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TOWARDS THE ESTABLISHMENT OF A FULLY COMPLIANT NATIONAL HUMAN RIGHTS INSTITUTION IN ITALY

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ABSTRACT

This dissertation concerns the establishment of a National Human Rights Institution (NHRI) in Italy. In particular, whether the country is currently on the right track in the process of creating one that can be accredited as fully compliant with the Paris Principles and if it will be, according to these international criteria, likely to be able to efficiently work for the protection and promotion of human rights. The thesis firstly explores what exactly National Human Rights Institutions are, and the role they play in the human rights global, regional and national scenario. It then argues that there are institutional models that comply better with the minimum standards of the Paris Principles, and are better equipped to forward a more consistent implementation of international human rights standards. After an analysis of the Italian unified draft law for the establishment of a "National commission for the promotion and protection of fundamental human rights and for the fight against discrimination", it concludes with an assessment of its compliance with the Paris Principles.

ACRONYMS AND ABBREVIATIONS

APF - Asia Pacific Forum

CHR - Commission on Human Rights

CoE - Council of Europe

CRC - Convention on the Rights of the Child

CRPD - Convention on the Rights of Persons with Disabilities

ECOSOC - Economic and Social Council

ECJ - European Court of Justice

ECHR - European Convention on Human Rights

ENNHRI - European Network of National Human Rights Institutions

EU - European Union

GA - General Assembly

GANHRI - Global Network of National Human Rights Institutions

HRC - Human Rights Council

ICC - International Coordinating Committee of NHRIs for the Promotion and Protection of Human Rights

ICERD - International Convention on the Elimination of Racial Discrimination

NANHRI - Network of African National Human Rights Institutions

NGOs - Non-governmental organizations

NHRI(s) - National Human Rights Institution(s)

OHCHR Office of the High Commissioner for Human Rights

OPCAT - Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

OSCE - Organization for Security and Co-operation in Europe

PPs - Paris Principles

RINDHCA - Red de Instituciones Nacionales de Derechos Humanos del Continente Americano

SCA - Sub-Committee on Accreditation of the GANHRI

UN - United Nations

UNDP - United Nations Development Programme

UNGA - United Nations General Assembly

UPR - Universal Periodic Review

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INTRODUCTION

The establishment of National Human Rights Institutions (NHRIs) is one of the States' commitments that emerged in response to the atrocities of the World Wars and the massive violations of human rights that occurred throughout the 20th century. Together with the proliferation of international organisations and international conventions aimed at avoiding the reoccurring of such events and binding States to a greater respect of those rights, the need for national bodies for their implementation and monitoring became stronger over the years. The first conceptualisation of national institutions that could collaborate for the promotion and protection of human rights was made in 1946 and since then the concept of the role of national human rights institutions gradually developed. The creation of international standards in 1991, known as the Paris Principles, for the establishment and strengthening of NHRIs boosted and guided their formation globally and regionally. This work, rather than considering the global scenario, concerns the structure and functioning of NHRIs in the smaller European context.

Despite the fact that States are not legally bound to establish a national institution for the promotion and protection of human rights, it is nonetheless still important for them to create one, even for States with a long democratic tradition. Notwithstanding this need, there are European countries that either still lack such an institution or have one that struggles to be compliant with the mentioned international criteria. Italy belongs to the former category, even though it has an urgent necessity of an NHRI, not only for its international credibility but, most importantly, for the promotion and protection of the rights and fundamental freedoms at stake. The country needs an independent institution that can help to direct the policies towards a legislation more responsive and respectful of the current international human rights standards. Therefore, it is of the utmost importance to follow the process for the establishment of the future Italian NHRI that started in 2006 and is still ongoing. These are the reasons behind the author's

choice to address this topic together with the need to find a suitable answer to the following queries.

With this dissertation the author wants to address the main question whether Italy is on the right track in the process of establishing a fully compliant and efficient National Human Rights Institution. In order to do so, it is vital to first understand what exactly National Human Rights Institutions are, and the role they play in the human rights global, regional and national scenario. The institutional model to set up an NHRI is not strictly predetermined, and the Paris Principles deal mainly with the mandate, functions and the degree of independence of the institutions. Nonetheless, the structure can influence the effectiveness of an NHRI in dealing with its protection and promotion tasks and the Paris Principles, as well as their auxiliary instruments, are the only available criteria for such an assessment. This leads back to the initial question, which needs to be observed from different perspectives, that raise three general sub-questions. The latter will be addressed throughout this work and are the following:

1. Is there a better structure to deal with the complexity of the international protection of human rights? Subsequently, did Italy choose a structure that can potentially bring about an effective implementation of international human rights standards?
2. What is exactly the content of the Paris Principles? Consequently, did Italy respect these criteria to make its future Commission a "fully compliant and effective" NHRI?
3. Does the Italian draft law for the establishment of a Commission present shortcomings that will hinder its accreditation and its best functioning or is it sufficiently compliant with the Paris Principles to lead to the creation of a strong NHRI?

To address the first sub-question, throughout the first chapter the author tries to understand if there are structures better suited to fulfil the mandate of an NHRI. The research focuses on the European context which is the closest and therefore the most likely to influence and shape the setting up of an Italian NHRI. The first chapter starts by considering the main historical passages, and the most

relevant regulatory framework concerning the establishment of NHRIs, the initial difficulties to accept the need of such institutions in advanced democracies, and the global and regional networks created for their coordination and strengthening. This introductive section of the first chapter leads to a more specific section that focuses on the assessment of some of the structures chosen to set up European NHRIs. More specifically, this part analyses the "Human Rights Institute" and the "Commission/Institution" models, the most relevant for the study of the Italian situation.

To be able to answer the second sub-question the author dedicates the second chapter to the study of the history and development of the criteria that should guide States towards the establishment of fully compliant and efficient NHRIs. After an assessment of the perceived shortcomings of the Paris Principles, follows an analysis of their content. Far from being an exhaustive commentary, the analysis is focused on highlighting to what extent some NHRIs failed to meet the criteria or why they did not reach the level required to be accredited with a higher (or the highest) status. This assessment is vital to later understand if and how the Italian draft law respected these criteria and to eventually give an answer to the main question.

The third and last chapter, building upon the parameters and guidance offered by the previous ones, deals with the study of the Italian draft law in order to give a more solid answer to the sub-questions and the main research question. After giving an overview of the Italian fragmented human rights panorama, this chapter deals with the need of a national institution for the protection and promotion of human rights. Eventually, it offers an assessment of the compliance of the draft law with the Paris Principles. Based on the findings of every chapter, the author will gradually attempt to understand: whether Italy chose an institutional structure that can potentially bring about an effective implementation of international human rights standards; whether it respected the criteria to make it a "fully compliant and effective" NHRI; whether the Italian draft law for the establishment of a Commission presents shortcomings that will hinder its accreditation and its best functioning. In the light of all that, the author will be

better able to address the main and final question of whether Italy is on the right track in the process of establishing a fully compliant and efficient National Human Rights Institution.

CHAPTER 1
THE HISTORY AND DEVELOPMENT OF NHRIs AT GLOBAL, REGIONAL AND NATIONAL LEVEL

Worldwide, 117 States participate with their National Human Rights Institution (NHRI) in the Global Network of National Human Rights Institutions (GANHRI), and regionally 39 Council of Europe's members belong to the European Network of National Human Rights Institution (ENNHRI). Italy is one of the last four countries[1] in the European Union (EU) to lack one. This chapter is aimed at understanding, with a narrower focus on national experiences that are more relevant for the study of the Italian situation, whether there is an institutional model that can potentially bring about a better implementation of human rights standards. For this purpose, the author will collect and analyse the main sources referring to the creation and development of NHRIs: first, at the global level with the GANHRI, second at the regional level, focusing on Europe, and third, some national experiences will be compared, offering an overview of the main models, and assessing how their structure can play a role in a more consistent implementation of international human rights standards.

1. A brief historical perspective of NHRIs and their proliferation

In order to understand the nature and the role of national human rights institutions, it is necessary to consider the main historical events that led to their creation, as well as the main tools that encompass their establishment and development. Therefore, the author will proceed by highlighting some crucial

[1] Together with Malta, the Czech Republic and Romania.

events that have occurred since 1946 and by presenting the main "soft law" and "hard law" instruments that shaped NHRIs as we know them today.

1.1. The idea to found National Human Rights Institutions

In June 1946, the Economic and Social Council (ECOSOC) of the United Nations (UN), while drafting the terms of reference for the former Commission on Human Rights[2] (CHR), invited Member States to consider the establishment of "information groups or local human rights committees within their respective countries"[3] which could collaborate for the furthering of the Commission's work. This was the first time the UN asked States to create what years later would become the "National Human Rights Institutions".

It was only in 1978 that proper guidelines were drafted: the UN Division of Human Rights in Geneva organised a seminar[4] during which the functioning and the structure of the institutions were defined and transposed into a report. Furthermore, the UN General Assembly (UNGA) and the CHR, after endorsing the report, invited States which were still missing them to establish such institutions. Nonetheless, while promotion functions were clearly listed, "fewer and less detailed recommendations were adopted with regards protective functions".[5] States were still far from being ready to follow stricter guidelines on this matter, and only after the strengthening of an international understanding and consensus, they started to accept the idea of autonomous institutions with a mandate of human rights protection.

One of the most important steps towards the realisation of a stronger awareness of the importance of national institutions as "national bridges" enhancing the protection of human rights, was made in 1991 with the first

[2] Established in February 1946 as a subsidiary body of the ECOSOC. In 2006 the Commission was replaced by the United Nations Human Rights Council (HRC).
[3] ECOSOC Resolution 2/9 of 21 June 1946.
[4] The seminar on "national and local institutions for the promotion and protection of human rights" lasted from 18 to 29 September 1978 and resulted in a report (file name: ST_HR_SER.A_2-EN.pdf) that can be found on the official website of the digital library of the United Nations.
[5] Katrien Meuwissen (2015) *The Paris Principles and National Human Rights Institutions: lost in translation?* KU Leuven, Working Paper 163, 3.

international "Workshop on National Institutions for the Promotion and Protection of Human Rights", which took place in Paris in October. A well-known outcome of the workshop was the adoption of the Paris Principles[6] (PPs), the first "codification" related to the status of national institutions. Even though the objective was to enhance cooperation among existing National Institutions, many governments chose not to participate because almost no one expected a concrete document as an outcome of the workshop.[7] Chris Sidoti, a leading NHRI practitioner, recalled that everyone was "surprised that the Paris Principles came out of the [Paris] meeting".[8] Drafted by the existing NHRIs, the PPs were endorsed by the Commission on Human Rights in 1992 and the UN General Assembly in 1993.[9]

The 1993 Vienna World Conference served as a springboard for the PPs as a credible instrument to test the legitimacy of national institutions protecting and promoting human rights. They became the most important parameter for the international recognition and accreditation of national organisations as proper "National Human Rights Institutions" with subsequent voting and speaking rights. Another crucial step was the establishment of the former "International Coordinating Committee of the national institutions for the promotion and protection of human rights" (ICC), which in March 2016 became the "Global Alliance of National Human Rights Institutions" (GANHRI).

1.2. The Global Alliance of NHRIs

On 13 December 1993, a group of NHRIs met in Tunis, establishing the former "International Coordinating Committee of the national institutions for the promotion and protection of human rights" with the aim of coordinating the

[6] Their full name being: "Principles relating to the status and functioning of national institutions for the protection and promotion of human rights".
[7] Katerina Linos, Tom Pegram (2016, June 23) *The Language of Compromise in International Agreements*. International Organization, 70, 598.
[8] *Ibid.*
[9] Gauthier De Beco and Rachel Murray "Introduction, history and context" in Gauthier De Beco and Rachel Murray (2014) *A Commentary on the Paris Principles on National Human Rights Institutions*. Cambridge University Press, 3.

activities of existing NHRIs. The Statute of the organisation[10] was first adopted in 2008 in Nairobi and went through a series of revisions, the last one on 5 March 2019. The main functions of GANHRI, as set in its Statute[11], are to coordinate at the international level the activities of NHRIs, to promote their establishment and strengthening according to the Paris Principles, and to undertake all other functions[12] that the voting members refer to it. The Head Office, based in Geneva, provides technical support to NHRIs and other bodies of the organisation.

GANHRI's members together make up the General Assembly, which exercises the most important deliberative functions. The Assembly is responsible for the election of governance bodies, decides the program of activities, approves the budget and amendments to the Statute, and it monitors the activities of the Bureau. The Bureau is GANHRI's executive body, and, therefore, it implements the General Assembly's decisions, and it is responsible for the overall functioning of the organisation.[13] The role of treasurer of GANHRI belongs to the Finance Committee, which is appointed by the Bureau.

Another important governance body is the GANHRI Sub-Committee (of the Bureau) on Accreditation (SCA) which works under the auspices of the Office of the High Commissioner for Human Rights (OHCHR),[14] which is a permanent observer and through the "National Institutions and Regional Mechanisms

[10] GANHRI is a non-profit organization under Swiss law based in Geneva.

[11] The Statute itself takes into account the need of expanding and explaining its own content. For instance, according to its article 57: "*The General Assembly may adopt, amend or revoke rules of procedure, without prejudice to article 46 q), in relation to the working methods of GANHRI, including General Assemblies and international conferences, to regulate or clarify any matter contemplated by this Statute*".

[12] The Statute, in its article 7, mentions the principles that GANHRI has to emphasize while fulfilling these functions: "*a) Fair, transparent and credible accreditation processes; b) Timely information and guidance to NHRIs on engagement with the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies, as well as other UN bodies, mechanisms and processes in the area of human rights; c) The dissemination of information and directives concerning the Human Rights Council and its mechanisms, and United Nations human rights treaty bodies to NHRIs; d) Mandated representation of NHRIs; e) Strong relationships with the OHCHR and the Regional Networks that reflect the complementarity of roles; f) Flexibility, transparency and active participation in all processes; g) Inclusive decision-making processes based on consensus to the greatest extent possible; h) The maintenance of its independence and financial autonomy*".

[13] The powers of the Bureau are listed in article 46 of the Statute.

[14] The former UN Commission on Human Rights issued Resolution n. 74 on 20 April 2005. In paragraph 11(a) it makes a specific reference to the SCA: "*Permitting national institutions that are accredited by the Accreditation Subcommittee of the International Coordinating Committee of National Institutions under the auspices of the Office of the High Commissioner, and coordinating committees of such institutions, to speak, as outlined in the report, within their mandates, under all items of the Commission's agenda* […]".

Section" serves as SCA's Secretariat. The SCA, made of one 'A' status institution from each of the four regional networks,[15] is responsible for deciding whether a national institution is compliant with the PPs and, therefore, if it can be accredited or not. The work of the SCA is vital to ensure the existence and respect of international standards of independence and proper functioning of NHRIs. Those are, in fact, reviewed in their initial accreditation[16] phase and during their re-accreditation every five years. This last moment is essential to grant that NHRI's compliance with the Paris Principles has not been altered. At the end of the review process, the SCA issues recommendations and presents a report to the Bureau, which finally decides on the accreditation. To assist NHRIs in developing their practices while respecting the Paris Principles, the SCA issues General Observations that must be approved by the Bureau.

Apart from the OHCHR,[17] GANHRI liaises with other international organisations, civil society, NGOs and the UN Development Programme (UNDP). GANHRI coordinates NHRIs at a global level, but they are also organised in regional networks. In this way, they "are better able to reflect regional challenges and particularities and can address actors relevant to the region, for example, regional human rights courts or policy-making by regional organisations".[18] There are four of these organisations: the Asia Pacific Forum (APF), the Network of African National Human Rights Institutions (NANHRI), the "Red de Instituciones Nacionales de Derechos Humanos del Continente

[15] The current members of the SCA are chosen from: the French "Commission nationale consultative des droits de l'homme" (from ENNHRI), the "Conseil national des droits de l'homme" of Morocco (from NANHRI), the Palestinian "Independent Commission for Human Rights" (from APF), and the Procuraduria de Derechos Humanos of Guatemala (from RINDHCA).

[16] In 2021 the following two accreditation sessions will take place: Session 1 in June and Session 2 in October. During the first session it will be discussed the accreditation of Cape Verde, Djibouti, and Fiji and the re-accreditation of Burundi, Cyprus, Ireland, Malaysia, Mauritius, Iraq, and Scotland. During the second session the SCA will review the accreditation of Brazil and re-accreditation of Korea, Mongolia, Northern Ireland, Palestine, Qatar, Samoa, Sierra Leone, Uruguay, and Zimbabwe.

[17] In its article 6, GAHNRI's Statutes sets the collaboration with OHCHR: "*General Meetings of GANHRI, meetings of the GANHRI Bureau and of the SCA, as well as International Conferences of GANHRI shall be held under the auspices of, and in cooperation with, OHCHR*".

[18] Kämpf, *National Human Rights Institutions and their work on migrants' human rights: Results of a survey among NHRIs*, 15.

Americano" (RINDHCA),[19] and the European Network of National Human Rights Institutions. The APF is made up of 25 institutions,[20] and among its goals, can be found: the protection and promotions of the rights of children, women and girls, people with disabilities, indigenous people, migrants, refugees and asylum seekers; the prevention of torture in places of detention; the respect for sexual orientation and the ending of the death penalty. The NANHRI[21] counts 33 accredited members, and some of its current goals are the following: build strong and effective NHRIs; strengthen the respect of Economic, Social and Cultural Rights; combat impunity. Fifteen of the eighteen members[22] of the RINDHCA have voting powers, while three of them have "B" status. One of the topics currently under discussion is the right to development and, more in general, sustainable development objectives. The ENNHRI, which will be analysed in the following paragraph, counts thirty NHRIs with "A" status, nine with "B" status and other associate members without an accreditation. [23]

Until now it has been used the broad term "institution". In fact, there are a lot of different types of organisation that can fall under this category. Among them, there are six main models: ombudsman institutions, human rights commissions, consultative and advisory bodies, hybrid institutions, institutes, centres and multiple institutions. NHRIs are not courts nor mere research institutions. They are neither governmental nor non-governmental organisations.[24] Regardless of their exact structure, NHRIs as independent organisations are vital to promote and protect human rights at the national level. In the next paragraphs the author will analyse some of the configurations that NHRIs can present. Spread all over the world, they constitute one of the most important networks for the monitoring and prevention of human rights violations.

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[19] Known as the "Network of National Institutions for the Promotion and Protection of Human Rights in the Americas".
[20] For an overview of the APF members go to https://www.asiapacificforum.net/members/.
[21] For an overview of the NANHRI members, go to https://www.nanhri.org/members/member-profiles/.
[22] For an overview of the RINDHCA members, go to https://www.rindhca.org/miembros/miembro-rindhca.
[23] For an overview of the ENNHRI members, go to http://ennhri.org/our-members/.
[24] European Union Agency for Fundamental Rights (FRA) (2020) *Strong and effective national human rights institutions: challenges, promising practices and opportunities*, 6.

To conclude, GANHRI is a trusted partner of the UN,[25] which has established "strong relationships with the UN Human Rights Office, UNDP and other UN agencies, as well as with other international and regional organisations, NGOs, civil society and academia".[26] It is an essential part of the whole NHRIs universe. With its bridging role and its tight collaboration with the OHCHR it makes possible to connect and coordinate all the international actors involved in the protection and promotion of human rights. For instance, without specific parameters (the PPs) and a well-functioning "upper" body (GANHRI's SCA) with the power and competence to use them, it would not be possible to have impartial and autonomous national institutions with the mandate of promoting and protecting human rights.

