

## Functions and Responsibilities of the German Institute for Human Rights: Promoting Human Rights Education in the Public Sphere\*

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### 1. Introduction

In 2000, through a motion unanimously approved by all parliamentary groups (see below § 2), the German *Bundestag* endorsed the establishment of the *Deutsches Institut für Menschenrechte* (German Institute for Human Rights – GIHR)<sup>1</sup>. At that time, Germany expressed its intention to comply with the commitment – legally non-binding under international law, but undoubtedly politically significant – to align with the set of *Principles relating to the Status of National Institutions (the Paris Principles)*,<sup>2</sup> which were reaffirmed in the Vienna Declaration of 25 June 1993<sup>3</sup>.

From the outset, within the traditional classification of National Human Rights Institutions (NHRIs), it was clear that Germany opted for the Institute model, despite

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<sup>1</sup> Deutscher Bundestag, 14. Wahlperiode, Druksache 14/4801 of 28.11.2000: Antrag der Fraktionen SPD, CDU/CSU, BÜDNIS 90/DIE GRÜNEN und F.D.P. (Einrichtung eines Deutschen Instituts für Menschenrechte).

<sup>2</sup> The Principles date back to 1991, when they were elaborated at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights (Paris, 7–9 October 1991), and were subsequently formally adopted by the UN General Assembly in Resolution 48/134 of 20 December 1993 (Principles relating to the Status of National Institutions (the Paris Principles)).

<sup>3</sup> Vienna Declaration and Programme of Action del 25 June 1993 (the World Conference on Human Rights in Vienna). See, R. Goodman - T. Pegram (eds.), *Human Rights, State Compliance, and Social Change. Assessing National Human Rights Institutions*, Cambridge, NY, 2012.

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minor variations<sup>4</sup>. It therefore rejected both the Commission model, adopted by the Netherlands,<sup>5</sup> and the Ombudsman model, chosen by Spain and Poland<sup>6</sup>. Germany thus established a body without quasi-judicial powers. The GIHR does not have the authority to receive or handle individual complaints. In a role primarily focused on providing institutional and “evidence-based”<sup>7</sup> support, the GIHR was entrusted with tasks of research and monitoring. Its main aim is, in this respect, to strengthen a culture of fundamental and human rights in the public sphere through constant dialogue with institutions and civil society. Such a configuration is entirely consistent with the explicit possibility, provided for in the Paris Principles, of deciding whether to assign quasi-judicial functions to NHRIs.<sup>8</sup> It also aligns with paragraph 36 of the Vienna Declaration, which states that each State may “choose the framework best suited to its particular needs at the national level”<sup>9</sup>.

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<sup>4</sup> For a general overview, see *National Human Rights Institutions. A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, New York and Geneva, 1995, pp. 7 ff.; see also S. Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights*, Philadelphia, 2014, pp. 8 ff. and G. de Beco, *National Human Rights Institutions in Europe*, in *Human Rights Law Review*, 2007, p. 332; A. Eren, *National Human Rights Institutional Models in Comparative Law and the Case of Turkey*, in *Gazi University Faculty of Law Review*, 2011, pp. 171 ff. and V. Aichele, *Die Nationale Menschenrechtsinstitution: eine Einführung*, Berlin, Deutsches Institut für Menschenrechte, 2009, available at <https://nbn-resolving.org/urn:nbn:de:0168-ss0ar-328263>. On this issue, see L.F.M. Besselink, *Types of National Institutions for the Protection of Human Rights and Ombudsman Institutions: an Overview of Legal and Institutional Issues*, in *Human Rights Commissions and Ombudsman Offices*, The Hague-London-Boston, 2000, pp. 157-164.

<sup>5</sup> For the Netherlands, see Y. Donders - M. Olde Monnikhof, *The Newly Established Netherlands Institute for Human Rights: Integrating Human Rights and Equal Treatment*, in J. Wouters - K. Meuwissen (eds.), *National Human Rights Institutions in Europe*, Cambridge, 2013, pp. 83 ff.; for a comparative perspective including the United Kingdom, see F. Nania, *National Human Rights Institutions through the Prism of Human Rights Protection: A Comparison between the United Kingdom and the Netherlands*, in *Rivista di Diritti Comparati*, 2025, pp. 1 ff.

<sup>6</sup> For a European overview, see V. Aichele, *Nationale Menschenrechtsinstitutionen in Europa*, Deutsches Institut für Menschenrechte, 2004.

<sup>7</sup> C. Badse, *The Danish Experience: The Danish Institute for Human Rights*, in J. Wouters - K. Meuwissen (eds.), *National Human Rights Institutions in Europe*, cit., p. 30.

<sup>8</sup> *Principles relating to the Status of National Institutions* (The Paris Principles), General Assembly resolution 48/134, 20 December 1993. These prerogatives are included in the section titled “Additional principles concerning the status of commissions with quasi-judicial competence”, where it is clarified that “[a] national institution may be authorized to hear and consider complaints and petitions concerning individual situations” (emphasis added). For an overview on this point, see G. Arditto, *La competenza para-giudiziarica delle istituzioni nazionali per i diritti umani: modelli e prassi in prospettiva comparata*, in L. Manca (a cura di), *Le istituzioni nazionali per la promozione e la tutela dei diritti umani*, Napoli, 2021, pp. 11-47. The aforementioned essay also notes that, from a terminological perspective, the use of the term *quasi-judicial* instead of *quasi-judicial* is actually considered an error, as identified by the SCA-GANHRI in 2018 (p. 15).

<sup>9</sup> *Vienna Declaration and Programme of Action* Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, § 36: “The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the “Principles relating to the

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Considering that the purpose of this flexible approach is to enable the creation of NHRIs appropriate to the national legal and cultural framework, Germany's decision is unsurprising. At least two contextual factors should be considered. First, although there is no equivalent of a true Ombudsman at the federal level, Article 17 of the Basic Law already provides for a right of petition, which is largely handled by the *Petitionsausschuss* (Petitions Committee) established in the *Bundestag*. Moreover, at the level of the *Länder* (states), some state constitutions explicitly provide for the presence of an Ombudsman, the *Bürgerbeauftragte*, notably in the state of Rhineland-Palatinate.<sup>10</sup>

Second, one cannot overlook the deep-rooted judicialization of fundamental rights protection that has always characterized the very idea of the rule of law in Germany. This culminates in Article 19(4) of the Basic Law, which states: "If a person's rights are violated by public authority, legal recourse shall be available". The individual's right to take legal action to protect their fundamental rights is further safeguarded through the recognition of an explicit right to file individual constitutional complaints for violations of fundamental rights by public authorities (Article 94(1), sentence 4a). This framework also reflects the fact that, historically, in Germany, the promotion of a culture of fundamental rights has been closely tied to the educative function of the individual constitutional complaint.<sup>11</sup> Such an observation may help explain why the Federal Constitutional Tribunal has come to be regarded – though it is not formally a court of appeal – as the apex body ensuring the highest level of constitutionalization within the legal system. This is due, in particular, to the role played by the instrument of the *Urteilsverfassungsbeschwerde* (constitutional complaint against judgments).<sup>12</sup> It also sheds light on why the website of the Federal Government Commissioner for Human Rights Policy once explicitly stated: "Protection of individual human rights in Germany is in principle the responsibility of the courts".<sup>13</sup>

From a comparative perspective, the experience of the German Institute for Human Rights may represent a valuable reference point for the Italian debate on the

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status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level".

<sup>10</sup> See B. Kofler, *Germany*, in G. Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions. A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea*, Wien-New York, 2008, pp. 203-213.

<sup>11</sup> See K. Zweigert, *Die Verfassungsbeschwerde*, in JZ, 1952, 321 ff., cited in BVerfG, 28.06.1972 - 1 BvR 105/63, 1 BvR 275/68, Rn. 34.

<sup>12</sup> See F. Saitto, *Il ricorso individuale diretto: assetti del sistema di giustizia costituzionale e rapporti tra giurisdizioni in Germania*, in G. Repetto - F. Saitto (eds.), *Temi e problemi della giustizia costituzionale in Germania. Una prospettiva comparativa alla luce del caso italiano*, Napoli, 2020, pp. 43-85.

<sup>13</sup> S. Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights*, cit., p. 292. It has been argued that the GIHR should still be considered "relatively young," and that the reasons for its delayed establishment lie in the traditional view that the protection of fundamental rights fell within the remit of the courts and the Federal Constitutional Tribunal: see H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, in S. López Escarcena - M.A. Núñez Poblete - J. Wouters (eds.), *National Human Rights Institutions in Europe and Latin America. International and Comparative Perspectives*, Cambridge, 2024, p. 245; pp. 260 ff.

