
OMBUDSMAN/HUMAN RIGHTS INSTITUTION IN THE MIDDLE EAST COUNTRIES

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Abstract

The Ombudsmen institution is a relatively young institution in the political systems of 133 countries of the world. Although its founder is tied to Sweden, where this institution was founded in the early 19th century, its rapid spread only came in the sixties and seventies of the 20th century. In the Middle East, this institution exists in just a few countries. This institution continues to exist in this region and in certain countries only at the beginning of the 21st century. The institution of ombudsman in the interests of the Middle East is not close to the political systems of these countries, nor to the usual nor the cultural ambience. However, since it protects human rights and controls public administration, it is also necessary in the political regime of the countries of the Middle East. In this paper, special attention is paid to the Ombudsman/National Human Rights Institution in some countries of the Middle East.

Keywords: Ombudsman, Middle East countries, Turkey, Israel, Egypt, other Middle East countries...

1. INTRODUCTION

An ancient word in the Swedish language, Ombudsman is made up of the words ‘ombud’ (representative, vice) and man (person). As for the term Ombudsman as an institution, it denotes a person or people elected by the parliament for representing the parliament. The equivalent for Ombudsman is termed in various ways such as mediator, public controller, public referee, lawyer of the people and parliament commissioner. Ombudsman is the name assigned to an elected, independent, high-ranking authority generally elected by the legislative body, who helps the citizens in their problems with the administration, is reported upon their complaints, can bring about offers to the authorities of the administrative institutions related with that issue. The word also expresses the post of this authority. Defined as the official person authorized for examining and finalizing the complaints by citizens according to the doctrine, ombudsman is the way of controlling public administration by listening, examining the complaints and carrying out investigations.¹

The Middle East is a transcontinental region. it includes countries on Turkey, Iran, Iraq, Saudi Arabia, Yemen, Syria, Israel, Palestinian Territories, Syria, Lebanon, United Arab Emirates, Oman, Kuwait, Qatar, Bahrein, Egypt and Jordan. After numerous wars during the 1990s and the first dekate of 21th century, some of these countries face significant human rights violations. The Ombudsperson Institution, therefore, in some of them, in the near future, could be a significant step towards their improvement. The Middle East region is very unstable. The development of democracy is slow. In these areas, authoritarian regimes, purges and wars, international interventions and internal instabilities are still are very often. In war crises and internal instabilities, violations of human rights are very often. The authorities often take over the army at certain times and even distinguish militant groups. But, in some countries in the region, Ombudsman/Human Rights institution certainly exists as a useful institution. Former Supreme Court President in Israel, Aaron Barak noted that “human rights are a key component of a modern democracy ... they are the jewel

¹ Gary Sander, Ombudsman and Local Governments, International Local Governments Congress, Venice, 2013, pp. 9-11.

in the crown of democracy. A democracy without human rights is meaningless and empty.”²



Country Map – Middle East

But, the protection of human rights was not originally the core of the work of the ombudsman institutions. These ombudsman institutions, which function in countries throughout the world, handle public complaints and were established for the purpose of protecting the concept of good governance. Their other initial objectives were to prevent “maladministration” and the abuse of authority, and to increase the sense of accountability among public employees. The Ombudsman protects citizens from mala administration.

Since in some countries of the region public administration has not been reformed, human rights are less protected. The perspective in the region is the introduction of an ombudsman institution in all countries of the Middle East.

Some European countries have made significant efforts in this direction. During the first decade of 21st century, Sweden was very

² A. Barak, *Proportionality in the Law – Violation of Constitutional Rights and the Limitations Imposed Thereon* (2010), at p. 208.

involved in process which fokus on human rights and promote the rule of law on this region. Appropriate interventions could involve efforts to establish ombudsman institution in this Regeion.³

Unfortunately, the ombudsman institution in this region exists only at Turkey, Israel, Egypt and Jordan.