1.3. NHRIs in the European context: the establishment of ENNHRI and its engagement with other regional and international bodies

The European Network of National Human Rights Institutions is one of the largest regional organisations of NHRIs. Almost every EU Member State, with the only exception of Italy, Malta, the Czech Republic and Romania,[27] established an NHRI that now holds either "A" or "B" status. Most of the Council of Europe (CoE) members that are not EU members participate as well in ENNHRI with accredited institutions. It was in Europe in 1947 that the first NHRI in the world was created: the French National Consultative Commission on Human Rights,[28] which was recognised in 2013 as fully compliant with the PPs.

The human rights architecture in Europe is a complex and rich one, and national human rights institutions greatly contribute to its strengthening and cohesion. In the 1990s, a proliferation of NHRIs took place, even though some

[25] A useful tool to better understand the relationship between NHRIs and the UN human rights treaty system can be found in: Amrei Müller and Frauke Seidensticker (2007) *The Role of National Human Rights Institutions in the United Nations Treaty Body Process*. German Institute for Human Rights.

[26] GAHNRI, *Strategic Plan 2020-2022*, 3.

[27] Romania, though, does already have a National Human Rights Institution that can be accredited and in Czech Republic the Public Defender of Rights, even without GANHRI's accreditation, enjoys extensive powers in the field of human rights.

[28] The "Commission nationale consultative des droits de l'homme" (CNCDH).

European governments showed "a certain unwillingness to create NHRIs, as well as doubts regarding the added value they could bring".[29] Scholars suggest that this reluctance was probably related to their belief in being already well-equipped to deal with international human rights standards. De Beco offers an interesting insight into the reasons why even in advanced democracies, establishing an NHRI could still bring added value.[30] He starts by underlining the fact that NHRIs could help coordinate the work of already existing and even well-functioning human rights bodies. He then considers that their broad mandate can play a key role in ensuring that national policies are compliant with international standards. He concludes by stressing the importance of such institutions as fast "communication channels" both at the national and at the international level. This brief explanation gives an idea of the reason why, despite this initial unwillingness of some governments, NHRIs started to gradually appear all over Europe.[31]

The first formal meeting of European NHRIs, aimed at strengthening cooperation among existing institutions, was held in November 1994 in Strasbourg under the auspices of the Council of Europe. In January 1997 in Copenhagen another reunion took place, where the need for a coordinating body that could ensure a better collaboration resulted in the establishment of the European Coordinating Committee (ECC). On 30 September 1997, the Committee of Ministers of the Council of Europe adopted a recommendation[32] for member

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[29] Gauthier De Beco (2007) *National Human Rights Institutions in Europe.* Human Rights Law Review, 7(2), 339.

[30] *Ibid*, 340.

[31] For a more extensive evaluation of "why NHRIs matter, how they operate in practice", and "under what conditions they can effectuate compliance with human rights standards and bring about social change" the author suggests taking into consideration: Ryan Goodman, and Thomas Pegram (2012) *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, Cambridge University Press.

[32] Recommendation No. R (97)14: "[…] *consider, taking account of the specific requirements of each member state, the possibility of establishing effective national human rights institutions, in particular human rights commissions which are pluralist in their membership, ombudsmen or comparable institutions;* […] *draw, as appropriate, on the experience acquired by existing national human rights commissions and other national human rights institutions, having regard to the principles set out in Resolution 48/134 of the General Assembly of the United Nations and in the Vienna Declaration and Programme of Action, adopted in 1993, as well as on the experience acquired by ombudsmen, having regard to Recommendation No. R (85) 13 of the Committee of Ministers;* […] *promote co-operation, in particular through exchange of information and experience, between national human rights institutions and between these institutions and the Council of Europe, in accordance with Resolution (97) 11 of the Committee of Ministers;* […] *ensure that this recommendation is distributed in civil society, in particular among non-governmental organisation*".

states on the establishment of independent national institutions for the promotion and protection of human rights. In Belfast and Dublin in 2002, at their fourth meeting, European NHRIs formalised the European Group with the adoption of the Rules of Procedure, deciding its membership criteria.[33] It was only in 2013 that the Group established a Permanent Secretariat and changed its name to "European Network of National Human Rights Institutions".

ENNHRI is now a non-profit international organisation based in Brussels. The governance structure is composed of the General Assembly, the Board with its Chair, the Finance Committee, the Permanent Secretariat and Secretary-General, and the Working Groups. The General Assembly is the highest decision-making body and every member participates in it. There are three categories of members according to the statute:[34] voting members, non-voting members and associate members.

Voting members must be fully compliant with the Paris Principles and accredited "A" status by the SCA. They have the right to vote in the General Assembly and are eligible to be members of the Board and represent ENNHRI on the SCA. Non-voting members are only partially compliant with the Paris Principles and are therefore accredited "B" status. They do not have the right to vote but they have the right to speak in the General Assembly. They can participate neither in the Board nor in the SCA. Nonetheless, they can participate in all Working Groups. They are required to commit themselves to take active steps towards level "A" of accreditation in a way that the Board considers acceptable. Associate members include the ones accredited status "C"[35] by the SCA and others. They have to take acceptable steps to apply for accreditation and then to be in

[33] Jan Wouters and Katrien Meuwissen (eds.) (2013) *National Human Rights Institutions in Europe: Comparative, European and International perspectives*. Cambridge - Antwerp - Portland: Intersentia, 131.

[34] ENNHRI, *Statutes*, available at http://ennhri.org/wp-content/uploads/2019/09/ENNHRI-statutes.pdf.

[35] This category is maintained only for institutions that were accredited with this status before October 2007. It means that the Institution was deemed to not be in compliance with the PPs but it is no longer in use by GANHRI. As of May 2021, there are 10 "C" status institutions in GANHRI: Antigua and Barbuda, Barbados, Puerto Rico, Hong Kong Special Administrative Region of China, Iran, Switzerland and Romania.

compliance with the PPs. The only rights they have are speaking rights in the General Assembly and in the Working Groups.

Only six voting members[36] can be part of the Board of the association, which is responsible for the overall administration and management of ENNHRI and can act in its name, subject to the powers reserved for the Assembly. The Board is the former European Coordinating Committee[37] and it can delegate its day-to-day management to the Secretary-General, who is the director of the Permanent Secretariat. The Finance Committee is responsible for the financial situation of the association and its fundraising. Finally, ENNHRI is articulated in thematic Working Groups[38] that lead the action in their specific fields and facilitate coordination among members.

ENNHRI works with the aim of strengthening, connecting and supporting National Human Rights Institutions. According to its Statutes, ENNHRI's main activities to achieve its goal of promoting and protecting human rights across Europe are, in fact, to support the establishment and accreditation of NHRIs in the region, to enhance communication and coordination among its members, and to facilitate collaboration between the latter and other regional or international organisations.

As a regional network of National Human Rights Institutions and as part of GANHRI, ENNHRI liaises with other international organisations, such as the UN OHCHR and the UNDP, which works for eradication of poverty and combats inequalities and exclusion and supports NHRIs in some common areas. The National Institutions and Regional Mechanisms Unit of OHCHR works as GANHRI SCA's Secretariat. Moreover, ENNHRI works closely with the

[36] The Board Members of 2019-2021 are: the Irish Human Rights and Equality Commission (Chair); the People's Advocate of Albania; the Office of the Ombudswoman of the Republic of Croatia; the Greek National Commission for Human Rights; the Norwegian National Human Rights Institution; the Polish Commissioner for Human Rights.
[37] ENNHRI Statutes still refer to the Board as the ECC.
[38] ENNHRI's Working Groups are currently the followings: Asylum and Migration Working Group; Business and Human Rights Working Group; Communications Working Group; Convention on the Rights of Persons with Disabilities Working Group; Economic, Social and Cultural Rights Working Group; Legal Working Group; Sustainable Development Goals Working Group.

OHCHR Regional Office for Europe through sharing information and collaboration in conferences. European (and all other) NHRIs actively participate in the work of the HRC. For instance, "A" status NHRIs can "submit documents and make oral and written statements to the Council, and also have a role in the Council's universal periodic review process".[39] In the context of the Universal Periodic Review (UPR) they have their own seat and they can efficiently push for the adoption of recommendations that are more likely to be implemented in their countries. It has been mentioned that NHRIs play an important role in the monitoring process of the UN human rights treaty bodies. Not only do they engage with such bodies, but some European NHRIs[40] take up directly the role of monitoring body, for example under article 33(2) of the UN Convention on the Rights of Persons with Disabilities (CRPD).

The current Strategic Plan 2018-2021 of ENNHRI sets three main objectives: create a stronger network, foster the creation of European NHRIs in compliance with the PPs and ensure a more effective promotion and protection of human rights. More than 40 European NHRIs are now part of this regional network.[41] It has been said that one of ENNHRI's focus is to connect NHRIs, in particular with other regional bodies. A major challenge for this interaction is "that the size of the regional human rights framework in Europe means that there are a large number of initiatives and projects being undertaken in the human rights field, and therefore there can be multiple calls on the time and resources of NHRIs".[42] For instance, ENNHRI plays a vital role in coordinating the work of European

[39] Wouters and Meuwissen, *National Human Rights Institutions in Europe: Comparative, European and International perspectives*, 237.

[40] Among others: the German Institute for Human Rights, the French National Consultative Commission on Human Rights, the Equality and Human Rights Commission (Great Britain) and the Consultative Human Rights Commission of Luxembourg.

[41] The following countries count at least one NHRI. Thirty of them hold A status and are in: Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Great Britain, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Northern Ireland, Norway, Poland, Portugal, Russian Federation, Scotland, Serbia, Slovenia, Spain, Ukraine. Nine of them accredited B status are in: Austria, Azerbaijan, Belgium, Bulgaria, Cyprus, Montenegro, North Macedonia, Slovakia, and Sweden. The European Network counts some associate members in: Belgium, Czech Republic, Kosovo, Liechtenstein, Romania, and Turkey.

[42] Wouters and Meuwissen, *National Human Rights Institutions in Europe: Comparative, European and International perspectives*, 138.

NHRIs with the Council of Europe, the European Union, the Organization for Security and Co-operation in Europe (OSCE), and with NGOs.

The Council of Europe hosted the very first meeting of European NHRIs in 1994 and since then it supported their establishment and strengthening.[43] ENNHRI participates in the Council of Europe's Steering Committee for Human Rights' (CDDH) meetings as permanent observer. Every member state of the Council of Europe is bound to the European Convention on Human Rights and Fundamental Freedoms (ECHR) and every European country that established an NHRI is also a CoE member,[44] with the only exception of Kosovo. NHRIs are considered important stakeholders for the implementation of the ECHR and this role was underlined at the High-Level Conference on the Future of the European Court of Human Rights (ECtHR) meeting at Brighton in April 2012. The meeting resulted in the "Brighton Declaration"[45] in which State Parties were invited to ensure effective implementation of the ECHR at national level by, above other measures, considering the establishment of an independent National Human Rights Institution. The importance of involving NHRIs in the implementation of the Convention was also stressed in the 2015 Brussels Declaration,[46] and for this purpose ENNHRI developed guidelines on the implementation of the ECtHR judgments. Moreover, thanks to its Legal Working Group, ENNHRI can act as *amicus curiae* before the ECtHR and can submit third-party interventions. Finally, ENNHRI works in collaboration with the CoE's Commissioner of Human Rights.

As far as its collaboration with the European Union is concerned, ENNHRI participates in hearings concerning human rights organized by some of the

[43] On 31 March 2021 the Committee of Ministers issued a recommendation to member States on the development and strengthening of effective, pluralist and independent national human rights institutions.
[44] See Annex 1.
[45] European Court of Human Rights, High Level Conference on the Future of the European Court of Human Rights, *Brighton Declaration* of 20 April 2012, available at https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf.
[46] European Court of Human Rights, High-level Conference on the Implementation of the European Convention on Human Rights, our shared responsibility, Brussels Declaration of 27 March 2015, available at https://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf.

Committees[47] of the European Parliament and in meetings held by the Human Rights Working Group of the Council of the EU (COHOM), and it receives grants from the European Commission.[48] Moreover, ENNHRI cooperates with the European Union Agency for Fundamental Rights (FRA) and the European External Action Service.

The Organization for Security and Co-operation in Europe (OSCE) invites European NHRIs to talk in its Human Dimensions Implementation Meetings, and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) supports the capacity-building and strengthening of NHRIs. Finally, ENNHRI, in its bridging role between States and civil society, encourages and creates collaboration with NGOs and other civil society representatives.

ENNHRI currently works with a focus on some specific areas that also reflect the main challenges of the region. These thematic areas are the followings: democracy and rule of law; asylum and migration; human rights in (post-)conflict; economic and social rights; sustainable development goals; business and human rights; communicating human rights; rights of older persons; rights of persons with disabilities. European NHRIs participate in all these thematic areas through their participation either in the dedicated Working Groups or in separate projects. Many European countries are violating the respect of the principle of the rule of law, by, for example, threatening the independence of the judiciary and discouraging attempts to strengthen human rights implementation within their borders.[49] NHRIs play a key role in the process of raising awareness about these situations and their engagement in the reporting process about the respect of the rule of law in their respective countries, as well as their ability to effectively fulfil their mandate, serves an important indicator for this assessment. This was only an example of ENNHRI's contributions in its areas of work which, unfortunately, cannot be analysed in depth. Without ENNHRI's guidance and coordination efforts, national institutions in Europe could not conduct their work as effectively

[47] For example, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Human Rights of the European Parliament (DROI).
[48] Through, among others, the Directorate-General for Justice and Consumers (DG JUST) and the Directorate-General for International Co-operation and Development (DG DEVCO).
[49] Poland and Hungary, for example, are subject to an article 7 TEU procedure for the breach of the rule of law, the former since 2017 and the latter since 2018.

as they are increasingly learning to do it. In the next paragraph the author will present the main models of European NHRIs and highlight some best practices at the national level.

2. NHRIs at the national level: European models and best practices

Since the 1990s, NHRIs started to appear all over Europe and their number gradually but significantly increased. Most of them gained their level of accreditation in the last decade[50] and thirty of them now hold "A" status. Twenty-nine of these institutions are ombudspersons or ombuds institutions while the remaining ones are mainly commissions or institutes.

2.1. Ombuds Institutions

The whole European context was built and developed on democratic foundations and both the EU and the CoE consider the respect of the rule of law as a membership prerequisite. It then comes as no surprise that the great majority of European NHRIs are ombudspersons. The latter are, in fact, national bodies safeguarding the lawfulness of the work of the government and public administrations, which can receive individual complaints. Classic ombudsmen, though, differ from the ones that are also NHRIs because the former only deal with maladministration without an express mandate to address human rights issues. NHRIs are key players in the mentioned context as human rights and the rule of law are interlinked and mutually reinforcing principles. For instance, an effective protection of human rights can only be realised in a context of a strong rule of law regime, and the:

> *rule of law can only be fully realised in an environment that protects human rights. The involvement of NHRIs in European rule of law monitoring mechanisms has a clear value added in terms of helping policy makers get to a more comprehensive and informed assessment of the situation in each country. In turn, the active engagement of NHRIs has the potential to lead to enhanced impacts of follow up action intended to drive progress in the national and regional rule of law and human rights environment. By including rule of law and democracy among the priorities for their regional cooperation, members of the European Network of National Human Rights Institutions (ENNHRI) have acknowledged this potential and committed to develop a strategic engagement in European*

[50] See Annex 1.

> *rule of law mechanisms […] NHRIs' contribution to rule of law reporting is one key aspect of such strategic engagement.*[51]

The above-mentioned contributions of NHRIs in the reporting process about the rule of law situation, collected in a specific report in 2020, highlighted some of the challenges faced by European democracies such as: a lack of adequate resources for NHRIs and scarce collaboration with them, threats to media pluralism, restriction of civil society space and limitations to freedom of assembly, and other shortcomings with great impact on the independence of the judiciary.[52] In this climate of democratic backsliding, ombudspersons that protect the rule of law together with human rights are essential, and thanks to their unique position among the branches of governance they "can also provide institutional opposition to an authoritarian regime and regressive tendencies".[53] As it has been already mentioned, twenty-nine ENNHRI members are ombudspersons of which twenty[54] are accredited "A" status. They carry different names: the People's Advocate of Albania, the Human Rights Defender of the Republic of Armenia, the Human Rights Ombudsman of Bosnia and Herzegovina, the Irish Human Rights and Equality Commission, the Commissioner for Fundamental Rights of Hungary, the Protector of Human Rights and Freedoms of Montenegro, the Protector of Citizens of the Republic of Serbia, and the Ukrainian Parliament Commissioner for Human Rights. Most of them are hybrid institutions but there is no substantial difference in their mandate and functions. For instance, they all "oversee the work of administrative authorities and fight maladministration, and they have an explicit mandate to protect and promote human rights".[55] However, from a study of NHRIs globally emerged that hybrid institutions that share features of ombudsmen offices "have the additional advantage of being able to deal with a range of issues of broad concern to the public" and without them "complainants may be referred

[51] European Network of National Human Rights Institutions (ENNHRI) (2020, June 29) *State of the rule of law in Europe. Reports from National Human Rights Institutions*, 4.
[52] *Ibid*, 5.
[53] Luka Glušac (2020, June 15) *Strengthening Ombudspersons in Central and Eastern Europe*. German Marshall Fund of the United States, 2.
[54] See Annex 1.
[55] Glušac, *Strengthening Ombudspersons in Central and Eastern Europe*, 4.

from one agency to another to "find" the proper agency or government office".[56] The research will not focus on a specific ombuds institution, and it moves on analysing the other two main categories of NHRIs, namely the institutes (and centres), and the commissions (and institutions).

2.2. Human Rights Institutes

The "Institute for Human Rights" model (together with the "Centres") is one of the least used in Europe. Nonetheless, it resulted to be efficient in many ways, and the most evident are probably the impact on education and the engagement with all relevant regional and international stakeholders, thanks to the high level of human rights professionals involved. This institutional setting does not normally allow, unlike ombudsmen, to receive individual complaints. Institutes are more focused on research and although they tend to "have a very broad membership from different levels of society", differently from Commissions, this membership "does not usually participate directly in decision-making, which is left to a professional staff".[57]

The German Institute for Human Rights, the Danish Institute for Human Rights and the Netherlands Institute for Human Rights are all "A"-status NHRIs.[58] These institutes (leaving aside the Centres)[59] will briefly be presented in order to later understand if the difference in the choice of the institutional models can result in a more efficient exercise of their mandate. It will not be covered every aspect of their work and structure, rather will be highlighted some of their peculiar functions.

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[56] UN Development Programme (2010, December) *Toolkit for collaboration with National Human Rights Institutions*, 25.

[57] *Ibid*, 26.

[58] The Romanian Institute for Human Rights is currently applying for accreditation but, differently from the others, it also works as an Ombuds Institution. The Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) is the Belgian new associate member, not yet accredited.

