

NATIONAL HUMAN RIGHTS INSTITUTIONAL MODELS IN COMPARATIVE LAW AND THE CASE OF TURKEY

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ABSTRACT

Regardless of its specific title in each country, the concept of national human rights institutions is used for the national institutions, which have made the accreditation demonstrating the compliance with the international standards. Having applied to the accreditation procedures, there are many institutions that acquired the quality of national human rights institution as ombudsman and commission model. Although dressed with a wide authorization to choose the institutional models the countries are expected to meet the international standards in line with the model chosen. The subject of this study will be to examine in which models compliant to the international standards national human rights institutions exist, what are the factors taken into consideration by the countries to determine the institution choice and what sort of an institutional structure must be preferred for Turkey.

Key Words: National Human Rights Institutions, human rights, ombudsman, human rights commission, national institutions

KARŞILAŞTIRMALI HUKUKTA ULUSAL İNSAN HAKLARI KURUM MODELLERİ VE TÜRKİYE'DEKİ DURUM

ÖZET

Ulusal insan hakları kurumları kavramı, her ülke kapsamında kendine özgü adı ne olursa olsun, uluslararası standartlara uygunluğu gösteren akreditasyon işlemini yaptırmış, ulusal kurumlar için kullanılmaktadır. Akreditasyon işlemine başvurarak ulusal insan hakları kurumu niteliğini kazanmış birçok ombudsmanlık ve komisyon modeli kurum bulunmaktadır. Ülkelere kurumsal modelleri seçme yönünde geniş bir takdir yetkisi tanınmış olmakla birlikte, tercih edilen modele uygun olarak uluslararası standartların sağlanması beklenmektedir. Bu çalışmanın konusu, uluslararası standartlara uygun hangi modellerde ulusal insan hakları kurumları bulunduğu, ülkelerin kurum tercihini belirleyen faktörlerin neler olduğu ve Türkiye için nasıl bir kurumsal yapılanma tercih edilmesi gerektiği üzerinde durulacaktır.

Anahtar Kelimeler: Ulusal İnsan Hakları Kurumları, insan hakları, ombudsman, insan hakları komisyonu, ulusal kurumlar

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Introduction

The idea of defending human rights has a history of approximately 500 years. The notion of defending the rights of the individual against the State came into existence in 17th Century while the normative protection within the frame of constitutional institutions was provided in 18th Century. Towards the end of the 19th Century, the scope of the protection was expanded from the personal and political rights to the social and economic ones. The world wars experienced in the first half of the 20th Century gave rise to the idea that the national protection should be complemented by the international protection. In the third quarter of the century the international standards pertaining to the human rights were determined, while in the last quarter focus was on the institutional mechanisms to provide the implementation. Today, while the perception of national protection to be the core and the international protection to be the secondary perception is adopted; the “international human rights institutions” arose as the “new institutional model” to assume the “role of a bridge” between two levels.

Arisen as the national institutional model the human rights institutions had received significant international contribution at its promotion and deployment stages. The initiatives of the UN Commission on Human Rights for the establishment of “national committees” initialized in 1946 were concluded with the adoption of 1991 “Paris Principles” determining the International Standards for National Institutions by the General Assembly of the UN in year 1993. On the same date, under the auspices of United Nations High Commissioner for Refugees (UNCHR), National Institutions’ International Cooperation Committee (ICC) was established with the aim of determining the compliance to the international standards. Upon the call for the establishment of the national institutions in line with the Paris Principles and the Vienna declaration adopted in World Conference on Human Rights in 1993, the interest in the institutions had been increased. Until this date there were only 8 institutions considered compliant to the international standards, as of today this number is circa 65. In many countries the efforts for the establishment of institutions compliant to the international standards or for rendering compliant the already existing ones still continue.

Regardless of its specific title in each country, the concept of national human rights institutions is used for the national institutions, which have made the accreditation demonstrating the compliance with the international

standards. Having applied to the accreditation procedures, there are many institutions that acquired the quality of national human rights institution as ombudsman and commission model. However, both models may vary within it. In terms of accreditation formalities, some of these structures may be included within the scope of national human rights institution while some are not considered compliant to the standards. Although dressed with a wide authorization to choose the institutional models the countries are expected to meet the international standards in line with the model chosen. Regardless of the model, the institutions that meet the international standards are considered as notified party by the international institutions. For this reason, in the evaluation of accreditation to demonstrate the compliance to the international standards, the international principles are interpreted and implemented differently according to the institutional models.

The subject of this study will be to examine in which models compliant to the international standards national human rights institutions exist, what are the factors taken into consideration by the countries to determine the institution choice and what sort of an institutional structure must be preferred for Turkey. In this way, determining the right direction of the developments related to the national institutions, contribution is aimed to be provided towards the establishment of an appropriate institutional structure.

During the determination of institution models, national institutions from Europe, Asia, Africa and America continents that have completed the “accreditation procedures” to indicate the compliance with the international standards are examined. In the selection of the institutions, the focus was on the institutions in status A that indicates the full compliance to the standards and that have been models to many countries within the frame of law traditions and law systems. In particular, studying different ombudsman and commission models, the diversities in the implementation is demonstrated. In this way, the best, acceptable and non-compliant implementations according to the model to be chosen are aimed to be pointed out.

A. National Human Rights Institution Definition

National Human Rights institution (NHRI) is a concept used not for any ordinary institution dealing with human rights, but for the institutions having a special structure and function in a country¹. In modern democracies,

¹ Full name is “National Human Rights Institutions for the Promotion and Protection of Hu-

there are many institutions handling human rights issues at national level. In general these consist of parliamentary commissions, ombudsman institutions, public organizations and institutions, institutions in quality of public body, non-state organizations, religious institutions, commercial institutions, media organizations and jurisdiction institutions. In terms of structure and function these institutions are divided into two as state actor or non-state actor. This distinction is important in the determination of the functions of the institutions in the protection of the human rights. However, the concept of national human rights institution points out a new and different institutional model apart from the traditional institutions.

There is no international instrument to define the concept of national human rights institution. The first definition related to the concept was done in the “National Human Rights Institutions Handbook” of the United Nations in year 1995. According to this, “the concept of national institution indicates an organ established by the state via constitution or another regulatory act and for which the tasks in the promotion and protection of human rights are

man Rights”. These herein after will be referred as either “National Human Rights Institutions” or “National Institutions. National human rights institutions concept and historical development see. United Nations, National Human Rights Institutions, A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, New York and Geneva, 1995; The Danish Centre for Human Rights, National Human Rights Institutions: Articles and working papers, Edited by Birgit Lindsnaes, Lone Lindholt, Kristine Yigen, Denmark, 2001; Anna-Elina Pohjolainen, The Evolution of National Human Rights Institutions The Role of the United Nations, The Danish Institute for Human Rights, Copenhagen, Denmark, January 2006; Mu’taz Qafisheh, Defining the Role of National Human Rights Institutions With Regard to the United Nations, Institute of International Studies, Geneva, Legan Report Series (36); The Australian Human Rights Centre, National Human Rights Institutions: An Overview of the Asia Pacific Region, International Journal on Minority and Group Rights 7: 207-278, 2000; Rachel Murray, The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa, Oxford And Portland, Oregon, 2007; Amnesty International’s Recommendations on National Human Rights Institution, National Human Rights Institutions, Amnesty International’s Recommendations for effective protection and promotion of human rights, AI INDEX: IOR 40/007/2001, 1 October 2001; Office of the United Nations High Commissioner for Human Rights, Handbook on National Human Rights Plan of Action, Professional Training Series No. 10, United Nations, New York And Geneva, 29 August 2002; Office of the United Nations High Commissioner for Human Rights, Economic, Social and Cultural Rights, Handbook for National Human Rights Institutions, Professional Training Series No. 12, United Nations, New York and Geneva, 2005.; Yunseon Heo, National Human Rights Institutions in the Asia-Pacific Region: Assessment and Prospect, Graduate School, University of Seoul, Seoul, 2000; International Council on Human Rights Policy, Performance & Legitimacy: National Human Rights Institutions, Geneva, 2000.; Gauthier de Beco, “National Human Rights Institutions in Europe” Human Rights Law Review, 7:2, 2007, 331-370.

defined clearly”². The issues mentioned in the definition are not satisfactory to distinguish the national institutions from the other conventional ones. Furthermore, “another regulatory act” other than the constitution and the law” reflecting the implementation to be conformable to the international standards is a controversial issue.

