of ADR methods is very limited in the ombudsman context even if ombudsman itself is an ADR method. There are multiple issues regarding dispute resolution capacity of ombudsman. The first reason is related to the lack of trainings and information. Personal qualities of mediators have always been a good indicator for the success of a mediation process (Sullivan, 1984: 154). In the ombudsman context, trainings and knowledge on dispute resolution methods determine how experts deal with the cases (Michael, 2014). Data on the Turkish case clearly illustrates that as well as not having extensive knowledge and experience on ADR methods including mediation, negotiation, and arbitration,

the experts have a legal-oriented approach towards the process. When defining mediation, they mostly refer to the legal mediation in Turkey and make differentiations between mediation and friendly-settlement. By referencing the existing practice of mediation in the judiciary based on the Code on Mediation in Civil Disputes No. 6325, they claim that friendly-settlement is different from mediation. Even if mediation is one of the methods used by the institution, most of the experts are strongly against the idea that they are practicing it.

Data also depicts that experts adopt a legalistic approach in their understanding of ombudsman business. They think that obligation to obey legal principles and knowledge of legal information are *sine qua non* for their profession. This means that bureaucratic legalism also determines the mindset of experts in dealing problems. They adopt a legalistic approach in administrative tasks (Lapunte & Suzuki, 2020). Due to this reason, they broadly use legal terminology rather than referencing ADR methods in analyzing the process. Thus, as experts have limited knowledge on ADR and mediation, they naturally do not prefer using it.

The second issue regarding dispute resolution capacity is the nature of the dispute. Ombudsman is an effective mechanism in resolution of minor and/or emergent issues. Ayeni states that the reason of the wide use of ombudsman is the failure of the judiciary in resolution of these cases (Ayeni, 1985: 15). Compared to complex issues requiring dedication of time and effort, these cases need less time and effort. Turkey's ombudsman also uses friendly-settlement for resolving minor and/or emergent issues. While minor cases are mostly resolved by using non-interactive and formal methods, parties occasionally arrive at a solution regarding emergent issues based on interactive and informal methods. Although the nature of dispute

determines the level of interaction, it does not bring significant difference in adapting interactive and informal resolution. Thus, the nature of dispute has a limited impact on the selection of the method.

Resolution strategy is the third issue regarding dispute resolution capacity. Turkey's Ombudsman Institution uses two strategies during the resolution: directive and non-directive. Directive strategies assume the use of assertive tools and enable the intervention of the third party in the process. In line with this strategy, the third party pushes the parties to reach an agreement (J. A. Wall & Chan-Serafin, 2014: 286). The third party is more determinant on "problem-solving steps, questions of who talks and to whom, types of forum (joint sessions or private meetings), and the types of interventions made" in directive strategy (Moore, 2003). As Zaartman and Touval defines, directive strategies allow the third-party to make decisions on content, substance, and process (cited in Bercovitch, 2009). On the contrary, non-directive strategy requires less involvement from the third party in making decisions regarding resolution stages. The third party facilitates communication between the parties to prevent any misunderstandings in non-directive strategy (Thompson, 2009: 364).

Data reflects that Turkey's ombudsman institution mostly uses directive rather than non-directive strategies. The resolution process is perceived as win-lose rather than mutual gains as a result of the legalistic approach adopted by the ombudsman and public institutions subject to complaint. As a legalistic approach prevents using mediation, the ombudsman owns investigation and providing information missions. While adopting these missions, rather than creating an environment for parties to arrive at a solution, ombudsman investigates root causes

of dispute, reveals rules and regulations, and conducts an evaluation. After making a decision based on evaluations, the ombudsman separately discusses its evaluations with the parties involved. In this stage, the ombudsman tries to convince the parties, enforce the resolution over them or guide them for the upcoming stages even if these actions do not bring success in each case.

Using directive strategy prevents the adoption of interactive and informal dispute resolution. Nonetheless, ombudsman limitedly adopts non-directive strategies that enable finding mutual ground. The ombudsman conducts separate or joint meetings with the parties especially while the disputed issue interests numerous people or is sensitive. The equal representation of the parties at the table is a major concern for finding a mutual background.