[59] The Human Rights Centre in Finland (with "A" status), the Slovak National Centre for Human Rights (with "B" status), the Interfederal Centre for Equal Opportunities and Opposition to Racism (or "Unia", with "B" status), and the Belgian Federal Migration Centre (associate member, non-accredited). In Belgium there is also the Combat Poverty, Insecurity and Social Exclusion Service, associate member since 2015, not accredited.

2.2.1. The German Institute for Human Rights

In 1991 a group of German NGOs developed the concept of a human rights institute with a focus on human rights education and strategic human rights work.[60] The "Deutsches Institut für Menschenrechte"[61] (DIMR) was established in 2001 and gained the highest level of accreditation in 2002.[62] It is organized as an institution with a focus on academic research.[63] The DIMR is a non-profit association[64] and is financed from public grants and additionally from membership fees, project-related public and private grants and private donations. The association[65] is politically independent. It acts on his own initiative and independently of any requirements and instructions from the Federal Government or other public and private bodies or at the request of the government using its resources on its own responsibility. The DIMR has a broad mandate that covers civil and political as well as economic, social and cultural rights. It does not have a mandate to investigate individual complaints, nor does it have other quasi-judicial competencies. However, the DIRM makes use of strategic litigation tools (e.g. *amicus curiae*) to further its protection mandate. The Institute can rely on the work of 88 members, and this allows it both to be organised in well-structured departments and units,[66] each with a specific focus, and to participate in every working group of ENNHRI and in some of its projects. The DIMR exercises its mandate by holding conferences, by issuing publications, by giving political advice and opinions to parliamentary committees, by organizing seminars, trainings and human rights education for the police, teachers, social workers, NGOs, members of parliament, and others, by offering a public library and a range of library services,

[60] Anna Würth (2012) *The German Institute for Human Rights*. Centre for Regional Policy Research and Cooperation Studiorum, 16, 215.
[61] The "German Institute for Human Rights".
[62] Confirmed in the last re-accreditation session.
[63] Beate Rudolf (2011) *The German Institute for Human Rights*. Nova Acta Leopoldina, 387, 19.
[64] Under German law, those associations are largely autonomous, issue their own statute, and are regulated by law.
[65] All the information about the functioning of the DIMR is available at https://www.institut-fuer-menschenrechte.de/.
[66] The department of Human Rights Policy Domestic / Europe; the UN Convention on the Rights of Persons with Disabilities monitoring agency; the UN Convention on the Rights of the Child monitoring unit; the department of Human Rights education; the department of International Human Rights Policy; the communication department; the library department.

and by hosting a large and informative website. Moreover, the Institute reports regularly to national[67] and international[68] bodies on the human rights situation in Germany and it exercises a monitoring function both for the UN Convention on the Rights of Persons with Disabilities, and the UN Convention on the Rights of the Child (CRC). The high level of human rights expertise, and the staff commitment make the "Deutsches Institut für Menschenrechte" a highly qualified, well interconnected, and efficient NHRI.

2.2.2. The Netherlands Institute for Human Rights

Similarly, the Netherlands Institute for Human Rights[69] (NIHR), established[70] in 2012 and accredited "A" status in 2014, employs a rich variety of expertise, approximately fifty professionals including researchers, lawyers, policy advisers and others. The Institute is an independent administrative body in the matters it takes up and the spending of the budget. Its independence is enshrined in article 4 of the Law of 24 November 2011, and its basic financing is provided by the Ministry of Justice and Security. It is Netherlands' NHRI, Equality Body and ECJ Monitoring Body. According to article 1(3) of the Human Rights Institute Act, the NIHR "aims to protect human rights in the Netherlands, including the right to equal treatment, to increase awareness of these rights and to promote compliance with these rights". Except for the section on the powers to investigate and assess equal treatment, the Act also applies to the public entities Bonaire, Sint Eustatius and Saba. The NIHR gives advice to the government or to an administrative body both on their request and on its own initiative. It can give advice on laws, bills, administrative measures that are - directly or indirectly - related to human rights. The Institute can ask for the information and the

[67] The law on the legal status and tasks of the DIMR from 2015 also stipulates that the Institute submits an annual report to the German Bundestag on its work and on the development of the human rights situation in Germany, on which the Bundestag should comment.
[68] NHRIs and civil society organizations have the right to submit "parallel reports" to the UN committees as part of the state review process and to the UN Human Rights Council as part of the Universal Periodic Review (UPR). Like all contracting states, Germany must also regularly report on the implementation of the rights guaranteed in the UN human rights treaties, and the institute accompanies the reporting process.
[69] The "College voor de rechten van de mens".
[70] Law of 24 November 2011, establishing the Human Rights Institute (Human Rights Institute Act), available at https://wetten.overheid.nl/BWBR0030733/2020-01-01.

documents it needs for the exercise of its mandate. However, according to article 6(3) of the Act, this provision "does not apply insofar as it concerns information and documents, the disclosure of which is contrary to the interests of national security or entails a violation of official or professional secrecy". The NIHR may also conduct on-site investigations and it shall be granted the right to have access to any place "with the exception of a dwelling, without the consent of the occupant, to the extent reasonably necessary for the performance of its duties".[71] These investigations are the ones referred to in article 3(a) of the act. They can be made while conducting a research about human rights, they result in an opinion, and they are made public. One function of the Institute worth noticing is that it can receive complaints from individuals, who can directly report abuses and submit their discrimination complaints. In this case, though, it is only allowed to deal with cases covered by the Dutch Equal Treatment Act.[72] Individuals can also ask the Institute's Board[73] for an official opinion on the complaint. The Board will assess whether the legislation on equal treatment has been violated in the specific case and, therefore, whether the discrimination complaint is justified.

2.2.3. The Danish Institute for Human Rights

The Danish Institute for Human Rights (DIHR)[74] is the National Human Rights Institution, the Equality Body and the CRPD Monitoring Body of Denmark. Established in 1987 and reaccredited "A" status in 2012, it is particularly active in monitoring Denmark's compliance with international human rights legislation and follow up on UN's recommendations. Part of this monitoring activity is reflected in the preparation of legal briefs aimed at assessing whether a bill, for example, complies with human rights law. The DIHR carries out practical and academic research and organises educational activities (e.g., workshops, seminars, and courses) in the field of human rights. The Institute liaises with civil

[71] Article 8(1) of the Act. Paragraph 2 of the same article makes an exception: the NIHR cannot investigate in places designated as prohibited by the State Secrets Protection Act.
[72] For a brief overview of its content go to https://www.government.nl/topics/discrimination/prohibition-of-discrimination; while for the whole text go to https://wetten.overheid.nl/BWBR0006502/2020-01-01.
[73] The governing Board (the "Collegeleden"), the Advisory Council (the "Raad van Advies") and the Desk ("Bureau") are the main organs of the Institute.
[74] The "Institut for Menneskerettigheder".

society organisations and other national and international stakeholders. The DIHR also undertakes activities to encourage ratification of international treaties. Nonetheless, it is not attributed this function by its founding law and during the Institute's last re-accreditation session of 2018, the SCA suggested to advocate for amendments to make it explicit.

2.2.4. Assessment of human rights institutes

It has been argued that, in the first years of their establishment human rights research institutes seemed "to be better qualified in supporting NHRIs with the necessary research expertise and human rights education skills rather than fulfilling the various tasks of NHRIs themselves".[75] This was probably more true at that time, and this was the reason why the former Norwegian Institute of Human Rights was replaced by the Norwegian National Human Rights Institution.[76] Nonetheless, some improvements in the last decade have occurred. The German Institute, for example, maintains a strong engagement with all relevant human rights stakeholders and its participation in each Working Group of ENNHRI gives it a broad understanding of the current European challenges. This can result in the strengthening of both its monitoring functions towards the German government, and its *amicus curiae* role. Moreover, it has been highlighted the fact that the Netherlands Institute has been attributed with the quasi-judicial function of receiving individual complaints, and this goes far beyond the mentioned "human rights education skills" that seemed to characterize these institutes in their first years of life.

2.3. Human Rights Commissions and Institutions

The "Human Rights Commission/Institution" model is the closest to the original idea of an organisational structure of NHRI. Therefore, it appears to be the best model to deal with all the functions that an NHRI should and could cover.

[75] Manfred Novak, *National Human Rights Institutions in Europe: comparative, European and international perspectives*, in Wouters and Meuwissen, *National Human Rights Institutions in Europe: Comparative, European and International perspectives*, 26.
[76] *Ibid.*

As of 2021, seven ENNHRI members have been established as Commissions[77] and two of them as Institutions.[78] Commissions are typically headed by "a number of members, full and/or part-time, who are decision-makers", they have investigation powers, and many have "the authority to make recommendations only, following investigation (the more typical model)" ,[79] while some of them are attributed quasi-judicial competences. As of 2021 there is only one accredited "Institution" in Europe, namely the Norwegian National Human Rights Institution. The latter presents all the typical features presented, except for the fact that it does not deal with individual cases. An overview of five of the seven[80] Commissions will be now offered, given the relevance that this institutional model has for this research, both for its general versatility as NHRI and as a possible best practice to follow for the future Italian "National Commission for the Promotion and protection of fundamental human rights and for the fight against discrimination".[81]

2.3.1. The French National Consultative Commission on Human Rights

The French "Commission nationale consultative des droits de l'Homme" (CNCDH) is the oldest National Human Rights Institution. It was established in 1947 and granted "A" status in 2007 for the first time.[82] It is assimilated to an Independent Administrative Authority (AAI)[83] and its independence is set in law

[77] The Commission for Protection Against Discrimination in Bulgaria ("B" status NHRI); the French National Consultative Commission on Human Rights ("A" status); Equality and Human Rights Commission of Great Britain ("A" status); Northern Ireland Human Rights Commission ("A" status); Scottish Human Rights Commission ("A" status); Greek National Commission for Human Rights ("A" status); Consultative Human Rights Commission of Luxembourg ("A" status).

[78] The Norwegian National Human Rights Institution (with "A" status), and the Human Rights and Equality Institution of Turkey (associate member, non-accredited).

[79] UNDP, *Toolkit for collaboration with National Human Rights Institutions*, 22.

[80] The Greek and Bulgarian Commissions will not be covered.

[81] In Italy, three draft laws were prepared in 2018 for the establishment of an NHRI and a unified draft law about the establishment of the Commission was prepared on the 29th of October 2020. On the 13th of January 2021 the assigned Commission of the Italian Parliament made another referral for the study of the unified text adopted as the new basic text because of the plethora of proposed amendments.

[82] In 2007 the CNCDH applied for re-accreditation and gained "A" status (cf. https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/2007_October%20SCA%20Report.pdf).It was reaccredited the same status in March 2019.

[83] Confront https://www.cncdh.fr/fr/linstitution. The CNCDH does not appear in (the Annex of) the Law n. 2017-55 of January 20, 2017 on the general statute of independent administrative

292 of 5 March 2007.[84] The CNCDH is a monitoring body under article 33(2) of the UN Convention on the Rights of Persons with Disabilities (CRPD), the National Rapporteur in different human rights-related fields, and also the National Committee for the implementation of international humanitarian law. The decree 1137 of 26 July 2007[85] regulates the composition and functioning of the Commission, which is made up of 64 members. Among them there are representatives of the main NGOs working in the field of human rights, representatives of main trade union confederations as well as representatives of currents of thought and religions, academics, lawyers and magistrates. According to the mentioned decree other members are a deputy appointed by the President of the National Assembly, a senator appointed by the President of the Senate, the Defender of Rights,[86] and a member of the Economic, Social and Environmental Council. The members of the Commission are appointed by the Prime Minister with a decree.[87] The organs of the association are the followings: the Plenary Assembly and the President, the Office (Bureau), the Coordination Committee, the General Secretariat and the Secretary-General, and five Sub-Committees.[88] The CNCDH, among other independent administrative authorities, is handled by the administrative and financial services of the Prime Minister. According to its "*Réglement intérieur"* (Rules of Procedure), the Commission has the objective of

authorities. But the Defender of Rights, member of the CNCDH and Equality Body of France, is an official independent administrative authority.

[84] Article 1(2) of the founding law affirms: "*La commission exerce sa mission en toute indépendance. Elle ne reçoit ni ne sollicite d'instruction d'aucune autorité administrative ou gouvernementale*". The updated version of the law is available at https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000646724.

[85] The updated text of the decree 1137 of 26 July 2007 is available at https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000791293/.

[86] The Defender of Rights is France's Equality Body and a member of the CNCDH with voting rights. It is an independent authority, appointed by the President of the Republic, and it exercises different roles. It collaborates with European and international bodies (UN, European Union, Council of Europe), it presents reports to some UN Committees and contributes to the preparation of others. It can conduct investigations and receive individual complaints in its field of competence. It may propose amendments to laws and issue recommendations to the authorities.

[87] Differently from the other 64 members of the Commission that are appointed by the Prime Minister, the members of the Secretariat are chosen following a public selection.

[88] The Sub-Committees are listed in article 56 of the Rules of Procedure and, as of 2021, they are the following: Society, ethics and human rights education; Racism, discrimination and intolerance; Rule of law and freedoms; International and European questions - International humanitarian law; Emergencies.

protect and promote "human rights, universal and indivisible".[89] For the exercise of its mission it:

> *promotes consultation between the administrations, the representatives of the various currents of thought of the civil society and the various interested non-governmental organizations and institutions. It contributes to the preparation of the reports that France presents to international organizations, in application of its treaty obligations in the field of human rights. It contributes to human rights education. It is responsible for preparing the annual public report on the fight against racism.*[90]

The CNCDH adopts opinions and recommendations either in response of the government request or on its own initiative. For the drafting of opinions, the Commission can conduct hearings, carry out investigative missions, and rely on the expertise of its members. It plays a vital role in the "examination procedure of France by the various treaty bodies, committees responsible for verifying compliance with treaties by States parties in the area of human rights and of the Universal Periodic Review (UPR)".[91] The CNCDH can participate in judgments of the European Court of Human Rights (ECtHR) through third-party interventions, and it then helps in the monitoring of the execution of judgments concerning France. It contributes to human rights education in many ways. It followed the adoption of the UN "Declaration on Human Rights Education and Training", it collaborates with the Ministry of National Education with which it awards the human rights prize René Cassin, and it has produced short movies with educational purposes. It organises courses and seminars and every year, on Human Rights Day, it awards to five laureates the Human Rights Prize of the French Republic. Finally, the CNCDH is particularly active in ENNHRI and participates in all its working groups.

2.3.2. The Consultative Human Rights Commission of Luxembourg

The French National Consultative Commission has been the major source of inspiration for the establishment of the "Commission Consultative des droits de l'Homme du Grand-Duché du Luxembourg"[92] (CCDH). In April 2000, the

[89] The Rules of Procedure are available at https://www.cncdh.fr/fr/reglement-interieur-de-la-cncdh.
[90] Decree 1137 of 26 July 2007, Chapter 1, Article 1.
[91] Information available at https://www.cncdh.fr/fr/linstitution.
[92] The "Consultative Human Rights Commission of Luxembourg".

Governing Council of Luxembourg adopted the regulations establishing a "Consultative Commission on Human Rights" which was then accredited "A" status in 2002. It was only in May 2008, after the possibility of being downgraded to "B" status, that a proper bill establishing the "Consultative Commission on Human Rights in the Grand Duchy of Luxembourg" was adopted, endowing the Commission with a legal status. The CCDH is composed of 21 members with voting rights, appointed by the government for five years, plus a government delegate. The 21 members must be representative of civil society and must be chosen for their competence in human rights. The CCDH's main tasks are to provide advice to the government, report on international treaties and maintain dialogue with other national human rights institutions. It also draws the government's attention to measures likely to foster the protection and promotion of human rights. Its opinions are not addressed directly to Parliament but to the Prime Minister, who forwards them to the Chamber of Deputies. The CCDH shares its missions with other sectoral bodies in the field of human rights, such as the Ombudsman, the Centre for Equal Treatment and the National Commission for Data Protection. Currently, the Commission has four working groups: Asylum Seekers and Immigration, Disability Rights, Youth Protection, and Business & Human Rights. The CCDH does not have jurisdiction to deal with individual complaints, but it can use the opinion procedure on a draft law (that has been already adopted by the Council of Ministers) when the government invites it to a meeting to discuss it.

2.3.3. NHRIs in the United Kingdom

In the United Kingdom there are three independent National Human Rights Institutions, all accredited "A" status, the Equality and Human Rights Commission, the Scottish Human Rights Commission, and the Northern Ireland Human Rights Commission. They collaborate to promote and protect human rights in the whole country. The British Equality and Human Rights Commission liaises with the Scottish NHRI and with the Welsh government through its Scottish

and Wales[93] Committees. The Commission also engages[94] with the Northern Ireland Human Rights Commission. The latter, in accordance with the Belfast (Good Friday) Agreement, meets with the Irish Human Rights and Equality Commission (Irish NHRI) in a joint committee. This committee is a forum for considering human rights issues in the island of Ireland, affecting both jurisdictions. The collaboration among the NHRIs of the U.K., together with the peculiar political system, was probably one of the reasons why they were all able to be accredited despite their existence in the same country.[95] For instance, the Sub-Committee on Accreditation (SCA), while recommending that the EHRC should be accredited with status "A", acknowledged that the EHRC met all of the mandatory requirements set out in its General Observation 6.6 "*More than one National Institution in a State*".[96] It also emphasized the importance of further developing cooperation between the EHRC, the Northern Ireland Human Rights

[93] Through its Committee in Wales the EHRC also makes sure that the Commission's policy-making in Great Britain reflects the needs of Wales. With powers given to it under the 2006 Equality Act, the Wales Committee is a decision-making body that advises the Welsh Government and National Assembly for Wales and carries out research about equality and human rights in Wales.

[94] The Chairs and Chief Executives of the National Human Rights Institutions for Ireland, Great Britain, Northern Ireland and Scotland met on 2 December 2015 to share progress and discuss future collaboration. In 2018 the Equality and Human Rights Commission (EHRC), the Equality Commission for Northern Ireland (ECNI), the Northern Ireland Human Rights Commission (NIHRC) and Scottish Human Rights Commission (SHRC) issued a joint statement on Brexit and identified together three priority areas that should be protected and advanced in the course of the UK's exit from the European Union.

[95] The SCA, while considering the application of the Scottish Human Rights Commission, in its report of March 2010 recognised: "*the unique situation of the United Kingdom of Great Britain and Northern Ireland that results in separate and distinct jurisdictions for each of the 3 NHRIs existing in the country, and acknowledges correspondence from the government of the United Kingdom to this effect*". The complete report is available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

[96] General Observation 6.6 of the SCA: "*The Sub-Committee acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution. In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member. In those circumstances the conditions precedent for consideration of the application by the Sub-Committee are the following:*

1) Written consent of the State Government (which itself must be a member of the United Nations).

2) Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

The Sub-Committee stresses the above requirements are mandatory for the application to be considered."