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possible establishment of a National Human Rights Institution. As this paper will show, the GIHR exemplifies a model of NHRI that, despite the absence of quasi-judicial powers, is capable of exercising significant influence within the public sphere through research, policy advice, strategic engagement with constitutional adjudication, and sustained dialogue with political institutions and civil society. In this sense, the German experience confirms that an NHRI may effectively contribute to the constitutionalization of the legal order even without being entrusted with individual complaint mechanisms or adjudicatory functions. At the same time, however, any attempt to draw inspiration from the GIHR must take into account the profound structural differences between the German and the Italian constitutional systems. In particular, the central role played in Germany by the *Bundesverfassungsgericht* – characterized by the broad accessibility of constitutional review through individual constitutional complaints and by a highly judicialized model of fundamental rights protection – creates a context in which an institution such as the GIHR can interact with constitutional adjudication in a manner that is difficult to replicate in Italy. Accordingly, while the GIHR may serve as a compelling abstract model for demonstrating how an NHRI can function as a bridge between international human rights standards, constitutional interpretation, and public discourse, its concrete modes of operation cannot be mechanically transposed into the Italian context. Any Italian NHRI would necessarily have to be tailored to the specific dynamics of the Italian constitutional system, particularly with regard to the role of constitutional adjudication, the forms of access to constitutional justice, and the channels through which international human rights norms are internalized within the domestic legal order<sup>14</sup>.

This paper focuses on the GIHR and is structured as follows. It begins by examining the founding phase (§ 2). It then turns to the Institute's evolution and governing bodies (§§ 3-3.5). Subsequently, it addresses its structure and principal fields of activity (§ 4). Finally, the functions and the nature of the GIHR are contextualized within the broader processes of the constitutionalization of international law and the internationalization of constitutional law (§ 5). In anticipation of what will be addressed in the conclusion, it may already be observed that, in light of the GIHR's experience, NHRIs can be regarded as key instruments in shaping an "open constitutional state".<sup>15</sup> They may contribute to strengthening a process that limits sovereignty while simultaneously reinforcing state authority, acting as intermediaries capable of coordinating the interaction between state and society, and fostering in the public sphere an interpretation of fundamental rights consistent with international commitments.<sup>16</sup> From this vantage point, NHRIs do more than merely "bridge"

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<sup>14</sup> With regard to the Italian debate, see G. Repetto (ed.), *Una National Human Rights institution per l'Italia. Problemi e prospettive*, Torino, 2025.

<sup>15</sup> For a general overview on the topic, see S. Hobe, *Der offene Verfassungsstaat zwischen Souveränität und Interdependenz*, Berlin, 1998.

<sup>16</sup> See B.-O. Bryde, *Konstitutionalisierung des Völkerrechts und Internationalisierung des Verfassungsrechts*, in *Der Staat*, 2003, pp. 61-75.

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international and domestic law, inasmuch as they actively influence the constitutionalization of the legal order, contributing to enhanced protection for fundamental rights, which takes into account both the national and international levels.<sup>17</sup>

*2. The 2001 Parliamentary Motion and the Establishment of the GIHR: Issues Concerning the Founding Source*

On the initiative of all parliamentary groups then represented in the *Bundestag* – SPD, CDU/CSU, Bündnis 90/Die Grünen, and FDP – a motion was adopted on 28 November 2000 calling for the establishment of the GIHR. In the final section of the motion, the decision to set up the GIHR expressly cited the Danish institution<sup>18</sup> as a model for Germany, thereby clearly confirming the intention not to assign any quasi-judicial powers. With regard to the timing of its establishment, legal scholarship has noted a certain “reluctance” across Europe to establish NHRIs. However, this attitude was not due to fundamental opposition, but rather to a degree of indifference or a lack of real incentives.<sup>19</sup>

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<sup>17</sup> See § 5; and R. Carver, *A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law*, in *Human Rights Law Review*, 2010, pp. 1-32.

<sup>18</sup> The Danish institution, originally called the Danish Center for Human Rights, was established by parliamentary vote in 1987. It served as a loose model for the creation of NHRIs in Norway and Luxembourg during the same period (S. Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights*, cit., p. 291). However, it was only in 2002 – following considerable controversy and narrowly avoiding permanent closure – that the institute was formally established by law as part of a broader reform. The founding act was subsequently revised in 2012. Notably, for a brief period between 2003 and 2009, the Danish institute also served as the designated national equality body and was granted competence to handle individual complaints under Article 13 of Directive 2000/43/EC (C. Badse, *The Danish Experience: The Danish Institute for Human Rights*, cit., 31 ff.). Although it retained its status as a national equality body under the Directive, the authority to rule on individual complaints was later transferred to an *ad hoc* body, the *Ligebehandlingsnævnet* (Equal Treatment Board). The 2012 reform aimed to better ensure the institute’s independence and to clarify its mandate as an NHRI. In Denmark, the organizational structure includes a Board, which appoints the Directors of the Institute; the Board itself is appointed by the universities of Denmark, the Council for Human Rights in Denmark and Greenland, and the employees of the Danish Institute for Human Rights. The Council for Human Rights also assesses the design and implementation of the Institute’s activities and may submit proposals for new initiatives to the Board (available at <https://www.humanrights.dk/about-us>).

<sup>19</sup> See i.e. S. Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights*, cit., 291 ff., p. 293: “Germany’s government seems to have created an NHRI quite reluctantly, only following calls from civil society. The unanimous parliamentary acclaim that greeted it may have been more akin to a collective sigh of relief from skeptics: satisfying a proposal for an NHRI with a minimalist institution, which matched Germany’s interest in portraying an image of itself as a country pursuing a “moral foreign policy,” including through extensive development assistance”. It has been stressed that, in Germany, “the central impetus for an NHRI came from civil society, not from a particular political party or governmental body” (J.A. Mertus, *Straddling Checkpoint Charlie. The German Human Rights Institute*, in Id., *Human Rights Matters*, Stanford, 2009, p. 118).

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The founding motion highlighted from the outset the need to ensure the independence of the GIHR. To this end, the government was requested to take the necessary steps to establish the Institute in close coordination with representatives of non-governmental organizations and the academic community. Nonetheless, while the mandate was outlined, it was not detailed at this early stage. The motion merely stated that the Human Rights Institute was to operate in a practice-oriented manner, complementing the work of existing governmental and non-governmental institutions and playing a complementary and cooperative role. It was also established that the Institute should be able to act on its own initiative and remain independent of instructions or directives from the federal government or any other public or private entity.<sup>20</sup> Specifically, the Institute was to focus on providing information on the human rights situation both domestically and internationally. Its activities were intended to prevent human rights violations and to promote and protect human rights. From this perspective, it has been noted that the choice of location near Checkpoint Charlie was no coincidence, as one of the Institute's most sensitive domestic tasks was not only to engage with the country's past, but also to address potential disparities between different parts of Germany and monitoring the reunification process.<sup>21</sup>

Based on these principles, six areas of activity were defined. First, the Institute was tasked with providing information and documentation, including the creation of databases and the collection of human rights materials such as international treaties and case law from supranational courts. A second area involved conducting research. The third area outlined a role in political advisory work. While research was intended to prevent, address, or manage human rights violations, political advisory work was to include concrete policy proposals and promote continuous dialogue between science and politics. The Institute's mandate also encompassed human rights education in Germany, international cooperation, and the promotion of dialogue and collaboration on human rights within Germany.

In line with the Paris Principles, it was clarified that the Institute's bodies should be composed predominantly of individuals representing civil society, with specific expertise in human rights, in order to ensure pluralism. In addition to some provisions concerning financial matters, the motion also specified, however, that the federal government – represented by the Federal Foreign Office, the Federal Ministry of Justice, and the Federal Ministry for Economic Cooperation and Development – as well as members of the *Bundestag*, representatives of the *Länder*, and representatives of non-governmental organizations, academia, the legal profession, business, trade

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<sup>20</sup> Mertus notes, quoting a 2004 study conducted by Rikke Frank Jørgensen, a staff member of the Danish Institute for Human Rights, that while the parliamentary decision fails to explicitly refer to the Paris Principles, the Institute's statutes do contain such a reference, thereby opening the door to a broader interpretation of its mandate (J.A. Mertus, *Straddling Checkpoint Charlie. The German Human Rights Institute*, cit., pp. 120-121).

<sup>21</sup> J.A. Mertus, *Straddling Checkpoint Charlie. The German Human Rights Institute*, cit., p. 123.

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unions, and various religious communities, could all become members of the association.

As later detailed in the preamble of the GIHR's founding law, the motion led to the establishment of a private-law association by several stakeholders.<sup>22</sup> This form was chosen to emphasize the Institute's distance from other public-law bodies and to ensure its autonomy, which was to be guaranteed through its private legal status. The clear aim was to strengthen the GIHR's independence and political neutrality.<sup>23</sup>

From the outset, certain shortcomings could be identified in light of the few binding requirements set forth in the Paris Principles. The most evident issue concerned the legal basis on which the *Bundestag* mandated the establishment of the GIHR. The Paris Principles require that the mandate of an NHRI "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".<sup>24</sup> A parliamentary motion – even one adopted unanimously and supported by strong political will, as explicitly mentioned in the coalition agreement of 20 October 1998 (Part XI, 8), which expressed the intention to implement the Paris Principles – does not seem to provide the same level of legitimacy. Nor does it adequately safeguard the requirement of independence.<sup>25</sup> Moreover, the provisions regarding the composition of the governing bodies of the GIHR did not appear sufficiently clear to comply with even the broadly defined international standards. It is no coincidence that, although the GIHR was granted A-status following accreditation procedures, reports by the Sub-Committee on Accreditation of GANHRI (SCA)<sup>26</sup> stressed the need to revise the

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<sup>22</sup> B. Rudolf, *The German Institute for Human Rights*, in *Nova Acta Leopoldina*, 2011, pp. 19-24. As stated in the preamble of the law (see § 3): "Taking up this resolution by the *Bundestag*, two members of the parliamentary Committee for Human Rights and Humanitarian Aid of the *Bundestag*, three distinguished representatives of the Forum *Menschenrechte*, one independent expert each from the field of international organisations, academia and the media, as well as one distinguished personality designated by the Federal Government of Germany, on 8 March 2001, together founded the German Institute for Human Rights as a non-profit registered association. The founding members were Friederike Bauer, Rudolf Bindig (MP), Hermann Gröhe (MP), Prof. Dr. Eckart Klein, Barbara Lochbihler, Werner Lottje, Klaus Stoltenberg, Bruno Thiesbrummel and Barbara Unmüßig", available at <https://www.institut-fuer-menschenrechte.de/en/institute/mandate-tasks-functions/legal-basis>.

