



Ombudsman in the institutionalization of administrative ethics

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1. Introduction

In the public administration reforms undertaken recently, it can be seen that good administration and fight against corruption is now becoming the ruling principle in all public institutions. Priority targets of the administrative reforms include effective and efficient use of public resources and achieving public satisfaction by quality improvement of services. In the fight against corruption, it is also important for public service policies to be based on not only legal basis but also on an ethical basis. It is not coincidental for the policies, which are oriented to form an understanding of administrative ethics that will be binding for public institutions, to become the main constituent of the institutional structure.

Apart from the national legislation enacted to govern the ethical behavior of civil servants, efforts are being made at international level. European Union Ombudsman also contributed significantly to the adoption of Europe Code of Good Administrative Behavior. One of the main axes of the reforms undertaken in the developed countries after 1980s is ethical administration. New ethical principles and standards are being developed to guide public institutions and new administrative structures are being established for the inspection. Ethical board, ombudsman and similar authorities develop new ethical principles and standards for civil servants and they also monitor the unethical implementations. These administrative structures are expected to have important function in the adoption of ethics as an administrative value and in becoming popular and institutionalized in the public sector. In this regard, one of the tools that can be used in the institutionalization of administrative ethics is ombudsman. Thanks to its monitoring system on the administration, a functional ombudsman body could play a significant role in the detection of unethical behavior, prevention of repetition and settling of the culture of ethics.

As seen in other examples around the world, the strengthening of trust in public administration in Turkey has only been possible with the regulations that increase the effect of ethical values. In order to functionalize the concept of ethics among public officers, Council of Ethics for Public Service was established in 2004 within the body of Prime Ministry. Another initiative to implement the codes of

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conduct was the establishment of Ombudsman Institution in 2012. With the establishment of such a widely applied institution, a mechanism to improve the dialogue between the citizens and the administration was introduced to the Turkish public administration system.

2. Conceptual Framework of Administrative Ethics

Ethics is a concept used in various fields. For example, administrative ethics, also known as public ethics, include the behavioral patterns that are encouraged or avoided for the civil servants working in public institutions. Administrative ethics means “Such principles and values that civil servants should follow while making a decision or conducting public services as impartiality, honesty, merit, objectivity, transparency, accountability, justice, equity, protecting public benefit, professionalism, prudence and efficiency, refusing any gifts or bribes” (Eryilmaz, 2008: 7).

The examination of the concept of ethics scientifically dates back to 1970s and the concept has gradually gained importance to today. However, due to studies in the field that are not connected with each other and that are not products of a common effort, the field could not thrive enough. Although the diversity of subjects enriches the field, the fact that there is not a common understanding in basic issues causes administrative ethics to continue to have vague boundaries in public administration (Cooper, 2004: 395).

Public officers face with different options before they make a decision. As soon as they make a choice, it means that they turn down the benefits of other choices. Although their decisions are legal, they might be ethically wrong (Sen, 2005: 361). Decisions of public bureaucrats are a mixture of professional and personal values. Besides the fact that public interest is safeguarded, satisfaction of personal interests (power, money, prestige, etc.) might be considered (Downs, 1967: 84 quoted in Ozturk, 2013: 263).

Ethical principles and standards guide public officers through safeguarding public interest. Based on various reasons, bureaucrats have different viewpoints and administrative styles in their public service politics. There is always the possibility of diverting from upholding laws faithfully (Eryilmaz et al., 2011: 29). What is aimed with administrative ethics is to give moral basis besides the legal one to officers who have humane reactions. Public administrators work under exterior and interior pressures when their work makes high public expenses possible or they make decisions that affect citizens’ lives. Offering illegal financial advantages is an example of environmental factors (Uzun, 2004: 156-157).

Public services given by various public institutions reach the society thanks to public bureaucracy. It is an ancient administrative principle to make administrative

decision considering public interest rather than the individual interests of people or groups. The relation between administrative decisions and public interests is established with regulation and ethics. Public services gain value provided that they are in line with regulations and supported by ethical considerations.

3. Administrative Ethics Structure

Behaviors of employees who show activity in administration-related subjects are the subject of administrative ethics. Together with transparency, which is one of the concepts that new public administration approach brought to public life, the visibility of civil servants by citizens has increased, which became a driving force behind obedience to principles of ethics. Main objectives of administrative ethics include determination of standards of ethics to be applied during the execution of administrative works and while taking decisions, and regulating the relations between citizens and civil servants (Sayli et al., 2007: 234).

Ethical approach in public administration can be institutionalized by achieving internal and external ethics simultaneously. Besides internalization of ethical standards to be applied in public service processes by civil servants, it is also necessary to establish structures which will supervise non-ethical actions and operations (Eryilmaz, 2013: 252).

Regulations have been made in many countries in order to establish ethical administration. Codes of ethics have been determined and different mechanisms have been established in order to make supervision and monitoring (Uzun, 2004: 163 – 168). After the Watergate Scandal in 1972 in the United States, the Parliament made comprehensive efforts as to the establishment of an independent mechanism to inspect civil servants' criminal acts. In October 1978, Ethics in Government Act, shortly Ethics Act, was adopted among many suggestions. According to this Act, the authority to start a judicial process when deemed necessary is the chief prosecutor (Mixer, 1985:497).