Commission and the Scottish Human Rights Commission, and referred to General Observation 1.5 "*Cooperation with other human rights institutions*".[97]

The Equality and Human Rights Commission (EHRC) is the British National Human Rights Institution, which started its work in 2007, was granted "A" status in 2008 and reaccredited the same status in 2015. The EHRC has been established by the Parliament under the Equality Act of 2006 as a statutory non-departmental public body. Another Equality Act in 2010 provided a unified legal framework build to protect the rights of individuals and advance equality of opportunity for all. It works independently of the UK, Scottish and Welsh governments. The Commission is firstly an NHRI, but it is also a monitoring body under article 33(2) of the UN Convention on the Rights of Persons with Disabilities (CRPD), and an Equality Body belonging to the European Network of Equality Bodies. The EHRC's funding is provided by the Government Equalities Office, and it often works with government to influence progress on equality and human rights. However, it does not carry out government business or perform its functions. The EHRC has a broad mandate that covers both equality and diversity issues, and human rights issues. In fulfilling its human rights mandate the Commission has the legal power to: take judicial review proceedings, hold inquiries into any issue of human rights, and intervene in human rights cases taken by others (known as a "third party" intervention). The Commission often uses this power in equality and human rights cases, both in Britain and in the European Court of Human Rights. The judicial review proceeding is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. Its use of judicial review is not limited to breaches of the Human Rights Act (HRA). It can use it if the subject matter relates to a statutory function of the Commission (e.g., the equality and human rights duties of the Equality Act 2006). The Commission can bring a judicial review in its own name under the HRA even if it is not the victim of the violation. If the Commission thinks a proposed law change will

[97] General Observation 1.5 of the SCA: "*Cooperation with other human rights institutions: NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee*".

breach a group's human rights, it can threaten judicial review before the legislation is passed. However, the Commission cannot support individual human rights cases that do not raise an equality issue. The EHRC shall monitor the effectiveness of the equality and human rights enactments. In doing so it may: advise central government about the effectiveness of any of the equality and human rights enactments; recommend to it the amendment, repeal, consolidation or replication of any of the equality and human rights enactments; advise central or devolved government about the effect of an enactment (including an enactment in or under an Act of the Scottish Parliament).

The Scottish Human Rights Commission (SHRC) is Scotland's National Human Rights Institution, CRPD monitoring body, and National Preventive Mechanism (NPM) under article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Founded by the Scottish Commission for Human Rights Act of 2006 (the "Act"),[98] it started its work in 2008, and gained "A" status accreditation in March 2010. According to the Act it has the duty to promote awareness of human rights and encourage best practices related to them. For this purpose, it can conduct research, provide education, training, advice or guidance, and publish information or ideas. The SHRC can recommend changes to "any area of the law of Scotland, or any policies or practices of any Scottish public authorities".[99] The Commission can conduct inquiries, although with some restrictions,[100] into the policies and practices of Scottish public authorities. Differently from the Northern Ireland NHRI, the SHRC is not provided with the power to "provide assistance to or in respect of any person in connection with any claim or legal proceedings to which that person is or may become a party",[101] and this also excludes guidance, advice and grants. Exception made for children's hearing proceedings, the

[98] The "Scottish Commission for Human Rights Act 2006" is available at https://www.legislation.gov.uk/asp/2006/16/contents.
[99] Article 4(1) of the "Scottish Commission for Human Rights Act 2006".
[100] The restrictions as to scope of inquiry are listed in article 9 of the "Scottish Commission for Human Rights Act 2006".
[101] Article 6 of the "Scottish Commission for Human Rights Act 2006".

Commission can intervene in civil proceedings when the matter concerned is relevant to its general duty, and when it raises a matter of public interest.

Finally, yet importantly, the Northern Ireland Human Rights Commission (NIHRC) was the first NHRI to be established in the U.K. in 1999. It was founded with the Northern Ireland Act of 1998[102] by the U.K. government and it also became the monitoring body under article 33(2) of the CRPD. It gained "B" status accreditation in 2001 and was re-accredited "A" status in 2011 and 2016. The NIHRC has a broad mandate and a wide range of powers that makes it the best functioning NHRI of the United Kingdom as far as an efficient protection of human rights is concerned. Besides its monitoring activities about the implementation of human rights treaties and the national reporting to the Secretary of State for Northern Ireland, the NIHRC advises legislative and executive bodies, either about the compatibility of Bills with human rights, or about measures that ought to be taken to protect them. Moreover, it can conduct investigations on human rights issues and for this purpose it can enter places of detention[103] and receive documents from agencies or individuals. The Commission can provide legal assistance to individuals in "proceedings involving law or practice relating to the protection of human rights which a person in Northern Ireland has commenced, or wishes to commence".[104] The NIHRC promotes awareness of human rights and undertakes educational activities, and it collaborates with the Irish Human Rights and Equality Commission, Ireland's NHRI, through a joint Committee. So far, the NIHRC could be considered the strongest NHRI - of the ones presented - as regards the chance of implementation of human rights standards. The founding Act gives the institutions extensive powers that in other NHRIs (e.g., the EHRC and the NIHR) are as strong only in equality issues.

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[102] The Northern Ireland Act of 1998 is available at https://www.legislation.gov.uk/ukpga/1998/47/part/VII/crossheading/human-rights.

[103] Article 96-C(1) of the Northern Ireland Act about investigations in places of detention provides: "*For the purpose of an investigation under section 69(8) a person authorised in writing by the Commission may enter a specified place of detention in Northern Ireland on one or more occasions during a specified period*".

[104] Article 70 of the Northern Ireland Act.

2.3.4. An assessment of human rights Commissions

From the overview of the five human rights commissions, it can be drawn the general conclusion that they seem to be better equipped than other European institutional models to forward a more consistent implementation of international human rights standards. It has been mentioned that the Northern Ireland commission, for example, was mandated with broad investigations powers regarding human rights violations and legal advice functions that none of the other analysed model was attributed in such extensive way.[105] Moreover, commissions normally include a wider variety of members, thus better ensuring the pluralistic representation of all the relevant stakeholders. To conclude, it has been argued that "national human rights commissions seem to comply better with the minimum standards of the Paris Principles that single-member ombuds-institutions and human rights research institutes".[106]

[105] Some have similar powers but usually restricted to equal treatment issues.
[106] Manfred Novak, *National Human Rights Institutions in Europe: comparative, European and international perspectives*, in Wouters and Meuwissen, *National Human Rights Institutions in Europe: Comparative, European and International perspectives*, 25.

CHAPTER 2

THE CRITERIA FOR INDEPENDENT AND EFFECTIVE NHRIs: THE PARIS PRINCIPLES AND THE SCA'S GENERAL OBSERVATIONS

The Paris Principles are the foundation and the engine of the whole universe of NHRIs. Without specific and solid parameters, it would not be possible to have impartial and autonomous national institutions, neatly separated from their respective governments, with the mandate of promoting and protecting human rights. In this chapter the author will briefly present the context of the Paris Principles' adoption and some of their perceived initial shortcomings. Following this, their content will be analysed in the light of the General Observations issued by the GANHRI Sub-Committee on Accreditation. On the basis of this evaluation, and with the additional help of the reports of the accreditation sessions of the SCA, the author will try to understand why some NHRIs failed and still fail to either get accredited at all or to gain "A" status. This assessment will help to later understand if Italy is on the right track in its process of establishing a Commission that can become the future Italian NHRI.

1. The context: adoption of the Paris Principles and perceived shortcomings

The Paris Principles were adopted in 1991 at the International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris. The workshop itself was organised by the French CNCDH and the other existing national institutions[107] gathered to discuss, for the first time, how they should be

[107] Together with other participants, representatives of the following national institutions took part in the Paris Workshop: Human Rights and Equal Opportunity Commission, Australia; Beninese Commission on Human Rights, Benin; Council for the Protection of Human Rights, Brazil; Canadian Human Rights Commission, Canada; Chilean Commission on Human Rights, Chile; Commission on Civil Rights, United States of America; National Consultative Commission on Human Rights, France; Commission on Human Rights, Italy; Advisory Council on Human Rights, Morocco; National Commission on Human Rights, Mexico; Human Rights Commission, New Zealand; Advisory Commission on Human Rights, Norway; Commission of Inquiry into

established and strengthened. It is true that "part of the legitimacy of the Paris Principles and their enduring value comes from the fact that they were drafted by NHRIs themselves". [108] The PPs were then endorsed in 1992 by the Commission on Human Rights[109] and in 1993 by the UN General Assembly.[110] As it has been already mentioned, the Vienna World Conference of 1993 served as a springboard for PPs as a credible instrument to test the legitimacy of national institutions protecting and promoting human rights. They became in time the most important criteria for the international recognition and accreditation of national organisations as proper "National Human Rights Institutions" with subsequent voting and speaking rights, and this in spite of the fact that no one was expecting the PPs as an outcome of the Paris workshop of 1991. As Linos and Pegram note:

> *[the] draft Paris Principles prepared by the working group suddenly appeared on the final day and were unanimously adopted in plenary without debate* […] *Observers speculate that many delegations were simply not aware of what they were endorsing. If the resolution had been subject to debate and a vote it may have been blocked* […] *In sum, in a normal treaty-drafting process, with hundreds of countries negotiating over many years, we would expect the final document to reflect key compromises among powerful states. But the significant time pressures and unusual composition of the Paris meeting generated an atypical document.* [111]

Therefore, it can be said that the origin of the PPs contributed to the shaping of their content, both in a positive and in a negative way. For instance, one could argue that their atypical adoption was a fortune: as Linos and Pegram underlined above, had they been subject to debate, they may have been blocked. On the other hand, their fast creation and the absence of a formal process led negotiators to

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Violations of Human Rights, Uganda; Human Rights and Foreign Policy Advisory Commission, Netherlands; National Council on Human Rights, Peru; Commission on Human Rights, Philippines; Commission for Racial Equality, United Kingdom; Commission on Human Rights, Senegal; National Commission on Human Rights, Togo; Higher Committee on Human Rights and Fundamental Freedoms, Tunisia; Human Rights Commission, Turkey; Political Commission for International Cooperation and Humanitarian and Human Rights Problems, Union of Soviet Socialist Republics; Attorney-General of the Republic, Venezuela; and Committee for the Protection of Liberties and Human Rights, Yugoslavia.

[108] De Beco and Murray, *A Commentary on the Paris Principles on National Human Rights Institutions*, 3.

[109] The UN Commission on Human Rights endorsed PPs through resolution n. 54 of 3 March 1992.

[110] The UN GA adopted resolution 48/134 on "National Institutions for the Promotion and Protection of Human Rights", with an annex containing the Paris Principles, in which it encouraged all states in the world to set up independent NHRIs.

[111] Linos and Pegram, *The Language of Compromise in International Agreements*, 599.

make several mistakes. But before explaining some of these shortcomings, it is useful to give an overview of the content of the PPs.

The key pillars of the PPs are independence, pluralism and effectiveness. According to them,[112] NHRIs should have a mandate as broad as possible so that they are able to cover all human rights issues; they should be independent of national governments and established with a constitutional or legislative text; they should be attributed broad functions to be able to provide advice, to prepare reports, to issue recommendations and to deal with complaints[113] and for these purposes, they should be given adequate powers; they must ensure the "pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights";[114] they shall have adequate resources to be able to have their "own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence".[115] Another important aspect to be taken into consideration is the cooperative work: NHRIs must develop an articulated engagement capacity, seeking to collaborate with other national and international institutions.

As mentioned above, the PPs present some shortcomings that can probably be ascribed to the context of their adoption. One crucial problem is related to the lack of sufficient elaboration of some concepts. Kumar points out, for example, about the fundamental requirements of independence, that the principles "offer very little guidance to the states as to how to achieve this independence".[116] Other mistakes include:

> [the] *relegation of features typical of Latin-American ombudsmen to weak recommendations and to omissions. In Paris, the experts promoted the advisory and quasi-judicial commission models rather than the ombudsman model because human rights ombudsmen from Latin America were severely underrepresented at the Paris meeting, and*

[112] See the UN General Assembly resolution 48/134 of 20 December 1993 for the complete text of the PPs.
[113] *Ibid.* This function is listed in the "Additional principles concerning the status of commissions with quasi-jurisdictional competence".
[114] *Ibid.*
[115] *Ibid.*
[116] Raj Chaurasia Kumar (2003) *National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights*. American University International Law Review, 19(2), 272.

other participants did not know enough about human rights ombudsmen to promote their features.[117]

Moreover, some have argued that the PPs are too narrow in their focus due to the fact that they are more concerned with how NHRIs must be established than with offering a set of parameters relevant for their functioning.[118] For this reason it has also been suggested that one must use a certain degree of caution while encouraging states to establish an NHRI. For instance, this can result "in more attention being paid to the creation of such a body rather than its potential effectiveness".[119]

Despite the lack of clarity and the weaknesses of the PPs, States can rely on a number of auxiliary instruments. For instance, the PPs are interpreted and elaborated by the GANHRI Sub-Committee on Accreditation (SCA) which decides whether an NHRI is to be accredited with "A status" (fully compliant with the PPs) or "B status" (partially compliant with the PPs), the latter having only participative rights but no voting powers. Furthermore, the SCA developed a set of General Observations that help to overcome some of the above-mentioned problems. The accreditation (or re-accreditation) session of the SCA offer an important aid to states for a better interpretation and implementation of the PPs. During one of those sessions, the Sub-Committee explained that the issues raised in "relation to accreditation and reaccreditation of an NHRI" require NHRIs "to take steps to address these issues in a subsequent review" because it is its expectation "that all NHRIs will take the necessary steps to pursue continuous efforts at improvement and to enhance effectiveness and independence in line with the Paris Principles and the recommendations made by the SCA".[120] More in general, GAHNRI "encourages and facilitates cooperation among NHRIs from all regions, including through hosting global meetings of NHRIs and by acting as

[117] Linos and Pegram, *The Language of Compromise in International Agreements*, 599.
[118] De Beco and Murray, *A Commentary on the Paris Principles on National Human Rights Institutions*, 20.
[119] *Ibid*, 21.
[120] Session report of the Sub-Committee on Accreditation of November 2017, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

knowledge broker for NHRIs"[121]. Other bodies play an important role in the clarification and strengthening of the PPs: the UNGA and Human Rights Council (HRC), for example, reaffirmed the importance of the "independence" requisite through various resolutions, the most recent one being the "A/RES/74/156" adopted by the UNGA in December 2019.

So far, mainly "soft law instruments" (and only part of them) have been taken into consideration that deal with the implementation of the Paris Principles. For instance, there is no legal obligation[122] either to establish national human rights institutions, or to do so by following the path drawn by the PPs. Nonetheless, some binding human rights treaties specifically encourage or even oblige state parties to set up "domestic bodies" for the implementation of the obligations they entail. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[123] and the International Covenant on Civil and Political Rights (ICCPR),[124] just to mention some of them, require state parties to establish bodies competent to offer remedies to alleged victims of human rights violations or to accept complaints from individuals that claim that the rights set forth in the treaty have been violated. Moreover, it ought to be mentioned that the PPs themselves have become part of "hard law instruments", namely the Convention on the Rights of Persons with Disabilities (CRPD) in its article 33[125] and the

[121] Andrea Kämpf (2018, December) *National Human Rights Institutions and their work on migrants' human rights Results of a survey among NHRIs*. German Institute for Human Rights.
[122] See Wouters and Meuwissen *National Human Rights Institutions in Europe: Comparative, European and International perspectives*, 21.
[123] Article 14 (2) of the ICERD: "*any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies*".
[124] Article 2 (3b) of the ICCPR: "*to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy*".
[125] Article 33 (2) of the CRPD: "*States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights*".

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), in its articles 17[126] and 18[127].

2. The content: which criteria does an NHRI have to meet?

The Paris Principles present some shortcomings related to the context of their adoption, which on the one hand has protected them against external influence, but on the other hand has led to a too wide, flexible and hurried drafting.[128] Nonetheless, it is also true that the PPs have in time been interpreted and elaborated in such a way that there is now more certainty about their content. The General Observations[129] (GOs) of the Sub-Committee on Accreditation as well as the information provided during the accreditation sessions[130] are essential instruments for the interpretation of the Paris Principles. For instance, it is in the light and with the help of these tools that the author wants to analyse their broader content. This will make it easier to understand why certain NHRIs failed to be accredited or to be recognised "A" status. This further step will pave the way for a more comprehensive and critical assessment of the Italian situation and in particular of the draft law for the establishment of the future "National Commission for the Promotion and protection of fundamental human rights and for the fight against discrimination". For the mentioned analysis the author will

[126] Article 17 of the OPCAT: "*Each State Party shall maintain, designate or establish […] one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.*

[127] Article 18 (4) of the OPCAT: "*When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights*".

[128] De Beco and Murray, *A Commentary on the Paris Principles on National Human Rights Institutions*, 5.

[129] The importance of the General Observations of the SCA has been also recognised by the Committee of Ministers of the Council of Europe. With Recommendation n. 1 of 31 March 2021 addressed to member states, the CoE asked them to "*ensure that these principles are interpreted in line with the specific recommendations and General Observations of the GANHRI Sub-Committee on Accreditation*".

[130] The accreditation sessions of the SCA normally take place twice a year, and they always result in reports, thus offering an additional assessment tool for the interpretation of the Paris Principles. The reports are available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

follow the structure of the document of the UN General Assembly[131] that endorsed the principles. There is no space for an exhaustive commentary[132] about every section. Therefore, the focus will be on the most relevant information for our purposes.

2.1. Competence and responsibilities

The first three points of the 'competence and responsibility' section[133] of the PPs affirm that a national institution: 1) shall be attributed with "*competence to promote and protect human rights*"; 2) shall be "*given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence*"; 3) shall have, *inter alia*, certain responsibilities. As it has been already mentioned, NHRIs do not have to fit a specific and predetermined model, they are rather defined by certain characteristics and functions, leaving states the chance to choose the structure that best fits their national human rights landscape. In paragraph 7 of the Introduction of the General Observations,[134] the SCA mentions that it is:

> *aware of the different NHRI structural models in existence, including: commissions; ombudsman institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates […] The SCA is of the view that its General Observations must be applied to every NHRI, regardless of its structural model type.*

Even if the PPs and GOs potentially fit a broad range of "model type", there are certainly NHRIs with structures that are better equipped to forward a stronger and wider promotion and protection of human rights than others. There are additional principles specifically concerning commissions with quasi-judicial competences, meaning that there can be a gap in the attribution of functions that can also be related to the 'structural' choice. Nonetheless, different types of NHRIs could all

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[131] UN General Assembly, Resolution 48/134: National institutions for the promotion and protection of human rights, 20 December 1993, available at https://www.refworld.org/docid/3b00f25e14.html.

[132] For a comprehensive and detailed analysis (which does not, though, include the latest General Observations of 2018) of the Paris Principles refer to De Beco and Murray, *A Commentary on the Paris Principles on National Human Rights Institutions*.

[133] Section A of Annex 2.

[134] The latest version of the GOs - as of June 2021 - is the one of 2018, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Rules-of-Procedures.aspx.

gain "A" status accreditation, and in Europe these are, for example, ombudspersons, institutes, and commissions.