Country	Institution	Type	Name of human rights institution
Turkey	Yes	Independent	Ombudsman
Iran	No	-	
Saudi Arabia	No	-	
Yemen	No	-	
Syria	No	-	
Israel	Yes	Independent	State Comptroller /Ombudsman
Lebanon	No	-	
UAE	No	-	
Oman	No	-	
Kuwait	No	-	
Qatar	No	-	
Bahreïn	No	-	
Egypt	Yes	Independent	National Council for Human Rights
Jordan	Yes	Independent	National Center for human Rights

Ombudsman/Human Rights Institution in Middle East Countries

³ Regional strategy for development cooperation with The Middle East and North Africa (MENA) 2006-2008, The Ministry for Foreign Affairs, Sweden, Stockholm, 2006. p.16.

2. OMBUDSMAN IN TURKEY

Particularly since the early 2000, Turkey has taken significant legal and administrative steps in promoting “rule of law”, “democracy” and “respect for human rights” and has been decisively continuing to institutionalize the mechanisms for protecting and improving the fundamental rights and freedoms. The Ombudsman Institution has achieved to serve as the strong voice of the public conscience in a very short time by means of its examinations and investigations carried out independently and objectively with a view to promote rule of law, democracy, respect for human rights as well as with a sense of responsibility towards the society.⁴

The Ombudsman Institution of the Republic of Turkey, also known as the Ombudsman, was established in 2012 with the Law No.6328 as a constitutional public entity affiliated with the Grand National Assembly of Turkey. The Ombudsman Institution follows all developments in society within the scope of its duties, evaluates complaints of any individual or legal entity, regardless of religious, cultural, and/or ethnic affiliation and reports them. Law on the Ombudsman No. 6328 and the Regulation on the Procedures and Principles regarding the Implementation of the Ombudsman Institution include good governance principles similarly to the regulations in Europe.⁵

Like other Ombudsman Institutions in the world, the Turkish Ombudsman Institution serves two purposes: “protecting” the fundamental rights and freedoms, and “promoting” them. The works on eliminating the violations identified after the examinations and investigations carried out upon complaint applications filed by native and foreign natural and legal persons serve for protecting the rights.

This Law covers the principles regarding the establishment, duties and working procedures of the Ombudsman Institution and the provisions regarding the qualifications, selection and personal rights of the Chief Ombudsman and ombudsmen and the appointment and personal rights of the staff members of the Institution. The

⁴ *The Ombudsman Institution of Turkey and its role in ensuring access to justice for the right to housing and property*, Available: <https://www.ohchr.org/Documents/Issues/Housing/Justice/OmbudsmanInstitutionTurkey.pdf>, Accessed: 01/07/2019

⁵ *Ibidem*, p. 1-2.