In 1940’s when the concept was newly started to be discussed, the human rights institution has been used for a very wide scope. The entire structures directly or indirectly interested in the human rights within the national system were considered to be human rights institutions. Within this scope, human rights institutions concept has been used for judicial bodies, legislative committees, non-state organizations, professional organizations, trade unions, social aid organizations, human rights commissions, ombudsman offices and other similar structures³. However, with the decision of the General Assembly of the UN in 1978, after the adoption of the first principles of these institutions the connotation of the concept had been limited. In this way, not the institutions indirectly interested but solely the institutions to handle the human rights issues directly and expressly by the agency of consultancy, education, investigation and awareness are started to be considered as human rights institutions. Within this context, the judicial bodies, non-state organizations, professional organizations and social aid organizations were excluded from the scope of the concept. Although in different quality and has variant characteristics, the concept of national human rights institutions are limited with the “human rights commissions” and “ombudsman” institutions.

Paris Principles introduced some certain concrete principles in terms of structure and power within the frame of the functions expected from such institutions. For the establishment of national institutions in line with these principles, under the auspices of the UN, International Cooperation Committee (ICC) for National Institutions has been established. Ombudsman or human rights commissions conformable to Paris Principles, being subject to the process of “accreditation” demonstrating the conformity, obtain the quality of national human rights institution. With this process carried out under the

² United Nations, National Human Rights Institutions, A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, New York and Geneva, 1995, s. 6, p. 39.

³ United Nations, National Human Rights Institutions, A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, s. 6, p. 36-37.

auspices of the UN, any institution that has obtained the accreditation at status A, regardless of its specific name, is accepted as a “national human rights institution”. Thus, the concept of national human rights institution has started to be used not for any ombudsman or commission but for the national institutions that are in line with Paris Principles.

In practice, there are many institutions with the title of human rights commission or ombudsman, which are not conformable to Paris Principles. In terms of the institutions that have undergone the accreditation process demonstrating the conformity with the Paris Principles, there is no hesitation in the utilization of the concept of the national human rights institutions, while different terms to cover also the institutions without such accreditation are used. As a matter of fact, the Council of Europe prefers to use in its implementations “national human rights structures (NHRS) to include the entire institutions regardless of conformity with these principles. In decision no 1999/50 of the Committee of Ministers of the Council of Europe on the establishment of the Commissioner for Human Rights, the concept of “national human rights structures” has been mentioned. In the interpretation related to the terminology the Commissioner stated: “Contrary to the NHRIs, ombudsman might have national, regional or local power. These powers might be general or based on the subject. The Commissioner considers the entire ombudsman as the important human rights structures in the member states”⁴. With this explanation, in a sense, the Commissioner admits the difference between the NHRIs in respecting the Paris Principles and the ombudsman or similar institutions that are not conformable to the said principles.

In brief, the definition of the national human rights institutions contained in the UN Handbook in 1995, in such a quality to cover the entire human rights institutions without any interest in their respect to Paris Principles. It has been prepared based on the two basic principles of Paris Principles, namely legal basis for the establishment and the protection of human rights. However, after 2000s, this definition is not sufficient over against the developments that qualify the institutions solely with accreditation as the national human rights institutions.

⁴ Commissioner for Human Rights of the Council of Europe, CommDH/Omb-NHRI (2007) 1 Rev 3, “Effective Protection of Human Rights in Europe: Enhanced Co-operation between Ombudsman, National Human Rights Institution and the Council of Europe Commissioner for Human Rights”, Athens, 12-13 April 2007, Commissioner’s mandate and terminology, para. 8-10.

B. National Human Rights Institutional Models

In the international instruments and in the decisions of the international organizations, during the determination of the minimum requirements of the national human rights institutions, since the beginning no model has been proposed. In the Vienna Declaration and the Action Plan adopted after the World Conference, the countries were granted the right to “choose the structure convenient to their needs”. In the decision for adopting Paris principles and as well as in the following decisions related to the national institutions, the General Assembly of the UN, supported the attitude adopted in the World Conference⁵. Paris Principles prepared within this frame, have been come into being in such a flexible form to address as much as possible to the entire different models, concurrently supporting a model capable of providing the function expected from the national institutions.

In practice structures as ombudsman, human rights commission, advisory committee on human rights, human rights institution, commissions on equality and discrimination, ombudsman for children’s rights are observed. This discrepancy encountered in practice, renders more difficult “an absolute modelling of the institutions”. In the institutional modelling usually functional and historical approach is employed⁶. In the functional approach, the constitution and tasks as well as power of the institutions are taken into account; while the historical approach considers the legal traditions of the countries and the appearance process of the institutions in these countries. In terms of constitution the institutions are divided into two as “commission” with one member and “ombudsman” with many multi members⁷. Considering the “tasks and power” of the institutions as ombudsman, human rights commission,

⁵ Bk. United Nations General Assembly, The Role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, A/RES/63/169, 20 March 2009; A/RES/63/172, 20 March 2009; A/RES/64/161, 12 March 2010.

⁶ In UN Handbook on National Institutions, in the classification regarding the national institutions, the functional approach is observed to be taken into account, and within this frame in general the national institutions are divided into three. See United Nations, National Human Rights Institutions, A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, s. 7, p. 41-45.

⁷ UN General Assembly, in its decisions about the national institutions, applies a dual distinction as ombudsman and other national human rights institutions. See United Nations General Assembly, The Role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, A/RES/63/169, 20 March 2009; A/RES/63/172, 20 March 2009; A/RES/64/161, 12 March 2010.

advisory committee on human rights, specialized institutions, and human rights institutions, triad⁸, quad⁹ or quintet¹⁰ distinctions can be done. By the same token, considering the “political and law traditions”, Nordic (Norway), Hispanic (Spanish), Francophone (French) and Anglophone/Commonwealth (Commonwealth) traditions are cited.¹¹

Regarding the status A institutions accredited as conformable to Paris Principles, the major part of these is in the form of either the “ombudsman” or “human rights commission”¹². In this regard, on the basis of conformity

⁸ In the Handbook on National Institutions prepared by the UN, there is a triad classification. According to this, the national human rights institutions are divided into three as “human rights commissions”, “ombudsman” and “specialized institutions” and elaborated. See United Nations, National Human Rights Institutions, A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, s. 7-8, p. 41-62; likewise, in the memorandum of the period before the Handbook by the UN identical triad classification has been adopted. United Nation, Fact Sheet No. 19, National Institutions for the Promotion and Protection of Human Rights, April 1993.; In another classification, the national institutions are divided into three as traditional ombudsman, human rights commissions and specialized ombudsman. See Jeong-Woo Koo/Francisco O. Ramirez, “National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966-2004, Social Forces 87/3, March 2009, s.(1321-1354), s.1324.