<sup>23</sup> See on this point A. Würth, *The German Institute for Human Rights*, in *EBPOAIIJAAOT Cnycauue za eponcku npaauaHa*, 2012, p. 216: "The GIHR is a Registered Association (in German: Verein), a predominant legal form for civil society and non-profit organisations. Registered Associations are largely autonomous, issue their own statute, and are regulated by law. GIHR's purpose, mandate, composition of bodies, competences and obligations were laid down in the Statutes of the GIHR Association (henceforth: GIHR Statutes), adopted on 8 March 2001 by the Founding Assembly. Later, the Statutes were amended several times, mainly due to inner-organisational needs; the last amendment was made in 2009".

<sup>24</sup> Paris Principles, Competence and responsibilities, paragraph 2

<sup>25</sup> See on this topic J.A. Mertus, *Straddling Checkpoint Charlie: The German Human Rights Institute*, cit., pp. 120 ff.

<sup>26</sup> Available at <https://ganhri.org/sub-committee-on-accreditation/>. As noted, although this accreditation process does not have a formal legal basis that makes it binding, it is becoming increasingly

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applicable legal framework. In several reports, the SCA called for the adoption of a law to regulate the DIMR comprehensively.<sup>27</sup> Additional concerns included the need to clarify the criteria governing the dismissal of members of the Institute.<sup>28</sup>

Moreover, in the first months following the establishment of the GIHR, in parallel with some early-stage tensions,<sup>29</sup> the United Nations Economic and Social Council (ECOSOC) directly addressed the Institute's most characteristic feature: the absence of any quasi-judicial powers. In this regard, Germany was encouraged to introduce a mechanism allowing individuals to bring complaints directly to the GIHR.<sup>30</sup>

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relevant at the political level; see on this topic V. Aichele, *Die Nationale Menschenrechtsinstitution: eine Einführung*, cit., p. 2.

<sup>27</sup> <https://ganhri.org/sub-committee-on-accreditation/>

<sup>28</sup> See D. Langtry- K. Roberts Lyer, *National Human Rights Institutions*, Oxford, 2021, pp. 53–54 and 84; regarding the dismissal process later established by law, see p. 151. Over the years, concerns have also been raised about the guarantee of pluralism: D. Langtry and K. Roberts Lyer, *National Human Rights Institutions*, cit., p. 105. See also G. de Beco, *National Human Rights Institutions in Europe*, cit., p. 342: “Composition is one of the most critical aspects of NHRIs, since it directly affects two fundamental principles underlying these institutions, that is, pluralism and independence”. On the need to establish the GIHR by law, see A. Würth, *The German Institute for Human Rights*, cit., p. 216.

<sup>29</sup> J.A. Mertus, *Straddling Checkpoint Charlie: The German Human Rights Institute*, cit., pp. 121 ff., focused on the “early challenges” of the German Institute for Human Rights, reconstructing the events surrounding the resignation of the first director, Percy MacLean, which was followed by some controversy. According to Mertus, “[t]he critical stories contended that MacLean was pushed out because he sought to place more emphasis on the monitoring of human rights in Germany, whereas his opponents at the Institute favored a greater emphasis on international human rights promotion. The controversy over MacLean’s firing illustrates an important challenge for the Institute: the need to demonstrate its relevance at home”. In the 2002 annual report, it is stated that: “On May 15th, 2002, the governing board appointed Percy MacLean, formerly presiding judge at the Administrative Court of Berlin, as director of the Institute. He assumed office in August 2002 and resigned on January 17th, 2003. The director’s position will be filled by Dr. Heiner Bielefeldt from August 1st, 2003. In the meantime, Barbara Unmüßig, one of the two vice presidents of the governing board, is acting director on a volunteer basis” (see German Institute for Human Rights, Annual Report 2002, 7). See also, regarding the Institute’s early years of activity, H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., pp. 259 ff.

<sup>30</sup> This recommendation was made by the Economic and Social Council, Committee on Economic, Social and Cultural Rights, in its *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights* (Report on Germany), E/C.12/1/Add.68, 24 September 2001. See, in particular, paragraph 12, which states: “While welcoming the recent establishment of the DIMR, the Committee notes that the Institute’s functions appear to be limited to research, education and the provision of policy advice, and that it does not enjoy the powers often associated with national human rights institutions, such as the power to investigate complaints, conduct national inquiries and formulate recommendations for employers and other actors. In the context of the Covenant, these limitations are especially regrettable because economic, social and cultural rights receive less attention and enjoy fewer safeguards than civil and political rights in the State party”. Later, in its 2017 report, the Sub-Committee also raised a similar concern: see D. Langtry - K. Roberts Lyer, *National Human Rights Institutions*, cit., p. 224.

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In order to respond – at least partially – to these concerns, the *Bundestag* passed a law in 2015 specifically regulating the Institute’s legal status, composition, structure, functions, and competences. Nevertheless, the absence of concrete powers to protect fundamental rights confirmed, at least formally, that the GIHR was conceived as “a minimalist institution” and – at least *prima facie* – a “weak NHRI”.<sup>31</sup>

### 3. The 2015 Founding Law of the GIHR

Following repeated calls, which culminated in a message from the then Foreign Minister Steinmeier – now President of the Federal Republic of Germany –, the *Bundestag* finally passed a law in 2015 regulating the GIHR’s mandate, objectives, and functions. This came after the October 2014 deadline set during the reaccreditation process had passed without any action being taken, amid the threat of losing A-status and the associated rights. As noted above, the Paris Principles highlight one requirement in particular: an NHRI should be established by law or constitutional amendment. In Germany, however, a “solid legal basis” was still lacking<sup>32</sup>.

The law, ultimately approved by the *Bundestag* on 18 June 2015 and by the Bundesrat on 10 July 2015, is divided into 8 Articles and is preceded by a preamble, already referenced, which outlines the reasons for the decision to establish the GIHR and retraces the history of its creation. More specifically, Article 1 is entitled “Legal status and funding”. Article 2 regulates “Mandate, tasks and functions”, while Article 3 identifies the “Organs of the Association,” and Articles 4, 5, 6, and 7 regulate, respectively, the “Membership,” the “General Assembly,” the “Board of Trustees,” and the “Board of Directors”. Article 8, finally, sets out the entry into force of the law.

As a private association, the Institute is also governed by its own statute – frequently referenced in the founding law – which, following a preamble, provides a detailed regulation of the GIHR’s operations, with particular emphasis on the organization and functioning of its organs.

#### 3.1. Legal Nature and Status

As already pointed out, in Germany the GIHR is not a public entity. According to the 2015 law, the GIHR is a registered association governed by private law. The GIHR has therefore differed markedly from the Danish experience from the outset.

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<sup>31</sup> S. Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights*, cit., p. 293. On the “decisive six months” that led to the adoption of the law, see H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., pp. 266 ff.

<sup>32</sup> President Steinmeier in his statement; available at: [https://www.auswaertiges-amt.de/en/newsroom/news/150303-deutschesinstitutmenschenrechte-269768?utm\\_source=chatgpt.com](https://www.auswaertiges-amt.de/en/newsroom/news/150303-deutschesinstitutmenschenrechte-269768?utm_source=chatgpt.com).

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This reflects a deliberate decision not to establish a public-law body or an independent authority in the strict sense, as such a status would have implied inevitable dependence on a ministry. Its legal basis is thus “two-fold,” resting not only on the founding law but also on its Articles of Association.<sup>33</sup> This principle is clarified by Article 1 of the founding law itself. The point is further developed in Article 1 of the Statute, which states in its first two paragraphs: “The Association’s name is Deutsches Institut für Menschenrechte [German Institute for Human Rights], with DIMR as the official abbreviation,” and “The Association is registered in the Register of Associations. It operates under its name with the supplementary letters ‘e. V.’ [eingetragener Verein = registered association]”.

The issue was not merely one of independence<sup>34</sup>, but also of conceptual clarity. A public-law status for the GIHR could have resulted in the Institute being fully absorbed into the state structure, thus limiting its ability to act as a “bridge” in the public sphere between state and civil society.<sup>35</sup> The associative model, in this sense, appeared preferable because it safeguarded the Institute’s capacity for self-determination and self-organization, enabling it to exercise its critical role toward institutions more freely and to engage society as broadly as possible. In this way, it was also believed that its function as a “bridge” in the realization of a harmonious balance between “the national and international human rights guarantees” would have been strengthened.<sup>36</sup>

The final result, however, is that the GIHR is recognized as playing a significant role in the public sphere, frequently described as one of connecting and intertwining not only state and society, but also the national and international communities.