In line with this finding, collective dispute resolution capacity is the fourth determinant of dispute resolution capacity. Collective dispute resolution indicates the ombudsman's power to resolve disputes unitedly regarding a group of people rather than individuals. In line with collective dispute resolution, ombudsman can also lead a resolution process for disputes on the same subject even though citizens apply individually.

Collective dispute resolution is discussed in line with two areas: labor disputes and community disputes in the recent years. Collective Bargaining Convention 1981 sets the rule for the rules of collective bargaining in labor disputes (Koukiadaki, 2020: 12). The method is still widely used in labor and business disputes (Menkel-Meadow, 2011). In the ombudsman context, collective dispute resolution is not provided in each case. Scott claims that since individual rights are not under protection in underdeveloped countries, the ombudsman provides a

collective rather than individual solution in these contexts (Scott, 1984: 217).

Nonetheless, as collective resolution is a common method in public dispute resolution in the West, this may not be valid in each example (Stokke & Seip, 2008).

Turkey's ombudsman institution has a limited use of collective dispute resolution as most of the cases are resolved separately. As investing time and resources for mediating individual cases is expensive, ombudsman uses non-interactive and formal methods in resolution of these cases. Although they are limited in number, collective disputes allow the use of mediation and negotiation. Because of this reason, one of the methods used for discussing collective disputes is mediation. Ombudsman mostly use this method in resolving disputes regarding education-related institutions. These institutions are more open for discussions based on two reasons. First, there are contact points between ombudsman and education-related institutions. Second, these institutions deal with collective disputes regarding significantly large populations.

Data deliberates that although the ombudsman does not hold an authority to solve disputes collectively, experts take personal initiatives to offer collective solutions. Nonetheless, although experts negotiate cases collectively, they fail to offer a collective agreement between the parties. Thus, collective dispute resolution capacity in the Turkish ombudsman is not only based on the personal initiative of experts, but also limited to the negotiation stage. After parties agree on the solution, the ombudsman closes cases on an individual basis. Thus, the agreement is not signed collectively. There are some cases that reflect the inefficiency regarding this issue. Although over one hundred cases deal with the same issue, the ombudsman opens separate files for each case and they are finalized separately. As the

ombudsman does not use collective dispute resolution widely, ombudsman decisions regarding friendly settlement fail to provide necessary legal changes concerning the masses. The examination of the ombudsman's decisions shows that the recommendation decisions it makes provide better solution at a mass level compared to friendly-settlement.

The ombudsman's attitude during the resolution also determines the level of interaction. In examples from across the world, the ombudsman obeys the principles of impartiality and neutrality. In the Turkish case, however, the ombudsman's position is blurred due to a number of factors. Data shows that the perception of experts regarding the ombudsman's position between public institutions and citizens determines their approach. Almost half of the interviewees perceive the ombudsman as an advocacy institution rather than an intermediary. They call it the "people's lawyer", "citizen's defender", and "citizen's advocate". In line with this approach, they act to protect "weak people" against "strong administrations". Nevertheless, the advocacy mission of the ombudsman may endanger its neutral position in the public sector (Sudhankitra, 2015: 102). This may turn the ombudsman into a biased institution in the eyes of public institutions subject to complaint. As a senior official underlines, the ombudsman's advocacy position results in adopting more directive strategies in the process and this creates reservations in the eyes of public institutions subject to complaint.¹⁴⁰ Thus, the advocacy function of the ombudsman causes less willingness among public institutions subject to complaint to participate in an interactive process.

¹⁴⁰Interview number 22.

On the other hand, public institutions subject to complaint display a dismissive attitude towards ombudsman regarding its position as the third party. As these institutions abstain from removing prevalent maladministration and fear from work overload, they do not have a cooperative attitude against the ombudsman institution.

All of these factors highlight that even if there are various reasons behind the lack of informal and interactive resolution in friendly-settlement in the ombudsman context, most of these factors are related to the legalistic bureaucratic tradition in Turkey. As previously mentioned, Turkey's bureaucratic tradition is based on a legalistic approach with the dominance of rules and regulations based on a central and hierarchical administration. In this matter, Turkey follows the Napoleonic administrative tradition. The Napoleonic administrative tradition is based on applying legal rules in administrative processes (Peters, 2008). Administrative actions are directed by strict legalism in this tradition (Peters, 2008).