⁹ Considering the constitution, tasks and functions, the national institutions have been divided into four as “human rights commissions”, “advisory committees on human rights”, “human rights ombudsman” and “specialized institutions” and elaborated. See Pohjolainen, The Evolution of National Human Rights Institutions, The Role of the United Nations, s. 16.

¹⁰ Quintet classification; Advisory Committee on human rights, Human rights commissions, commissions with ombudsman power, human rights centres, human rights ombudsman, see Morten Kjearum, National Human Rights Institutions Implementing Human Rights, 8.; Another quintet classification; national human rights commission, national advisory commission on human rights, national commission against discrimination, ombudsman, defensor del pueblo. Bk. International Council on Human Rights Policy, Performance & Legitimacy: National Human Rights Institutions, Versoix, Switzerland, 2000, s. 4

¹¹ For these classifications see International Council on Human Rights Policy, Assessing the Effectiveness of National Human Rights Institutions, Versoix, Switzerland, 2005, s. 5-6.

¹² According to the “Status Chart of National Institutions” dated 2nd June 2009 of the International Cooperation Committee on National Institutions (ICC), among 68 institutions with status A, 40 are commissions, 28 are ombudsman. In 14 countries of the Asia-Pacific region (Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Qatar, Philippines, Republic of Korea, Thailand) commission model and in one (Timor Leste) ombudsman exist. In 13 countries of Africa region (Egypt, Ghana, Kenya, Malawi, Mauritius, Morocco, Niger, Rwanda, Senegal, South Africa, Tanzania, Togo, Uganda, Zambia) commission model exist, while in one country (Namibia) ombudsman is observed. In 13 countries of America continent (Argentina, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Nicaragua, Panama, Paraguay, Peru, Venezuela, Honduras and Mexico,) ombudsman exist, while Canada has commission model. And in Europe, 12 countries (Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Georgia, Croatia, Poland, Portugal, Russia,

with Paris Principles, combining the functional and historical approaches, it is possible to classify the institutions in two main models as ombudsman and human rights commission.

1. Ombudsman Model

Ombudsman institution has arisen for the first time in 1809 in Sweden as the Parliamentary ombudsman¹³. Ombudsman means representative in Swedish language¹⁴. In general ombudsman model consists of the independent and impartial persons, appointed by the Parliament, President of states or governments and who supervise the conformity of the government with the law directly or upon request¹⁵. Different from the judicial supervision, supervisory

Spain, Sweden, and Ukraine) employ ombudsman, while in 9 countries (Denmark, France, Germany, Great Britain, Greece, Ireland, Luxemburg, Norway, Northern Ireland) commissions are observed. See Chart of The Status of National Institutions, Accredited by The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Accreditation status as of 2 June 2009, http://www.nhri.net/2009/Chart%20of%20the%20Status%20of%20NIs%20_2%20June%202009__final.pdf, 30.09.2010.

¹³ The roots of the modern ombudsman dates back to the establishment of Swedish “Justitie-ombudsman/JO” (Riskdagens ombudsman) in 1809. The basis of the Ombudsman institution is figured on “Kazasker” organization in Ottoman Empire. It is connoted that King of Sweden XII. Charl, between 1709-1714 when was obliged to reside within the borders of the Ottoman Empire, constituted the “Ombudsman” institution since he was inspired by the Kazasker organization. Influenced by the Swedish model, first Finland (1919), then Denmark (1955), Norway (1962), New Zealand (1962), United Kingdom (1967), Canada (1967), Tanzania (1968), Puerto Rico (1977), Australia (1977), France (1973), Portugal (1975), Austria (1977), Spain (1981) and the Netherlands (1981) put into practice ombudsman institution. Today, in approximately 140 countries various ombudsman models are employed. See <http://www.law.ualberta.ca/centres/ioi/About-the-I.O.I./History-and-Development.php>, 30.09.2010.

¹⁴ In many countries different expressions are used in consideration of ombudsman. In Spanish speaking countries (Spain, Argentina, Peru, Colombia) “Defensor del Pueblo”; in Sri Lanka and United Kingdom “Parliamentary Commissioner for Government”; in France, Gabon, Mauritania, in Senegal “Médiateur de la République”; in South Africa, “Public Protector”; Québec “de ‘Protecteur du Citoyen’”; in Austria “Volksanwaltschaft”; in Nigeria “Public Complaints Commission”; in Portugal “Provedor de Justiça”; in Italy Difensore Civico”; in Zambia “Investigator-General”; in Iowa “Citizen’s Aide”; in Pakistan “Wafaqi Mohtasib”; in India “Lok Ayukta” terms are used. See <http://www.law.ualberta.ca/centres/ioi/About-the-I.O.I./History-and-Development.php>, 30.09.2010.

¹⁵ In Sweden, the first implementation place of ombudsman, until 1915 the Parliament used to appoint 1 ombudsman and the power of the ombudsman was to supervise the conformity of the military and civil governments to the law. Between years 1915-1968, the number of the ombudsman was raised to two, one to supervise the military and the other to audit the civil bureaucracy. After year 1976, the number of the ombudsman was raised to four. See http://www.jo.se/Page.aspx?MenuId=20&MainmenuId=12&ObjectClass=DynamX_Documents&Language=en, 30.09.2010.

power is rapid, free of charge and based on conciliation. In today's world the ombudsman could be formed not only at universal¹⁶, regional¹⁷, national and local¹⁸ levels, but also by the private sector¹⁹. Until 1983 there were 21 national and 6 local or regional ombudsmen in the world, as of today this number is around 140²⁰.

For the purposes of the study, taking into account not the entire categories but solely the national ombudsmen, it is possible to address three different models. The main point in such triad division is the scope of the power in human rights issues. In the Nordic countries where historically the Swedish ombudsman is taken as a model commonly "classic model" that requires the supervision of the government is observed. Second one is the "hybrid model" that combines the supervision of the government commonly seen in the Hispanic countries and those where Spain is taken as a model and the human rights issues. And the third category is called "specialized model"

¹⁶ On 6th February 2008 the UN General Assembly, with decision no 62/228, has established the Office of the United Nations Ombudsman. Ombudsman is an independent person who provides confidential and impartial support against the unlawful decisions taken during the work executed in the UN. This service is available to everyone including the entire staff and those who are retired from the UN as well. For further information see <http://www.un.org/en/ombudsman/help.shtml>, 29.09.2010.

¹⁷ In 1993, the European Parliament opened the European Ombudsman and appointed the first ombudsman in 1995. Ombudsman has the power to examine the violations originating from the mal government of the organs of the Union, except for the European Court of Justice, either at its own discretion or upon request. It is duly independent in the execution of its duties. For further information see <http://www.ombudsman.europa.eu/resources/strategy.faces#hl1>, 30.09.2010. Regards to the regional cooperation among the Ombudsmen, European Ombudsman Network formed by the EU MS Ombudsmen, The European Network of Ombudsmen for Children, the Mediterranean Ombudsman Association/AOM), the Latin American Federation of Ombudsmen /FIO) are observed.

¹⁸ At local level, there are local ombudsmen in Belgium Flanders, Wallonia, and French Community; in the entire states of Germany, sub regions of Spain, as well as sub regions of Italy, in two sub region of Austria, in England, Scotland and Wales regions of UK, and in four cantons of Switzerland. See <http://www.ombudsman.europa.eu/atyourservice/regionalombudsmen.faces>, 30.09.2010.