The first (pre)requisite is the "*competence to promote and protect human rights*". When it comes to the mandate, which should be '*as broad as possible*', the GOs proved to be useful in filling the interpretative uncertainty left by the principle. In GO 1.2.,[135] with the title "human rights mandate", the SCA clarifies that this mandate to promote and protect human rights must be understood "so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent". In addition, some accreditation reports of the SCA reiterated the request that NHRIs should address all human rights issues, including economic, social and cultural rights.[136] The mentioned GO explains that the mandate shall also "extend to the acts and omissions of both the public and private sectors"[137] and this was one of the reasons for not accrediting the Austrian Ombudsman Board (AOB) with "A" status. For instance, the SCA noted that AOB's remit "is restricted to state powers; it does not have competence over the private sector" and that "the existing legislation does not make specific provision for a broad mandate to protect and promote human rights".[138] The lack of a provision for a broad human rights mandate has been an issue also for the Belgian Interfederal Centre for Equal Opportunities and

[135] The reference here is to the GOs version of 2018.
[136] The session report of the Sub-Committee on Accreditation of 7-18 December 2020, for example, emphasized the inclusion of these rights in their mandate while considering the re-accreditation of the Netherlands Institute for Human Rights (NIHR), the Ombudsman of the Republic of Latvia, the Uzbekistan's Authorised Person of the Oliy Majlis for Human Rights (Ombudsman), the National Human Rights Commission of Thailand (NHRCT), and the Protector of Citizens of Serbia (PCRS)
[137] GO 1.2., "human rights mandate".
[138] Session report of the Sub-Committee on Accreditation of May 2011, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

Opposition to Racism (Unia) that also could not be accredited "A" status,[139] and for the Cyprus Commissioner for Administration and Human Rights (CAHR).[140]

Another important requirement is that institutions "*shall be clearly set forth in a constitutional or legislative text specifying its composition and its sphere of competence*". Once again, the GOs, acknowledging that the differences in states' political systems may impact the way they are formally set up, help them to have a clearer idea of how NHRIs should be established:

> *the Paris Principles are clear on the requirement that NHRIs, regardless of the constitutional and legal system in which they operate, be formally entrenched in law and in this way be distinguished from an agency of state […] Further, it is necessary that the constitutional or legislative text set out the NHRI's mandate as well as the composition of its leadership body. This necessarily requires the inclusion of complete provisions on the NHRI's appointment mechanisms, terms and conditions of office, mandate, powers, funding and lines of accountability. The SCA considers this provision to be of central importance in guaranteeing both the permanency and independence of the Institution.*[141]

The creation of NHRIs in other ways, although it can raise "concerns regarding permanency, independence from government and the ability to exercise its mandate in an unfettered manner",[142] did not prevent certain NHRIs to reach "A" status accreditation. The German Institute of Human Rights, for example, was first established through a decision of the Federal Parliament. The Sub-Committee re-accredited the Institute with "A" status, but it reiterated the "the need for an NHRI to be established in a constitutional or legal text" and therefore recommended "the adoption of a stronger legal basis for the Institute",[143] a request that was accomplished in 2015. Concerning the case of the Belgian NHRI, Unia, the SCA on the one hand expressed its concern about the fact that "the inter-federal agreement provides for a three (3) year periodic tacit renewal, and that any of the parliamentary assemblies could withdraw unilaterally" could "impact the

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[139] In the session report of the Sub-Committee on Accreditation of May 2018 the SCA noted that "*the mandate provided to UNIA by the inter-federal agreement is limited and does not cover the full range of human rights*". The report is available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

[140] In the session report of the Sub-Committee on Accreditation of November 2015 the SCA noted that: "*the enabling law of the CAHR provides a limited promotion mandate […] The SCA is of the view that a NHRI should be legislatively mandated with specific functions to both promote and protect human rights*".

[141] GO 1.1., "The establishment of NHRIs".

[142] *Ibid.*

[143] Session report of the Sub-Committee on Accreditation of 3-6 November 2008, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

functioning and jurisdiction of UNIA". On the other hand, though, it also acknowledged and accepted "that UNIA indicates that a change to this provision would not be feasible in the context of the Belgian federal structure".[144]

The last requisite of the section concerns the core responsibilities that a national institution should be attributed. The list provided[145] is not exhaustive and it will not be analysed here. Only to mention one example, the responsibilities to encourage the ratification of or accession to international human rights instruments and to engage with the international human rights system were both addressed by the SCA in the re-accreditation session of Unia. In this case the recommendation was directed at the general strengthening of the mentioned engagement of Unia and to the necessity of an explicit legal provision about the mandate to encourage ratification of international instruments.[146]

2.2. Composition and guarantees of independence and pluralism

The second section of the Paris Principles sets three requirements for the establishment of an independent and pluralist national institution: 1) the members' selection procedure must be set in a way to "*ensure the pluralist representation of the social forces (of civilian society)*"; 2) the NHRI must have adequate funding to "*enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control*"; 3) the members' appointment shall be "*effected by an official act which shall establish the specific duration of the mandate*".

To ensure a pluralist representation the principle suggests the inclusion of representatives of certain groups, namely NGOs that deal with human rights, trends in philosophical or religious thoughts, universities, the Parliament and government departments. The latter,[147] if included, cannot participate in decision-making bodies of the institution. GO 1.8. explains that it is vital for the

[144] Session report of the Sub-Committee on Accreditation of May 2018, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.
[145] Section A (3) of Annex 2.
[146] As already mentioned, the same recommendation was directed to the Danish Institute.
[147] The Paris Principles only explicitly provide for the government departments that "*their representatives should participate in the deliberations only in an advisory capacity*". Nonetheless, the SCA notes in GO 1.9. that "*a similar restriction must apply to members of parliament, and particularly those who are members of the ruling political party or coalition*".

independence of an NHRI to promote a merit-based selection of the decision-making body. This can be done, for example, through a broad publicization of vacancies, the assessment of "applicants on the basis of pre-determined, objective and publicly available criteria", and a selection of "members to serve in their own individual capacity rather than on behalf of the organization they represent".[148] This principle was brought as the third notation that the SCA made to the Austrian Ombudsman while re-accrediting it with "B" status: "a clear, transparent and participatory selection process is of critical importance in ensuring the pluralism and independence of a NHRI".[149] The same recommendation was made to Unia because the SCA is of the opinion that the selection and appointment process contained in the Belgian law is "not sufficiently broad and transparent" and in particular it does not "require the advertisement of vacancies; and specify the process for achieving broad consultation and/or participation in the selection, screening, and appointment process".[150] A similar notation was addressed to the Cyprus Commissioner for Administration and Human Rights (CAHR) when it was accredited "B" status.[151] The latter was also recommended to "advocate for the inclusion in its enabling law a requirement that its staff be reflective of the principle of pluralism".[152]

The importance of an "adequate funding" has been stressed multiple times from the SCA during the accreditation sessions.[153] The General Observations are particularly detailed with regard to the funding of national institutions. First of all, it must be at their free disposal to be allocated according to their priorities. Then,

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[148] GO 1.8., "Selection and appointment of the decision-making body of NHRIs".

[149] Session report of the Sub-Committee on Accreditation of May 2011. During the same session the SCA also noted - about the independence of the AOB's members - that they "*are selected upon recommendation of the three major political parties; all current members are former elected representatives*". The report is available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

[150] Session report of the Sub-Committee on Accreditation of May 2018, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

[151] The CAHR is currently (as of June 2021) undergoing a new accreditation session.

[152] Session report of the Sub-Committee on Accreditation of November 2015, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

[153] The session report of the Sub-Committee on Accreditation of May 2011, for example, while re-accrediting the Northern Ireland Human Rights Commission noted "*the importance of NHRIs receiving adequate core funding. This allows them to effectively fulfil their mandates, ensures their independence from Government, and guarantees their ability to determine their priorities and activities. It also notes requirement for the NIHRC to obtain approval for external sources of funding, which could have an impact on its ability to fulfil its mandate*".

it must be sufficient to enable the free determination of their activities.[154] GO 1.10. also establishes a minimum content for the states' provisions about the funding of the institution. While acknowledging the different "national financial climate", the SCA also believes "that it is nevertheless possible to identify certain aspects of this Paris Principles requirement that must be taken into account in any particular context"[155] and includes a list of those requirements. In the accreditation session of the Cyprus NHRI, the SCA, while noticing that "the mandate of CAHR has increased significantly over the past years, with no concurrent increase in allocated resources" it also repeated the importance for an NHRI to have an "appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities".[156]

The last requirement about the stability of the mandate asks that the members of the institution "shall be effected by an official act which shall establish" its specific duration. This principle, though, differently from the others presented so far, is commented by the SCA in the "practices that directly promote Paris Principles compliance" section of the General Observations and not in the "essential requirements of the Paris Principles". The SCA, in the introduction to the GOs explains that their categorization into the two mentioned sections clarifies which of the GOs are "direct interpretations of the Paris Principles, and which are drawn from the SCA's extensive experience in identifying proven practices to ensure independent and effective NHRIs in line with the Paris Principles".

2.3. Methods of operation

The third section lists the activities of the institutions that should fall under their operational framework. Among them can be found: "*freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority*"; "*address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations*"; "*maintain consultation with the other bodies*" responsible for the protection and promotion of human rights and

[154] GO 1.10., "Adequate funding of NHRIs".
[155] *Ibid.*
[156] Session report of the Sub-Committee on Accreditation of November 2015, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

"*develop relations with the non-governmental organizations devoted to promoting and protecting human rights*". Some of them are commented and thus expanded by the GOs 1.5.,[157] 1.6 and 1.9. In the context of the re-accreditation session of the Austrian NHRI, the SCA also noted - as far as relations with NGOs are concerned - that to get "A" status in the future, the AOB should also "develop regular and systematic working relations with such organizations".[158] Similarly, during the accreditation of the Slovakian National Centre for Human Rights (SNCHR) with "B" status, the SCA explained that a "regular and constructive engagement with all relevant stakeholders is essential for NHRIs to fulfil their mandates effectively".[159]

2.4. Additional principles concerning the status of commissions with quasi-judicial competence

The fourth section considers national institutions that may be mandated to receive individual complaints.[160] Without prejudice to the other PPs' provisions, this section offers additional principles to consider when a national institution is attributed quasi-judicial[161] competences. Once again, this part is not included in the "essential requirements of the Paris Principles" section of the General Observations, rather it goes under "practices that directly promote Paris Principles

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[157] GO 1.5., for example, explains that "*regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations*".

[158] Session report of the Sub-Committee on Accreditation of May 2011, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

[159] Session report of the Sub-Committee on Accreditation of March 2014, available at https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx.

[160] The principle acknowledges that "*a national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations*". It then lists some of the functions that can be entrusted to the commission: "*(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality; (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them; (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law; (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights*".

[161] In the General Observations the SCA explains that "*the term 'quasi-jurisdictional competence' as cited in the Paris Principles has been recognized as a translation error. It is instead meant to be understood as 'quasi-judicial competence' and it refers to a NHRI's complaints-handling mandate and its related functions and powers*".

compliance". The SCA itself clarifies that the PPs do not *require* that an NHRI "have the ability to receive complaints or petitions from individuals or groups regarding the alleged violation of their human rights".[162] However, when such mandate is attributed, the institution "should be provided with the necessary functions and powers to adequately fulfil this mandate" and, in essence, it is "expected to handle complaints fairly, speedily and effectively through processes which are readily accessible to the public".[163]

3. A "contemporary template": the Paris Principles and the General Observations

The Paris Principles have in time gained the status of international dominant model against which to assess the establishment and work of national bodies entrusted with the protection and promotion of human rights. It has been noticed that "any discussion that begins its analysis and understanding of NHRIs from the U.N. initiatives or the Paris Principles perspective presupposes that these institutions are inherently good".[164] However, these 'parameters' have been accused of being too narrow in their focus as they "do not seek to expand on or cover a comprehensive range of issues relevant to the functioning of an NHRI".[165] It has been already mentioned that some of the shortcomings can be explained looking back to the "hurried" context of their adoption, which was at the same time their fortune. For instance, states were still far from being ready to follow stricter guidelines in this matter, and only after the strengthening of an international understanding and consensus, they started to accept the idea of autonomous institutions with human-rights'-protective tasks. The fact that the drafting of the PPs was too wide and flexible, that they did not "look at all issues of accountability and effectiveness",[166] that they potentially fit a broad range of model type, can all be seen as both elements that helped their 'smooth' adoption, and the trigger for

[162] GO 2.9., "The quasi-judicial competency of NHRIs (complaints-handling)".
[163] *Ibid.*
[164] Kumar, *National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights*, 270.
[165] De Beco and Murray, *A Commentary on the Paris Principles on National Human Rights Institutions*, 20.
[166] *Ibid.*

the progressive development of the interpretative expansion offered by the General Observations of the SCA and by other international and regional organisations.[167] Taken together, the PPs and the GOs, create now an "appropriate contemporary template for NHRIs" and the latter "expand upon the vagueness" of the former and provide:

> *the detail and guidance needed. If the Paris Principles are seen as the minimum rather than the maximum that NHRIs should attain, as proposed above, these can be bolstered by additional softer criteria from the SCA. Their flexibility gives the option for further amendment and revision, an approach that the SCA has been willing to accept, and therefore provides the possibility of addressing the* [mentioned] *omissions.*[168]

The PPs have in time been interpreted and elaborated in such a way that there is now more certainty about their content, and it is therefore easier for states to directly establish fully compliant NHRIs, even with the possibility to choose the structure that best suits their national context. As it has been already mentioned, even if the PPs and GOs potentially fit a broad range of "model type", there are certainly NHRIs with structures that are better equipped to forward a stronger and wider promotion and protection of human rights than others. Among the ones that have been analysed, the "Institute for Human Rights" model seemed - in the first years - to be better qualified in supporting NHRIs with research expertise and education skills rather than fulfilling the various tasks of NHRIs themselves. Nonetheless, it later resulted to be efficient in many ways, and the most evident are probably the impact on education and the engagement with all relevant regional and international stakeholders, thanks to the high level of human rights professionals involved. The "Human Rights Commission/Institution" model, though, remains the closest to the original idea of an organisational structure of NHRI, the same of the first one ever established and the one that could better take up additional quasi-judicial competences. From the overview of some human rights commissions, it has been drawn the general conclusion that they seem to be the best model to deal with all the functions that an NHRI should cover, being (in

[167] The CoE, for example, issued different recommendations, of which the last one in 2021: Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions.

[168] De Beco and Murray, *A Commentary on the Paris Principles on National Human Rights Institutions*, 147.

theory) better equipped to forward a more consistent implementation of international human rights standards. This is the institutional model that Italy chose for its future(?) NHRI and is now in the consolidate version of the draft law about the Italian "National Commission for the Promotion and protection of fundamental human rights and for the fight against discrimination".

CHAPTER 3
A FULLY COMPLIANT NHRI FOR ITALY?

In Italy, three draft laws[169] were prepared in 2018 for the establishment of a "National Commission for the Promotion and protection of fundamental human rights and for the fight against discrimination" and were recently merged into one. On the 13th of January 2021 the assigned Commission of the Italian Parliament made another referral for the study of the unified text adopted as the new basic text because of the plethora of proposed amendments.[170] As it has been already mentioned, Italy is one of the last four[171] countries in the European Union to lack an NHRI, although it has a strong need for such an institution, not only for its international credibility but also for the promotion and protection of the rights and fundamental freedoms at stake. It is vital to have an independent NHRI that can monitor the respect of human rights, and both the current pandemic season and the situation with migrants have highlighted the need for its work. The so-called first[172] and second generation[173] of human rights need specific attention in Italy, and its non-compliance with international obligations creates problems in many fields of its social and economic situation. Therefore, it is of the utmost importance to follow the process for the establishment of the future Italian NHRI. In this chapter, the authors wants to understand if the current draft legislation is effectively oriented towards the creation of a fully compliant and independent commission that can help the country to direct the policies towards a legislation

[169] The "PDL 1794" (for the establishment of an anti-discrimination national authority) presented on the 18th of April 2019 to the Italian Chamber of Deputies, the "PDL 1323" presented on the 30th of October 2018, and the "PDL 855" presented on the 3rd of July 2018.
[170] These amendments have a manifestly dilatory purpose, and it is not easy to predict when the political debate will reach a consensus on the matter.
[171] As already mentioned, also Malta, the Czech Republic and Romania do not have an accredited NHRI yet. The Romanian Institute for Human Rights, though, is currently a "C" status NHRI and is working for its re-accreditation. In the Czech Republic the Public Defender of Rights, even without GANHRI's accreditation, enjoys extensive powers in the field of human rights.
[172] The "Civil and Political rights". See the International Covenant on Civil and Political Rights, available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
[173] The "Social, Economic and Cultural Rights". See the International Covenant on Economic, Social and Cultural Rights, available at https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

more responsive and respectful of the current international human rights standards.

1. The Italian fragmented human rights panorama

The first attempt to create an Italian NHRI was made in 2006 with the draft law (*progetto di legge*) n. 2018 presented by deputy De Zulueta.[174] It was a revolutionary effort to establish a commission that could even receive individual complaints about human rights violations with subsequent inquiry and denunciation powers.[175] Unfortunately, nothing concrete followed, and even further proposals amounted to nothing. The most recent unified draft law[176] about the establishment of the Italian Commission was prepared on the 29th of October 2020,[177] bringing together three different *progetti di legge* (hereinafter "PDL"). The process is still ongoing[178] since the political parties could not reach a consensus on the unified PDL and since one party blocked the discussion in January 2021 with a profusion of amendments mainly aimed at converting the future independent commission into a parliamentary commission composed of deputies and senators. In Italy, there are already committees and commissions for the promotion of human rights in the context of parliamentary departments and adding another one will only bring further fragmentation and functional overlapping. In the Presidency of the Council of Ministers,[179] for example, there is the Committee of Ministers for Policy and Strategic Guidance on Human Rights Protection,[180] which will be abolished if the current draft law is passed.[181] In 2003 the National Office against Racial

[174] PDL n. 2018 of 2006 is available at http://legxv.camera.it/_dati/lavori/stampati/pdf/15PDL0018720.pdf.
[175] Cf. Elena Santiemma (2019*) La mancanza in Italia di una istituzione nazionale indipendente per la promozione e la protezione dei diritti umani e il monito della società civile*. Ordine internazionale e diritti umani, 170.
[176] The text of the unified draft law is available at https://www.camera.it/leg18/824?tipo=A&anno=2020&mese=10&giorno=29&view=&commissione=01#data.20201029.com01.allegati.all00010.
[177] Cf. Annex 3.
[178] As of June 2021.
[179] The Presidency of the Council of Ministers is the is administrative structure that supports the work of the President of the Council of Ministers.
[180] The "*Comitato dei Ministri per l'indirizzo e la guida strategica in materia di tutela dei diritti umani*" was established with the decree of the president of the council of ministries n. 141 of 20 June 2007.
[181] Cf article 7 of the unified draft law.