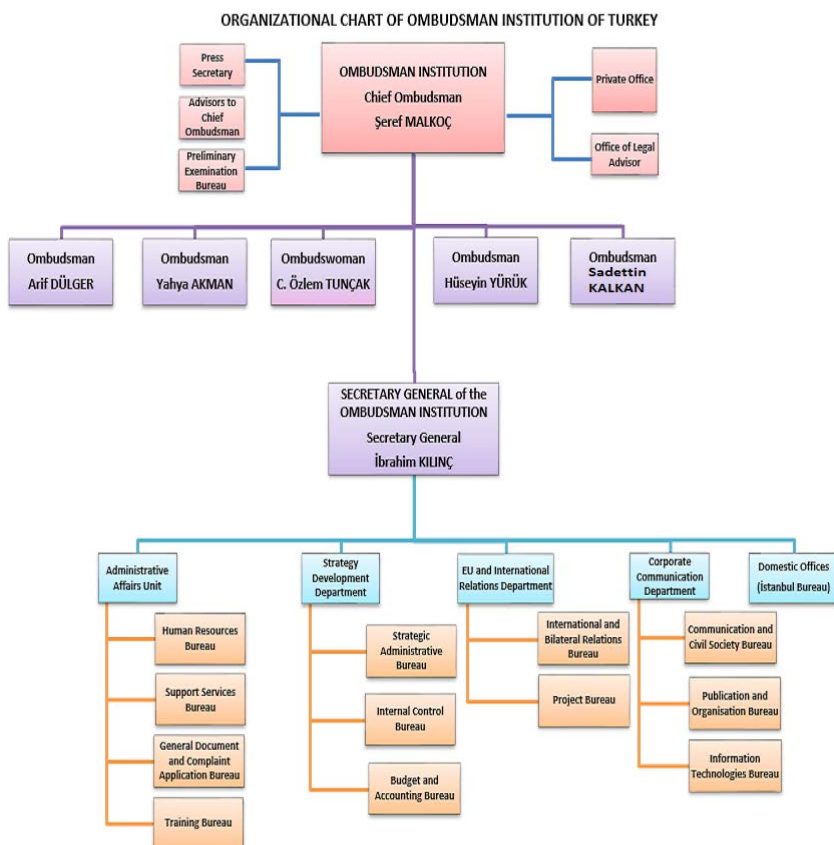
Institution has been assigned “to examine, investigate, and submit recommendations to the Administration with regard to all sorts of acts and actions as well as attitudes and behaviors of the Administration upon complaint on the functioning of the Administration within the framework of an understanding of human rights-based justice and in the aspect of legality and conformity with principles of fairness”.⁶

Chief Ombudsman shall be elected with a two-thirds majority of the total member number of MP’s of Parliament. The candidate of the Ombudsman have to be: a) a citizen of the Republic of Turkey; b) at least 50 years of age in case of the Chief Ombudsman and 40 years of age in case of ombudsmen at the date of election; c) to have graduated from the faculties with four-year education program of preferably law, political science, economic and administrative sciences, economy or management, or from higher education institutions at home or abroad, the equivalence of which has already been accepted; d) to have an experience of at least ten years in aggregate at the public institutions or organizations, international organizations, non-governmental organizations, professional organizations with public institution status, or in the private sector; e) Not to be banned from public rights; f) Not to be a member of a political party at the time of the application.⁷

In addition to the Chief Ombudsman, who manages the office, there are five ombudsmen in Turkey in the special areas headed by the Chief Ombudsman. The service has a secretary general. There are five departments within the Ombudsman’s office: Administration Affairs Unit, Strategy Development Department, EU and International Department, Corporate Communication Department and Domestic offices. Each department has special sections and groups.

6 Parliament of Turkey, *Law on the Ombudsman*, Official Journal of Republic of Turkey, No. 6328, 2012, Art. 2, Art. 5.

7 Parliament of Turkey, *Law on the Ombudsman*, Official Journal of Republic of Turkey, No. 6328, 2012, Art. 10-11.



Organizational Chart of Ombudsman Institution of Turkey⁸

One interesting case reacted by these institutions was the education of children in the crisis area in Turkey, during the police time, due to which many children denied the right to education. Ombudsman, in this case, Chief of Ombudsman concluded:

“The education has been interrupted and the right to education is violated due to the call made for the teachers as a whole to attend in-service training while the school year was ongoing in some provinces and districts where curfew was imposed particularly in the city of Şırnak’s district of Cizre and Silopi, and many

⁸ Organizational Chart of Ombudsman Institution of Turkey, Available: <https://www.ombudsman.gov.tr/English/organisation-chart/index.html> Accessed: 02/07/2019.

children have been injured and died as a result of conflicts that have been ongoing since July 2015 and those injured have had difficulty in having access to healthcare services and the aforementioned children could not meet their basic needs for a long time, and the children have been subject to forced migration in the midst of conflicts, and they have been taken into custody, arrested and sentenced” they allege and demand the Institution to safeguard the right to life for all, and do what is necessary for the continuance of education, and share with public the measures taken to put an end to the conflict and restore peace across the region and recover damages suffered by the children in the process.⁹