¹⁹ Today ombudsman is also employed by the private sector. Private sector ombudsman is formed by the private sector with the scope of examining the complaints of its own clients. In this regard, ombudsman is employed by the private universities, banks, private health care institutions and companies.

²⁰ See <http://www.law.ualberta.ca/centres/ioi/About-the-I.O.I./History-and-Development.php>, 30.09.2010. Out of 140 countries with ombudsman, 34 are in Africa, 13 in Asia, 9 in Pacific, 29 in Caribbean and Latin America, 53 in Europe and 2 in North America. See Victor O. Ayeni, "Ombudsman as a Human Rights Institutions: A New Face of a Global Expansion", s. 3.

created in the recent years, taking into consideration the international human rights rather than the historical categories.²¹

a) Classical Ombudsman

The prototype of classical ombudsman model consists of Swedish “Parliamentary Ombudsman”. In this model, using a power similar to administrative jurisdiction, ombudsman provides conformity and accountability of the government to the laws. Supervision of government occurs in case of mal government. The supervision pertaining to the human rights is considered within this concept and no special authorization takes place. In this regard, the power of ombudsman is limited with the conformity of the government to the laws in Sweden and excludes jurisdiction, parliamentary works, parliament members and local administrators. Likewise, the non-state actors as journals, televisions, trade unions, banks, insurance companies, private medical doctors and attorneys are out of the scope. However, except for the supervision of the government, the scope of power does not include the protection and promotion of human rights²².

In West-Nordic countries as Denmark, Norway and Iceland where administrative jurisdiction lacks, as a part of the parliamentary supervision, under the supervision of the government, the Parliamentary ombudsmen replace the place of administrative jurisdiction²³. In Denmark the Parliamentary Ombudsman is only one person and is elected by the parliament²⁴. The task

²¹ Meanwhile, there is another group that considers the human rights commissions as a certain type of ombudsman model and divides ombudsmen into five different categories according to the power of supervision they are dressed with. Kessing, dividing the ombudsmen into different models, speaks about “The Court-like Model”, “Prosecutor Model”, “The Mediation Model”, “The Specialized Ombudsman Model” and “Human Rights Complaints Model”. In this regard, he elaborates the human rights commissions as “The Hybrid Ombudsman Model. See Peter Vedel Kessing, “Implementation of The Western Ombudsman Model In Countries In Democratic Transition”, National Human Rights Institutions, Edited by Birgit Lindsnaes, Lone Lindholt, Kristine Yigen, The Danish Centre for Human Rights, Denmark, 2001, s. 121-142, s. 131.

²² Bk. http://www.jo.se/Page.aspx?MenuId=12&ObjectClass=DynamX_Documents&Language=en, 01.10.2010.

²³ Bk. Kessing, “Implementation of The Western Ombudsman Model In Countries In Democratic Transition”, s. 126.

²⁴ As per the provisions of the latest modifications done in 2009 to the Law no 473 dated 12 June 1999 on Parliamentary Ombudsman, “After each parliamentary elections or occurrence of vacant position in the permanent staff, the parliament elects an ombudsman (art.1). In case of withdrawal of confidence, the Parliament may dismiss the Ombudsman (art.3).

of the Ombudsman covers the entire public organizations; however, the jurisdiction is excluded from the scope of this supervision²⁵. The scope of the task is to supervise the conformity with law of the government and to provide information and recommendation to the concerned institutions and the Parliament. However, the ombudsman does not have a special power related to the human rights. It has no power in the promotion, training, consultancy and international cooperation about the human rights and the preparation of the relevant reports. In Denmark, the Danish Institute for Human Rights is in charge for such issues.

b) Hybrid Ombudsman

Another ombudsman model is the one in Hispanic countries “Defensor del Pueblo” (Defender/Attorney of Public). Defensor del Pueblo, for which Spain forms the classic model is very common in particular in Latin America countries²⁶. In this structure called hybrid model differs from the classic parliamentary ombudsman due to the fact that the human rights issue is particularly included within the scope of the supervision of the government²⁷. For this reason, in these countries a separate human rights commission is not established.

As it is the case for the classic model, in the hybrid ombudsman model the ombudsman is elected by the parliament and is responsible to the parliament.

²⁵ As per the provisions of Law no 473 on Ombudsman, “In case the companies, institutions, associations etc. use completely or partially the public power legislatively or administratively, the Ombudsman may include these organizations in the scope of the supervision”. Likewise, “Except for the direct and indirect questions about the doctrine or sermon of the church, Danish Public Church is included within the scope of the Ombudsman activities”. art.2.

²⁶ In America Defensor del Pueblo is implemented in Argentina, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela. Except for Venezuela the institutions are in line with the Paris Principles in Status A. In general the name Defensor del Pueblo is common, but in Costa Rica the institution is called Defensor de los Habitantes, in Honduras and Mexico it is Comisionada Nacional de Derechos Humanos. A study in Latin America on Ombudsman Institutions see Gonzalo Elizondo and Irene Aguilar, “The Ombudsman Institution in Latin America: Minimum Standards for its Existence”, National Human Rights Institutions, Articles and working papers, Edited by Birgit Lindsnaes, Lone Lindholt, Kristine Yigen, The Danish Centre for Human Rights, s. 209-222.

²⁷ This model to be common in Latin America countries is linked with the democratization that has been initialized after 1980. In this regard, significant contribution is expected from these institutions in terms of democratization. For a study in this direction see Michael Dodson, Donal Jackson, “Horizontal Accountability in Transitional Democracies: The Human Right Ombudsman in El Salvador and Guatemala, Latin American Politics and Society, 46/4, s.2.

Likewise, the ombudsman may supervise the activities of the entire public organizations including the ministries. However, in the classic model there is no power granted to examine the complaints about human rights, while in this model the institutions also have the power to examine the human rights violations as well. In Spain Defensor del Pueblo is elected by the Parliament and is in the status of Parliamentary high commissioner. However, different from the classic ombudsman, has the power to examine clearly the violation of human rights²⁸. Despite this, different from the commission model, there is no clear authorization for human rights training, awareness, consultancy and cooperation with international organizations in this field²⁹.

Hybrid ombudsman model is accepted to arise with the inception of “third wave democracy” movement of 1970’s in the South Africa. For the first time in Portugal, “Provedor de Justiça” organization was granted the power to protect the human right in addition to its supervision task on the government. Afterwards, with the new Constitution prepared after the democratic conversion experienced in Spain in 1978, Defensor del Pueblo organization was established and was assigned with the protection of the human rights in besides the supervision of the government. In 1980’s, during the democratic conversion started to be experienced in the Latin American countries Defensor del Pueblo model institutions were established, respectively in Colombia (1991), Peru (1993), Argentina (1994), Panama (1997), Bolivia (1998) and Ecuador (1998). This model was started to be implemented in these countries at the transition to democracy stage in 1990’s in the Central and Eastern Europe countries. In this regard, it was established in Poland (1987), Croatia (1992), Slovenia (1995), Bosnia-Herzegovina (1995), Hungary (1995), Russia (1997), Romania (1997), Georgia (1998), Armenia (1998)³⁰.

²⁸ In Spain the ombudsman is elected for a period of 5 years with the three fifth majority of the parliament. According to the article 54 of Spanish Constitution, with an organic law, Ombudsman (Defensor del Pueblo), appointed as the high commissioner of the Parliament (Cortes Generales) to defend the rights mentioned in the constitution is established; and for this aim supervises the activities of the government and submits reports to the parliament. For further information see http://www.defensordelpueblo.es/web_ingles/index.asp?destino=todosobredefensor.asp, 01.10.2010.