Nevertheless, there have been some reform initiatives to create a more inclusive and decentralized bureaucracy in Turkey in order to overcome difficulties in this tradition. As mentioned, the government aimed to bring a more decentralized and participatory state structure in line with the EU reforms in the 2000s. However, reform initiatives did not reach the intended success and failed at promoting decentralization and flexibility in the Turkish administrative structure. 5393 Municipality Law, 5216 Law on Metropolitan Municipalities, 5302 Law on Special Provincial Administration, 5355 Law on Unions of Local Governments, 5747 Law on Establishment of Districts within the Boundaries of Metropolitan Municipalities and Amendment to Certain Laws, 5779 Law on General Budget Tax Revenue

Allocations to Special Provincial Administrations and Municipalities were prepared to empower local administrations in Turkey. These laws expanded the authority of local administrations by decreasing the power that central administrations had over them. For instance, the shares of special provincial administrations and municipalities from the general budget have been increased based on Law 5779 on General Budget Tax Revenue Allocations to Special Provincial Administrations and Municipalities (*Law No. 5779*, 2008).

Despite all efforts to strengthen local administrations and decrease the dominance of central administrations, Turkey's bureaucracy is still under the central hierarchical-bureaucratic control. Although reforms in the early 2000s aimed to create a more transparent, accountable, and efficient public administration in line with the EU accession criteria, the later reforms, indeed, brought "additional monitoring powers over regulatory councils" to the central administration (Sobacı, Miş, & Köseoğlu, 2018). Due to this reason, the post-2011 process caused further centralization in state (Bayraktar, 2018). One of the reasons of this is the weak adoption of these reforms by public institutions. Akdoğan claims that even if rules and regulations had been changed, ineffective policies and political crisis in the government prevented the adoption of these rules by public institutions (Akdoğan, 2018). As the government was increasingly dealing with political matters, there lacked an efficient monitoring mechanism to observe and control the adoption of these rules.

The centralization of government accelerated after the July 15 Coup Attempt in 2016. Top-down statutory decrees promoted the use of central power over public institutions. A state of emergency announced soon after the coup attempt bypassed

the checks and balances system (Orhan, 2018). Moreover, after Turkey was transformed from a parliamentary to presidential system in 2018, the centralization of executive power increased. Under the new political system, the president appoints senior public officials and holds more power over issuing presidential decrees, declaring a state of emergency under certain conditions, setting a budget, and deciding to hold an election¹⁴¹ (Yilmaz, 2018).

Top-down decision making is another reason for the failure of the reforms.

“A strong state, an overcentralized structure, an empire tradition, and an understanding of government where reforms are made top-down” are the main characteristics of Turkish bureaucracy in this sense (Demir, 2021: 169). In line with this fact, Turkish administrative culture is not based on “openness of bureaucracy” (Akdoğan, 2018). Turkish bureaucrats pay much more attention to obeying rules and regulations rather than adapting into new circumstances (Heper, 1991). As this tradition is dominant, public institutions do not develop collaborative behavior (Heper, 1991). For instance, although reform initiatives aimed to promote collaborative platforms such as citizen juries and deliberative forums, it did not reach the intended success (Demir, 2021: 137). Moreover, rather than efficiency, formality is still more important for these institutions (Sezen, 2011).

In this sense, the lack of interaction and informality in friendly-settlement cases proves that formality and legality matter more in the Turkish administration. The resilience of Turkish bureaucracy against informal and interactive resolution has been reflected in the case of legal mediation in Turkey. Legal bureaucracy rejected

¹⁴¹Article 116 of the Constitution gives authority to the president to renew the election only if the general election of the Turkish Grand National Assembly and the presidential elections are held together.

implementing more informal mediation and perceived it as an “intervention” to their sphere of influence (Kalem, 2010). Legal bureaucracy circles acted in organization to influence the draft law. While the draft law allowed for individuals outside legal business to mediate disputes, bar associations strongly rejected this change. As a result, only people “having at least five year experience and undergraduate law degree” are authorized for mediation (*Law on Mediation in Civil Disputes*, 2012).