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<sup>33</sup> See H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., pp. 246-247, where it is stated that “the double legal basis of the DIMR strengthens its legitimacy and independence”, since its associative nature, protected under Article 9 of the Basic Law, safeguards the Institute from potential arbitrary dissolution through legislation.

<sup>34</sup> The GIHR’s independence is also ensured through the regulation of its funding channels, to which the SCA always pays close attention. In this regard, Article 1 of the law provides that: “To fulfil the tasks under Article 2 Subsections 2, 4 and 5, the German Institute for Human Rights (registered association) is provided with funding insofar as it is included in the budget of the Federal Parliament (*Deutscher Bundestag*) and the current Statute of the Institute meets the minimum requirements laid down in Articles 2 to 7”. Article 5 of the Statute further specifies that: “The Association is funded through public grants according to § 1 paragraph 1 second clause of the Law. Additional sources of funding are membership fees, project-based public and private grants, as well as private donations,” and that “The Association may acquire assets to promote its aims. Third-party allowances intended for this purpose will accrue to the Association’s assets”.

<sup>35</sup> See P. Ridola, *Prime riflessioni sullo “spazio pubblico” nelle democrazie pluralistiche*, in Id., *Diritto comparato e diritto costituzionale europeo*, Torino, 2010, pp. 31-49.

<sup>36</sup> See DIMR, *Entwicklung der Menschenrechtssituation in Deutschland Januar 2015 – Juni 2016 Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG*, p. 4: “eine Brücke zwischen den nationalen und internationalen Menschenrechtsgarantien zu schlagen”.

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### 3.2. Organizational Structure and Governing Bodies

Articles 3–7 of the Law, further detailed in the Statute (Articles 7–31)<sup>37</sup>, establish that the organs of the Association are the General Assembly, the Board of Trustees, and the Board of Directors, composed of the Director and the Deputy Director. Article 3 also provides that “advisory boards may be established when needed for specific subjects or projects” and that it is prohibited to serve simultaneously on both the Board of Trustees and the Board of Directors.<sup>38</sup>

Article 4, which governs Membership, states that the founding members form part of the registered association and that “a pluralistic representation of civil society actors involved in the promotion and protection of human rights” must be ensured. It is specified that “additional members who either professionally or on a voluntary basis work for the protection and promotion of human rights may be – upon their application – accepted by a decision of the Board of Trustees”.

More detailed provisions are set out in the Statute, for instance regarding the possibility of rejecting applications for membership, which is permitted only “in well-founded exceptional cases, e.g. due to incompatibility with the purposes of the Paris Principles,” and the Board of Trustees’ authority to admit or expel members. Membership, including possible expulsion procedures, is governed in detail by Articles 8–11 of the Statute. A specific prerogative of the General Assembly is to “give advice as to the guidelines for the work of the German Institute for Human Rights (registered association)” and “follow its activities in view of the legal requirements and the Paris Principles”. The Statute provides a more detailed set of rules to define the Assembly and its powers, particularly in Articles 12–23, where the body’s functions are outlined, including the power to elect six members to the Board of Trustees. The Assembly also has the power to amend the Statute (Article 18). Amendments affecting the “aims and purposes” of the association require a four-fifths majority of all members.<sup>39</sup>

The Board of Trustees is specifically regulated under Article 6 and consists of eighteen members with voting rights and nine without.<sup>40</sup> Once again, the law seeks to reflect and comply with the Paris Principles, distinguishing between members with voting rights and those without. The term of office for voting members is four years, renewable once. The law states: “The Statute must provide for the appointment of the

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<sup>37</sup> See H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., pp. 249-250, where it is specified that although the law must formally be considered superior, in reality the two sources should be regarded as mutually interdependent.

<sup>38</sup> Recently, it has been noted that around 80 people work at the GIHR: H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., p. 246.

<sup>39</sup> For a detailed overview, see H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., pp. 251-252.

<sup>40</sup> See again H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., pp. 252 ff., where the criticism, raised in the latest reaccreditation decision by the SCA, is reported that the composition of the Board is marked by an excessive number of government representatives.

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following members of the Board of Trustees with voting rights”. Specifically, voting rights are held by: “six members appointed from among the General Assembly; one member appointed by the German Disability Council (*Deutscher Behindertenrat*); two members appointed from among the Federal Parliamentary Committee on Human Rights and Humanitarian Aid; three members representing academic institutions pertaining to human rights appointed by the Federal Parliament (*Deutscher Bundestag*); three members representing civil society appointed by the Federal Parliament; and three members appointed by the Forum Human Rights (*Forum Menschenrechte*)”.

Non-voting members include “one each from the Office of the Federal Government Commissioner for Migration, Refugees and Integration; the Office of the Federal Government Commissioner for Human Rights Policy and Humanitarian Aid; the Office of the Federal Government Commissioner for Human Rights Matters; the Office of the Federal Government Commissioner for Matters Related to Ethnic German Resettlers and National Minorities; the Office of the Federal Government Commissioner for Matters Related to Persons with Disabilities; the Federal Ministry for Economic Cooperation and Development; the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth; the Ministry of Defence; and the Federal Council (*Bundesrat*)”.

According to Article 7, the Board of Directors consists of a Chair and a Deputy, appointed by the Board of Trustees for a term of four years, renewable once. Article 23 of the Statute outlines the “Duties of the Board of Trustees,” notably the authority to decide on the admission and, especially, expulsion of members, as well as the appointment and oversight of the Board of Directors. Regarding the composition of the Board of Directors, Article 31 of the Statute requires that one member be a lawyer and that at least one be a woman.

### *3.3. Mandate, Functions and Competences*

With regard to “Mandate, Tasks and Functions,” reference should be made to Article 2 of the Law and to Article 2 of the Statute, titled “Purpose and Mandate”. In general terms, and in full alignment with the Paris Principles, it is established that the GIHR “shall inform the public on the situation of human rights in Germany and abroad and shall contribute to the prevention of human rights violations and to the protection and promotion of human rights”.

More specifically, a range of tasks is listed, which, in addition to the duty of “informing the public,” includes conducting “academic research,” providing “policy advice,” carrying out “educational work at the domestic level,” and “facilitating dialogue as well as national and international cooperation with relevant human rights actors”.

Additional tasks include “supporting the Federal Government in drafting reports on human rights in third countries, country analyses and questionnaires on

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human rights-related shortcomings in third countries” and “analyzing the impact of European and German policies on the human rights situation in partner countries, with particular regard to development policies”.

Of particular significance and public visibility is the obligation to submit “to the *Bundestag* an annual report on its work and activities, as well as on developments with respect to the human rights situation in Germany,” with a corresponding duty on the *Bundestag* to provide a response.

In its reports, as will be discussed further (below, § 4), the Institute fosters public discourse and identifies research areas, often making extensive reference to the case law of the *Bundesverfassungsgericht* and taking positions on the need for constitutional or legislative reform. As stated by Director Beate Rudolf in her interview on the Institute’s twentieth anniversary, and reiterated by her deputy, the GIHR may, in fact, engage in debates on proposals to amend the Basic Law.

### *3.4. Additional Mandates*

The GIHR is specifically entrusted with performing additional tasks of particular relevance, often in fulfilment of international treaties or European directives that expressly require the designation of a body responsible for monitoring their proper implementation.

It should first be noted that the GIHR acts as the independent monitoring mechanism under Article 33(2) of the UN Convention on the Rights of Persons with Disabilities. Pursuant to Article 1(2) and Article 2(4) of the founding law, the German Institute for Human Rights (GIHR) operates “as an independent monitoring mechanism under Article 33(2) of the UN Convention on the Rights of Persons with Disabilities of 13 December 2006”<sup>41</sup>. The GIHR is thereby entrusted with the tasks outlined in the Convention, which provides that: “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”<sup>42</sup>.

As indicated on the Institute’s website, the federal structure of the German state is particularly relevant in the performance of this function. It is emphasized that “independent monitoring mechanisms in the sense of Article 33(2) of the UNCRPD

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<sup>41</sup> For an overview of the reports published in this field, see <https://www.institut-fuer-menschenrechte.de/en/topics/rights-of-persons-with-disabilities>.

<sup>42</sup> See G. de Beco, *Article 33(2) of the Un Convention on the Rights of Persons with Disabilities: Another Role for National Human Rights Institutions?*, in *Netherlands Quarterly of Human Rights*, 2011, pp. 84–106.