²⁹ Powers of Defensor Del Pueblo see Organic Act 3/1981, April 6th, regarding The Ombudsman, Official Journal number 109 dated May 7th, 1981, m.9-14.

³⁰ Linda C. Reif, “Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection”, Harvard Human Rights Journal, Vol.13, 2000, s. 12-13.

c) Specialized Ombudsman

A third model is “The Specialized Ombudsman Model”³¹. Different from the ombudsman with general power (the public sector ombudsman), the specialized ombudsman may perform supervisions either on the entire government about a certain subject (equality, discrimination, children’s rights etc.), or may perform overall supervision on a certain part of the government (military, police, penitentiary etc.)³². For instance, in Sweden, except for the Parliamentary ombudsman there is also the Swedish Children’s Ombudsman. This ombudsman is a specialized ombudsman and provides the implementation of the UN Convention on Children’s Rights in the country. The children’s ombudsman does not have any power neither to conduct any investigation on the public authorities nor to examine the individual violations. Rather than these ombudsman provides awareness, information, consultancy and recommendations and submits the relevant report prepared to the government each year³³.

Considering the ombudsman models as the national institution model, although there are common points as function, constitution, power and tasks, many differences are also observed in the model. The main function of the ombudsman is to protect the individuals against the violation of rights originating from the government and mal administration, and to provide the accountability of the government. Within this scope, as an impartial mediator holds meetings with the Government in order to bring solutions to the problems of the public³⁴. Having some certain differences ombudsmen usually consist of one person appointed by the Parliaments. The ombudsmen assigned and dismissed by the majority of the Parliament are totally independent from the Government.

³¹ Bk. Kessing, “Implementation of The Western Ombudsman Model In Countries In Democratic Transition”, s. 130.

³² See <http://www.law.ualberta.ca/centres/loi/About-the-I.O.I./Concept-and-Institution.php>, 30.09.2010.

³³ Swedish Children’s Ombudsman is established by a law in 1993. It is assigned by the Government for a period of 6 years. The main task of the Ombudsman is to promote and protect the rights mentioned in the UN Convention on Children’s Rights. Within this scope, the Swedish government may put forward proposals for the required legal modifications as well as may provide suggestions to the central and local administration for the implementation of the Convention. See <http://www.barnombudsmannen.se/Adfinity.aspx?pageid=85>, 01.10.2010.

³⁴ The Commissioner for Human Rights of the Council of Europe, The Role of the Ombudsman in States Governed by the Rule of Law, CommDH(2004)16, Strasbourg, 10 May 2004.

As an instrument of the Parliamentary supervision, likewise, the task is to identify the illegality either directly or upon request, and to bring a solution contacting the concerned institution and the Government, and to inform the public opinion and the legislative bodies about the results of the supervision. However, the ombudsmen do not have the power to take binding decisions on the public bodies and are excluded from the adjudication supervision. The strength of the ombudsmen has moral power in proportion with the support they receive from the Parliament and the public. Furthermore, in many countries before consulting to an ombudsman there is a condition that the entire other legal ways should have been applied and there is also a certain period of time to make this consultation. In many countries the individuals may directly consult to an ombudsman while in some others they have to apply via local parliamentarians³⁵. And in some countries, the ombudsmen have the power to bring the violations determined to the court. Ombudsmen may be a party in the court³⁶.

Considering as the national human rights institution model conformable to the Paris Principles, different models are observed in terms of function, constitution and scope of task. In the triad classification related to the ombudsman, each of the three models are observed to be similar to each other in major part, but weak from the point of “plurality” characteristic set forth by Paris Principles. Considering the development process of the national institutions, these institutions are expected to have a structure to unify different parts of the civil society and the government representatives. Functionally in each of the three models the core is the supervision of the government on behalf of the Parliament, but in the classic model focus is on the “conformity to law supervision” of the government, where the protection and promotion” of human rights plays the second role. In Defensor del Pueblo model, the protection of the human rights is also included in the supervision,

³⁵ Common functions of Ombudsman institution see United Nation, Fact Sheet No. 19, National Institutions for the Promotion and Protection of Human Rights, April 1993, p.5; Centre for Human Rights, National Human Rights Institutions, A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, s. 8-9, p. 56-62.

³⁶ The Commissioner for Human Rights of the Council of Europe, 8th Round Table of European Ombudsmen, Oslo, 3-5 November 2003 Final Document adopted by the ombudsmen of Council of Europe member States in conclusion of the Round Table Round Table organised jointly by the Norwegian Ombudsman and the Council of Europe Commissioner for Human Rights, CommDH/OMB (2003) 24, Strasbourg, 5 November 2003.

however “promotion and training” of human rights is kept in the background. In specialized ombudsman model, is observed not to have the quality to fulfil the entire functions expected from the national institutions with the Paris Principles.

Today, the countries generally having classic ombudsman institution (Germany, UK, Denmark, France, Greece, Ireland, Norway etc.), form also human rights commissions or institutions conformable to Paris Principles for the protection of the human rights. In Latin America countries where Spanish model is adopted, generally a model conformable to Paris Principles is seen. However, this model is also observed to be common in the countries to share law traditions in certain geography.

According to 2010 data of the International Cooperation Committee on National Human Rights (ICC), out of 67 institutions accredited in status A approximately 25 are ombudsmen, and 42 is commission model. In Europe out of 22 institutions 9 are ombudsmen and 13 are commission model. And in America 14 out of 15 institutions are ombudsmen. In particular Defensor del Pueblo model is observed to be common. Except for one or two of the 15 institutions in Asia-Pacific and 15 in Africa, the institutions are commission model. The ombudsman model to be common in America although could be explained by the historical and political traditions, in particular after the adoption of Paris Principles, human rights commission model is commonly observed.³⁷.

2. Commission Model

National human rights commission model, being young when compared to the ombudsman model, has also different reasons to arise. Ombudsman model was born due to the need of supervision of government for mal administration on behalf of the Parliament. And the commission model was established by the beginning of the twentieth century to provide consultancy to the governments in human rights issues in particular racism and discrimination. As examined above, UN efforts since 1946 for the establishment of national institutions, taking into account the diversities about these two models were in direction of establishment of national human rights institutions to meet the minimum

³⁷ Bk. Chart of The Status of National Institutions, Accredited by The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Accreditation status as of June 2010.

requirements.

Upon the recommendation of the Economic and Social Council on the establishment of the national human rights institutions in 1946, forwarding letters to the member states for three times between September 1946 and May 1948, UN Secretariat for Human Rights asked information about the work carried out related to the national institutions. The first institution established in 1947 through the recommendation is the “Advisory Committee on Codification of International Law” in France, which was afterwards given the title “French National Advisory Committee on Human Rights” (1984)³⁸. In the following years this model is observed to become common as “advisory committee” in Francophone countries. The second wave of the human rights commission model is the “equality commission model” known as “Commonwealth model”. The first examples of this model are seen in UK (1975), New Zealand (1977), Canada (1977) and Australia (1986)³⁹. And the third wave related to the commission model could be cited as the “human rights institutions model” in the countries without a strict loyalty to a certain law traditions after the adoption of Paris Principles in 2000s. the first examples for this model are the countries as Germany (2001), Norway (2001), and Denmark (2003).

a) Equality Commission

The Equality Commission model is observed to be established based on the discrimination and racism in commonwealth countries particularly in England. These commissions were established based on the act against discrimination in 1970s, however, in 1990s with the scope of providing conformity to the modified new standards on the national human rights institutions were evolved towards “Human Rights Commission”⁴⁰. The main characteristic of the Equality Commission model is to focus on issues related to the equality and discrimination.