3. OMBUDSMAN IN ISRAEL

The early institution of the ombudsman in Israel was an institution of State Comptroller established in 1971, which has also functioned as ombudsman for the state of Israel. Later, the institution of the Ombudsperson also emerges. The ombudsman works to protect Israeli citizens and residents from harmful decisions of governmental and administrative authorities. The ombudsman receives and investigates complaints submitted by individuals against public authorities. If an investigation following the complaint against Israeli government offices confirms that there is a problem in a public authority's operations, the State Comptroller and Ombudsman will order its Audit Unit to perform an audit and give its recommendations to that public authority.¹⁰

Today, The Office of the Ombudsman is authorized to investigate complaints against government ministries, local authorities, and other municipal bodies, such as inter-city associations and water and sewage corporations, state enterprises or institutions, government corporations and other public bodies - as provided by law. The Ombudsman may also investigate complaints about employees and officeholders in those public bodies against which complaints are filed. In general, the Office of the Ombudsman will investigate a complaint if it concerns an act - including an omis-

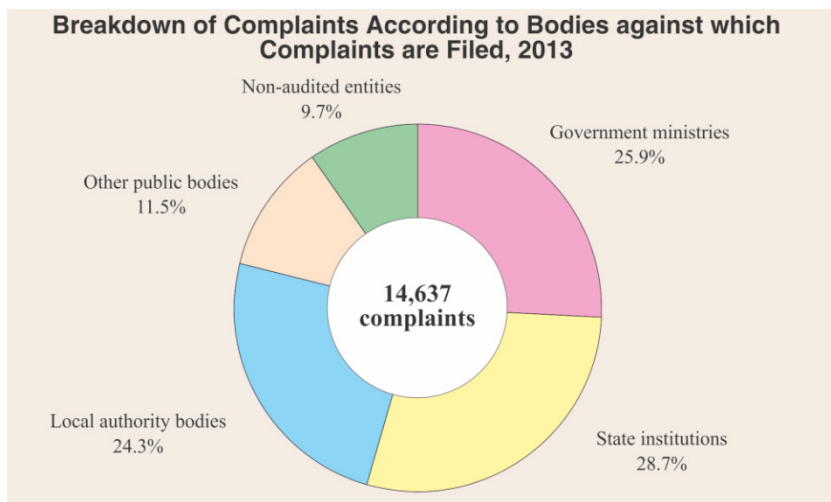
9 Complaint No: 2015/5629, Date of Decision, 8/23/2016, Summary of Decision, Available: <https://www.ombudsman.gov.tr/English/dosyalar/2015-5629-decision.pdf> Accessed: 02/08/2019.

10 Miriam Ben-Parath, "The Ombudsman as Defender of Democracy and Human Rights", In: Alfred E. Kellermann, Kurt Siehr, Talia Einhorn, *Israel Among the Nations* (eds.) Kluwer Law International, The Hague, the Netherlands, 1998, pp. 53-68.

sion or a delay in acting - that is directly injurious to, or directly withholds a benefit from, the complainant. In addition, the act must be either contrary to law, taken without lawful authority, contrary to good governance, or involve excessive inflexibility or flagrant injustice.¹¹

However, since the 1980's, these public ombudsman's offices have, in many countries, adjusted themselves to the new legal and social reality in the field of human rights; they have begun to play an active and key role in the enforcement of the constitutional and international norms in this area.

The Ombudsman received a large number of complaints today. In 2013, Israeli citizens recalled 14,637 complaints.



