

**National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands\***

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TABLE OF CONTENTS: 1. Introduction: National Human Rights Institutions through the lens of human rights protection. – 2. The need for a Human Rights Commission in the United Kingdom: the 2004 Government White Paper. – 2.1. The Equality Act 2006 and the establishment of the Equality and Human Rights Commission: composition and appointment; autonomy, accountability and funding within the political-institutional framework. – 2.2. The powers of the EHRC between general powers and enforcement powers. – 2.3. Equality Act 2010 and the “protected characteristics”. – 2.4. Notes on the EHRC’s practice. – 2.5. I An explicative case: the legal definition of “woman” between the EHRC and the UK Supreme Court. – 3. The process leading to the establishment of the Netherlands Institute for Human Rights. – 3.1. The NIHR: composition, appointment and funding. – 3.2. The institutional mandate of the Institute. – 3.3. I The powers of the Institute, with particular reference to the power to conduct investigations. – 3.4. Notes on the NIHR’s practice: the META case. – 3.5. The establishment of the State Commission against Discrimination and Racism: an unusual overlap of roles? – 4. Concluding remarks on National Human Rights Institutions and the transformations in the landscape of fundamental/human rights protection: suggestions for the establishment of an NHRI in Italy.

*1. Introduction: National Human Rights Institutions through the lens of human rights protection*

The need to protect human rights has not remained confined to the international sphere in which their specific codification may be found. The difficulty in disentangling the relationship between the category of human rights and the notion of fundamental rights<sup>1</sup>—prevalent at least in European constitutionalism in the immediate post-war

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\* Contribution to the proceedings of the conference “The Role of National Human Rights Institutions in Promoting Rights and Preventing Rights-Related Litigation and Conflicts”, Bocconi University, 8–9 September 2025. The paper constitutes the author’s contribution to PRIN 2022 *FRAMing national human rights institutions: European and comparative interplays* (FRAME) - CUP - J53D23005290001, prot. n. 2022BXT5HR, funded by the European Union – Next Generation EU. The article is a revised version of the contribution published in *Diritti Comparati Journal*, No. 2/2025.

<sup>1</sup> This is not the appropriate forum to address the question of whether fundamental rights possess an ontological foundation—a question that has also concerned the dogmatic meaning of the category of “human rights” and its philosophical grounding. See J. Hersch, *I diritti umani da un punto di vista filosofico* (1990), Milano, 2008; R. Nania, *Sui diritti fondamentali nella vicenda evolutiva del costituzionalismo*, in R. Nania (a cura di), *Diritti fondamentali. Aspetti teorici e temi attuali*, Torino, 2024; V. Baldini, *I diritti*

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

period—has not prevented States from undertaking, within their domestic legal systems, the establishment of specific mechanisms of protection aimed at fostering the development of democratic principles and the rule of law<sup>2</sup>, particularly in terms of their increasing effectiveness within social life.

In Europe, this development has entailed the complementing of traditional liberal mechanisms designed to protect citizens' fundamental rights—first and foremost judicial enforceability, which is characteristic of the rule of law—with new bodies known as National Human Rights Institutions (NHRIs). These are institutions operating at the national level, entrusted with the promotion and protection of human rights through modes of intervention and operational tools which, as will be shown below, differ from those provided by systems of legal protection and are instead primarily directed towards fostering the growth of a culture of respect for rights within civil society, as well as concerning the practices of public authorities.