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for all 16 states are essential for the implementation of the UNCRPD throughout Germany”. To that end, “a legal basis and permanently secured funding” are deemed necessary. From an operational perspective, the GIHR recommends that “all federal states enact legal regulations for the establishment of an independent monitoring mechanism at the state level, in accordance with the Paris Principles for National Human Rights Institutions,” and that the exercise of these mandates be entrusted to the Institute “with the provision of sufficient funds for this purpose”. In the performance of this monitoring function, the Institute conducts research on the situation of persons with disabilities in Germany and produces scientific analyses and publications concerning the implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). It organizes events on key issues addressed by the Convention and promotes public awareness through media outreach and public engagement. Furthermore, it regularly consults with persons with disabilities and their representative organizations (“association consultations”), and maintains dialogue with both federal and state disability commissioners. Where appropriate, it provides guidance to policymakers at the federal and state levels, as well as to officials in ministries, public authorities, courts, non-governmental organizations, and associations regarding the Convention’s implementation. The National CRPD Monitoring Mechanism also issues statements and recommendations on political, administrative, and judicial decisions, and advocates for full compliance with the Convention.<sup>43</sup>

According to information currently available on the GIHR’s website, statutory regulations concerning CRPD monitoring mechanisms at the state level exist in five *Länder*: North Rhine-Westphalia, Berlin, Saarland, Rhineland-Palatinate, and Schleswig-Holstein, reflecting a differentiated and decentralized implementation of Article 33(2) CRPD within Germany’s federal system. The Institute has been performing its monitoring functions in Berlin since 2012, in North Rhine-Westphalia since 2017, and in Saarland since 2020.<sup>44</sup>

Furthermore, the GIHR acts as the National CRC Monitoring Mechanism. Within the framework of the monitoring mandate concerning the UN Convention on the Rights of the Child, since 2015 the Institute has been entrusted with the task of “promoting, supporting and monitoring the implementation of the UN Convention on the Rights of the Child in Germany”.<sup>45</sup> The website of the Institute states that the

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<sup>43</sup> <https://www.institut-fuer-menschenrechte.de/en/institute/departments/national-crpd-monitoring-mechanism>. Here are also outlined the main areas of intervention: Action plans; Education; Guardianship law; Health; Housing; Mobility; Participation; Protection against; Discrimination; Protection against violence; Women; Work.

<sup>44</sup> <https://www.institut-fuer-menschenrechte.de/en/institute/departments/national-crpd-monitoring-mechanism/about-the-national-crpd-monitoring-mechanism>. See H. Bielefeldt - M. Krajewski - M. Krennerich - B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., p. 273.

<sup>45</sup> <https://www.institut-fuer-menschenrechte.de/en/institute/departments/national-crc-monitoring-mechanism/about-the-national-crc-monitoring-mechanism>

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Monitoring Mechanism plays a key role in raising awareness about children's rights and, when necessary, encourages organizations to comply with the UN Convention. Based on thorough research, it provides advice to policymakers at the federal, state, and local levels, as well as to members of the judiciary, legal professionals, and civil society actors, assisting them in understanding and implementing the Convention in a child-friendly manner. It also exchanges information with national human rights institutions in other countries and regularly updates the UN Committee on the Rights of the Child regarding the status of children's rights in Germany. The Mechanism works closely with civil society organizations, government agencies, and research institutions. Crucially, it directly involves children and young people, as their participation – as stipulated in Article 12 of the UN Convention – is fundamental to its mandate. According to the website, Hesse is the first state to regulate this task. The website also indicates that the main areas of intervention concern “Raising Awareness of Children's Rights, Advising on CRC Interpretation, Reporting to the United Nations, Collaboration with civil society organizations, government bodies, and research institutions”.<sup>46</sup> In addition, the GIHR operates as the National Rapporteur Mechanism on gender-based violence. As the National Rapporteur Mechanism on gender-based violence, the Institute is tasked with enhancing the implementation of the Istanbul Convention, specifically the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.<sup>47</sup>

In this capacity, the Institute contributes to the fulfilment of state obligations to improve support and protection services for victims, raise public awareness, and ensure effective investigation and prosecution. Article 10 of the Convention, in particular, requires the establishment of bodies responsible for coordinating, implementing, monitoring, and evaluating its implementation.

Since its establishment, the Institute has contributed to the development of effective protection strategies. On 1 November 2022, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth entrusted the Institute with monitoring and assessing the implementation of the Convention in Germany. The National Rapporteur Mechanism on gender-based violence operates independently of the federal government.<sup>48</sup>

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<sup>46</sup> <https://www.institut-fuer-menschenrechte.de/en/institute/departments/national-crc-monitoring-mechanism>; Key Focus Areas: Best interests of the child; Non-discrimination; Participation and views of the child; Incorporating children's rights into the German Basic Law; Child-friendly justice; Children of incarcerated parents; Complaints mechanisms; Custodial measures; Rights of refugee and migrant children; Monitoring at the federal state level.

<sup>47</sup> <https://www.institut-fuer-menschenrechte.de/en/das-institut/abteilungen/national-rapporteur-mechanism-on-gender-based-violence/about-the-national-rapporteur-mechanism-on-gender-based-violence>.

<sup>48</sup> According to the website, in this case, the main areas of focus are domestic violence; sexualized violence; digital violence; and the promotion of political debates and public discourse on annual themes: custody and visitation rights (2023); protection and support services (2024).

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According to the GIHR's website, in August 2020 Germany submitted its first state report to GREVIO, the Group of Experts on Action against Violence against Women and Domestic Violence. This body, composed of 10 to 15 experts, is responsible for monitoring States' implementation of the Istanbul Convention. In September and October 2021, GREVIO conducted its first visit to Germany to assess the Convention's implementation. The initial evaluation report on Germany's compliance was published in October 2022. While the report highlights some positive developments, such as the reform of sexual offence legislation, it also outlines several recommendations – including some urgent ones (see “key concerns” below) – which are considered insufficiently implemented.<sup>49</sup> The GIHR's website also provides access to the first Report on the Implementation of the Istanbul Convention in Germany, available for download.<sup>50</sup>

Ultimately, the Institute is also specifically tasked with evaluating compliance with the treaty aimed at combating human trafficking. This international obligation stems not only from the Council of Europe Convention on Action Against Trafficking in Human Beings, which has been in force in Germany since 2013, but also from the EU Trafficking in Human Beings Directive of 2011. Since November 2022, the German Institute for Human Rights has been entrusted by the Federal Government with the responsibility of providing ongoing and independent national reports on the implementation of both the Convention and the EU Directive. This work is financially supported by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) through a four-year funding project.<sup>51</sup>

The Independent National Rapporteur Mechanism on trafficking in human beings, as part of the German Institute for Human Rights, is responsible for critically assessing the implementation of the Convention and the EU Directive. Through data-driven and evidence-based monitoring, as well as the analysis of legislation and judicial decisions, it develops practical recommendations for policymakers, public authorities, and the judiciary to improve efforts to prevent and combat human trafficking, and to enhance protection and support for victims.<sup>52</sup>

According to the Institute's website, the Mechanism collaborates closely with civil society and promotes public dialogue on the issue of human trafficking. By publishing its findings and insights, it supports the Federal Government in fulfilling its

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(<https://www.institut-fuer-menschenrechte.de/en/das-institut/abteilungen/national-rapporteur-mechanism-on-gender-based-violence>).

<sup>49</sup> <https://www.institut-fuer-menschenrechte.de/en/topics/gender-based-violence>

<sup>50</sup> <https://www.institut-fuer-menschenrechte.de/en/monitoring-report-violence-against-women>

<sup>51</sup> <https://www.institut-fuer-menschenrechte.de/en/institute/departments/independent-national-rapporteur-mechanism-on-trafficking-in-human-beings/about-the-independent-national-rapporteur-mechanism-on-trafficking-in-human-beings>

<sup>52</sup> Further information and the first Report are available at the following link: <https://www.institut-fuer-menschenrechte.de/en/topics/trafficking-in-human-beings>

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national and international reporting obligations. The first Periodic Report on human trafficking in Germany was published in October 2024.<sup>53</sup>

### *3.5. Cooperation Duties of the GIHR within the National and International Human Rights Framework*

National Human Rights Institutions (NHRIs) have a specific duty to “cooperate with the United Nations and any other organization within the United Nations system, regional institutions, and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.”<sup>54</sup> Moreover, NHRIs should “maintain consultation with other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators, and similar institutions),” and “in view of the fundamental role played by non-governmental organizations in expanding the work of national institutions, develop relations with NGOs 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, persons with physical and mental disabilities), or to specialized areas”<sup>55</sup>.

Within the GANHRI system (Global Alliance of National Human Rights Institutions), the German Institute for Human Rights (GIHR) holds a prominent position, as it does within Europe through the European Network of National Human Rights Institutions (ENNHRI). Indeed, it has consistently been recognized with A-Status, along with the attendant rights of participation.<sup>56</sup>

Given the significant commitment demonstrated by the GIHR in engaging both nationally and internationally with other human rights actors, this work focuses on its relations with the Fundamental Rights Agency (FRA), the Federal Anti-Discrimination Agency (ADS), and the Federal Commissioner for Data Protection and

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<sup>53</sup> <https://www.institut-fuer-menschenrechte.de/en/institute/departments/independent-national-rapporteur-mechanism-on-trafficking-in-human-beings>. According to the Institute’s website, the main areas of focus include: All forms of human trafficking and exploitation in Germany; Protection and support for trafficked persons; Trafficking in human beings and exploitation of refugees; Trafficking in human beings and exploitation of minors; Annual focus topics for the promotion of political debate and public discourse: 2023: Establishment of the National Referral Mechanism for Trafficked Persons; 2024: Labour Exploitation; 2025: Trafficking in and exploitation of children and adolescents.

<sup>54</sup> Principles relating to the Status of National Institutions (the “Paris Principles”), UN General Assembly resolution 48/134, 20 December 1993.