Breakdown of Complaints According to Bodies against which Complaints are Filled 2013

The Ombudsman is a respectable institution in Israel. 4,196 (28.7%) of the complaints were against State institutions: the National Insurance Institute, the Israel Police, the IDF, the courts, the Population and Immigration Authority, the Enforcement and Collection Authority, the Israel Lands Authority and other institu-

¹¹ Ombudsman Israel, Annual Report 39-40 (2012 and 2013) – General Summary, pp. 22-23. Available: <https://www.mevaker.gov.il/he/Reports/Pages/300.aspx#> Accessed: 02/08/2019.

tions. 3,793 (25.9%) of the complaints were against Government ministries. 3,551 (24.2%) of the complaints were against local authority bodies: local authorities – municipalities, local councils and regional councils – local committees and other municipal entities, such as Local Planning and Building Commissions, city associations and water and sewage corporations. 1,677 (11.5%) of the complaints were against other public bodies: infrastructure and transportation companies, educational and scientific institutions, health maintenance organizations and more. At the end, 1,420 (9.7%) of the complaints were against bodies regarding which the Office of the Ombudsman is not authorized to investigate complaints, such as banks and telephone companies.¹²

4. OMBUDSMAN IN EGYPT

In Egypt, instead of an ombudsman, there is a similar institution called the National Council for Human Rights established by Law, 2003.¹³

A council named “The National Council for Human Rights”, under the auspices of the Shoura Council, shall hereby be established to further the protection, set the values, raise the awareness, and ensure the observance of human rights. The Council shall have a legal personality, have its headquarters in Cairo, and may have branches and offices in other Governorates of the Arab republic of Egypt. The Council shall independently perform its duties, activities and functions. The Council shall be composed of a Chairman, one Deputy Chairman, and 25 public figures well known for their experience and interest in human rights’ issues, or for their distinguished performance in this field. A decree of the Shoura Council shall establish the Council for three years.

To achieve its goals, the Council shall: 1. Prepare and propose the means of implementation for a national action plan designed to further the protection of human rights in the Arab republic of Egypt. 2. Provide competent bodies with recommendations and advice on all means to protect further and promote human rights. 3. Provide opinions, recommendations, and advice on matters referred to it by the competent authorities and bodies concerning

12 Ombudsman Israel, Annual Report 39-40 (2012 and 2013) – General Summary, pp. 48-49.

13 Parliament of Egypt, Law No. 94 of 2003 on The National Council of Human Rights.

the protection and promotion of human rights. 4. Receive and examine complaints concerning protection of human rights, refer, at its discretion, any such complaints to the competent bodies and follow-up with them, advise the parties concerned with the matter of the legal procedures to be followed and assist them in such regard, or settle such complaints with the relevant bodies. 5. Monitor the application of international human rights agreements and conventions, as well as provide the concerned authorities with the proposals, notes, and recommendations necessary for the proper application of such agreements and conventions. 6. Coordinate with international and local organizations and agencies concerned in human rights in matters that would help achieve the objectives of and promote the relationships of such organizations and agencies with the Council. 7 Coordinate with public agencies concerned with human rights, and cooperate with the National Council for Women, the National Council for Children and Motherhood, and other interested councils and agencies 8. Make the recommendations necessary to support institutional and technical capacities in the fields of human rights, including the technical education and training of employees of the state bodies related to civil liberties, and economic, social, and cultural rights, with a view to increase the efficiency of such employees etc.

After 2010, Egypt is entering a turbulent period. Egypt has witnessed very important developments since the outbreak of the revolution on January 25th, 2011 when the Egyptian people took the streets calling for bread, freedom, social justice and human dignity. Peaceful demonstrations and sit-ins continued until they toppled former President Mubarak on the 11th of February 2011. The situation continued to be too much confused and critical in the first year of the transitional period during the Military Council's rule. This period witnessed violations of human rights due to excessive use of force by security forces against demonstrators and the repeated clashes between demonstrators and sit-ins on the one hand and security forces on the other hand which caused the death and injury of hundreds. During the rule of former President Morsi from June 2012 to the end of June 2013, this situation persisted. Human rights violations took another turn where the former president exceeded his constitutional powers and violated the principle of separation of powers by issuing a constitutional declaration

