

## Framing National Human Rights Institutions: European and Comparative Experiences and the Prospect of Establishing an Italian NHRI\*

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National Human Rights Institutions (NHRIs) have increasingly assumed a prominent role in monitoring and ensuring the effective domestic implementation of human rights. The minimum standards and requirements for the establishment of effective NHRIs were set out in the Paris Principles, adopted by the United Nations General Assembly in 1993. Their non-judicial nature, together with their broad functional mandate, reflects their essential role in both the protection and promotion of human rights. In particular, NHRIs engage in awareness-raising activities and may play a crucial preventive role with respect to potential violations, thereby complementing judicial remedies, which are not always capable of fully redressing harm and may remain difficult to access for minorities and vulnerable groups.

In recent years, NHRIs have attracted growing scholarly attention. Existing literature has explored their global diffusion<sup>1</sup>, as well as the opportunities and challenges they face<sup>2</sup>. Much of this scholarship has been situated within the broader framework of international law and politics<sup>3</sup>. At the European level, too, the defining features and functions of NHRIs have been extensively analysed<sup>4</sup>.

This Special Issue seeks to examine the role of NHRIs within the European legal framework, with particular attention to the possible establishment of an Italian NHRI.

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<sup>1</sup> S. Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights*, Philadelphia, 2014; D. Kim, *International Nongovernmental Organizations and the Global Diffusion of National Human Rights Institutions*, in *International Organization*, 67, 3, 2013; E.M. Hafner-Burton, *Making Human Rights a Reality*, Princeton, 2013.

<sup>2</sup> Lyer K. R., *National human rights institutions*, in G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts*, London, 2018, 1; K. Linos - T. Pegram, *What Works in Human Rights Institutions?*, in *The American Journal of International Law*, 111, 3, 2017.

<sup>3</sup> L. Violini, *The Role of Non-Judicial Bodies in Human Rights Implementation*, in E. Bribosia – I. Rorive (eds), *Human Rights Tectonics: Global Dynamics of Integration and Fragmentation*, Cambridge, 2019; D. Zipoli, *NHRI Engagement with UN Human Rights Treaty Bodies: A Goal-based Approach*, in *Nordic Journal of Human Rights*, 37, 3, 2019; G. de Beco - R. Murray, *Commentary on the Paris Principles on National Human Rights Institutions*, Cambridge, 2015.

<sup>4</sup> K. Meuwissen - J. Wouters (eds.), *National Human Rights Institutions in Europe: Comparative, European and International Perspectives*, Cambridge, 2013; R. Murray, *The Role of National Human Rights Institutions at the International and Regional Levels*, Oxford, 2007; G. de Beco, *National Human Rights Institutions in Europe*, in *Human Rights Law Review*, 7, 2, 2007.

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Within Europe's multilevel system of human rights protection, it is necessary to investigate the horizontal relationships between the European Union Agency for Fundamental Rights (FRA) and other key institutions of both the European Union and the Council of Europe (CoE), which together constitute central reference points in the protection of fundamental rights. The FRA represents one of the emerging bodies tasked with maximising and operationalising the potential of the EU Charter of Fundamental Rights. Any prospective Italian NHRI would necessarily operate within this complex institutional environment, including in its relations with the Agency.

In this context, vertical relationships—between the FRA and NHRIs, as well as between NHRIs and the institutions of the Council of Europe—become equally crucial. At the same time, this Special Issue addresses a further dimension, namely the diversity of NHRI models that emerge from a comparative law perspective. By mapping and analysing the principal institutional models adopted across jurisdictions, this Special Issue aims to highlight both the underlying rationales and the dynamics through which the absence of an NHRI may negatively affect the protection of fundamental rights at both the European and national levels. A key research question concerns whether, in order to ensure a more comprehensive and effective protection of rights, it is preferable to establish a single institution endowed with a general human rights mandate, rather than relying on a plurality of bodies tasked with the protection of specific interests. In this regard, particular attention is also devoted to assessing the effectiveness of such an institution in light of the powers conferred upon it and the nature of the acts it is entitled to adopt.

The first part of the Special Issue aims to shed light on the role of the FRA, as well as on its distinctive features compared to the institutions of the Council of Europe, by analysing its contribution to European digital constitutionalism. This section opens with an introductory contribution by Michael O'Flaherty, former Director of the FRA and currently Commissioner for Human Rights of the Council of Europe. His reflections focus on the role of NHRIs in the contemporary European context. Against the backdrop of widespread rights violations, disinformation, institutional weakening, and a broader crisis of trust, O'Flaherty argues that NHRIs constitute essential instruments for the protection of rights, the resilience of democratic systems, and the overall quality of public policymaking. Within the challenges posed by Europe's multilevel system, his analysis also addresses the Italian case, calling for the establishment of an independent, inclusive, ambitious, and adequately resourced NHRI.