From this perspective, the subject matter of the present contribution may be situated within that line of scholarship which conceives the realisation of personal rights—both constitutional and universal—as a process that is also, if not predominantly, of a “cultural”<sup>3</sup> nature, and which therefore requires a plurality of techniques and interpretative and applicative approaches.<sup>4</sup>

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*fondamentali in movimento: dalla prospettiva storico-dogmatica all'esperienza*, in V. Baldini (ed.), *Cos'è un diritto fondamentale?*, Napoli, 2017, p. 3 ff.; L. Di Santo, *Diritti dell'uomo e diritti fondamentali. Profili ermeneutici*, in *Cos'è un diritto fondamentale?*, cit., p. 395 ff.; G. Palombella, *From Human Rights to Fundamental Rights. Consequences of a conceptual distinction*, in *EUI Law*, 34, 2006. About the link between fundamental rights and the paths of constitutionalism see P. Ridola, *Il principio libertà nello Stato costituzionale. I diritti fondamentali in prospettiva storico-comparativa*, Torino, 2018 as well as *Il costituzionalismo e i diritti*, in Id., *Esperienza, Costituzioni, Storia. Pagine di storia costituzionale*, Napoli, 2019, p. 91 ff. About the fundamental rights “dimensions” in the development of constitutionalism A. Di Martino, *La doppia dimensione dei diritti fondamentali*, in V. Baldini (ed.) *Cos'è un diritto fondamentale?*, cit., p. 123 ff.

<sup>2</sup> The close connection between the rule of law, democracy, and the protection of human rights is expressly emphasised by the European Network of National Human Rights Institutions (ENNHRI), namely the organisation bringing together NHRIs operating across the European continent. In the document entitled *Democracy & Rule of Law*, it is stressed that “given the close interconnection and mutually reinforcing relationship between the rule of law, democracy and human rights, NHRIs are well placed to report and participate in rule of law monitoring initiatives as an integral part of their mandate to promote and protect human rights. This is crucial given the persisting rule of law challenges and structural human rights issues that Europe faces”. On the relationship between the rule of law and the protection of rights in the European context, see M.G. Rodomonte - L. Durst (eds.), *Judicial Review, Fundamental Rights and Rule of Law. The Construction of the European Constitutional Identity*, London, 2025.

<sup>3</sup> Reference must inevitably be made to P. Häberle, *Per una dottrina della Costituzione come scienza della cultura*, Roma, 2001 as well as Id., *Cultura dei diritti e diritti della cultura nello spazio costituzionale europeo*, Milano, 2003. See also P. Ridola, *La Costituzione della Repubblica di Weimar come “esperienza” e come “paradigma”*, in *Rivista AIC*, 2, 2014, par. 2, p. 5 ff. and footnote 16; A. Di Martino, *Verfassungs-Kultur. A proposito di un recente volume su Peter Häberle*, in *Diritti Comparati*, 10 October 2016.

<sup>4</sup> On the “universalisation” of rights see N. Bobbio, *L'età dei diritti*, Torino, 1992, esp. p. 23-24. Without forgetting recent contributions that propose a strongly disenchanting view of codified constitutionalism; in particular, Loughlin (M. Loughlin, *Against Constitutionalism*, Cambridge, 2022,

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

It is not possible within the scope of this article to retrace in analytical detail the developments that led to the establishment of NHRIs in numerous countries (including those outside the European continent), nor would it be feasible to provide an exhaustive account of the extensive scholarly reflection that has accompanied the emergence of these new bodies<sup>5</sup>.

The paper will thus focus specifically on two experiences of national National Human Rights Institutions - the Equality and Human Rights Commission of the United Kingdom and the Netherlands Institute for Human Rights - analyzing their genesis within the respective national legal systems and examining the instruments available to them for pursuing their institutional objectives.

Nevertheless, it is worth recalling that the genesis of NHRIs coincides with Resolution No. 48/134 adopted in 1993 by the United Nations General Assembly, through which Member States were called upon to establish their own “national institutions for the promotion and protection of human rights”. The Resolution also set out detailed guidance—stemming from a preparatory conference held in Paris in 1991—concerning the functions, composition and guarantees of independence of national commissions, while expressly reserving to States the “right ... to choose the structure best suited to their particular needs at the national level”. In this way, States were

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especially p. 183 ff.) considers the very concept of constitution – as a product of modern constitutionalist ideology – to be outdated (or surmountable). This reconstruction can also be included in one of the strands of criticism of global constitutionalism on which see A. Di Martino, *Circolazione delle soluzioni giuridiche e delle idee costituzionali. Questioni di metodo comparativo e prassi tra culture costituzionali e spazi globali*, in *DPCE Online*, 50, 2021, p. 774 ff., where is nevertheless specified that when the adjective “global” is used as a “synonym for the universalistic projection of the principles and rights of liberal-democratic constitutionalism”, its “generalising force is based on the aspiration for the broadest possible realisation of the coexistence of individuals and groups in conditions of freedom” (867).