in November 2012 immunizing his decrees against any revision including the judiciary rulings. This situation led to the eruption of another wave of revolution on June 30th, 2013 coupled with peaceful demonstrations as an expression of a popular sweeping will backed by the armed forces which previously supported the 25th of January revolution to avert civil war. This wave led to the disposing of former President Morsi. The President of the Higher Constitutional Court took over as interim president. A map for the future was put in place defining the constitutional targets for the transitional period, namely: amending the 2012 Constitution and holding presidential and parliamentary elections. A referendum on the amended constitution was held on 14th and 15th January 2014. The presidential election process starts in March 2013 to be followed by the parliamentary elections.¹⁴

After this period turbulent period in Egypt, The National Council for Human Rights becomes a credible institution. At 2014. NCHR formed 73 fact-finding missions to investigate human rights violations since June 2010. They issued reports including the report on the so-called “Camel battle”, Maspero incidents and the latest about the break-up of Rabaa sit-in which was organized by the Muslim brotherhood. The NCHR report, released on 3/5/2014, states that the assembly continued for 48 days and was dispersed on 14/8/2013 by security forces who enforced the public prosecution decision. The assembly started peacefully but was soon joined by armed individuals with fire arms which stripped it of its peaceful nature. The report documented the disproportionate use of heavy fire by security forces during the break-up of the assembly and its negligence for not giving the sit-ins an enough time notice and not securing a safe passage. On the other hand the report documented that leaders of the assembly committed crimes of torture, - killed 11 citizens and-violated the rights of the residents of Rabaa area, specially their rights to safe living, housing and freedom of movement. The storming and the clashes between the security forces and the armed individuals resulted in the killing of 632 persons including 8 policemen. The NCHR is about to issue three fact-finding reports on incidents of church burning, Kerdassah, and the vehicle deporting detainees.¹⁵

14 Submission of the National Council of Human Rights on the situation of Human Rights in Egypt to the Universal Periodic Review Mechanism 13 March 2014, Available:

15 Ibidem.

5. OMBUDSMAN IN JORDAN

Ombudsman institution in Jordan named National Center for human Rights (NCHR). NCHR established by Law in 2006. NCHR established to safeguard the dignity of individuals, and to protect public freedoms and citizens right to a society that guarantees brotherhood, tolerance, and solidarity among all its members. The National Centre for Human Rights (NCHR) is an independent national institution NCHR has a juridical personality with full financial and administrative independence in practicing its intellectual, political and humanitarian activities related to human rights.¹⁶

However, there are still numerous human rights abuses in the Jordan. Also, public administration has not yet been transformed. In the United Nations periodical report, it was stated that this institution in Jordan is still not efficient enough. Jordanian Government was generally mindful of its human rights obligations, some concerns remained. Those included the treatment of detainees in police stations and prisons, including alleged use of torture. Efforts to combat rising poverty and unemployment were insufficient and there was infringement of civil and political rights. Jordan's continued cooperation with the United Nations human rights mechanisms and the adoption of the National Action Plan for Human Rights 2016–2025. They also welcomed the development of its legal system and the adoption of a law to fight family violence, and they appreciated that Jordan had accepted recommendations on the promotion of the culture of human rights and guarantees for a fair trial. Also, still concerned tight State control on civil society organizations' registration and funding.¹⁷

6. PROBLEMS OF ESTABLISHING OMBUDSMAN INSTITUTION IN SOME MIDDLE EAST COUNTRIES

The Danish Institute for Human Rights started working in Yemen in 2007. Our main objective is to support the national human

16 <http://www.ijjo.org/en/organizations/general/jordan-national-centre-for-human-rights> Accessed: 15/08/2019.