³⁸ Bk. Pohjolainen, The Evolution of National Human Rights Institutions, The Role of the United Nations, s. 31-32 ve s. 86’da footnote 10

³⁹ Pohjolainen, The Evolution of National Human Rights Institutions, The Role of the United Nations, s. 16

⁴⁰ In the USA, against the racism events in 1919; for the first time the Chicago Commission on Human Rights was established under the structure of the government in 1921. See Lessons from National Human Rights Institutions Around the World for State and Local Human Rights Commissions in the United States, Prepared by Shubhankar Dam for the Executive Session on Human Rights Commissions and Criminal Justice Kennedy School of Government, Harvard University, August 2007, p. 1. Executive Session Papers, Human Rights Commission and Criminal Justice, Marea L. Beeman (Series Editor)

In UK, one of the first examples of this model, in 1975 Equal Opportunities Commission (EOC), in 1976 Commission for Racial Equality (CRE) and in 1999 Disability Rights Commission (DRC) have been established respectively. Each of three commissions, based on three different acts, was accepted to have the quality of non-departmental public body. The acts establishing these commissions are respectively 1975 Sex Discrimination Act⁴¹, 1976 Race Relations Act⁴² and 1999 Disability Rights Commission Act⁴³.

Although in different fields, the function of each of the three commissions is struggle against discrimination, equal opportunities and the implementation of the legislation in the relevant field. The commissions are authorized to conduct official examinations, provide recommendations, and submit proposals for amendment in the legislation to the Secretary of state, research, training, promotion and financial aid. However, the Commissions do not have the power to examine the violation of individual rights. The member of each three commission is assigned by the Secretary of State for a period of 4 years and the Government provides the finance. Each of three commissions was aborted within the frame of 2006 Equality Act on 30th September 2007; the functions of these three commissions were transferred to the Equality and Human Rights Commission (EHRC)⁴⁴. Equality and Human Rights Commission took up its duties on 1st October 2007. Assuming the duties of the previous three commissions, the Commission's jurisdiction is expanded to cover the other equality issues as well. However, the Commission is still authorized for the problems based on the equality. The legal quality of the Commission is, as it was the case for the previous ones is non-governmental public body⁴⁵.

Another country of the Commonwealth tradition New Zealand Human Rights Commission was established in 1977 with the Act on Human Rights

⁴¹ See Equal Opportunities Commission, Annual Report & Accounts, April to September 2007, s. 24.

⁴² See Commission for Racial Equality, Annual Report and Accounts, 2006/7, s. 50-51.

⁴³ See Disability Right Commission, Annual Report and Accounts, April to September 2007, s.4-5.

⁴⁴ Commission reports see <http://www.equalityhumanrights.com/about-us/vision-and-mission/annual-reports/previous-commissions-annual-reports/>, 06.10.2010.

⁴⁵ Equality and Human Rights Commission, Corporate Governance Code of Practice and Conduct For The Chair And Committee Members of Equality and Human Rights Commission, The Commission Board Governance Framework, February 2007, m. 3.2.1.

Commission and took up its duties as of 1st September 1978. Initially it was focused on the discrimination issues within the frame of 1971 Race Relations Act. However, by 1993 Human Rights Act and the previous 1977 Commission Act and Race Relations Act were consolidated and the jurisdiction of the Commission was expanded. According to the Human Rights Act, the functions of the Commission are to protect, expand and defend human rights via training and creating awareness, organize events in human rights field, provide cooperation, examine the legislation, apply to a judge or court for human rights issues and submit report to the Prime Minister related to these issues⁴⁶.

Similar change in the commonwealth tradition is also observed in Australia and Canada⁴⁷. Within the frame of the 1975 Racial Discrimination Act in Australia, in year 1977 the “Human Rights and Equal Opportunity Commission” was established⁴⁸. Initially the Commission was active only in the discrimination issues, but with the introduction of the Australian Human Rights Commission Act on 10th December 1986, was replaced by the Human Rights Commission with wider authorization⁴⁹. The Commission’s power was expanded to examine the individual complaints, human rights training and research⁵⁰.

Likewise, Canadian Human Rights Commission was established with 1977 Canadian Human Rights Act. Being not less than three and more than six the Commission members are assigned by the Governor in Council for

⁴⁶ Human Rights Act 1993, Public Act 1998 No. 82, 10 August 1993, section 5.

⁴⁷ In addition to these countries, Hungarian Parliamentary Commissioner on the Rights of National and Ethnic Minorities/Status A; Belgian Centre for Equal Opportunities and Opposition to Racism/ Status A; the Netherlands Equal Treatment Commission; Switzerland Federal Commission against Racism/Status A See <http://www.nhri.net/NationaldataListPrint.asp?MODE=1&ID=1>, 08.10.2010.

⁴⁸ The Racial Discrimination Act 1975, Part III, Division 1, m. 20.

⁴⁹ The President and each member of the Commission are specialized in different fields. President and Human Rights Commissioner, Disability Discrimination Commissioner, Race Discrimination Commissioner and Social Justice Commissioner, Sex Discrimination Commissioner, Age Discrimination Commissioner. See The Australian Human Rights Act 1986, Act No. 125, m. 8; and see. http://www.hreoc.gov.au/about/president_commissioners/index.html, 07.10.2010.

⁵⁰ The function of the Commission as per the Law is to increase the public awareness in human rights related issues and to provide training, to examine the complaints related to the discrimination and the violation of the human rights, conduct research and develop policies, to provide consultancy in human rights issues. See The Australian Human Rights Act 1986, Act No. 125, Division 2, m. 10A,11.

a period of 7 years. The main function of the Commission is to provide the equality and struggle against discrimination within the scope of the Canadian Human Rights Act and the Employment Equality Act 1995⁵¹. The Commission is established as an autonomous and impartial administrative unit⁵².

b) Advisory Committee

Another example of the Commission is the National Advisory Commission for Human Rights (CNCHD) in France, which responded to the call of the UN for the establishment of the national committees in 1946⁵³. This Commission was first established in 1947 by the Ministry of Foreign Affairs of France in order to provide the conformity of France with the international human rights legislation; and in 1984 took its current structure and is accepted as the first national commission⁵⁴. According to the amendments on 5th March 2007 done to the Commission Act, the role of the Commission is to provide consultancy and recommendations to the government in the field of human rights. However, the Commission does not have the power to examine the violations of individual rights as well as to supervise the institutions. This power is left firstly to ombudsman and the other institutions. The structure of the Commission is formed of quite wide based 100 members however the number of the members is limited with 64 according to the new legislation⁵⁵.

⁵¹ Canada Human Rights Act 1985, Part II, Human Rights Commission, m. 26.

⁵² About Commission see Canadian Human Rights Commission, Human Rights Commission and Public Policy: The Role of the Canadian Human Rights Commission in Advancing Sexual Orientation Equality Rights in Canada, Prepared by Annette Nierobitsz, Mark Searl, Charles, Th  roux, 2008.

⁵³ The first name of the Commission was "Commission consultative pour la codification du droit international et la definition des droits et devoirs des Etats et des droits de l'homme ('Consultative Commission for the Codification of International Law and the Definition of the Rights and Duties of States'), then in 1984 the name was shortened as "Commission consultative des droits de l'homme ('Consultative Commission of Human Rights'), and in 1989 became "Commission nationale consultative des droits de l'homme ('French National Advisory Commission for Human Rights'). The initial aim of establishment for this Commission was to provide consultancy to the government in the ratification of the international human rights instruments. See Gauthier de Beco, "National Human Rights Institutions in Europe", Human Right Law Review 7:2, 2007, (331-370), s. 333.