<sup>5</sup> On NHRIs, with particular reference to the European experiences as well as in comparative terms with other international human rights bodies, see at least M. Nowak, *National Human Rights Institutions in Europe: Comparative, European and International Perspectives*, in J. Wouters - K. Meuwissen (eds.), *National Human Rights Institutions in Europe: Comparative, European and International Perspectives*, 2013; L. Manca (ed.), *Le istituzioni nazionali per la promozione e la tutela dei diritti umani. Profili teorici, comparativi e prassi*, Napoli, 2021; G. De Beco, *National Human Rights Institutions in Europe*, in *Human Rights Law Review*, 7, 2007, p. 331–370; D. Langtry - K. Roberts Lyer, *National Human Rights Institutions: Rules, Requirements and Practice*, Oxford, 2021; L.C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, in *Harvard Human Rights Journal*, 13, 2000; R. Murray, *National Human Rights Institutions: Criteria and Factors for Assessing Their Effectiveness*, in *Netherlands Quarterly of Human Rights*, 25, 2, 2007, p. 189–220. Among the most recent Italian doctrine see G. Repetto, *Le National Human Rights Institutions: una nuova frontiera nella protezione sistemica dei diritti fondamentali e l'urgenza italiana*, in G. Repetto (ed.), *Una National Human Rights Institution per l'Italia: problemi e prospettive*, Torino, 2025 as well as - from a comparative perspective - the contributions within the focus on *National Human Rights Institutions. Alcune esperienze comparate* edited by A. Di Martino in *Diritti Comparati Journal*, 2, 2025. With specific reference to the contribution that these institutions can make in the context of climate change litigation see A. Baraggia, *Contenzioso in materia climatica e separazione dei poteri: il ruolo delle National Human Rights Institutions*, in *DPCE Online*, 2, 2023, p. 313.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

granted a certain margin of autonomous discretion in the establishment of such bodies<sup>6</sup>.

The delay with which European countries proceeded to establish these institutions, as compared with developing countries—given that their creation would not occur until the new century<sup>7</sup>—appears particularly striking. It has plausibly been suggested that this delay was due to doubts as to the potential “added value” that such bodies could contribute to the protection of fundamental rights already safeguarded by domestic constitutional frameworks (whether written or unwritten) aligned with international standards and supported by effective systems of legal and judicial guarantees.<sup>8</sup>

However, the experience of NHRIs highlights their potential contribution compared to traditional liberal mechanisms for the protection of fundamental rights, especially in promoting a culture of human rights and respect for them.

In this respect, Italy represents a particularly significant case. In fact, it should be noted that Italy—the only European country among those monitored by ENNHRI—still lacks an accredited institution or, in any case, a national body performing the functions of an NHRI.<sup>9</sup>

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<sup>6</sup> It may be recalled that, as regards competences, the Paris Principles annexed to UN General Assembly Resolution 48/134 state that “a national institution shall be vested with the competence to promote and protect human rights” and that, to this end, it must be entrusted with “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”.

Among the tasks expressly referred to are, in particular, those of “submitting to the Government, Parliament or any other competent body, on an advisory basis or at the request of the authorities concerned, or through the exercise of its power to conduct independent inquiries, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights”; of “promoting and ensuring the harmonisation and implementation of national legislation, regulations and practices with the international human rights instruments to which the State is a party”; and of “assisting in the dissemination of information on human rights and on efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of the media”.