17 United Nations, Human Rights Council, Human Rights Council adopts the Universal Periodic Review outcomes of Mexico, Mauritius, Jordan and Malaysia, 2019.

rights system in becoming capable of promoting and protecting human rights across the country. But, in early 2011, the wave of Arab uprisings reached Yemen where members of the opposition staged protests against the rule of President Saleh, who had been in power for more than three decades. Following negotiations, Saleh agreed to resign and gained subsequent immunity. Presidential elections in 2012 were followed by a National Dialogue Conference (NDC) process, which was supposed to define the main aspect of a future unified Yemeni state. Although significantly delayed, the NDC was formally finalized, but the outcomes are yet to be implemented. This is mainly because of the instability in Yemen caused by the Houthi rebellion against the sitting president and government. In September 2014, the northern-based Zaidi Shiite Houthi movement took over the Yemeni capital Sana'a, and has since continued to expand its control over different areas of Yemen. Ombudsman/Human Rights institution still not established.¹⁸

King Haman Al-Kfalifa in Kingdom of Bahrain 2011, after mass protests, established Bahrain Independent Commission of Inquiry (BICI). But, this institution was not ombudsman institution. Today, authority regime of the King of Al-Kfalifa still violated human rights. Courts since January 2018 have stripped at least 243 people of their citizenship, including activists, leaving most of them effectively stateless. Authorities also deported at least eight people after stripping their citizenship. The government announced general elections for November 2018 despite serious restrictions on free speech and assembly. The authoritarian regime of the Kingdom in Bahrain still not establishes ombudsman/national human rights mechanism.¹⁹

7. CONSLUSIONS

The Ombudsman/National Human Rights Institution is not rooted in Middle Eastern political countries. Many countries in this region do not have this institution. In addition to the lack of democratic traditions, as well as the wars in this area, totalitarian and Islamist regimes in individual countries, as well as various other instabilities. In countries where this institution exists, experiences

18 <https://www.humanrights.dk/place/yemen> Accessed: 12/08/2019.

19 <https://www.hrw.org/world-report/2019/country-chapters/bahrain> Accessed: 15/08/2019.

are sporadic and dependent on other factors. The oldest institution in this region established in Israel. It already has a long democratic transition, but the issue of potential human rights violations of Palestinians in the personalities of Israeli deputies by public administration has not yet been sufficiently investigated. In Turkey, under the Recep Tayyip Erdoğan Regime in recent years, there have also been human rights abuses and frequent mismanagement. However, depending on the time, this institution in Turkey has shown positive results. The internal instabilities that plagued Egypt and Jordan also affected the human rights/ ombudsman working institution in these countries. In these countries, these are young institutions, which have yet to gain in importance. On the other hand, the protection of citizens and their human rights, especially from abuse by public administrations, requires that it be introduced and gradually given importance to this institution in other countries of the Middle East. It is the best step towards the promotion of human rights, so it will need to continue to establish these institutions in other countries in the region where it does not yet exist in the future.

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ОМБУДСМАН/ИНСТИТУЦИЈА
ЗАШТИТНИКА ПРАВА ГРАЂАНА У
ЗЕМЉАМА БЛИСКОГ ИСТОКА

Сажетак

Институција Омбудсмана је релативно новија институција у политичким системима 133 земље у свету. Иако се њени зачеци везују за Шведску где је ова институција основана почетком 19. века, њено рапидно ширење је дошло тек током шездесетих и седамдесетих година 20. века. На Блиском истоку, ова институција постоји тек у неколико земаља. Ова институција наставља своје трајање у региону и неким земљама тек почетком 21. века. Институција Омбудсмана са становишта Блиског истока није блиска политичким системима земаља овог региона, нити је уобичајена за њихов културни амбијент. Ипак, пошто је у питању заштита људских права и контрола јавне администрације, она је потребна и у политичким системима у земљама Блиског истока. У овом раду, посебна пажња биће посвећена Омбудсману/Националној институцији за људска права у одређеним државама Блиског истока.

Кључне речи: Омбудсман, земље Блиског истока, Турска, Израел, Египат, друге земље Блиског истока...

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