As there was a strong opposition to the foundation of an ombudsman institution in Turkey, public institutions do not easily welcome the ombudsman’s informal and interactive problem-solving method. As previously mentioned, the idea of establishing an ombudsman office in Turkey was criticized for being incoherent to the public administration system and the alleged existence of institutions with similar functions. These discussions show that the ombudsman’s singular position in the public sector is not understood very well in Turkey. The existing administrative structure fails to prioritize the ombudsman’s informal and interactive functions. Moreover, some institutional and personnel deficits decrease informal and interactive dispute resolution capacity. Although the ombudsman’s impact in the public sector increases in parallel with the higher acceptance rate of ombudsman decisions, it still heavily functions as an investigation and information mechanism rather than dispute resolution. Due to this, there is a need for improving the ombudsman’s third-party function in Turkey by making necessary institutional and policy changes.

6.2 Contributions to Literature and Future Research Directions

This study’s main contribution to literature is bringing an empirical explanation for the ombudsman’s third-party function and the factors facilitating and

undermining it. I used mixed-methods research design to analyze friendly-settlement cases and its use in the Turkish context. In previous research, the analysis on the ombudsman's function was mainly descriptive without providing first-hand empirical data. By using friendly-settlement cases as data and getting information on the use of the method from the experts implementing it, this research broadened empirical evidence on the ombudsman's third-party function.

As the outcome of this research illustrates, the ombudsman's dispute resolution capacity is not only related to its structural components, but is also related to the administrative and legal context that it is a part of. This dissertation brought new factors such as central bureaucratic structure and bureaucratic legalism to explain the ombudsman's third-party function. Research showed that in the presence of bureaucratic legalistic understanding, the third-party function of the ombudsman, which must rely on informal and non-interactive methods, may still remain within formal and non-interactive boundaries. Thus, contextual factors regarding the system are also effective on the ombudsman's function.

This study also shows that in mediation processes, the administrative culture directly affects the behavior of the mediator. Administrative culture is very effective in ombudsman process, where two of the three parties are public institutions. Therefore, the influence of administrative culture on behavior should not be ignored when analyzing the ombudsman's use of mediation.

Moreover, by examining the changing function of the ombudsman in a developing country context, I draw a framework to understand ombudsman in a developing country context. Literature analyzes the ombudsman's diversifying function especially in the Western context. Ombudsman offices in the developing

context, on the other hand, are evaluated in relation with their human rights function. Nevertheless, this study contributes to understanding the ombudsman's third-party function by examining a developing country case.

Considering the findings of this thesis, some future directions can be suggested for future research. One area is the effect of legalistic bureaucratic tradition in other country cases. The findings of this study proves that these factors are also effective on the ombudsman's dispute resolution capacity. Researchers may be interested in understanding to what extent these factors are effective on the ombudsman's function and whether developed country cases show any similar pattern.

This study shows that administrative culture in relation with bureaucratic legalism affects ombudsman's third-party function. Previous research shows that policy style of public institutions of Turkey is under the influence of administrative culture (Bolukbasi & Ertugal, 2018). It might be useful to discuss whether the countries with similar state structure and/or administrative culture have the same outcome or they are different.

In line with this fact, it may be more useful to examine the effect of the administrative culture on the third-party function through different country examples. Doing these studies from a comparative perspective will yield richer results. It may be useful to examine this phenomenon by comparing Southeastern European countries, Italy, and Spain to see whether the same situation exists there.

Another area is "public dispute resolution" and the ombudsman's role in resolving mass-level public disputes. Public dispute resolution deals with the resolution of disputes regarding the public in various extents. The public could

consist of a neighborhood, district, city or a social group and it could be solved with ADR methods. Ombudsman offices with high collective dispute resolution capacity also deal with public disputes. The ombudsman's public dispute resolution function and its practice in different countries can contribute to understanding its collective dispute resolution capacity.

Further research may also investigate how ADR is practiced in Turkey. ADR methods have been used both in administrative and legal areas in Turkey since 2012. Nevertheless, there is not any comprehensive study regarding the adoption of ADR in Turkey and its effects in administrative and legal affairs. There is a need of a comparative study analyzing the use of ADR in both administrative and legal processes and their potential pitfalls and advantages should be examined to draw a picture of it in the Turkish context.