The European perspective is further developed through our contribution on the FRA. Building on the existing literature concerning the Agency and its impact on fundamental rights within the European Union, the article by Oreste Pollicino and Matteo Monti examines whether—and to what extent—the FRA has influenced the development of European digital constitutionalism and shaped EU digital regulatory policies. In the field of digital regulation, legislative processes are increasingly informed by reports, opinions, and empirical research produced by specialised technical bodies.

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Among these, the FRA occupies a significant yet still underexplored position. The article also engages with the well-known debate concerning the potential overlap between the FRA and the institutions of the Council of Europe, a particularly salient issue at the time of the Agency's establishment. From a normative standpoint, the FRA's conception of fundamental rights largely aligns with the paradigm developed within the Council of Europe in this field. From a policy perspective, however, the FRA's influence on EU legislative and regulatory processes appears uneven. In certain instances—such as the Regulation on terrorist content online, the Digital Services Act, and the AI Act—the Agency has played a visible and constructive role, contributing through formal opinions, impact assessments, and monitoring activities, thereby strengthening the fundamental rights dimension of these instruments. Nevertheless, the FRA does not yet appear to occupy a central position within the EU's institutional public discourse, a role that is instead more clearly assumed by other experiences, as demonstrated in the comparative section of this Special Issue.

The Issue further explores the role of NHRIs from a comparative perspective, enabling an analysis of experiences across different jurisdictions and the identification of best practices that may inform the establishment of an Italian NHRI. The contribution by Francesco Saitto examines the German Institute for Human Rights (GIHR) as an NHRI which, despite lacking quasi-judicial powers, plays a significant role in the promotion of human rights in Germany. The article traces the development of the Institute from the 2000 parliamentary motion to the 2015 founding law. The absence of quasi-judicial powers of the GIHR is explained not only by the deeply rooted view that specialised courts should retain a primary role in this field, but also by the intrinsic difficulties of entrusting an essentially public function to an institution that, while independent, is legally characterised by a private associative nature. This limitation, however, does not diminish the authority of the GIHR, nor its capacity to exert influence in the public sphere. The Institute has performed both reactive and proactive functions, particularly in public debates concerning the possible ratification of international treaties. The analysis of the GIHR's activities partly confirms the idea that NHRIs may serve as consultative interlocutors for constitutional courts. More broadly, the Institute operates within the public sphere as a bridge between institutions and society, engaging with civil society organisations, non-governmental actors, and a wide range of international stakeholders. The article argues that the GIHR influences constitutional interpretation and public debate through research, policy advice, cooperation with courts and institutions, and human rights education, thereby acting as an instrument of the open constitutional state. It may therefore be regarded as a functional model of NHRI capable of shaping constitutional interpretation even in the absence of strictly judicial powers. This aspect is particularly significant, as the Institute may contribute—indirectly yet decisively—to the constitutionalisation of the legal order. As the Institute itself has emphasised since its first report, its connective function may significantly influence not only political direction and legislative reforms, but also the judicial interpretation of federal law.

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The contribution by Angelo Schillaci examines the establishment and evolution of the *Defensor del Pueblo* within the Spanish constitutional experience, offering a particularly valuable vantage point from which to analyse evolving trends concerning National Human Rights Institutions (NHRIs) in contemporary constitutional democracies. From this perspective, the article explores the relationship between the *Defensor del Pueblo*, NHRIs, and ombudsman institutions, focusing on its constitutional relevance as reflected in its interaction with the political process, including its power to initiate proceedings before the Constitutional Court. The analysis demonstrates that the role of the *Defensor del Pueblo* extends beyond safeguarding a traditional understanding of the rule of law, instead contributing to the strengthening of the constitutional rule of law. This emerges clearly through several dimensions: (i) its relationship with the political process, including the use of its power to bring constitutional challenges; (ii) its potential counter-majoritarian function; (iii) its role as an actor in processes of integration within the constitutional public sphere, thereby acting as a guarantor of the constitutional rule of law; and (iv) its contribution to enriching the scholarly understanding of fundamental rights law. In particular, the power to lodge constitutional complaints places the *Defensor del Pueblo* firmly within the system of constitutional guarantees. At the same time, according to the Author, constitutional litigation represents an important channel of interaction with the political process, potentially enhancing the institution's capacity to shape rights-oriented public policies. The constitutional complaints brought by the *Defensor del Pueblo* have historically provided a platform for minority claims that would otherwise lack representation. An analysis of these constitutional complaints highlights both the potential counter-majoritarian role of the *Defensor del Pueblo* and its contribution to constitutional interpretation within the “open society of constitutional interpreters,” as well as its broader function in fostering processes of constitutional integration. Together with other NHRIs and ombudsman institutions, it may therefore enhance democratic quality and strengthen political integration, while contributing to the protection of the constitutional rule of law.