Discrimination (UNAR) was established as part of the Department of Equal Opportunities of the Presidency of the Council of Ministers. The UNAR is also the Equality Body[182] of Italy but it does not meet the independence requirements to be accredited as an NHRI. Moreover, if the draft law on the establishment of the Italian Commission is passed, some of the current functions of UNAR will be repealed and attributed to the former.[183] Another Committee that has a mandate to promote human rights is the Interministerial Committee of Human Rights (CIDU)[184] of the Ministry of Foreign Affairs and International Cooperation. Even if it is close to the idea of a national institution, it does not have the required independence[185] from the executive, its mandate is not broad enough and its functions partly overlap with the ones of other bodies.[186] The National Observatory on the Conditions of Persons with Disabilities was established in the context of the ratification of the UN CRPD and its Protocol by law n. 18 of 3 March 2009 of the Italian Parliament. There are many other parliamentary committees, councils, observers and commissions that deal with human rights related issues, but not all of them will be presented. Instead, the focus will be on other institutions that have a stronger independence: the national Independent Authorities. The Authority for Childhood and Adolescence,[187] for example, was established in 2011 with the aim of promoting the culture of childhood and adolescence and ensuring the implementation and protection of the rights and interests of persons under the age of 18 in accordance with the provisions of

[182] The UNAR is part of the European Network of Equality Bodies (EQUINET).
[183] The functions of the UNAR that will be abrogated are the following: to provide legal assistance - in judicial or administrative proceedings - to individuals who consider themselves wronged by discriminatory behaviour; to carry out investigations with the purpose of verifying the existence of discriminatory phenomena; to prepare a report for the Parliament on the application of the principle of equal treatment. All these functions will be attributed to the future Commission.
[184] The "Comitato Interministeriale dei Diritti Umani".
[185] Meuwissen (in Katrien Meuwissen (2015) *NHRIs and the State: New and Independent Actors in the Multi-layered Human Rights system?* Human Rights Law Review, 15, 442), explains that: "*The NHRI category is broad and open to varying specifications, but it is important to distinguish NHRIs from other bodies active in the human rights field. In particular, NHRIs must be differentiated from non-state actors (such as non-governmental organizations (NGOs)) as well as from national bodies that pertain to one of the three traditional state powers (the executive, legislative or judiciary power); a human rights department of the Ministry of Foreign Affairs, for example, cannot be regarded as an NHRI*".
[186] Ferdinando Lajolo di Cossano (2017) *L'Autorità nazionale indipendente per i diritti umani: se non ora, quando?* I diritti dell'uomo - Cronache e battaglie, 3, 583.
[187] The "Autorità Garante per l'Infanzia e l'Adolescenza" (AGIA).

international conventions and in particular the UN Convention on the Rights of the Child (UN CRC), signed in New York on 20 November 1989. This Authority was asked an opinion on the PDL 1794, 1323 and 855, before they were merged into the unified draft law. The AGIA expressed its concern about the overlapping of functions that could occur, since both bills refer to human rights, among which are included those referring to persons under the age of 18. To avoid such overlapping the unified text[188] specifically mentioned the necessity of coordination (respecting mutual competences) among the new commission and both the AGIA and the National Authority for the rights of persons detained or deprived of their personal liberty. The latter, established in 2014 following the ratification of the OPCAT,[189] is also the Italian National Preventive Mechanism (NPM) for the prevention of torture and other inhuman or degrading treatment. There are other authorities in Italy that are only mentioned here as examples of bodies that must be independent but have problems with either their functional or personal independence: the AGCOM (*Autorità per le garanzie nelle comunicazioni*), the CONSOB (*Commissione nazionale per le società e la borsa*) and the ANAC (*Autorità nazionale anticorruzione*).[190] The latter does not always effectively or successfully intervene in anti-corruption matters, and more in general, the absence of a national ombudsman in Italy creates problems as far as the fight against maladministration is concerned.[191] There is no space here to further analyse the broader Italian situation in detail. Nonetheless, there is enough information to realise the level of fragmentation and the inadequacy of the existent bodies to efficiently deal with the complexity of the challenges posed by the human rights' international legal framework. At this point one question arises: does Italy need a National Human

[188] Article 3, paragraph 1*(l)* of the unified draft law provides that: "the Commission works, in matters of mutual competence, in synergy with the National Guarantor of the Rights of persons deprived of their liberty and the Authority for Childhood and Adolescence".
[189] Italy ratified the OPCAT with the Decree Law n. 146 of 23 December 2013 (available at https://www.gazzettaufficiale.it/eli/id/2013/12/23/13G00190/sg), later converted into Law n. 10 of 21 February 2014.
[190] The National Anti-corruption Authority was established in 2012 with the Law for the prevention and repression of corruption and illegality in the public administration.
[191] In Italy there is no national ombudsman. However, at national level there is the National Coordination of Ombudsmen (the "*difensori civici*") of the Regions and Autonomous Provinces, a body for the dissemination and enhancement of the institutional role of ombudsmen and for relations with European ombudsmen.

Rights Institution and more pressingly, is the current draft legislation directed towards its establishment in compliance with the international standards for an effective protection and promotion of human rights?

2. Why does Italy need an NHRI?

The endorsement of the Paris Principles by the UN General Assembly Resolution 48/134 in 1993 was the first international "recommendation" (of the many others that followed)[192] directed at states regarding the establishment of a national institution "having regard to those principles and recognizing that it is the right of each State to choose the framework that is best suited to its particular needs at the national level".[193] Despite the fact that there is no legal obligation either to establish national human rights institutions, or to do so by following the path drawn by the PPs, some binding human rights treaties specifically encourage or even oblige state parties to set up "domestic bodies" for the implementation of the obligations they entail and ask them to give due consideration to the Paris Principles. For instance, both the Convention on the Rights of Persons with Disabilities in its article 33 and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in its article 18, endorsed the PPs by asking State Parties to take into account the "principles relating to the status and functioning of national institutions for protection and promotion of human rights". If on the one hand Italy complied with this obligation and established the National Observatory on the Conditions of Persons with Disabilities and the National Authority for the rights of persons detained or deprived of their personal liberty, on the other hand it is more difficult to say that it did so by respecting the PPs. At the third cycle of the Universal Periodic Review[194], Italy accepted more than 40 recommendations about the necessity to adopt measures in order to establish a fully independent national human rights institution in accordance with the Paris Principles. Moving to the

[192] In the HRC framework, for example, there are resolutions of the Human Rights Council, Special Procedure Recommendations, and UPR recommendations.
[193] UN GA, Resolution 48/134: National institutions for the promotion and protection of human rights, 20 December 1993.
[194] Documentation of Italy available at https://www.ohchr.org/EN/HRBodies/UPR/Pages/ITIndex.aspx

regional level, the Committee of Ministers of the Council of Europe adopted Recommendation n. 14 in 1997 on the establishment of independent national institutions for the promotion and protection of human rights, recalling its previous recommendation on the institution of the ombudsman,[195] Resolution n. 2 adopted in 1994 at the first European Meeting of National Institutions for the Promotion and Protection of Human Rights, and the declaration adopted in 1997 at the following meeting. The CoE considering "that effective, pluralist and independent" NHRIs "are among the pillars of respect for human rights, the rule of law and democracy", recently issued another recommendation, emphasising that "such institution (should) be established and function in full compliance with the minimum standards contained in the Paris Principles".[196] The calls for the founding of a National Commission for Italy did not exclusively come from international and regional actors. Many associations, NGOs,[197] and political parties 'advocated' for the creation of an Italian institution in compliance with international obligations and standards.

This brief overview does not exhaust the international regulatory framework on the establishment of NHRIs. However, it gives an idea of the pressure on states to create one. Italy's commitment and international credibility, though, are not the only reasons why it should pass the law on the National Commission without further delay. It has been already mentioned that the Italian human rights protection framework is fragmented. An NHRI with a broad mandate to protect and promote human rights could offer a comprehensive and unitary approach to such a complex and heterogeneous landscape. There is a strong need for a national independent body that can both widely monitor and promote the implementation of the full spectrum of human rights and coordinate the efforts at national level to consistently protect them. The current debate in Italy repeatedly stressed the

[195] Recommendation (85) 13 on the institution of the ombudsman, adopted on 23 September 1985. Available at https://rm.coe.int/0900001680506bee.

[196] Recommendation CM/Rec (2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions. Available at https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a1f4da.

[197] For example, Amnesty International Italia and other NGOs part of the Committee for the Promotion and Protection of Human Rights, established in January 2002 with the aim of promoting the creation of an NHRI.

importance of the bridging role of a National Commission. Marta Cartabia, former president of the Constitutional Court and Minister of Justice since February 2021, during a web conference,[198] highlighted the urgency to have a body with a bridging role that could help to overcome the fragmentation of the mandate and activity of national bodies, and that could play this role both between national and international level, and between the institutional dimension and the civil society dimension. It needs to be mentioned here that National Human Rights Institutions have been studied from the perspective of:

> *their bridge-building function between the state and non-state actors. The position of an NHRI as an independent state institution, however, has gotten far less attention. It can be noted that literature has argued that "seeing NHRIs as part of the state apparatus does not fit with the notion of them as independent institutions", and consequentially labelled NHRIs "semi-official independent bodies". This depiction of NHRIs has provoked (some) criticism, as it undervalues the importance of their distinctive character and special role as provided by the state in their constitutions. Indeed, there is no apparent reason why a characterization of NHRIs as state institutions would necessarily exclude their independence. Rather, NHRIs seem to fit a broader trend of supranational standards requiring states to transfer certain tasks to autonomous state entities.*[199]

It is probably in the same logic that the current Minister of Justice added at the aforementioned conference that NHRIs should be "early warning mechanisms" and should be provided with the capacity of early intervention to prevent human rights violations. The "bridge-building" function remains a fundamental reason for Italy to establish a National Commission without further delay. However, it is in the light of their role of "autonomous state entities" that the authors wants now to examine the unified draft law for the institution of the Italian National Commission for the Promotion and protection of fundamental human rights and for the fight against discrimination.

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[198] The EU Fundamental Rights Agency (FRA) recently organised a web conference with Diritti Comparati with the title "National Human Rights Institutions: Guaranteeing fundamental rights compliance during Covid-19". During the conference most of the speakers repeated the need to create an NHRI with a bridging role. The conference (25 January 2021) has been registered and is available at https://www.facebook.com/DirittiComparatiRivista/videos/1311974905856575.

[199] Meuwissen, *NHRIs and the State: New and Independent Actors in the Multi-layered Human Rights system?,* 443.

3. Is the current draft legislation effectively oriented towards the creation of a fully compliant and independent Commission?

The comparative analysis of the European NHRIs, together with the study of the PPs and the GOs, which potentially fit a broad range of "model type", brought to the conclusion that there are NHRIs with structures that are better equipped to forward a stronger and wider promotion and protection of human rights than others. The "Commission" model appeared to be one of the best suited, also for the exercise of the additional quasi-judicial competences. One of the mentioned PDL (n. 1794) was presented to establish an "Anti-Discrimination Authority", but the other two (n. 1323 and n. 855) were both for the institution of a "Commission" and the unified draft law reflected the latter, thus fixing the choice of the model for the Italian NHRI. The PDL n. 2018 of 2006 was already oriented towards a Commission-like institution, and it had all the chances to establish a fully compliant NHRI, which was even attributed with quasi-judicial competences.[200] The PDL n. 1323 of 2018, probably following the PDL of 2006, mentioned as well powers of investigation, control and denunciation, it kept the function to set a term to the offender for the cessation of the conduct complained,[201] but unlike the other PDL, did not make any reference to 'proceedings' before the Commission. Unfortunately, the consolidated version of the three recent PDL left out these powers and limited them to providing assistance in already established proceedings in front of other authorities (both judicial and administrative). Since the Commission, things standing thus, will not be attributed quasi-judicial competences, the author will not consider the last section of the PPs while

[200] The PDL n. 2018, in fact, in article 2(h) stated that the Commission had the task to: "*receive reports from the persons concerned or associations representing them concerning specific violations or limitations of the rights recognised in the international instruments in force and to take action them, activating the powers of investigation, control and denunciation under Article 3*". Article 3 (8-10) of the same PDL left no doubt as its quasi-judicial powers: "(8) *In the proceedings before the Commission, interested parties shall have the opportunity to be heard, in person or by or through a special representative, and have the right to submit statements or documents.* (9) *After obtaining the necessary information, the Commission shall, if it considers the request or complaint to be well-founded, set a term for the cessation of the conduct complained to the person responsible for it, indicating the measures necessary to protect the rights of the person concerned and shall set a time limit for their adoption. The measure shall be communicated without delay to the parties concerned by the Office.* (10) *The decision of the Commission may be appealed to the competent court.*

[201] The PDL 1323 added that, if the offender did not provide a well-founded motivation for his conduct the Commission should, if the conditions were met, refer the matter to the competent judicial authority.

analysing the unified PDL. Firstly, it will be made an assessment of the mandate, composition and guarantees of independence (funding, selection of the decision-making body) of the future Commission. Then, its tasks will be analysed in the light of the responsibilities and methods of operation[202] set by the PPs.

3.1. An assessment of the compliance of the Italian draft law with the PPs: mandate, composition and guarantees of independence

Article 1 of the unified draft law (hereinafter "UDL")[203] contains general principles and a specific reference to its drafting in pursuance of both resolution 48/134 of the UNGA, and of anti-discrimination European legislation.

The first requirement set by the PPs[204] is that the institution shall have the competence to promote and protect human rights. The UDL, in article 2(1), clearly states that "the National Commission for the promotion and protection of fundamental human rights and for the fight against discrimination" is established with the "aim of promoting and protecting the fundamental rights of the person" and with the aim of monitoring "equal treatment and the effectiveness of the instruments of protection against discrimination". As far as the mandate is concerned, which should be as broad as possible,[205] the UDL proceeds by specifying that the focus is on fundamental rights and in particular "those established by the Constitution and those identified and recognised by the international conventions to which Italy is a party". The GO 1.2. clarifies that the mandate should cover civil, political, economic, social and cultural rights, in order to give effect to the principle that all rights are universal, indivisible and interdependent. The UDL reference to "fundamental rights" seems "an obvious terminological, but above all ideological, error in the title of the bill itself" whereas it is known "that human rights are indivisible, universal and interdependent".[206]

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[202] Respectively, section A, paragraph 3, and section C of Annex 2.
[203] It should be only mentioned here that, since the PDL is going to be endorsed in a primary legislative act, the PPs' requirement for the institution to be set forth in a constitutional or legislative text is met.
[204] Cf Annex 2, section A, paragraph 1.
[205] Cf Annex 2, section A, paragraph 2.
[206] Santiemma, *La mancanza in Italia di una istituzione nazionale indipendente per la promozione e la protezione dei diritti umani e il monito della società civile*, 172.

The GO 1.2. adds that the mandate should also extend to both public and private sectors, which seems to be the case for the future National Commission. In the UDL, in fact, there is no mandate restriction as far as either public or private matter are concerned, and article 3 paragraph 1(m) specifically mentions public administration and privates as subjects that can both receive assistance and recommendations.

Article 2(2) of the UDL sets that "the Commission operates with complete independence of judgement and evaluation and has organisational, functional and financial autonomy, its own staff and its own premises". On the one hand this provision seems to be prepared to meet the independence requirement of the principle in section B(2).[207] On the other hand, the coherence of the wording must be checked in the substantive provisions about organisational, functional and financial independence. The author does not have the competences, nor the instruments yet, to make a critical assessment of the financial autonomy, but can point out what follows. Comparing the UDL to the first draft which authorized the expenditure of 10 million euro for the year 2006 and of 12 million euro per annum from 2007, it can be seen that the current draft law, in article 8, significantly cut the budget to less than 3 million euro. Other European NHRIs have double the budget and nonetheless struggle to fulfill their mandate. Moreover, the SCA often stressed the importance of an adequate funding, both in the GOs and in the accreditation reports, and it is highly probable that the future Italian Commission will be addressed recommendations both on its funding's inadequacy and on the lack of sufficiently detailed provisions about it.[208]

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[207] This principle requires the institution to have "*infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence*".

[208] GO 1.10. mentions what the funding provisions should include as a minimum: "*a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities […] b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State; c) remuneration of members of its decision-making body (where appropriate); d) the establishment of well-functioning communications systems including telephone and internet; e) the allocation of a sufficient amount of resources for mandated activities. Where the NHRI has*
been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions".

Article 2(3)(4)(5) of the UDL, following the PPs' requirement[209] that the members shall be effected by an official act that establishes the duration of their mandate, provides that the Commission "is a collegial body consisting of five members chosen from among persons offering guarantees of unquestioned recognised independence" that they "shall be appointed by a determination adopted in agreement with the Presidents of the Senate of the Republic and the Chamber of Deputies" and that their mandate is non-renewable and lasts five years. This provision also addresses the principle to ensure a pluralist composition[210] of the Commission by stating that its members are chosen ensuring "adequate gender representation, taking into account the ethnic diversity of society, the range of vulnerable groups and ensuring respect for diversity and the pluralistic representation of the social forces". The article does not list organisations or institutions but when it comes to the participation of the Government's representatives it clarifies that the Commission may invite them or "representatives of State administrations" where "the matters to be examined present specific problems of a technical nature" but only in an "advisory capacity, without a deliberative vote and without remuneration",[211] thus respecting both the principle in section B, paragraph 1(e), and the GO 1.9 when it extends the same limitation to members of the Parliament. Moreover, article 2(6) of the UDL strengthens the functional independence of the Commission by providing that the roles of president and member of the Commission:

> *are incompatible […] with any elective or governmental office, with any other public or private employment, any administrative job in public or private companies, with the exercise of entrepreneurial activity and with offices in associations in the field of human rights. The President and the members of the Commission may not carry out activities in the framework of or on behalf of associations, political parties or movements.*[212]

[209] Cf Annex 2, section A, paragraph 3.
[210] Cf Annex 2, section B, paragraph 1.
[211] Article 2(10) of the UDL.
[212] This, and the following parts of the UDL, are translations of the author and not an official translation of the Italian text of the draft law. The original text can be found both in Annex 3 and at the following link: https://www.camera.it/leg18/824?tipo=A&anno=2020&mese=10&giorno=29&view=&commissione=01#data.20201029.com01.allegati.all00010.

Less clear is what the UDL exactly implies by saying that members are elected "following an expression of interest".[213] It has been mentioned that GO 1.8. considers a merit-based selection of the decision-making body to be vital for the independence of an NHRI, for example, through a broad publicization of vacancies and an assessment based on pre-determined publicly available criteria. The "expression of interest" could leave space for a less transparent appointment process. As already mentioned, during an accreditation session the SCA noted that the founding law of the Belgian NHRI (Unia) did not provide for a sufficiently broad and transparent selection process and did not require the advertisement of vacancies. It is probable, things standing thus, that the same recommendation will be addressed to the future Italian Commission.