6.3 Policy Implications of Friendly-Settlement in the Ombudsman Context

In general, the ombudsman fails to realize policy changes on a mass level since collective dispute resolution capacity is low based on case-based solutions in Turkey. Although the existing ombudsman regulations foresee case-based solution, ombudsman may successfully resolve collective disputes in some cases. Nevertheless, bureaucracy hesitates to adopt collective solutions due to legal reservations. The experts hesitate to take any initiation to broaden the lines of the investigation as it may burden the budget. The solution for one case may bring resolution for all in some cases. Due to this, Turkey's ombudsman institution needs a change in the law and regulation to bring collective resolution by enabling collective

bargaining process. Different parties should be represented in the resolution process especially for cases regarding social security and education. This change may provide collective resolution authority to Turkish ombudsman and facilitate the resolution of outnumbered disputes at the same time.

The analysis of friendly-settlement also reveals that mediation is the right strategy for resolving collective disputes. As mediation brings various interests on the table and allows parties to discuss mutual gain, it provides an integrative solution as well as increasing collective dispute resolution capacity. Mediation also facilitates full resolution compared to other methods. Thus, not only should the ombudsman promote the use of mediation in its internal structure, but it should also work for increasing the adoption of mediation by public institutions subject to complaint. The ombudsman needs to promote mediation and the use of other ADR mechanisms among central administrative authorities. The Ombudsman Institution in Turkey may promote mediation among public institutions subject to complaint to enable the further use of it. Investing more time and resources to mediation may improve the dispute resolution capacity in the public sector. There is also a need of expanding the jurisdiction of meditation in the Turkish context. The use of mediation is mostly limited to education and training, economy, finance, and tax issues. Moreover, mediation does not bring solution for monetary issues in large amounts. Because of this reason, there is a need for expanding the use of mediation especially in monetary issues and other areas.

As the findings show, the dispute resolution capacity of Turkish ombudsman is limited. While having decent knowledge on the judiciary, the experts have limited knowledge on ADR methods. One of the outcomes of this gap is the similarity

between friendly-settlement resolution documents and legal texts. The documents comprehensively cover the legal background of the solution and provide limited information on the resolution process. Thus, there is need for expanding dispute resolution capacity in the public sector.

One of the ways of empowering their ADR capacity is designing a special training program focusing on ADR and mediation specifically based on the use of mediation in the ombudsman context. There is an increasing tendency for organizing e-learning programs not only for ombudsman staff, but also for the users of ombudsman services. For instance, the UK Housing Ombudsman organizes trainings for property owners to increase their problem-solving capacity (*UK Housing Ombudsman*, n.d.). This kind of online training program provides sustainability in the case of continuing education. It will be more beneficial if this training is based on practice rather than theory. While designing the training, it should be aimed to overcome the legal mentality of the experts.

Another way of improving dispute resolution capacity is transferring informal dispute resolution experiences on a community level to an institutional level. Community mediation has been used in resolving disputes among various groups in Turkey for a long time. Community mediation prioritizes cultural and social values of society in dealing with disputes (Wall et al., 2011). For instance, religious leaders have been resolving disputes regarding various issues in society by emphasizing societal values (Köse & Beriker, 2012). Indeed, an official emphasized that Turkey's Ombudsman Institution had made some initiatives to get in touch with community leaders in the Eastern and Southeastern regions of Turkey.¹⁴² Nevertheless, since

¹⁴²Interview number 23.

they were not sustained, these initiatives did not result in any knowledge transfer. Thus, there is a need of developing systematic and sustainable relations among the institution and community leaders to increase the ombudsman's intervention in disputes regarding social and cultural issues.

The non-existence of a guiding document can provide informality in general. Nevertheless, the Turkish case shows that the non-existence of a guiding document may result in the preference of legality over informality to avoid possible risks. If the ombudsman institution prepares a guiding document based on informal dispute resolution, it may direct the staff to adopt informality in the resolution process. Ombudsman institutions are preparing guiding documents to frame how ombudsman staff should behave in intractable cases. For instance, Victorian Ombudsman in Australia prepared "Good Practice Guide to Dealing with Challenging Behavior" to direct ombudsman personnel in dealing with emergent and difficult circumstances (Victorian Ombudsman, 2018). The Office of the Compliance Advisor Ombudsman's "Getting Started with Dispute Resolution" document informs staff on strategies and challenges in dispute resolution process (2021). These documents especially underline the use of informal methods in dealing with cases. Turkey's Ombudsman Institution also needs a similar guiding document in order to frame strategies for various stages and circumstances in the process.