⁵⁴ Historical Background of the French Commission, See http://www.cncdh.fr/rubrique.php?id_rubrique=132, 07.10.2010.

⁵⁵ These members are from NON-STATE ORGANIZATIONS and consist of trade union representative, competent persons in human rights field, religious groups, academicians, diplomats, attorneys, experts employed in the international human rights organs, parliament, ombudsman, advisors to the Prime Minister, and experts from the other ministries. See http://www.cncdh.fr/rubrique.php?id_rubrique=132, 07.10.2010.

The basic characteristic of the Advisory Commission is the fact that it is formed with the “pluralist structure” and “wide representation of the community” and that it assumes “consultancy function” to the government in the issues related to the human rights. In this way, the government and the representatives of the civil society come together in the Advisory Commissions⁵⁶. French model is implemented in 24 French speaking countries with differences and the National Human Rights Institutions in these countries form Francophone National Human Rights Association⁵⁷. However, by year 2008 the proposal for the establishment of independent “French Institute for Human Rights Institution” in full compliance with Paris Principles in France was personally brought by the French Advisory commission on human Rights⁵⁸.

In Greece and Turkey, non francophone but influenced in general by the France in terms of the administrative structure, similar commissions were established. In Greece, Human Rights Commission was established by the Act no 2667 in 1998. The Commission was established to provide consultancy to the government in human rights related issues and does not have the power to examine the violations to the individual rights. The Commission consists of 59 permanent and temporary members from various parts of the community and from the government representatives⁵⁹.

Also in turkey “Advisory Council on Human Rights” was established in 2001. as per the founding act, the Human Rights Advisory Council was established to “provide communication between the public institution related with the human rights and the NGOs, as well as to serve as a consultative body for the issues on human rights.⁶⁰ The Council has 100 approximately members from the government, NGOs, political parties, trade unions, bar associations,

⁵⁶ The Commission was accredited by the International Coordination Committee for Status A, which demonstrates the conformity with Paris Principles for twice respectively in 1999 and in 2007. See http://www.cncdh.fr/rubrique.php?id_rubrique=132, 07.10.2010.

⁵⁷ Bk. http://www.cncdh.fr/rubrique.php?id_rubrique=132, 07.10.2010.

⁵⁸ National Consultative Commission on Human Rights, Diplomacy and Human Rights, (Opinion adopted by the Plenary Assembly on February 7th 2008, the creation of “French Institute for Human Rights”, p.8, 84.

⁵⁹ See Commission Official web page: http://www.nchr.gr/category.php?category_id=121, 08.10.2010.

⁶⁰ Prime Ministry Law on Human Rights Presidency, Number: 4643, Date: 12.04.2001., art. 5.

professional organizations, professors and lecturers, researchers and authors⁶¹. The function of the council is to provide opinion on the promotion and protection of human rights, and make recommendations, bring proposals and prepare reports. As it is the case in France, the council does not have power to investigate the violation of rights⁶².

c) Human Rights Institution

In 2000s after the adoption of Paris Principles, an evolution is observed in the commission model. The commissions formed through the traditions of Commonwealth and Francophone, are observed to have a change inside. On the other side, in particular in the countries that are not strictly attached to a certain law tradition or in the ones that have ombudsman institutions, new “Human Rights Institution” model based on Paris Principles is observed to be developed. The first example accepted by the National Institutions Cooperation as conformable to the Paris Principles (accredited) is the Danish Institute for Human Rights (2002). Likewise, German Human Rights Institution (2001), Norway Human Rights Centre (2001) could be the examples for this model⁶³.

In 2002, the Danish Institute for Human Rights replaced the Danish Centre for Human Rights established in 1987⁶⁴. In the change the rationale for being a model conformable to Paris Principles is clearly explained in the web page of the institution⁶⁵. In the establishing act the functions of the institute is widely defined. According to this, the institution will base its activities on the human rights provided at any time by the international community, the international instruments and including constitutional rights; will perform independent and autonomous research on human rights; will provide recommendations to the Government and the Parliament about the

⁶¹ See Regulation the Basis and Procedures of the Establishment, Tasks and Operation of Advisory Council on Human Rights, 15 August 2001.

⁶² For tasks and powers of the institution see Regulation, art. 5.

⁶³ Pohjolainen, “The Evolution of National Human Rights Institutions, The Role of the United Nations”, s. 19.

⁶⁴ As per the provisions of the Law foreseeing an organizational change, with the aim of strengthening the human rights more in Denmark, the Danish Centre for International Studies and Human Rights has been established. The Centre is formed of two units: The Institute for International Studies and the Danish Institute for Human Rights. See Act governing the Establishment of the Danish Centre for International Studies and Human Rights, Act no. 411 of 06/06/2002, Chapter 1.

⁶⁵ For official web page see <http://www.humanrights.dk/about+us>, 08.10.2010.

obligations of Denmark in human rights field; will provide human rights training and information; in the international field and in Nordic region will have the task to promote the human rights relations. The institution is defined as independent and self-governing institution. The institution has a pluralist structure formed of 13 members⁶⁶.

Another example for the National Institute Model can be shown as Germany. The German Institute for Human Rights has been established on 8th March 2001, upon the recommendation of the German Federal Parliament (Deutscher Bundestag). The institute has status A and is in line with Paris Principles. The main function of the institute is stated as to play a bridge role in the protection of international and national human rights. The institute has 16 members elected from civil society, academicians, media and politicians⁶⁷. The legal status of the institute is defined as “institution of civil society”. The fact that the institute is established based on Paris Principles is mentioned in its official web page⁶⁸. Likewise, the Norwegian Centre for Human Rights is another model with status A, established according to Paris Principles on 21st September 2001⁶⁹.

In functional terms, the three main functions expected from the national institutions by Paris Principles, is more met by the human rights commission model when compared with ombudsman model. In ombudsman model, beside the differences, the role of supervising the government weighs in terms of conformity with the human rights. Whereas in human rights commission model, focus is more on the human rights training and promotion, consultancy to the government and investigation of the violation of rights⁷⁰. However, the

⁶⁶ The Commission's 6member is elected by the Council of Human rights, 2 members by the Rector of the Copenhagen University, 2 members by the Rector of Aarhus University, 2 members by Denmark conference of Rectors and one member by the own staff of the institute. See Act governing the Establishment of the Danish Centre for International Studies and Human Rights, Act no. 411 of 06/06/2002, Section 7.

⁶⁷ See Leaflet German Institute for Human Rights, <http://www.institut-fuer-menschenrechte.de/en/about-us/mandate.html>, 08.10.2010.

⁶⁸ See <http://www.institut-fuer-menschenrechte.de/en/about-us/mandate.html>, 08.10.2010.

⁶⁹ See <http://www.jus.uio.no/smr/english/>, 08.10.2010.

⁷⁰ In the “Commonwealth Workshop on the National Human Rights Institutions” held in Ottawa on 30 September - 2 October 1992, the differences between ombudsman model and commission model have been discussed. In this scope, the ombudsman model to function in the conformity of the public administration with the law and its legality, whereas the commission model to have a wider jurisdiction was concluded. See General Assembly, National Institutions for the promotion and protection of human rights, Report of the Secretary-Gen-

commission model has some certain differences within it in terms of these functions. In commonwealth tradition, human rights training and promotion function looms large. The power to investigate the violation of human rights is more elaborated in the basis of equality and discrimination. And in French tradition, the focus is on the pluralist representative structure and consultancy to the government on human rights issues. In the human rights institutions established in the recent years, an effort to balance these three functions is observed.