<sup>55</sup> Principles relating to the Status of National Institutions (the “Paris Principles”), UN General Assembly resolution 48/134, 20 December 1993.

<sup>56</sup> <https://ganhri.org/membership/>. See D. Langtry, K. Roberts Lyer, *National Human Rights Institution*, cit., *passim*.

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Freedom of Information (BfDI).<sup>57</sup> These bodies illustrate different models of interaction between the GIHR and specialized human rights institutions at the European and domestic levels.

The GIHR serves as the official “focal point” for the FRA. With regard to its relationship with the FRA, a guideline document exists, but is not publicly available. This document regulates the interaction between the Fundamental Rights Agency, established at the European level by Regulation (EC) No 168/2007, and the GIHR. More specifically, the website states that since 2011, the German Institute for Human Rights has acted as Germany’s official focal point for the European Union Agency for Fundamental Rights (FRA), headquartered in Vienna. This role is part of the FRA’s FRANET research network, which brings together multidisciplinary research partners from all EU member states, as well as candidate countries such as Albania, North Macedonia, and Serbia. Under a framework agreement with the Agency, the Institute regularly provides comprehensive legal and social scientific analyses on the human rights situation in Germany. These studies address a wide range of key topics within the FRA’s multi-year thematic program, including access to justice, victims’ rights, data protection in the digital age, Roma integration, and legal cooperation. Other focal areas include children’s rights, non-discrimination, migration and integration, visa and border policies, asylum, and racism.

The reports produced by the Institute constitute essential components of the FRA’s comparative analyses, which aim to identify common challenges and trends in fundamental rights across the European Union. Through its participation in the FRANET network, the German Institute for Human Rights contributes to strengthening the FRA’s role as a central actor in regional human rights protection, while simultaneously expanding its own expertise and influence within the broader context of European fundamental rights monitoring.<sup>58</sup> This role significantly enhances the GIHR’s capacity to act as a conduit between national human rights practice and EU-level fundamental rights monitoring.

At the national level, as previously noted, two additional bodies can be identified whose competencies potentially overlap with those of the GIHR. First, in

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<sup>57</sup> The examples mentioned do not exhaust the topic. For instance, within the framework of implementing the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), in order to fulfill the commitment to establish a National Preventive Mechanism, the Nationale Stelle zur Verhütung von Folter was created, taking into account the federal structure of the Federal Republic of Germany. See: <https://www.institut-fuer-menschenrechte.de/menschenrechtsschutz/deutschland-im-menschenrechtsschutzsystem/vereinte-nationen/vereinte-nationen-menschenrechtsabkommen/umsetzung-cat-in-deutschland> and <https://www.nationale-stelle.de/nationale-stelle.html>. In other countries, this function has instead been assigned to the NHRI: see L.C. Reif, *The Shifting Boundaries of NHRIs Definition in the International System*, in R. Goodman – T. Pegrām (eds.), *Human Rights, State Compliance, and Social Change. Assessing National Human Rights Institutions*, cit., pp. 61 ff.

<sup>58</sup> <https://www.institut-fuer-menschenrechte.de/en/monitoring/reports/reporting-to-the-eu-agency-for-fundamental-rights>

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implementation of Directives 2000/43/EC (racial equality) and 2004/113/EC (gender equality in access to goods and services), which require the establishment of equality bodies, specific anti-discrimination responsibilities have not been assigned to the GIHR but rather to the Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes - ADS). However, the ADS has faced considerable criticism and various reform proposals, primarily because it lacks sanctioning powers to resolve individual complaints.<sup>59</sup> Nevertheless, the law recognizes the ADS as the national equality body in Germany.

Among specialized bodies, then, the Federal Commissioner for Data Protection and Freedom of Information (BfDI) has been established as an independent and autonomous supervisory authority responsible for federal-level data protection. Its duties are defined under Article 57 of the General Data Protection Regulation (GDPR) and Article 14 of the Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG). The BfDI is empowered to provide official opinions to the German *Bundestag*, its committees, the *Bundesrat*, the Federal Government, other public authorities, and the general public. Upon request of the *Bundestag*, its committees, or the Federal Government, the BfDI conducts examinations of data protection practices within federal public authorities. Pursuant to Article 77 of the GDPR, and within the framework of the Law Enforcement Directive as stipulated in Article 60 of the BDSG, any individual may submit a formal complaint to the BfDI if they consider that their rights have been violated by an entity under the BfDI's supervisory jurisdiction.

Taken together, these forms of cooperation illustrate how the GIHR operates within a dense and multi-layered human rights architecture, both at the European and domestic levels, without overlapping with or duplicating the functions of specialized authorities. Rather than exercising direct enforcement powers, the Institute positions itself as a coordinating and knowledge-producing actor, capable of connecting different institutional spheres and facilitating the circulation of human rights standards across governance levels. This structural positioning provides the necessary background for examining, in the following section, the substantive thematic areas in which the GIHR has been most actively engaged, as reflected in its annual reports and public interventions.

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<sup>59</sup> See *Das Antidiskriminierungsrecht in der Kritik internationaler Menschenrechtsorgane*; available at <https://www.institut-fuer-menschenrechte.de/publikationen/detail/das-antidiskriminierungsrecht-in-der-kritik-internationaler-menschenrechtsorgane>. The reference is, of course, to the statute law Allgemeines Gleichbehandlungsgesetz vom 14. August 2006 (BGBl. I S. 1897). In particular, see Art. 27.

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The German Institute for Human Rights (GIHR) focuses on a wide and diverse range of topics. According to the website, its areas of work range from “Asylum and Migration” to “Business and Human Rights”. Other themes include “Development Policy,” “Gender-Based Violence,” “Children’s Rights,” “Climate Change and Sustainability,” “Trafficking in Human Beings,” “Human Rights Education,” “Rights of Older Persons,” “Rights of Persons with Disabilities,” “Rule of Law,” and “Economic, Social and Cultural Rights”.

The GIHR actively participates in public discourse on these issues through various means: it takes positions on the desirability and substance of potential constitutional reforms, intervenes in legal proceedings via *amicus curiae* briefs<sup>60</sup>, produces reports, and publishes research papers that inform policymakers, courts, and the general public.

One example is the debate on removing the word “race” from Article 3 of the Basic Law, which had already been raised by the Institute in 2010<sup>61</sup>. In 2021, the GIHR’s *Stellungnahme* supported the removal of the term “Rasse” from Article 3(3) of the Basic Law and proposed its replacement with an explicit reference to racist discrimination, in order to clarify the content of the provision without reducing the level of constitutional protection and in a manner consistent with the case law of the Federal Constitutional Tribunal and international human rights standards.<sup>62</sup> Another significant example concerns the GIHR’s engagement in the debate on the inclusion of children’s rights in the Basic Law. While opposing the specific text proposed, the Institute strongly argued for the need for constitutional reform. According to the GIHR, an insufficient constitutional recognition risked lowering the level of protection currently guaranteed by constitutional jurisprudence and prevailing international and supranational standards.<sup>63</sup> Finally, particular attention should be drawn to the

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<sup>60</sup> The Institute has frequently submitted *amicus curiae* briefs before various courts, including the *Bundesverfassungsgericht*, the European Court of Human Rights, and several United Nations bodies and they are available since 2010 here: <https://www.institut-fuer-menschenrechte.de/menschenrechtsschutz/stellungnahmen-vor-gericht-amicus-curiae>

<sup>61</sup> As stated by the Director in the interview marking the Institute’s twentieth anniversary, available here <https://www.institut-fuer-menschenrechte.de/20-jahre#c2472>

<sup>62</sup> Deutsches Institut für Menschenrechte, *Stellungnahme zum Diskussionsentwurf des Bundesministeriums der Justiz und für Verbraucherschutz – Entwurf eines Gesetzes zur Ersetzung des Begriffs „Rasse“ in Artikel 3 Absatz 3 Satz 1 des Grundgesetzes* (Feb. 2021), available at [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme\\_Zum\\_Diskussionsentwurf\\_des\\_Bundesministeriums\\_der\\_Justiz\\_und\\_fuer\\_Verbraucherschutz.pdf?utm\\_source=chatgpt.com](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Zum_Diskussionsentwurf_des_Bundesministeriums_der_Justiz_und_fuer_Verbraucherschutz.pdf?utm_source=chatgpt.com).