International organizations contribute to the institutionalization of ethical administration via conventions, codes and inspection tools. In 1996, the United Nations published a recommendation on rules of ethics that public officials in member states should obey. In 1999, the Council of Europe established the Group of States Against Corruption (GRECO) of which Turkey became a member in 2004. The aim of GRECO is to monitor the corruption policies of member states and develop policies against corruption. In 2000, the Council of Europe adopted the Model Code of Conduct for Public Officials as a recommendation for member states. GRECO is the institution responsible for supervising the implementation of the code. It is necessary

to emphasize that the Council of Europe's conventions against corruption have been signed by Turkey (Eryilmaz, 2013: 254-255).

One of the countries that conduct studies on organization of ethical administration is England. Committee on Standards in Public Life was founded in 1994. The committee is the institution applying ethical administration and also defining the framework of ethical administration that public officers should follow (Baydar, 2005b: 102).

In the report presented by Committee on Standards in Public Life to English Prime Minister and Parliament in 2013, it was stated that significant progress has been made for adoption of ethical principles in public institutions since 1995 to present day. However, reoccurrence of inappropriate behaviors, administrators' negligence of public life and delays in responding to even ordinary issues have resulted in public's diminished trust in administration continually. In the published report, information on necessary actions to be taken by the Committee, government and political parties have been featured in order to reach high ethics standards in public life. The information provided and evaluations made serve as suggestions (Committee on Standards in Public Life, 2013: 7).

Besides various regulations on public personnel's ethics behavior such as Public Officers Code, Declaration of Property, Code for Fighting against Bribe and Corruption and Turkish Penal Code, the Code that regulates ethics administration as a whole is the Code numbered 5176 on Establishment of Ethics Council for Public Officers and Regulations on Some Codes, was adopted in 2004.² According to the Code, public officers should take into consideration ethics behavior such as transparency, objectivity, honesty, accountability, and public spirit for service processes. Code numbered 5176 established Council of Ethics for Public Officers by undergoing a new organization.

The mission of the Council is to determine ethics behavior principles to be followed by public officers, to initiate the process of investigation and research in case of a violation of ethics principles ex officio or upon application and to inform the related departments of the result and conduct studies in order to cultivate ethics culture in public life.

The law is formulated with the exception of certain institutions as far as administrative ethics are concerned. Excluding the President, members of the Turkish Parliament, members of the Cabinet, members of the Turkish Armed Forces and judiciary and universities, public officers from other public organizations holding the title of Director General or an equal position at minimum are supervised for ethics by the Council.

² Official Gazette No 25486 dated 08/06/2004

The Bylaw on Principles of Ethical Behavior for Public Officers and Procedures and Principles for Appeal dated 2005 has concretized ethical behavior in public officers³. Principles on ethical behavior specified in section 2 of the bylaw are indicated under consciousness of serving the community, compliance with service standards, commitment to the objective and mission, integrity and impartiality, respectability and confidence, decency and respect, notification to competent authorities, avoiding conflict of interest, not using the duty and authorities to derive benefits, prohibition of receiving gifts and deriving benefits, making use of public domain and resources, avoiding extravagance, binding explanations and factitious statement, notification, transparency and participation, managers' liability to render account, relations with former public officers and declaring property.

Eryilmaz, who happened to chair the Council, considers the establishment of the Council a significant yet insufficient step for administrative ethics. He further considers essential the inclusion of all public institutions by the regulation on administrative ethics for the development of ethic culture in the society (Eryilmaz, 2008: 10-11).

One of the shortcomings about the Council of Ethics for Public Officers is the insufficient level of administrative and financial capacities. Without a legal entity, the Council does not have its own budget or staff. Hence the recommendations by the GRECO and EU regular reports to strengthen the Council (Eryilmaz and others, 2011: 40).

That the armed forces and universities are not included in the Council's jurisdiction has been subject to criticism. The exclusion of these institutions as per the integrity of the administration as a constitutional principle has debilitated the integrity of ethics (Eryilmaz and others, 2011: 40). Inclusion of these institutions to ethical supervision with future legal amendments has been recommended (Ozturk, 2013: 278).

General conviction is that the Ethics Council lacks in sanction power. The original version of the law included a provision which stated that the Council decisions were to be published on the Official Gazette, which was canceled by the Constitutional Court. The cancellation rendered inoperable the supervision of the public opinion upon detection of violation of ethics (Eryilmaz and others, 2011: 40) and caused commentary that "violation of ethics is almost sanction-free" (Ozturk, 2013: 278).

4. The Link Between Ombudsman and Administrative Ethics

³ Official Gazette No 25785 dated 13/04/2005

Various supervisions on public institutions address the legitimacy of processes and procedures and do not attach sufficient importance to supervisory criteria such as the efficient and effective use of resources, service quality or citizen satisfaction. However, contemporary approach to administration highly recognizes the importance of such criteria in strengthening the legitimacy of public administration and in creating trust between the administration and the administered. The establishment of good governance should not be left to the initiatives of public administrators and the administrative order should be built upon ethic standards and principles.