Qualitative data shows that one of the reasons for the lack of interaction between the ombudsman and public institutions subject to complaint is related to the lack of communication on an institutional level. Although some experts have a decent background and working experience in various public institutions subject to complaint, they do not always work in the same area in the ombudsman institution.

Therefore, the ombudsman institution needs to allow personnel to work in the department in line with their previous experience. This may contribute to relationship building with institutions. Moreover, the institution should pay more attention to allow specialization in certain areas. Experts should work in the department in line with their expertise.

Some changes in the organizational structure of the ombudsman institution may also increase the dispute resolution capacity of the institution. Currently, the management structure consists of a chief ombudsman and five deputies. Each deputy deals with cases related to certain areas. If the number of deputy ombudsmen is increased, both responsibilities will be shared with more people and more time will be allocated to mediation.

Another change that needs to be made regarding the organizational structure is to empower the personnel capacity in the institution in a way that will increase the dispute resolution function. In this direction, people who are familiar with ADR methods such as mediation and negotiation should be employed in the institution. In the current situation, the employees of the institution are recruited by the KPSS exam and an oral interview. In order to better measure the candidates' ADR knowledge, a written exam can be made or the ADR knowledge can be measured more in the oral exam.

As another organizational change, ombudsman's capacity on a local level should be strengthened. Both quantitative and qualitative data reflect that Turkey's Ombudsman Institution is not effective on a local level. Although the institution receives significant applications from rural areas, these applications are mostly concerning disputes with central authorities. Thus, Turkey's Ombudsman Institution

should be involved in dispute resolution activities on a local level. Rather than only having branches of a central ombudsman institution, there is need for autonomous ombudsman institutions in order to promote improved solutions for changing contexts. Local ombudsman offices provide more concrete direct relations between the parties (Gill, 2018). However, Turkey's central administrative structure may not allow the establishment of a separate local ombudsman institution. Thus, the Ombudsman Institution of Turkey may open new branches on a local level. This may also contribute to increasing collaboration and cooperation among local public institutions.

As the outcomes of the interviews conducted highlight, the expert title of ombudsman staff decreases their efficiency and their capability to engage with public institutions subject to complaint. While it becomes very difficult for experts to reach senior officials, it is even more challenging to get in touch with experts in the public institutions subject to complaint. When they communicate with public institutions subject to complaint, their title is also insufficient in convincing them to friendly-settlement. This problem is also regularly emphasized in the institution's Strategic Plans and Annual Reports. In accordance with resolving this problem, it is possible to offer a "rapporteur" title to the experts and increase their rights and positions in communicating with public institutions subject to complaint.

As the ombudsman institution has limited resources, it should increase efficiency in terms of using more interactive and informal resolution. ODR is an emerging concept in terms of saving time and resources. Especially after the COVID-19 pandemic, ODR has been widely used in international, national, and local disputes. Turkey's public administration system is one of the most successful

examples of digitalization of public services. The E-Government platform has been providing access to multiple government services since 2008. According to the UN E-Government Index, Turkey ranked 53rd out of 193 countries in 2020 and is considered “very high in e-Government development” (E-Government Index, 2020). Data on friendly-settlement reflects that people prefer to use online applications in Turkey. Thus, Turkey’s Ombudsman Institution should increase its use of ODR and transfer the existing experience in the public sector. Since logistical issues and limited resources prevent face-to-face or segregated negotiations, ombudsman may bring the parties together via online platforms. Thus, the digitalization of dispute resolution process may increase the level of interaction between the parties.

Ombudsman should not wait for an application to conduct an investigation. Turkey’s Ombudsman Institution can initiate a resolution process only upon receiving an individual application. Due to this reason, there is a need for the proactive resolution of disputes before a formal application is made. Turkey’s Ombudsman Institution uses informal methods to initiate an investigation on disputes as the ombudsman gets in contact with the victimized individual(s) and encourages them to apply to the institution. Nevertheless, ombudsman should have an authority to initiate its own investigation without requiring any formal processes. This may also increase informality and interactive dispute resolution in the ombudsman context.