Result: which factors determine the model preference and which model for Turkey?

In the preference related to the national institutions, in particular after the adoption of Paris Principles a change in the direction of international standards is experienced. In the institutional preferences of the countries, the law traditions and law systems of the countries are observed to be effective. The classical parliamentary ombudsman occurred in the Nordic countries in the leadership of Switzerland, became common in Latin America and in some central and eastern Europe countries in the form of Defensor del Pueblo to cover the issues between Spain and the human rights. In commission model institutions, consultancy model has been an example over France as inspiration to the Francophone countries. And the equality commission model has been deployed to Australia, New Zealand and other Commonwealth countries over the UK. However, after 1990s the national human rights institutions directly based on Paris Principles have started to be established. This process forces the classical ombudsman and commission model institutions for a change towards the international standards.

“Law traditions” is among the most important factors in the national institution preference of the countries. Countries attached to a certain law tradition prefer similar institution models. As seen above, classical ombudsman model is common in “Nordic” countries, Defensor del Pueblo model in “Hispanic” countries, equality commission model in “Anglophone/ Commonwealth” countries, and advisory committee model in “Francophone” countries. For instance in Africa continent in Anglophone countries commission model is common while, in Francophone countries advisory committee model is common. In the countries that are not strictly attached to a

eral, A/48/340, 23 September 1993, p.5, para.10.

certain law tradition, due to the historical interactions or the similarities in the law systems could prefer the model in the country comprehended close to it. As a matter of fact, Turkish and Greek administrative systems to be influenced by France also played a prevailing role the in the adoption of Advisory Committee model by these countries. However, the events encountered in the human rights law, creates an impact of erosion in law traditions and in this regard a significant similarity is experienced among the countries in terms of the models preferred. As a fact, the national institutions established in 1970s were observed to undergo some changes in the 2000s when Paris Principles started to deploy. In above, the developments in the United Kingdom, Denmark, and France demonstrate that the law traditions changed towards the direction of the international human rights law. In fact, in Turkey inspired from France in 1990s advisory committee was established and influenced by British commission model provincial and district councils on human rights were founded, while with the amendment done to the Constitution in year 2010 the constitutional foundation of the ombudsman model institution was laid. In the same way, in year 2011 a new draft bill was proposed to prefer the model of “Turkish National Human Rights Paris Institution” in line with Paris Principles.

Another factor to affect the national model selection is the “law system of the country”. The administrative and adjudication systems in the countries particularly influence the national institution preference. The countries which don’t have a strong adjudication system as in Latin America countries prefer ombudsman model. However, countries with a strong jurisdiction system, although prefer the ombudsman model, the institutions are not granted the power like adjudication. In the countries where the ombudsman or administrative jurisdiction is strong, in general the human rights commissions are not dressed with the power to investigate the violation of individual rights. In fact, in Denmark, Germany, France and Norway that have the classical ombudsman institutions, the power to investigate the violation of individual rights is not granted to the commissions.

In African countries that have adopted the Francophone law system, the tribunals to have stronger investigative power when compared with those who have adopted the Anglophone law system resulted in the limitation of investigative power of the national institutions in Francophone countries⁷¹.

⁷¹ For an evaluation in this direction see National Human Rights Institutions, Conflict Man-

For this reason, the institutions have the power to investigate the violation of rights in Africa countries that have adopted the Anglophone law system and preferred the commission model, while the countries that have adopted the Francophone law system preferred the advisory committees without investigative power. For instance, South Africa Human Rights Commission included within Anglophone law system has the power to investigate the individual complaints, while Morocco belonging to the Francophone law system preferred the advisory committee model.

In “plurinational states” with status of federative or regional country, “multi institution” is preferred to “single institution” model. In this regard, besides a national central institution at federal level, at each federal state a separate national institution may exist. For instance, in India at federal level besides India National Commission on Human Rights, in each federal state there is a national institution in with the name of that state. In UK, with a system semi-federal, there are three different institutions in the North Ireland, Scotland and Englanda.

In particular, the countries that have passed through new democracy after 1970 in Latin American countries and after 1990 in Eastern Europe countries are observed to prefer ombudsman model called hybrid ombudsman. In this way, instead of establishing the human rights commission that is common in advanced democracies and classical ombudsman, as in the Spanish model institutional model to assume the duty of both supervision of government in terms of conformity with the law and the protection of human rights. In major part of the Latin America countries, for example in Costa Rica, Guatemala, El Salvador, Panama, Argentina, Peru, Equator, Bolivia, Colombia “Defensor del Pueblo” model institutions are preferred. Although not under this name, ombudsman institutions to assume the function of protection of human rights have been established in the Eastern Europe countries. For instance in Poland “Commissioner for Protection of Human Rights”, in Hungary commissioner for Protection of Civil Rights and Rights of National and Ethnic Minorities”, in Slovenia Human Rights Ombudsman, in Bosnia Herzegovina Human Rights Ombudsman, in Russia Defender of Human Rights, in Ukraine Human

agement and Peace building in Africa, Le Vendôme Hotel, Sea Point, Cape Town, 29 November – 3 December 2004, Facilitators: Victoria Maloka and Michelle Parlevliet Centre for Conflict Resolution, Technical Seminar Report, Rapporteurs: Ghalib Galant and Victoria Maloka, s. 14.

Rights Representative, in Uzbekistan Commissioner for Human Rights has been established. During the process of democratic institutionalization in these countries a single model dressed with strong power is preferred⁷².

It can also be said that the economic development level is effective in the preference of the institutions. In developed countries co-implementation of ombudsman and commission model is seen, while in small and developing countries one of these models is observed to be preferred⁷³. For instance, among the developed Western European countries in England, Australia, Canada, France, Germany, Norway, and Denmark both the classical ombudsman and national institution exist. While in developing countries of Latin America, Eastern Europe and some Africa countries generally instead of two separate institutions a single national institution assigned with both duties is preferred⁷⁴.

In Turkey there is strong administrative adjudication supervision. Furthermore, with the amendments to the Constitution in 2010, Public Supervision Institution to correspond the ombudsman has been established. On the other hand Turkish National Human Rights Institution is in the stage of formation. In the process of Turkey's candidanship to become a full member of the EU, her preference to constitute both the ombudsman and the human rights institution is in line with the international developments in this field. One of the most important criteria of having stronger democracy is the "respect to human rights". At this point strong national human rights institutional structuring plays a key role. Having both the ombudsman and national human rights institution conformable to Paris Principles with status A will bring significant respectability to Turkey. If the ombudsman formed is not authorized for human rights issues, it will be considered as classical ombudsman institution and will not be able to obtain accreditation of Status A from ICC.

In case the Ombudsman and national human rights institution are formed together, the determination of power and duties will be important. The Ombudsman institution can be assigned with the examination of the violation

⁷² Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection", Harvard Human Rights Journal, Vol.13, 2000, s.38-39, 51.

⁷³ Commonwealth Secretariat, National Human Rights Institutions, Best Practice, 2001, s. 4.

⁷⁴ Morten Kjaerum, National Human Rights Institution Implementing Human Rights, Danish Institute for Human Rights, Denmark 2003, s. 8.

of human rights originating from public administration, while Turkish national human rights institution can handle the violations of human rights “deriving from the private space”. In this way, there will be no conflict of power between these two institutions. With its structure to enable the pluralist representation the national human rights institution will play the role of a bridge between the government and the civil society, while the ombudsman institution will have a function between the civil society and the parliament. In case both obtain Status A conformable to Paris Principles, these will assume the role of a bridge at national and international level in their own field.

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