<sup>63</sup> See <https://www.institut-fuer-menschenrechte.de/en/publications/detail/childrens-rights-into-the-basic-law> and Deutsches Institut für Menschenrechte, *Monitoring-Stelle UN-Kinderrechtskonvention*. (2021). *Kinderrechte ins Grundgesetz: Aktualisierte Stellungnahme zum*

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Institute's critical stance on the proposal to allow the Government to designate "safe countries of origin" by means of a regulation rather than through a formal legislative procedure. The Institute raised constitutional concerns, stressing that, in light of the significant procedural consequences for asylum seekers, such determinations should continue to be adopted by statute with parliamentary involvement.<sup>64</sup>

Noteworthy is the Institute's increasing focus on climate change in recent years. Since 2020, several reports have increasingly emphasized the nexus between climate change and the capacity to ensure respect for human rights. Within this framework, particular attention is devoted to the recognition of a right to a healthy environment through a resolution of the United Nations Human Rights Council. More recently, attention has turned to biodiversity, in particular in connection with a constitutional complaint filed with the German Federal Constitutional Tribunal by the *Bund für Umwelt und Naturschutz Deutschland*, which criticizes the inadequate protection of biodiversity and calls for a judicial mandate compelling legislative action.<sup>65</sup> In this context, the GIHR decided to prepare a comprehensive dossier on the subject.<sup>66</sup> Particular importance should also be attributed to the Institute's strategic work on human rights governance. In this regard, the document titled "Applying a Human Rights-Based Approach to the Challenges of Our Time. Strategy 2024–2028" is particularly significant. It refers to the need to further strengthen the Institute, despite its considerable growth in recent years, and to "shape fundamental changes in people's

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Gesetzesentwurf der Bundesregierung zur Änderung des Grundgesetzes zur ausdrücklichen Verankerung der Kinderrechte. (Stellungnahme / Deutsches Institut für Menschenrechte), Berlin, available at <https://nbn-resolving.org/urn:nbn:de:0168-ss0ar-73304-8>.

<sup>64</sup> See *Zum Entwurf eines Gesetzes zur Bestimmung sicherer Herkunftsstaaten durch Rechtsverordnung und Abschaffung des anwaltlichen Vertreters bei Abschiebungshaft und Ausreisegewahrsam*, available at <https://www.institut-fuer-menschenrechte.de/publikationen/detail/zum-entwurf-eines-gesetzes-zur-bestimmung-sicherer-herkunftsstaaten-durch-rechtsverordnung-und-abschaffung-des-anwaltlichen-vertreter-bei-abschiebungshaft-und-ausreisegewahrsam>. At present, an *Organstreit* proceeding is pending before the Federal Constitutional Court (see H. Bourenane, *Exekutive Selbstermächtigung: Wieso die Einstufung der sicheren Herkunftsstaaten durch Rechtsverordnung gegen Art. 16a GG verstößt*, in *VerfBlog*, 2026/3/30, <https://verfassungsblog.de/exekutive-selbstermaechtigung/>).

<sup>65</sup> See on the BVerfG's website: *Verfassungsbeschwerde unmittelbar gegen das Unterlassen der Bundesrepublik Deutschland, ein umfassendes gesetzliches Schutzkonzept für den Erhalt der Biodiversität zu schaffen, soweit dies zum Schutz von Freiheit, Leben, Gesundheit sowie zur Erhaltung der natürlichen Lebensgrundlagen auch für künftige Generationen erforderlich ist. Betr.: Öffentliches Umweltrecht; Natur und Landschaftsschutzrecht (Erhaltung der Biodiversität). Art. 2 Abs. 2 Satz 1; 14 Abs. 1 GG. Berichterstatter: BVR Prof. Dr. Eifert*, available at [https://www.bundesverfassungsgericht.de/DE/Aktuelles/AusgewaehlteNeueingange/vs\\_2024/\\_documents/november-2024.html](https://www.bundesverfassungsgericht.de/DE/Aktuelles/AusgewaehlteNeueingange/vs_2024/_documents/november-2024.html).

<sup>66</sup> *Biodiversity, Conservation and Human Rights*: available at <https://www.institut-fuer-menschenrechte.de/en/publications/detail/biodiversity-conservation-and-human-rights>

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livelihoods in accordance with human rights”. Special emphasis is given to the impact that climate change and artificial intelligence will have on human rights.<sup>67</sup>

Reports produced since 2016 pursuant to Article 2, paragraph 5, of the GIHR founding law are extensive and detailed. They demonstrate a high level of technical expertise and frequently reference the case law of the German Federal Constitutional Tribunal to indicate the concrete standards currently applicable in Germany that legislators must observe. For instance, one of them focuses in particular on the 2021 Federal Constitutional Tribunal decision on decarbonization<sup>68</sup>. The reports also devote substantial attention to the *Verfassungsbeschwerde* concerning triage during the COVID-19 pandemic.<sup>69</sup>

Significant attention is also devoted, for example in the 2023 Report, to safeguarding the right to assembly in the context of climate change protests<sup>70</sup>. Moreover, positive reference is also made to the Federal Constitutional Tribunal’s decision declaring unconstitutional the law that imposed restrictions on the voting rights of persons with disabilities.<sup>71</sup> This issue had received specific attention since the GIHR’s first Report<sup>72</sup>.

It should be noted that the GIHR’s focus on the Federal Constitutional Tribunal’s case law also stems from its involvement, at times prompted by the Court or undertaken autonomously, in submitting observations within constitutional complaints and constitutional law proceedings. In the triage ruling, already mentioned, for example, the Court explicitly referred to the GIHR’s position after consulting

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<sup>67</sup> See <https://www.institut-fuer-menschenrechte.de/en/publications/detail/applying-a-human-rights-based-approach-to-the-challenges-of-our-time-strategy-2024-2028>; BVerfG, Beschluss des Ersten Senats vom 24. März 2021 - 1 BvR 2656/18 -, Rn. 1-270.

<sup>68</sup> Entwicklung der Menschenrechtssituation in Deutschland Juli 2021 – Juni 2022. Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG, pp. 63 ff.

<sup>69</sup> The topic is explored in particular in Entwicklung der Menschenrechtssituation in Deutschland Juli 2020 – Juni 2021. Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG, pp. 64 ff. and subsequently, in relation to that decision, in Entwicklung der Menschenrechtssituation in Deutschland Juli 2021 – Juni 2022. Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG, pp. 89 ff. See the decision: BVerfG, Beschluss des Ersten Senats vom 16. Dezember 2021 - 1 BvR 1541/20, Rn. 1-131. Most recently, following that decision, the Court declared the legislative framework adopted in this field unconstitutional. In those proceedings, the GIHR submitted its written observations; see BVerfG, Beschluss des Ersten Senats vom 23. September 2025 - 1 BvR 2284/23, Rn. 1-141, Rn. 29. The decision was grounded in particular in the constitutional allocation of legislative competences.

<sup>70</sup> Entwicklung der Menschenrechtssituation in Deutschland Juli 2022 – Juni 2023. Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG, pp. 83 ff.

<sup>71</sup> Bundesverfassungsgericht, Beschluss des Zweiten Senats vom 29. Januar 2019 - 2 BvC 62/14, Rn. 1-142; see moreover, Urteil des Zweiten Senats vom 15. April 2019, Az. 2 BvQ 22/19, Rn. 1-53.

<sup>72</sup> Entwicklung der Menschenrechtssituation in Deutschland Januar 2015 – Juni 2016. Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG, pp. 114 ff.

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multiple third parties.<sup>73</sup> Moreover, the GIHR's stance on the unconstitutionality of the rule providing for the automatic invalidity of marriages involving minors contracted abroad – emphasizing the protection of the rights of those involved and the need to consider individual circumstances – was also detailed and ultimately reflected in the Court's reasoning.<sup>74</sup> The GIHR also submitted an opinion on voting rights for persons with disabilities upon the Court's request,<sup>75</sup> which the Court extensively referenced.<sup>76</sup> Moreover, a significant acknowledgment of the GIHR's work was made in the ruling concerning the recognition of the so-called third gender in cases of intersexuality.<sup>77</sup> Its involvement seems likewise notable on issues concerning compulsory medical treatment<sup>78</sup> and parental authority related to the right to education, even though the GIHR's initiatives are not explicitly mentioned or are only briefly cited.<sup>79</sup>

Finally, a concluding remark is in order. It has been noted that for “research-oriented” bodies “reports and documentation feature centrally in the institution's mandate,” with documentation often being specialized and an opportunity to examine issues in depth. However, a certain ambivalence has been observed: while institutions without complaint mechanisms may use research to remain “informed of the situation on the ground,” critics might argue that research documents abuses in a top-down manner, detached from street-level realities.<sup>80</sup> Nevertheless, even if this critique has some force in the abstract, it fits the German case only partially. The GIHR's technical expertise and its capacity to intervene before the Federal Constitutional Court enable it to influence actors involved in the ongoing constitutionalization of the legal order and, more generally, the constitutional debate, by promoting interpretations more open to the supranational dimension.

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<sup>73</sup> BVerfG, Beschluss des Ersten Senats vom 16. Dezember 2021 - 1 BvR 1541/20, Rn. 1-131, Rn. 62 ff.

<sup>74</sup> BVerfG, Beschluss des Ersten Senats vom 1. Februar 2023 - 1 BvL 7/18 -, Rn. 1-194, Rn. 83.

<sup>75</sup> Zu den Wahlrechtsausschlüssen nach dem Bundeswahlgesetz (BWahlG) im Wahlprüfbeschwerdeverfahren (2 BvC 62/14). See, <https://www.institut-fuer-menschenrechte.de/publikationen/detail/zu-den-wahlrechtsausschluesen-nach-dem-bundeswahlgesetz-bwahlg-im-wahlpruefbeschwerdeverfahren-2-bvc-6214>.

<sup>76</sup> BVerfG, Beschluss des Zweiten Senats vom 29. Januar 2019 - 2 BvC 62/14, Rn. 1-142, Rn. 19 ff.