The interviewees revealed that the institution does not regularly assess the success of friendly-settlement. The existing assessment is superficial and is only based on collecting statistical information on reaching the outcome. Indeed, there is a need of analyzing the process and monitoring long-term changes in bureaucracy’s

cooperative capacity. Regular assessment may also contribute to initiating new network activities with public institutions subject to complaint by pointing out the deficiencies on an organizational level.

Last but not least, ombudsman should work actively to make the administrative culture more interactive and informal. Although the administrative culture is difficult to change in the short term, ombudsman can advocate for informal and interactive resolution to other institutions. It should cooperate with public institutions in terms of informality and interaction and explain to public institutions that this will bring a more effective resolution.

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APPENDICES

A. LIST OF INTERVIEWEES

Name	Age	Gender	Education	Professional Background
Interview 1	39	Male	Public Administration	None
Interview 2	32	Male	Economics	None
Interview 3	38	Female	Political Science and Public Administration	Ministry of Industry
Interview 4	44	Female	Business Administration	Ministry of Industry, Family and Social Policy
Interview 5	42	Female	International Relations	Academic Institution
Interview 6	40	Female	Statistics	Turkish Statistical

				Institute
Interview 7	31	Male	Law	None
Interview 8	42	Male	Law	Ministry of Industry
Interview 9	36	Female	Public Administration	None
Interview 10	35	Male	Law	None
Interview 11	44	Male	Economics	Ministry of Finance
Interview 12	37	Female	Economics	Ministry of Finance
Interview 13	30	Male	Law	None
Interview 14	40	Male	Labor Economics	SGK
Interview 15	43	Male	Public Administration	SGK
Interview 16	30	Male	Political Science and Public Administration	None
Interview 17	32	Female	Law	None
Interview 18	40	Female	Political Science and Public	Ministry of Foreign Affairs

			Administration	
Interview 19	39	Female	Public Administration	State Personnel Administration
Interview 20	38	Male	Law	SGK
Interview 21	40	Male	Public Administration	General Directorate for Foundations
Interview 22	52	Male	Economics	Various public institutions
Interview 23	47	Male	Public Administration	Various public institutions
Interview 24	42	Male	Economics	Various public institutions

B. QUESTIONNAIRE

Demographic Information

1. Gender, age, education, occupation
 - a. Trainings

Pre-Dispute Resolution Process

2. How would you describe friendly settlement? (Differences, advantages, disadvantages)
3. The reason of adopting this method?
4. What factors influence whether or not to use friendly-settlement in cases?
5. Do you get the opinions of the parties when making a decision? Do the parties have the right to refuse?

Process

6. Is there any protocol to clarify the steps?
7. Which approach/technique do you adopt in the friendly settlement method?
(Conducting directly with the institutions, bringing the parties together, meeting with the parties separately, etc.)
 - a. Do you prefer interactive methods (face-to-face and telephone conversations) or non-interactive methods (correspondence, etc.)?
 - b. Does the content of the applied subject affect your approach in the process?

8. Which strategy do you adopt at the point where the process is deadlocked?

Parties

9. Are there situations where the parties themselves have a desire to come together?

- a. (If yes) Which strategy is adopted in cases where conflict escalates in meetings where the parties come together?
- b. Which party is more motivated in the process? (Citizens or public institutions?)

10. Do you try to change the attitudes of the parties towards each other in the process?

11. Does the power asymmetry between the parties in the process affect the process and the result?

Outcome

12. How do you describe the successful and unsuccessful outcome in cases you have resolved through friendly-settlement?

13. If the process fails, what is the way to go?

14. Which factors are facilitating or complicating the solution of problems by applying the friendly solution method? (Content, relationship of the parties, nature of dispute, intensity of dispute)

Parties

15. To what extent does the solution create satisfactory results for the parties?

(Full-partial etc.)

- a. Are there people who think that their problems are not solved at the end of the process and resort to other ways again? Which ways?

Institutional Factors

16. In what way does friendly-settlement contribute to ombudsman's function? (Conflict resolution, providing information, prevention of mismanagement/good governance, improving the quality of public services, etc.)

17. Does friendly solution create a more effective and faster solution?

18. How is it different from traditional judiciary and mediation?