The contribution by Federico Nania compares two National Human Rights Institutions established in accordance with the Paris Principles—the UK Equality and Human Rights Commission and the Netherlands Institute for Human Rights—examining their mandates, powers, and activities. Particular attention is devoted to their promotional functions and to the differences between the two institutional models. The article further considers whether such bodies, operating beyond traditional powers—particularly judicial authority—may play a meaningful role in integrating the protection of rights and equality in contemporary democracies as institutions of a “fourth branch.” The Author argues that these bodies shall situate within the category of “fourth branch institutions,” namely autonomous and independent actors that cannot be reduced to the classical separation of powers, yet are nevertheless legitimised to interact with each of them through non-binding forms of intervention and dialogue. Rather, by virtue of their specialised focus on human

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rights, they are able to act as interlocutors for institutional actors and courts alike, functioning as “non-judicial national institutions for the implementation of international human rights law.” The experiences of the United Kingdom and the Netherlands demonstrate that such institutions are fully capable of contributing to the protection of human rights, complementing the traditional framework without competing with judicial guarantees. As highlighted, they operate across multiple levels: promoting a culture of rights, conducting research and investigations, intervening before courts and thereby connecting with the judicial sphere, and adopting measures that impact the protection of fundamental rights of individuals and minorities.

Chiara de Santis’s contribution examines the role of National Human Rights Institutions in the Global South, with particular focus on the South African Human Rights Commission (SAHRC), analysing its history, structure, and competences. The article mainly focuses on the implementation of socio-economic rights by the Commission and its interaction with courts, particularly the Constitutional Court. It also addresses the controversial issue of the binding nature of the SAHRC’s recommendations, which remains central to South African legal debate, especially in light of recent case law denying such binding force. The contribution shows how a recent decision of the Supreme Court of Appeal has brought renewed attention to this issue and how a future redefinition of the Commission’s role will likely depend on the Constitutional Court’s determination of whether the SAHRC may be considered a quasi-judicial body under the constitutional and legislative framework. While the question of the binding nature of NHRI decisions remains—at least for now—largely unresolved both in South Africa and in other jurisdictions, the future development of NHRIs appears to follow two main trajectories. On the one hand, there may be value in fully developing those competences of human rights commissions that lie outside the judicial sphere, avoiding functional overlap and reinforcing the distinctive nature of NHRIs without transforming them into quasi-judicial bodies. On the other hand, should a strengthening of their adjudicative role be envisaged, it may become necessary to enhance their financial autonomy—often regarded as the “Achilles’ heel” of NHRIs—as well as to further increase their independence from the executive, an area in which the SAHRC still exhibits certain weaknesses. These experiences reveal a range of best practices that could be especially instructive for the establishment of an Italian NHRI.

The Special Issue finally turns to the question of establishing an NHRI in Italy. The contribution by Vincenzo Tudisco highlights that, despite repeated international and European recommendations, Italy remains one of the few EU Member States that has not yet established a NHRI. After outlining the draft bills currently under consideration in both chambers of Parliament, the article focuses on institutional design, weighing the arguments for and against the creation of a new ad hoc body versus assigning a human rights mandate to an existing institution, thus creating a multi-mandate body (as envisaged in some Senate proposals concerning the Data Protection Authority).

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Ad hoc institutions benefit from a dedicated mandate, specific competences, targeted advocacy, and greater visibility. However, in a fragmented system they may also lead to overlaps and gaps, and risk marginalisation or political influence. Multi-mandate institutions, by contrast, may address issues more comprehensively, operate under a single legal framework ensuring equal protection, facilitate the exchange of best practices, provide more coherent services, achieve cost efficiencies, and enjoy greater recognition and authority. At the same time, such models may give rise to tensions between different mandates and uneven distributions of powers, while inadequate leadership could negatively affect the overall protection of human rights. Given the fragmented Italian system, the article emphasises the need for systematic cooperation and coordination among institutions, in order to promote synergies, facilitate the exchange of best practices, and work towards a more uniform protection of vulnerable groups and individuals. Particular attention is also devoted to the potential opportunities arising from the implementation of recent EU directives on equality bodies, which may offer useful insights for the establishment of an NHRI and for creating linkages between such an institution and existing equality bodies. Tudisco's conclusions underline that there are compelling arguments both for the creation of a new NHRI and for entrusting the mandate to an existing body. Regardless of the chosen institutional model, however, certain core requirements remain indispensable: clear legislation, full independence, adequate resources, and effective mechanisms of cooperation and coordination with other actors.