3.2. An assessment of the compliance of the Italian draft law with the PPs: the tasks of the Commission

The Paris Principles, in sections A(3) and C, set the minimum standards for the methods of operation and tasks of a national institution, and the General Observations highlight and explain in detail their core content. The SCA considers some functions to be essential for the accreditation of an NHRI and those are: encouraging ratification or accession to international human rights instruments, the interaction with the international human rights system, the cooperation with other human rights bodies, and their recommendations and reporting functions. The UDL provides for all these functions and in article 3 it lists the tasks of the Commission:

a) to monitor respect for human rights and on any abuses perpetrated against peoples in Italy, with reference to domestic law and international standards and treaties;
b) to monitor the equality of treatment and the operation of the instruments of protection, for the removal of any form of discrimination based on nationality, gender, race, language, religion, on political opinions and on personal and social conditions;

The monitoring functions are essential for the work of NHRIs but alone are not sufficient to help fulfilling their protective tasks. GO 1.6., in fact, explains that monitoring, investigating and reporting "on the human rights situation in the

[213] Article 2(4) of the UDL.

country" is not enough for that purpose and the institutions should also "undertake rigorous and systematic follow up activities to promote and advocate for the implementation on its recommendations and findings".

c) receive reports of specific violations or limitations of the rights recognised in international instruments in force and provide assistance in already established judicial or administrative proceedings, to persons who consider themselves wronged by discriminatory behaviour, also in accordance with the procedures laid down in Article 425 of the Code of Civil Procedure;

In order to check on the reports of the violations, the Commission can order inspections at the premises where the violation has taken place and ask the public administrations to access databases or archives in their possession. This task is in accordance with the principle - contained in section C(b) - that requires an NHRI to be able to hear any person and obtain any information for "assessing situations falling within its competence". The reference to article 425 of the Code of Civil Procedure[214] gives the Commission the additional possibility to provide written observations. This is probably the closest function to a third-party intervention, though it does not have the same strength or efficacy in terms of results in the proceeding.

d) to carry out, with due respect for the prerogatives and functions of the judicial authority, inquiries in order to verify the existence of discriminatory phenomena and respect for human rights;

The Commission, according to article 5 of the UDL can also carry out investigations on its own initiative, aimed at submitting a report every time it becomes aware of facts that might constitute a criminal offence. For this purpose, it can ask the collaboration of State administration and invite the competent authorities to adopt measures for the restoration of the rights of persons who have suffered a violation of their fundamental human rights.

e) to formulate recommendations and opinions to the Government and the Chambers on matters connected to discrimination and respect for human rights, as well as proposals to amend existing legislation, also on the basis of the elements emerging from the activity referred to in subparagraphs (a) and (b). In particular, it may promote the signing or ratification of international agreements on human rights and anti-discrimination. The

[214] Art 425 (1) c.p.c. "*At the request of one of the parties, the trade union association indicated by that party may, through a representative, provide oral or written information and observations in court*".

Government shall submit to the opinion of the Commission draft legislative and regulations that may have a direct or indirect impact on those rights;

f) draw up an annual report to the Chambers and to the Government on the activity carried out, the state of implementation of international acts concerning the promotion and protection of human rights in Italy and abroad, on the respect for human rights and on the effective application of the principle of equal treatment and the effectiveness of mechanisms of protection and elimination of discrimination;

These are core functions to set up for a well-functioning NHRI. This paragraph of the UDL addresses, even if not with the same degree of detail, the Paris Principles contained in section A, paragraphs 3(a)(b)(c). Particularly important is the power to issue recommendations on its own initiative. GO 1.2. requires the mandate to include the possibility to address recommendations to public authorities. GO 1.6., entirely dedicated to recommendations, points out that these shall relate to "the creation or amendment of any legislative or administrative provisions" and "any situation of violation of human rights within a state". Moreover, it must be positively highlighted the fact that the Government shall submit draft legislation that may have an impact on human rights and anti-discrimination issues. About this function, Santiemma proposes the Danish Institute as a best practice because it "receives *de plano* all bills that may have a relation to the field of human rights".[215] She rightly believes that the Italian Commission could "automatically receive any draft legislation that may affect citizens' fundamental rights in order to be able to give its prior opinion".[216]

g) to disseminate as much knowledge as possible of the existing protection instruments, also by raising public opinion on the principle of equal treatment and the implementation of information and communication campaigns;

h) promote studies, research, training courses, and exchanges of experience […] with other non-governmental organisations operating in the sector and with specialised statistical institutes, also with a view to drawing up guidelines on combating discrimination;

i) promoting a culture of human rights of human rights, equal treatment and combating discrimination by promoting information campaigns and involving through educational and informative programs scholastic institutions of all levels of education;

[…]

m) to provide assistance and advice to public administrations and private entities wishing to include in their training programmes for staff courses on respect for human rights and fundamental freedoms and equal treatment […]

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[215] Santiemma, *La mancanza in Italia di una istituzione nazionale indipendente per la promozione e la protezione dei diritti umani e il monito della società civile*, 175.
[216] *Ibid*, 176.

The tasks of the Commission to raise public awareness and to promote a culture of human rights are in compliance with the principles contained in section A, paragraph 3 (f)(g), which requires the institution to assist in the formulation of programs for the teaching of and to publicize human rights and combat all forms of discrimination. The SCA, in GO 1.2., includes these functions in the "promotion" because they all "seek to create a society where human rights are more broadly understood and respected".

l) cooperate with authorities and public institutions and bodies, such as ombudsmen, guarantors of prisoners' rights, and the National Office against Racial Discrimination (UNAR) established at the Presidency of the Council of Ministers - Department for Equal Opportunities - to which the law attributes, at central or local level, specific competences in relation to the protection of human rights and the fight against to discrimination, if necessary using the administrative coordination role of the Interministerial Committee for Human Rights (CIDU), as well as with international bodies responsible for the protection of human rights, in particular with those of the United Nations, the Council of Europe and the European Union, and with equivalent bodies set up by other States in the field of the promotion and protection of human rights. The Commission works, in matters of mutual competence, in synergy with the National Guarantor of the Rights of persons in detention or deprived of their liberty and the Authority for Childhood and Adolescence;

[…]

n) establish a permanent forum for public debate on the Commission's work, in which voluntary organisations, associations, foundations and movements which purposes or aims relate to the protection of human and civil rights and the fight against discrimination. The forum shall be consulted at least every six months.

Another core function of an NHRI is to collaborate with other national and international stakeholders in the field of human rights. The principles in section A, paragraph 3(e) and in section C(f) require NHRIs to cooperate with the UN, regional and national institutions, and to maintain consultation with other bodies (e.g., ombudsman and mediators). The SCA repeatedly stressed the importance of this task and in the GO 1.5. it notes that "NHRIs should develop, formalize and maintain working relationships" with "other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations". This provision of the UDL is particularly important for the coordination among independent authorities in Italy that deal with human rights related issues. More than delineating their respective spheres of

competences, it stresses the importance of the fact that they should work in synergy. On the one hand the vagueness of the wording is positive because it does not restrict the mandate of the Commission. On the other hand, though it can create confusion and a risk of overlapping of competences. Article 6 of the draft law adds a specific provision for the collaboration with research centers, universities and organisations (e.g., non-governmental, social and professional).

The Commission, according to article 3(2) of the UDL, has the right to ask to the public administration and to any other public institution, the information it requires for the "performance of its institutional tasks" and the administrations "must reply within thirty days of the date of the request". The Commission may also request to access databases or archives. To strengthen this right, article 5(4) of the draft law provides that "whoever refuses or omits, without justified reason, to provide the information or to produce the documents" shall be subject to the "pecuniary administrative sanction of the payment of a sum from 4,000 to 15,000 Euros". Finally, Article 4 regulates the functioning of the future Secretariat of the Commission.[217]

In the light of the analysis of the current UDL, it can be said that Italy is on the right track to establish a fully compliant NHRI. For instance, the draft law follows the requirements set by the Paris Principles, although not always with the same precision as the General Observations of the SCA. There are, of course, many aspects that need to be clarified and many functions that need to be strengthened. The Commission was attributed quasi-judicial competences in the PDL of 2006 and, at least, it has the structure to be re-attributed such functions in the context of a broadening of its mandate. The open clause of article 3(4) of the UDL leaves hope for this possibility, in fact, the Commission "may be entrusted with functions resulting from international commitments under laws implementing international conventions in the field of human rights". Moreover, the function in article 2(1)c) could be strengthened to allow the Commission to play a role in proceedings through third-party interventions. To conclude, even if there is a big margin for

[217] Articles 5, 6, 7, and 8 of the UDL have already been considered throughout the current chapter.

improvement, the current draft legislation is effectively oriented towards the creation of an independent Commission, fully compliant with the Paris Principles.

CONCLUSION AND RECOMMENDATIONS

The aim of this work was to understand if Italy, one of the last European countries to lack a National Human Rights Institution, is currently on the right track in the process of establishing one that can be accredited as fully compliant with the Paris Principles and if it will be, according to these criteria, likely to be able to efficiently work for the protection and promotion of human rights. To address this question the author deemed necessary to tackle three inter-linked issues: the choice of the institutional structure for the future Italian NHRI, the compliance of the unified draft law with the Paris Principles, and the presence (or absence) of shortcomings in the draft law that could hinder the effective functioning of the future Commission.

With the current unified draft law Italy wants to set up a "National Commission" and the first sub-question was aimed at finding out whether the choice of the institutional model can result in a more efficient exercise of the mandate of an NHRI, and, subsequently, if Italy chose a structure that can potentially forward an effective implementation of human rights standards. The first chapter started with setting the basis for the comprehension of the history and nature of NHRIs. Building on this, a comparative analysis of certain European institutional models, namely the "Human Rights Institutes" and the "Human Rights Commissions and Institutions" was aimed at understanding, with a narrower focus on national experiences that could be more relevant for the study of the Italian situation, if there is a structure that we can consider a "better practice" for the establishment and functioning of an NHRI. Following the study of three "Human Rights Institutes" and five "Human Rights Commissions" the author found out that the latter seem to both comply better with the minimum standards of the Paris Principles, and to be better equipped to forward a more consistent implementation of international human rights standards.

The second chapter dealt with the study of the criteria that guide States towards the establishment of fully compliant and efficient NHRIs. The Paris Principles alone present shortcomings and weaknesses related to the context of their adoption that make it difficult for States to interpret them. For instance, they have been accused to be narrow in their focus and to offer little guidance to States even with regard to fundamental issues such as how to grant national institutions the required independence. However, these principles have been elaborated and explained in time through to the interpretation offered by the General Observations of the SCA and the reports drafted during the accreditation sessions. All these tools together form now an appropriate template that can better provide the guidance needed for the establishment of NHRIs. The second chapter offered an analysis of the Paris Principles that followed their structure and, at the same time, focused on understanding why certain NHRIs failed to be accredited or recognised "A" status. This work paved the way for a more critical assessment of the Italian draft law in the last chapter.

In the third chapter, the author briefly presented the Italian human rights panorama to give an idea of its level of fragmentation and of the inadequacy of the existent bodies to efficiently deal with the challenges posed by the human rights' international legal framework. Building on this the author presented the need for Italy to establish an NHRI with a broad mandate to protect and promote human rights, not only for its international credibility but, most pressingly, to have a comprehensive and unitary approach to such a complex landscape. Based on the analysis of the compliance of the unified draft for the establishment of the Commission with the Paris Principles the thesis, throughout the last chapter, suggests to:

- modify the wording of the name of the Commission, removing the reference to "fundamental" before human rights, showing a greater awareness of the mandate to promote and protect the "indivisible, universal and interdependent" human rights;
- to reconsider the attribution of quasi-judicial competences to the Commission or, at least, consider strengthening its possibility to present third-party

interventions, its *amicus curiae* role and expand the jurisdictions in front of which it can exercise these functions;

- to clarify and give more details for the procedure for the selection of the decision-making body, which does not seem broad and transparent enough to comply with the requirements of the General Observations to the principles;
- to consider the redetermination of the budget relying on the experience of other European NHRI set up as Commissions.

This dissertation concludes with a final assessment of the compliance of the Italian draft law with the Paris Principles and, after balancing its strengths and weaknesses, it draws the conclusion that with the current draft law Italy is on the right path to establish a National Human Rights Institution that not only has good possibilities to be accredited "A" status, but is also likely to become an efficient Commission for the effective promotion and protection of human rights. Some uncertainties left by the not always clear text of the draft law and the problem related to the inadequacy of the funding, will only be clarified with the adoption of the law and of the rules of procedure for the running of the Commission, after its first year of work and in the context of its accreditation session.

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GANHRI official website https://ganhri.org/

NANHRI official website https://www.nanhri.org/members/member-profiles/

RINDHCA official website https://www.rindhca.org/miembros/miembro-rindhca

ANNEX 1

Table[218]

MEMBERS OF THE EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS (ENNHRI)[219]

Comprehensive of "A" status members, "B" status members and associate non-accredited members, according to the Paris Principles.

Thirty of the following NHRIs hold A status and are in: Albania, Armenia, Bosnia and Herzegovina, Bulgaria (1), Croatia, Denmark, Estonia, Finland (2), France, Georgia, Germany, Great Britain, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Northern Ireland, Norway, Poland, Portugal, Russian Federation, Scotland, Serbia, Slovenia, Spain, Ukraine.

Nine of the following NHRIs accredited B status are in: Austria, Azerbaijan, Belgium (1), Bulgaria (1), Cyprus, Montenegro, North Macedonia, Slovakia, and Sweden.

The European Network counts some associate members in: Belgium (3), Czech Republic, Kosovo, Liechtenstein, Romania (applying for accreditation), and Turkey.

*** CoE** = the Country is a member of the Council of Europe

**** EU** = the Country is a member of the European Union

ENNHRI member and name of the institution(s)	Accreditation status	ENNHRI Membership	CoE * EU **
ALBANIA			✓ **CoE** *EU candidate*
People's Advocate of Albania	A	2014	
ARMENIA			✓ **CoE**
Human Rights Defender of the Republic of Armenia	A	2013	
AUSTRIA			✓ **CoE** ✓ **EU**
Austrian Ombudsman Board	B	2013	

[218] The information was mainly retrieved from ENNHRI's (http://ennhri.org/our-members/) and GANHRIs (https://ganhri.org/membership/) official websites. We suggest to consult them for an updated list of members and their accreditation status.
[219] Latest update: June 2021, not including SCA Session 14 - 24 June 2021.

AZERBAIJAN			✓ **CoE**
Azerbaijan Ombudsman Institute	B	2015	
BELGIUM			✓ **CoE** ✓ **EU**
Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism) B	B	2014	
FIRM/IFDH Federal Institute for the Protection and Promotion of Human Rights	N/A	2021	
Myria (Belgian Federal Migration Centre)	N/A	2014	
The Combat Poverty, Insecurity and Social Exclusion Service	N/A	2015	
BOSNIA AND HERZEGOVINA			✓ **CoE** *EU potential candidate*
Human Rights Ombudsman of Bosnia and Herzegovina	A	2014	
BULGARIA			✓ **CoE**
Ombudsman of the Republic of Bulgaria	A	2014	
Commission for Protection Against Discrimination	B	2020	
CROATIA			✓ **CoE** ✓ **EU**
Ombudswoman of the Republic of Croatia	A	2013	
CYPRUS			✓ **CoE** ✓ **EU**
Commissioner for Administration (Ombudsman)	B (re-accreditation in June 2021)	2016	
CZECH REPUBLIC			✓ **CoE** ✓ **EU**
Public Defender of Rights	N/A	2017	
DENMARK			✓ **CoE** ✓ **EU**
Danish Institute for Human Rights	A	2014	

ESTONIA			✓ **CoE** ✓ **EU**
Chancellor for Justice of Estonia	A	2019	
FINLAND			✓ **CoE** ✓ **EU**
Parliamentary Ombudsman	A	2013	
Human Rights Centre	A	2013	
FRANCE			✓ **CoE** ✓ **EU**
French National Consultative Commission on Human Rights	A	2014	
GEORGIA			✓ **CoE**
Public Defender (Ombudsman) of Georgia	A	2014	
GERMANY			✓ **CoE** ✓ **EU**
German Institute for Human Rights	A (2002)	2013	
GREAT BRITAIN			✓ CoE (U.K.)
Equality and Human Rights Commission	A	2014	
GREECE			✓ **CoE** ✓ **EU**
Greek National Commission for Human Rights	A	2013	
HUNGARY			✓ **CoE** ✓ **EU**
Commissioner for Fundamental Rights	A	2013	
IRELAND			✓ **CoE** ✓ **EU**
Irish Human Rights and Equality Commission	A (re-accreditation in June 2021)	2013	
KOSOVO			*EU potential candidate*
Ombudsperson Institution of Kosovo	N/A	2013	

LATVIA			✓ **CoE** ✓ **EU**
Ombudsman's Office of the Republic of Latvia	A	2014	
LIECHTENSTEIN			✓ **CoE**
Liechtenstein Human Rights Association	N/A	2019	
LITHUANIA			✓ **CoE** ✓ **EU**
Seimas Ombudsmen's Office	A	2014	
LUXEMBOURG			✓ **CoE** ✓ **EU**
Consultative Human Rights Commission of Luxembourg	A	2014	
MOLDOVA			✓ **CoE**
People's Advocate Office	A	2015	
MONTENEGRO			✓ **CoE** *EU candidate*
Protector of Human Rights and Freedoms of Montenegro	B	2019	
NETHERLANDS			✓ **CoE** ✓ **EU**
Netherlands Institute for Human Rights	A	2013	
NORTH MACEDONIA			✓ **CoE** *EU candidate*
Ombudsman	B	2014	
NORTHERN IRELAND			✓ CoE (U.K.)
Northern Ireland Human Rights Commission	A	2013	
NORWAY			✓ **CoE**
Norwegian National Human Rights Institution	A	2013	

POLAND			✓ **CoE** ✓ **EU**
Commissioner for Human Rights	A	2014	
PORTUGAL			✓ **CoE** ✓ **EU**
Portuguese Ombudsman	A	2015	
ROMANIA			✓ **CoE** ✓ **EU**
Romanian Institute for Human Rights	N/A (C)	2013	
RUSSIAN FEDERATION			✓ **CoE**
Commissioner for Human Rights of the Russian Federation	A	2017	
SCOTLAND			✓ CoE (U.K.)
Scottish Human Rights Commission	A (re-accreditation in June 2021)	2013	
SERBIA			✓ **CoE** *EU candidate*
Protector of Citizens of the Republic of Serbia	A	2013	
SLOVAKIA			✓ **CoE** ✓ **EU**
Slovak National Centre for Human Rights	B	2013	
SLOVENIA			✓ **CoE** ✓ **EU**
Human Rights Ombudsman of the Republic of Slovenia	A	2014	
SPAIN			✓ **CoE** ✓ **EU**
Ombudsman of Spain	A	2014	
SWEDEN			✓ **CoE** ✓ **EU**
Equality Ombudsman	B	2014	

TURKEY			✓ **CoE** *EU candidate*
Human Rights and Equality Institution of Turkey	N/A	2014	
UKRAINE			✓ **CoE**
Ukrainian Parliament Commissioner for Human Rights	A	2013	

ANNEX 2

The Paris Principles

Adopted by General Assembly resolution 48/134 of 20 December 1993

Principles relating to the Status of National Institutions

SECTION A[220]

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

> (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
>
> > (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

[220] The division in sections is inserted for practical purposes and does not reflect the content of the resolution. Everything else is an exact reproduction of the Annex of the UNGA resolution 48/134 of 20 December 1993.

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other orgnization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

SECTION B

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

SECTION C

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

SECTION D

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

ANNEX 3

ITALIAN UNIFIED DRAFT LAW ON THE ESTABLISHMENT OF THE NATIONAL COMMISSION FOR THE PROMOTION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND THE FIGHT AGAINST DISCRIMINATION

Giovedì 29 ottobre 2020 – 62 – Commissione I

Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali e per il contrasto alle discriminazioni. Proposte di legge C. 1323 Scagliusi, C. 855 Quartapelle Procopio e C. 1794 Brescia.