<sup>77</sup> BVerfG, Beschluss des Ersten Senats vom 10. Oktober 2017 - 1 BvR 2019/16, Rn. 1-69, Rn. 22. See, H. Bielefeldt, M. Krajewski, M. Krennerich, B. Rudolf, *Deutsches Institut für Menschenrechte (Germany)*, cit., p. 257.

<sup>78</sup> Stellungnahme an das Bundesverfassungsgericht im Rahmen des Verfahrens 1 BvL 1/24.

<sup>79</sup> An das Bundesverfassungsgericht im Rahmen der Verfassungsbeschwerde 1 BvR 1525/20 Amicus-Curiae-Stellungnahme eingereicht am 26. August 2021.

<sup>80</sup> S. Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights*, cit., pp. 332-333.

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5. *NHRIs as Instruments of the Open Constitutional State*

In light of the foregoing, it becomes clear why, despite repeated calls, the GIHR has not been granted quasi-judicial functions. Above all, this exclusion is attributable not only to the deep-seated conviction regarding the privileged role that must be reserved for specialized jurisdictions in this respect, but also to the inherent difficulties of entrusting a fundamentally public power – such as the power to adjudicate disputes between two or more parties – to an institution that, despite its independence, is legally characterized by a private-associative nature.

This, however, does not diminish the authority of the GIHR or its capacity to exert influence in the public sphere precisely because of the limitations of its specific mandate. As it has rightly been noted, the Institute has played both a reactive and a proactive role, particularly in public debates on whether to accede to certain international treaties.<sup>81</sup> An analysis of the GIHR's activities partly confirms the view that NHRIs can serve as advisory counterparts to constitutional courts. More generally, the GIHR can engage directly in the public arena connecting institutions – starting with the *Bundestag* and the *Bundesverfassungsgericht* – to society, involving various associative actors and non-governmental institutions, as well as multiple international stakeholders. Although its principal objective remains the promotion of greater awareness regarding the standards of protection imposed by Germany's adherence to international treaties, its human rights education work is too substantial to be dismissed as merely formal or ineffective. It is therefore possible to argue that the GIHR exemplifies a functional model of NHRI capable of shaping constitutional interpretation despite the absence of pure adjudicatory powers. This feature is particularly significant, as the Institute may make a decisive indirect contribution to the constitutionalization of the legal order.

The GIHR can intervene at all levels, helping to constitutionalize the legal order and to ensure that this constitutionalization aligns with Germany's international commitments. The Institute plays a distinctive role because it can engage across the entire process: from political debate to judicial implementation, to sustained interaction with societal actors. In doing so, the GIHR bridges different levels of governance with a degree of manoeuvrability rarely found in other actors. It has therefore been rightly argued that “[w]hat makes the Institute's approach uniquely valuable [...] is its record of engaging with a wide range of governmental and nongovernmental participants for policy-oriented discussions that are sustained in follow-up meetings”.<sup>82</sup>

The ultimate aim is to foster, at all levels, a broad and practical awareness of the need to guarantee a substantive level of rights. This is achieved primarily through engagement with institutions, but also by educating citizens in the exercise of

<sup>81</sup> J.A. Mertus, *Straddling Checkpoint Charlie: The German Human Rights Institute*, cit., pp. 123 ff.

<sup>82</sup> J.A. Mertus, *Straddling Checkpoint Charlie: The German Human Rights Institute*, cit., p. 124.

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fundamental rights and strengthening an informed debate in the public sphere. In this context, it is unsurprising that the GIHR's technical capacity to submit interventions before courts – even upon direct invitation – represents a decisive asset. Equally important is its participation in an extensive international network of supranational human rights organizations, as well as its sensitivity to grassroots pressures that call for recognition of new rights or potential amendments to the Basic Law.<sup>83</sup>

In this context, precisely due to the high degree of judicialization characterizing fundamental rights protection in Germany and the traditional doctrine of *Völkerrechtsfreundlichkeit*, the particular “bridge” role the GIHR seeks to embody may hold specific relevance when fundamental rights are applied by national judges: as the GIHR itself rightly emphasized since its first Report, its bridging action can significantly influence not only political guidance and legislative reforms, but also the judicial interpretation of federal norms. It was noted, in fact, that this “bridge” function is specifically grounded in the “international openness of the Basic Law, as expressed in the commitment to the inviolable and inalienable human rights (Article 1(2) of the Basic Law), and in the constitutional requirement to interpret the fundamental rights of the Basic Law in light of international human rights”.<sup>84</sup>

A final, conclusive reflection concerns the thesis that, “as neither state representatives, nor NGOs, nor international organizations, [NHRIs] occupy a “4th space”“. If such a fourth space exists, it is described as “one which has been enhanced through the activities of NHRIs in a broad range of contexts, and which primarily exists due to the engagement of NHRIs in what were previously the existing key actors within the international human rights framework: international human rights mechanisms, NGOs, and the states themselves”<sup>85</sup>“. In some sense, this function of

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<sup>83</sup> Regarding how this function is performed by the GIHR, see also G. de Beco, *National Human Rights Institutions in Europe*, cit., p. 357, where, in comparison with the Danish Institute, it is stated that it “aims to communicate human rights information through research, analysis, information, education and documentation at both national and international levels. At the national level, the DIHR develops training programmes in collaboration with NGOs to improve human rights awareness. At the international level, the DIHR collaborates with regional organisations and partner countries to disseminate international human rights standards among target groups. The GIHR is developing similar promotional activities. The fact that some European NHRIs specialise in promotional activities, however, does not imply that their function is limited to research, nor that other European institutions focus solely on monitoring and advising. On the one hand, research conducted to communicate human rights information does not, with regard to the DIHR, exclude monitoring and advising state authorities on human rights issues. On the contrary, large-scale research undertaken by the DIHR serves as a basis for legislative and practical changes in Denmark. Moreover, there is a clear connection between the activities of monitoring and advising and those of promoting human rights, since the former contribute to the dissemination of human rights standards, in this case, to state (political) authorities.”

<sup>84</sup> See DIMR, *Entwicklung der Menschenrechtssituation in Deutschland Januar 2015 – Juni 2016 Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG*, p. 4

<sup>85</sup> See K. Roberts, *The Role and Functioning of the International Coordinating Committee of National Human Rights Institutions in International Human Rights Bodies*, in J. Wouters - K. Meuwissen (eds.), *National Human Rights Institutions in Europe*, cit., p. 228. On the peculiar and promising position of NHRIs, see A.

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creating a “fourth space” aimed at “linking the international human rights system to the national level<sup>86</sup>” appears consistent with the idea of a public sphere that continually contributes to shaping the concretization of the Basic Law. At this level, the actions of the GIHR are undoubtedly consistent with the effort to give effect to constitutional principles, implementing a version aligned with the requirements set by international law. This idea is confirmed by the fact that it is through constitutional interpretation carried out by an “open society of interpreters,<sup>87</sup>” who are both aware and responsible, that the need to constitutionalize the legal order can be strengthened and effectively implemented.<sup>88</sup>

In this process, the society itself remains the key reference, as the constitution should reflect, not just highlight, a shared sense of cohesion.<sup>89</sup> In this process – and NHRIs seem to confirm it – the opening of statehood appears to push the boundaries even further in terms of constitutional interpretation.

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**ABSTRACT:** The article examines the German Institute for Human Rights (GIHR) as a National Human Rights Institution that, despite lacking quasi-judicial powers, plays a significant role in promoting human rights in Germany. It reconstructs the Institute’s development from the 2000 parliamentary motion to the 2015 founding law, focusing on its legal status, structure, mandate, and additional monitoring functions. 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.

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Smith, *The Unique Position of National Human Rights Institutions: A Mixed Blessing*, in *Human Rights Quarterly*, 2006, pp. 904-946.

<sup>86</sup> K. Roberts, *The Role and Functioning of the International Coordinating Committee of National Human Rights Institutions in International Human Rights Bodies*, cit., p. 228.

<sup>87</sup> P. Häberle, *Die offene Gesellschaft der Verfassungsinterpreten: Ein Beitrag zur pluralistischen und „prozessualen“ Verfassungsinterpretation*, in *JZ*, 1975, pp. 297-305.

<sup>88</sup> P. Häberle, *Zeit und Verfassung. Prolegomena zu einem „zeit-gerechten“ Verfassungsverständnis*, in *Zeitschrift für Politik*, 1974, pp. 111-137.

<sup>89</sup> See P. Häberle, *Die offene Gesellschaft der Verfassungsinterpreten: Ein Beitrag zur pluralistischen und „prozessualen“ Verfassungsinterpretation*, cit., p. 301: “Verfassung ist in diesem Sinne Spiegel der Öffentlichkeit und Wirklichkeit. Sie ist aber nicht nur Spiegel, sie ist auch Lichtquelle, wenn dieser etwas bildhafte Vergleich erlaubt ist”. Regarding the significance of human rights in the process of defining the constitutional state in Europe, where the close link between society and rights is highlighted, see also the considerations of M. Rask Madsen, *International Human Rights and the Transformation of European Society: from “Free Europe” to the Europe of Human Rights*, in M. Rask Madsen - C. Thornhill (eds.), *Law and the Formation of Modern Europe*, Cambridge, 2014, pp. 245-274.

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**KEYWORDS:** German Institute for Human Rights – National Human Rights Institutions – human rights education – constitutional interpretation – open constitutional state.

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