The Special Issue concludes with the contribution by John Morijn, whose reflections aim to provide guidance for the establishment of an NHRI in Italy. Morijn argues that, rather than focusing exclusively on institutional design, it is crucial to take into account the national context in which such institutions operate. In this perspective, the effectiveness of NHRIs depends to a large extent on the quality of their leadership and staff, which are decisive in ensuring meaningful human rights protection. According to the Author, one of the most important yet often overlooked elements in determining the added value of an NHRI is precisely the people who work within it. Leadership and personnel may matter more than formal legal structures when it comes to achieving tangible results. It is entirely conceivable for an NHRI to be well-funded and endowed with extensive powers, yet to remain ineffective if its leadership lacks the courage to act. For this reason, when Italy eventually establishes its own NHRI, the most critical factor in ensuring its effectiveness will be the selection of leadership and staff genuinely committed to the protection of the rights of all individuals within its jurisdiction, particularly those in vulnerable situations. Ultimately, the protection of human rights rests on a strong ethical commitment, the ability to address conflicts with both determination and balance, and a consistent focus on delivering concrete outcomes for individuals.

In conclusion, we strongly believe that an Italian NHRI would strengthen existing safeguards by providing a coherent and unified framework within what remains, at present, a fragmented national system of human rights protection. In this

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respect, as already emphasised in another paper<sup>5</sup>, the establishment of an ad hoc NHRI would foster the development of a promotional dimension of human rights protection, which remains significantly underdeveloped when compared to its more traditional reactive counterpart, i.e. courts. This function would be enabled by the NHRI's capacity to issue opinions, recommendations, and proposals—including in relation to legislative and regulatory measures—addressed to both Government and Parliament on all matters concerning the protection of human rights. As the comparative contributions in this Special Issue demonstrate, such activities play a crucial role in shaping the public sphere. In addition, the NHRI could assume a proactive role in encouraging the signature and ratification of international conventions and agreements, as well as in monitoring their domestic implementation. The experience of the German Institute for Human Rights (GIHR) provides a particularly illustrative example of this trend.

We believe that a number of key elements should guide the establishment of an Italian NHRI. First and foremost, independence must constitute the cornerstone of its institutional design. This requires, *inter alia*, that the term of office of commissioners be at least equal to—or longer than—that of the Parliament responsible for their appointment, and that commissioners not be subject to mid-term review or dismissal procedures that could compromise their autonomy. Closely related to this is the need to ensure the NHRI's full organisational and financial autonomy. The institution should be able to manage independently its internal structure, including human resources and budgetary decisions. Adequate and secure financial resources are essential to enable the Authority to carry out its mandate effectively and without external interference.

Another fundamental aspect concerns the representativeness and pluralism of the Commission's composition. As highlighted by the European Union Agency for Fundamental Rights, pluralism entails the broadest possible inclusion of diverse social groups within NHRIs<sup>6</sup>. While, as Morijn persuasively argues, the quality of leadership remains decisive, pluralism nonetheless constitutes a structural requirement for ensuring the legitimacy and effectiveness of the institution. The promotion of pluralism is closely linked to cooperation with civil society actors. Meaningful and structured interaction with civil society is essential to ensure that the voices of minorities and vulnerable groups are adequately represented, as comparative experience—such as the Spanish case—clearly demonstrates.

Finally, it is crucial that the Authority be endowed with powers to investigate human rights violations, whether individual or systemic. In this regard, particular attention should be given to equipping an Italian NHRI with tools enabling it to

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<sup>5</sup> J. Zenti - O. Pollicino, *È arrivato finalmente il tempo della italiana human rights institution?*, in *Diritticomparati.it*, 27 October 2020 ([www.diritticomparati.it](http://www.diritticomparati.it)).

<sup>6</sup> FRA, *Strong and effective national human rights institutions*, 2020, p. 49 ([fra.europa.eu](http://fra.europa.eu)).

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interact with ongoing judicial proceedings, for instance through the possibility of intervening as *amicus curiae*. The comparative contributions to this Special Issue demonstrate the crucial role of NHRIs in promoting and protecting rights across diverse institutional and legal contexts, thereby reinforcing the case for establishing an Italian NHRI<sup>7</sup>.

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<sup>7</sup> For a leading contribution on this issue, see G. Repetto (ed.), *Una National Human Rights Institution per l’Italia: problemi e prospettive*, Turin, 2025.