TESTO UNIFICATO ADOTTATO COME NUOVO TESTO BASE

Art. 1. *(Princìpi generali)*

1. La presente legge, in attuazione della risoluzione dell'Assemblea generale delle Nazioni Unite n. 48/134 del 20 dicembre 1993 e della normativa europea in materia di contrasto alle discriminazioni, contiene disposizioni per la promozione e la protezione dei diritti umani fondamentali, la parità di trattamento di tutte le persone e la rimozione di qualsiasi forma di discriminazione, nel rispetto e in conformità con i principi fondamentali della Costituzione, del diritto internazionale consuetudinario, nonché dei trattati e delle convenzioni internazionali di cui l'Italia è parte.

2. Al fine di assicurare l'attuazione di quanto previsto dal comma 1 del presente articolo, la Commissione di cui all'articolo 2 può segnalare al Governo le convenzioni internazionali in materia di diritti umani, di libertà fondamentali e di contrasto alle discriminazioni non ancora ratificate dall'Italia e formulare proposte per la loro esecuzione nell'ordinamento interno.

Art. 2. *(Istituzione e composizione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali e per il contrasto alle discriminazioni)*

1. E istituita la Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali e per il contrasto alle discriminazioni, di seguito denominata « Commissione », con lo scopo di promuovere e proteggere i diritti fondamentali della persona, in particolare quelli stabiliti dalla Costituzione e quelli individuati e riconosciuti dalle convenzioni internazionali di cui l'Italia è parte, nonché di controllare e garantire la parità di trattamento e l'operatività degli strumenti di tutela contro ogni discriminazione.

2. La Commissione opera con piena indipendenza di giudizio e di valutazione ed è dotata di autonomia organizzativa, funzionale e finanziaria di proprio personale e di una propria sede.

3. La Commissione è organo collegiale costituito da cinque componenti scelti tra persone che offrano garanzie di indiscussa moralità, riconosciuta indipendenza, integrità ed elevata professionalità, con competenza comprovata ed esperienza pluriennale nel campo della promozione e della protezione dei diritti umani, dei diritti dei minori e delle scienze umane in genere, in Italia e all'estero, o che abbiano ricoperto ruoli dirigenziali in organizzazioni internazionali pubbliche o private.

4. Per garantire il pluralismo e la rappresentatività della Commissione, i componenti della Commissione sono nominati con determinazione adottata d'intesa dai Presidenti del Senato della Repubblica e della Camera dei deputati, a maggioranza dei due terzi dei rispettivi componenti, secondo modalità stabilite dai Regolamenti parlamentari. I componenti della Commissione sono scelti a seguito di una manifestazione d'interesse, assicurando un'adeguata rappresentanza di genere, tenendo conto della diversità etnica della società, della gamma di gruppi vulnerabili e garantendo il rispetto della diversità nonché la rappresentanza pluralistica delle forze sociali coinvolte nella promozione e nella protezione dei diritti umani. Il presidente della Commissione è eletto tra i componenti della Commissione dai componenti medesimi con votazione a maggioranza, rimane in carica per due anni e sei mesi e non può essere rieletto fino al termine del mandato.

5. I componenti della Commissione durano in carica cinque anni e il loro mandato non è rinnovabile. La prima nomina dei componenti della Commissione e effettuata entro trenta giorni dalla data di entrata in vigore della presente legge. Con le stesse procedure adottate per la loro nomina, i componenti della Commissione possono essere revocati in qualsiasi momento qualora siano riscontrate manifeste violazioni dei doveri di ufficio e della garanzia di indiscussa moralità e integrità.

6. Gli incarichi di presidente e di componente della Commissione sono incompatibili, a pena di decadenza, con qualsiasi carica elettiva o governativa, con altro impiego pubblico o privato, con qualsiasi incarico di amministrazione in società pubbliche o private, con l'esercizio di attività imprenditoriale e con incarichi in associazioni che svolgono attività nel settore dei diritti umani. Il presidente e i componenti della Commissione non possono svolgere alcuna attività nell'ambito o per conto di associazioni, partiti o movimenti politici.

7. All'atto dell'accettazione della nomina, il presidente e i componenti della Commissione sono collocati fuori ruolo, se dipendenti di amministrazioni pubbliche; se professori universitari di ruolo, sono collocati in aspettativa senza assegni ai sensi dell'articolo 13 del decreto del Presidente della Repubblica 11 luglio 1980, n. 382. Il personale collocato fuori ruolo o in aspettativa non può essere sostituito durante lo svolgimento dell'incarico presso la Commissione. Della Commissione non possono fare parte i magistrati in servizio.

8. Al presidente e ai componenti della Commissione spetta un'indennità di funzione ridotta di un terzo rispetto al limite massimo retributivo previsto dall'articolo 13, comma 1, del decreto-legge 24 aprile 2014, n. 66, convertito, con

modificazioni, dalla legge 23 giugno 2014, n. 89. Non può essere prevista alcuna indennità aggiuntiva per il periodo di svolgimento della carica di presidente.

9. Oltre che per la naturale scadenza del mandato o per decesso e per comprovato o accertato impedimento fisico o psichico, l'incarico di componente della Commissione cessa esclusivamente in caso di dimissioni o di sopravvenuta accertata mancanza dei requisiti e delle qualità prescritti per la nomina. Alla sostituzione dei componenti cessati si provvede con le modalità previste dal comma 4.

10. La Commissione, qualora le questioni da esaminare presentino specifici problemi di natura tecnica, può chiamare a partecipare alle sue riunioni, con funzioni consultive, senza voto deliberativo e senza compenso, rappresentanti delle amministrazioni dello Stato e rappresentanti del Governo italiano negli organismi internazionali e presso l'Unione Europea deputati al controllo dell'adempimento degli obblighi assunti dall'Italia con la ratifica delle convenzioni internazionali in materia di diritti umani e di parità di trattamento.

Art. 3. ***(Compiti della Commissione)***

1. La Commissione ha il compito di:

a) vigilare sul rispetto dei diritti umani e su eventuali abusi perpetrati ai danni di popoli, in Italia, con riferimento al diritto interno e alle norme e ai trattati internazionali;

b) vigilare sulla parità di trattamento e sull'operatività degli strumenti di tutela, per la rimozione di qualsiasi forma di discriminazione fondata sulla nazionalità, sul sesso, sulla razza, sulla lingua, sulla religione, sulle opinioni politiche e sulle condizioni personali e sociali;

c) ricevere eventuali segnalazioni relative a specifiche violazioni o limitazioni dei diritti riconosciuti negli atti internazionali in vigore e fornire assistenza, nei procedimenti giurisdizionali o amministrativi intrapresi, alle persone che si ritengono lese da comportamenti discriminatori, anche secondo le forme di cui all'articolo 425 del codice di procedura civile;

d) svolgere, nel rispetto delle prerogative e delle funzioni dell'autorità giudiziaria, inchieste al fine di verificare l'esistenza di fenomeni discriminatori e il rispetto dei diritti umani;

e) formulare raccomandazioni e pareri al governo e alle Camere su questioni connesse alle discriminazioni e al rispetto dei diritti umani, nonché proposte di modifica della normativa vigente, anche sulla base degli elementi emersi dall'attività di vigilanza di cui alle lettere *a) e b)*. In particolare, può promuovere la firma o la ratifica degli accordi internazionali in materia di diritti umani e di contrasto delle discriminazioni. Il Governo sottopone al parere della Commissione i progetti di

atti legislativi e regolamentari che possono avere un'incidenza diretta o indiretta su tali diritti;

f) redigere una relazione annuale alle Camere e al governo sull'attività svolta, sullo stato di attuazione degli atti internazionali concernenti la promozione e la protezione dei diritti umani in Italia e all'estero, sul rispetto dei diritti umani e sull'effettiva applicazione del principio di parità di trattamento e l'efficacia dei meccanismi di tutela e rimozione delle discriminazioni;

g) diffondere la massima conoscenza possibile degli strumenti di tutela vigenti anche mediante azioni di sensibilizzazione dell'opinione pubblica sul principio della parità di trattamento e la realizzazione di campagne di informazione e comunicazione;

h) promuovere studi, ricerche, corsi di formazione e scambi di esperienze, in collaborazione anche con le associazioni e con gli enti di cui all'articolo 6 del decreto legislativo 9 luglio 2003, n. 215, con le altre organizzazioni non governative operanti nel settore e con gli istituti specializzati di rilevazione statistica, anche al fine di elaborare linee guida in materia di lotta alle discriminazioni;

i) promuovere la cultura dei diritti umani, della parità di trattamento e del

contrasto alle discriminazioni promuovendo campagne di informazione e coinvolgendo, attraverso percorsi educativi e informativi, le istituzioni scolastiche di ogni ordine e grado;

l) collaborare con le autorità e le istituzioni e gli organismi pubblici, quali i difensori civici, i garanti dei diritti dei detenuti comunque denominati e l'Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza o l'origine etnica (UNAR) istituito presso la Presidenza del Consiglio - Dipartimento per le pari opportunità - a cui la legge attribuisce, a livello centrale o locale, specifiche competenze in relazione alla protezione dei diritti umani e al contrasto alle discriminazioni, all'occorrenza avvalendosi del ruolo di coordinamento amministrativo del Comitato interministeriale per i diritti umani (CIDU), nonché con gli organismi internazionali preposti alla tutela dei diritti umani, in particolare con quelli delle Nazioni Unite, del Consiglio d'Europa e dell'Unione europea, e con gli omologhi organismi istituiti da altri Stati nel settore della promozione e della protezione dei diritti umani. La commissione opera, nei temi di reciproca competenza, in sinergia con il Garante nazionale dei diritti delle persone detenute o private della libertà personale e l'Autorità garante per l'infanzia e l'adolescenza;

m) fornire assistenza e rendere pareri alle amministrazioni pubbliche e ai soggetti privati che intendano inserire nei programmi di formazione e aggiornamento del personale le materie relative al rispetto dei diritti umani e delle libertà fondamentali e della parità di trattamento. Inoltre, promuove, nell'ambito delle categorie professionali, l'inserimento nei codici di deontologia di norme per la promozione

e la protezione dei diritti umani e il contrasto alle discriminazioni nonché per il controllo della loro attuazione, anche avvalendosi dei soggetti deputati ai controlli e alle segnalazioni;

n) istituire un *forum* permanente per il pubblico confronto sull'operato della Commissione, al quale possono aderire le organizzazioni di volontariato, le associazioni, le fondazioni e i movimenti che nel loro statuto prevedono finalità o scopi attinenti alla protezione dei diritti umani e civili e al contrasto delle discriminazioni. Il *forum* è consultato almeno semestralmente.

2. La Commissione, nel rispetto delle disposizioni in materia di protezione dei dati personali, può chiedere alle pubbliche amministrazioni, nonché a qualsiasi soggetto o ente pubblico, di fornire le informazioni necessarie allo svolgimento dei suoi compiti istituzionali; le amministrazioni e gli altri soggetti destinatari devono rispondere entro trenta giorni dalla data della richiesta. La Commissione, inoltre, può chiedere a enti e amministrazioni pubbliche di accedere a banche di dati o ad archivi, comunicando la richiesta al Garante per la protezione dei dati personali.

3. Ai fini del riscontro delle segnalazioni di cui al comma 1, lettera c*)*, la Commissione può altresì disporre accessi, ispezioni e verifiche presso le strutture ove la violazione denunziata ha avuto luogo, per effettuare rilevazioni utili ai riscontri, avvalendosi, ove necessario, della collaborazione di altri organi dello Stato.

4. Alla Commissione possono essere demandate funzioni derivanti dagli impegni internazionali previste da leggi di esecuzione di convenzioni internazionali in materia di diritti umani.

5. Ai fini del riscontro delle segnalazioni di cui al comma 1, lettera *c)*, la Commissione può chiedere a enti e amministrazioni pubbliche di accedere a banche di dati o ad archivi in loro possesso, sentito il Garante per la protezione dei dati personali. La disposizione del primo periodo non si applica ai dati e alle informazioni conservati nel centro elaborazione dati di cui all'articolo 8 della legge 1° aprile 1981, n. 121, nonché nella banca dati nazionale del DNA di cui alla legge 30 giugno 2009, n. 85.

6. Le amministrazioni pubbliche responsabili delle strutture oggetto di visite, accessi e verifiche e, ove necessario, gli altri organi dello Stato collaborano con la Commissione nei limiti delle risorse umane, strumentali e finanziarie disponibili a legislazione vigente.

Art. 4. *(Ufficio di segreteria della Commissione)*

1. La Commissione ha sede in un edificio pubblico ad essa esclusivamente destinato, atto ad accogliere anche persone con disabilita motorie e sensoriali. Tutti hanno diritto ad accedere senza limitazioni alla sede della Commissione.

2. La Commissione, per lo svolgimento dei compiti a essa affidati, si avvale di un proprio ufficio di segreteria, il cui organico iniziale e costituito da trenta unita, di cui un direttore, un vicedirettore, un segretario generale e ventisette impiegati. Tale organico può essere successivamente variato con il regolamento di cui al comma 3, ove ne sussista comprovata esigenza. L'assunzione del personale avviene mediante concorso pubblico finalizzato alla selezione di personale fornito dei requisiti stabiliti dalla Commissione in relazione allo svolgimento delle sue funzioni e, in particolare, di adeguata conoscenza delle principali lingue straniere. Nelle more dell'attuazione delle disposizioni di cui al comma 3 del presente articolo, al fine di consentire l'immediato avvio delle sue attività, la Commissione si avvale inizialmente di un primo contingente di personale amministrativo e tecnico, non superiore a trenta unita, ad essa assegnato entro sei mesi dalla nomina dei suoi componenti ai sensi dell'articolo 2, comma 5, selezionato fra il personale dipendente della pubblica amministrazione in possesso delle competenze e dei requisiti di professionalità ed esperienza necessari, collocato dalle amministrazioni di appartenenza, nelle forme previste dai rispettivi ordinamenti, in posizione di fuori ruolo entro il termine previsto dall'articolo 17, comma 14, della legge 15 maggio 1997, n. 127. Il servizio prestato presso la Commissione è equiparato ad ogni effetto di legge a quello prestato nelle amministrazioni di provenienza. All'atto del collocamento fuori ruolo e per la durata del medesimo i posti in dotazione organica lasciati vacanti sono resi indisponibili presso l'amministrazione di provenienza. Il personale collocato fuori ruolo risponde del proprio operato esclusivamente alla Commissione.

3. Con decreto del Presidente del Consiglio dei ministri, su proposta del Ministro degli affari esteri e della cooperazione internazionale, di concerto con i Ministri dell'economia e delle finanze e per la pubblica amministrazione, previo parere delle Commissioni parlamentari competenti e sentita la Commissione, e adottato, entro trenta giorni dalla data di entrata in vigore della presente legge, il regolamento concernente il funzionamento, la dotazione organica, l'organizzazione interna, i bilanci, i rendiconti e la gestione delle spese, le funzioni del direttore dell'ufficio di segreteria nonché le procedure e le modalità di reclutamento del personale dell'ufficio.

4. Al direttore, al vicedirettore, al segretario generale e agli impiegati dell'ufficio di segreteria e attribuito il trattamento economico e giuridico previsto dal contratto collettivo nazionale di lavoro relativo al personale del comparto Ministeri.

5. Al fine di garantirne la responsabilità e l'autonomia, il direttore, il vicedirettore, il segretario generale e gli impiegati dell'ufficio di segreteria rispondono esclusivamente alla Commissione.

6. L'ufficio di segreteria predispone il rendiconto della gestione finanziaria, che è sottoposta al controllo della Corte dei conti. Il rendiconto, approvato dalla Commissione, e pubblicato nei siti *internet* istituzionali della Commissione

medesima e del Ministero degli affari esteri e della cooperazione internazionale, in forme idonee ad assicurarne la diffusione e l'accessibilità a tutti gli utenti.

Art. 5. ***(Obbligo di rapporto, segreto d'ufficio e sanzioni)***

1. La Commissione presenta un rapporto all'autorità giudiziaria competente ogniqualvolta venga a conoscenza di fatti che possano costituire reato e svolge indagini di propria iniziativa, sulla base di segnalazioni individuali o collettive, anche qualora non sia presentata la relativa denuncia all'autorità giudiziaria.

2. La Commissione può chiedere la collaborazione delle amministrazioni dello Stato e di altri soggetti pubblici nonché invitare le autorità competenti ad adottare misure per il ripristino dei diritti delle persone che abbiano subito una violazione dei propri diritti umani fondamentali o atti discriminatori.

3. La Commissione assicura che le procedure adottate nello svolgimento della propria attività siano basate sui principi di trasparenza e di imparzialità e ha l'obbligo di motivare gli atti adottati.

4. Chiunque rifiuta od omette, senza giustificato motivo, di fornire le informazioni o di esibire i documenti di cui all'articolo 3, comma 2, e soggetto alla sanzione amministrativa pecuniaria del pagamento di una somma da 4.000 euro a 15.000 euro.

5. Chiunque attesta alla Commissione notizie o circostanze false ovvero produce ad essa atti o documenti falsi, salvo che il fatto costituisca più grave reato, è punito con la reclusione da sei mesi a tre anni.

6. I componenti della Commissione e dell'ufficio di segreteria nonché i soggetti di cui gli stessi si avvalgono per l'adempimento delle proprie funzioni sono tenuti al segreto sugli atti e sulle informazioni di cui sono venuti a conoscenza per ragione del proprio ufficio, ai sensi dell'articolo 15 del testo unico delle disposizioni concernenti lo statuto degli impiegati civili dello Stato, di cui al decreto del Presidente della Repubblica 10 gennaio 1957, n. 3.

7. La Commissione pubblica i propri provvedimenti secondo criteri di trasparenza e può adottare le iniziative che ritiene opportune per diffondere tra il pubblico la conoscenza dei provvedimenti adottati e dell'attività svolta.

Art. 6. ***(Collaborazione con enti di ricerca, centri di studi, università e organizzazioni)***

1. La Commissione può avvalersi della collaborazione di università e di centri di studio e di ricerca nonché di organizzazioni non governative, di organizzazioni sociali e professionali, di associazioni e di osservatori nazionali e di altri organismi, forniti di competenza e professionalità riconosciute e comprovate, operanti nel campo della promozione e della protezione dei diritti umani.

2. Dall'attuazione del presente articolo non devono derivare nuovi o maggiori oneri a carico della finanza pubblica.

Art. 7. ***(Abrogazioni e norme di coordinamento)***

1. Il decreto del Presidente del Consiglio dei ministri 13 aprile 2007, pubblicato nella *Gazzetta Ufficiale* n. 141 del 20 giugno 2007, è abrogato.

2. All'articolo 7, comma 2, del decreto legislativo 9 luglio 2003, n. 215, sono soppresse le lettere *a)*, *b)* e *f)*.

Art. 8. ***(Copertura finanziaria)***

1. All'onere derivante dall'attuazione della presente legge, valutato in 2.500.000 euro annui a decorrere dall'anno 2021, si provvede mediante corrispondente riduzione delle proiezioni dello stanziamento del fondo speciale di parte corrente iscritto, ai fini del bilancio triennale 2020-2022, nell'ambito del programma ≪ Fondi di riserva e speciali ≫ della missione ≪ Fondi da ripartire ≫ dello stato di previsione del Ministero dell'economia e delle finanze per l'anno 2020, allo scopo parzialmente utilizzando l'accantonamento relativo al medesimo Ministero.

2. Il Ministro dell'economia e delle finanze è autorizzato ad apportare, con propri decreti, le occorrenti variazioni di bilancio.