Delivery of services by officers who commit themselves to the ethical framework depends on the efficient operation of guiding and supervising mechanisms. There are various legal and administrative tools to solve complaints that stem from bad governance between the state and people. The ombudsman institution receives increasing interest along with classical means of supervision in remedying mistreatments caused by unethical administrative behavior. The creation of the ombudsman institution shows the state's interest in good governance (Eryılmaz, 2012: 392).

Ombudsman does not only supervise the public administration activities for legitimacy but also for appropriateness. It provides guidance to the administration as to the accurateness of public administration choices and how they could be better. Through supervisions, ombudsman detects unethical cases and helps avoid recurrence of such. It has guiding role in putting administrative ethics principles to practice. Ombudsman opinions concerning cases where officers face uncertainty have an educational function and puts forth recommendations. The European Code of Good Administrative Behavior designed by the EU Ombudsman to guide citizens and officers, for instance, has been accepted by the European Parliament as a reference document for the EU Ombudsman to perform its duties (Diamandouros, 2012: 21).

The Ombudsman Institution was established in 2010 in the Republic of Turkey with the constitutional amendment. The name of the article 74 was renewed as "The right to petition, information and applying to Ombudsman". The Ombudsman Institution Law no 6328 has been approved in 2012. The institution is responsible for eliminating inconveniences of citizens caused by administration. Ombudsmen oversee the activities of public institutions and organizations in terms of law, justice and equity. It is aimed to mitigate the personal complaints and the workload of administrative jurisdiction by obeying the suggestions of the ombudsman as much as possible. (Sengul, 2013: 83-84).

Bylaw on the Procedures and Principles Regarding the Implementation of the Ombudsman Institution Law emphasizes on good administration while defining the working procedures and principles of the institution. The principles of good administration are defined in Article 6 of the Regulation. The framework to be

observed by the Ombudsman in the inspection of administrative action and processes is laid out in the regulation “The institution abides by the good administrative principles and oversees the administration in a manner observing a mentality of justice based on the human rights in terms of the processes and actions as well as the showing the right attitude or behavior of lawfulness, absence of discrimination, proportionality, absence of abuse of administrative power, equality, impartiality, fairness, courtesy, transparency, accountability, compliance to rightful expectance, protection of vested rights, right to be heard and to make statements, right to be informed, justifiable verdict given within a reasonable time limit, indication of appeal possibilities, timely notification of the decisions and protection of personal data; while investigating and inspecting the administration.” The principles laid under the topic of good administration maintain an understanding in alignment with the codes accepted by both the European Council and European Union. It is a must of ethical administration for the Public institutions to take notice of these principles in their activities.

5. Conclusion

One of the most important problems of our century is the administrative corruption observed in almost all administration systems. When the public services officers pursue their own benefits, it causes the citizens to encounter unjust outcomes. In a transparent administration, as the unethical behavior becomes more visible, especially the trust to the state is shattered.

The administrative decisions are made by public officials who maintain the authority to take actions and make decisions on behalf of the administration. What is expected from the bureaucrats is making administrative decisions for the benefit of the public. Administrative ethics is important in that it leads the way towards for public officers on how to make decisions and act in practice. It poses a framework regarding the behaviors on public service and lays out the general principles for civil servants. The institutionalizing of administrative ethics affects the value of state in citizens’ eyes in a positive manner and consolidates the trust to state. Public service policies should be executed observing judiciary and moral principles such as objectivity, equality, justice, equity, righteousness and honesty. The inspection of unethical attitudes of public administration has been benefiting from the judiciary institutions as well as non-judiciary supervising institutions, recently. Other mechanisms for the benefit of the citizens and elimination of violation of citizens rights comes to the fore as the judicial inspection is limited to legality inspection and cannot reach on the administrative discretion. The Ombudsman Institution has a functional role in detecting the violations by evaluating the actions and processes of the public institutions in an ethical scale. In the process of solving the complaints caused by the

public administration, the ombudsman contributes positively to the establishment of ethical conscience and sensibility.

There have been various legal regulations in administrative ethics in Turkey. The founding of Council of Ethics for Public Service is among the outcomes of these efforts. On the other hand, there is a common perception regarding the inadequacies in the legal regulations about the structure and operation of the Council of Ethics for Public Service. Besides the administrative and financial capacity problems, the inspections of the council have enforcement problems. Following the Constitutional Court's verdict, the enforcement power and effect of the Council of Ethics are weakened. The role of Ombudsman Institution has become clearer in fulfilling the gap of ethical administration. The Ombudsman Institution has a functional position in enhancing the ethic capacity and institutionalization of Turkish public administration. The inspections to be realized in alignment with good administration principles mentioned in the Bylaw on the Practice will guide the adoption of ethical culture and support the process of implementing the ethical principles into public administration as described in the international conventions.

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