As regards composition, a high degree of pluralism should be ensured, for example, through the inclusion within NHRIs of representatives of non-governmental organisations active in the field of human rights protection, as well as suitably qualified experts. With respect to funding, it is stated that it must be “adequate” so as to enable the institution to be independent of the Government and not subject to financial control.

<sup>7</sup> This was also prompted by Recommendation No. 14 of 1997 adopted by the Committee of Ministers of the Council of Europe on the establishment of national institutions for the promotion and protection of human rights. At EU level, a reference to NHRIs appears in Recital n. 20 of Regulation No. 168/2007 establishing the Fundamental Rights Agency (FRA), which states that this body should cooperate with “governmental organizations and public bodies competent in the field of fundamental rights at Member State level, including national human rights institutions.”

<sup>8</sup> G. De Beco, *cit.*, 339 ff.

<sup>9</sup> For all the matters concerning the establishment of an Italian NHRI see now the contributions in the volume *Una National Human Rights Institution per l'Italia: problemi e prospettive*, edited by G. Repetto, Torino, 2025.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

Therefore, after analyzing the two institutions mentioned above, an attempt will be made to identify which “lessons” from these two experiences of national human rights institutions may be taken into consideration for the establishment of an Italian NHRI.

*2. The need for a Human Rights Commission in the United Kingdom: the 2004 Government White Paper*

The intention to establish a national human rights institution—later to become the Equality and Human Rights Commission (hereinafter, EHRC)—emerged in the United Kingdom during the Labour government led by Tony Blair, only a few years after the entry into force of the Human Rights Act 1998.<sup>10</sup> That Act had already marked, through the incorporation of the European Convention on Human Rights, a fundamental step in the evolution of the protection of fundamental rights, including—albeit not without controversy—their re-situating within the ahistorical domain of humanity. This development also occurred in parallel with the so-called equality directives adopted by the European Union, beginning with the 2000 Directive on equal treatment between persons irrespective of racial or ethnic origin (Directive 2000/43/EC).

It should also be noted that, within the United Kingdom—structured, as is well known, according to the model of devolution—a human rights institution already existed, namely the Northern Ireland Human Rights Commission, established in 1999 as part of the Good Friday Agreement between the British government and the Northern Irish Nation. Moreover, almost contemporaneously with the establishment of the EHRC, Scotland likewise endowed itself with its own human rights institution, the Scottish Human Rights Commission, created by the Parliament at Holyrood in 2006 and becoming operational in 2008.

Accordingly, the British framework is characterised by the presence of three authorities: the commissions of the Northern Irish and Scottish Nations, and the “central” Authority—the EHRC. The latter functions as the national human rights institution for England and Wales, as well as for all Nations in relation to the protection of equality.

Within this institutional configuration, the local commissions may ensure closer attention to issues more directly connected to matters within the competence of the devolved Nations, whereas the presence of a central Authority makes it possible to address, in a cross-cutting manner, issues that fall within the competence of the UK Government as well as within devolved matters, while also ensuring a degree of uniformity in approaches to human rights protection. Confirmation of this will be

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<sup>10</sup> On the consequences of the HRA on the British constitutional system F. Nania, *Le garanzie dei diritti fondamentali e le trasformazioni costituzionali nel Regno Unito. Corti e Parlamento tra common law e Human Rights Act*, Roma, 2023.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

provided below through the examination of a recent case in which the EHRC intervened in judicial proceedings that originated before the Scottish courts and ultimately reached the UK Supreme Court.

Turning back to the process that led to the establishment of the British Commission, mention must be made of the significant contribution of the Joint Committee on Human Rights (JCHR), the bicameral parliamentary committee on human rights. Particular reference should be made to its 2003 report entitled *The Case for a Human Rights Commission*, in which the Committee emphasised the need for the United Kingdom to establish an independent body, structured in accordance with the Paris Principles, and entrusted with the promotion of human rights.

On that occasion, the Committee also stressed that the Human Rights Act, approved only a few years earlier, while representing a crucial advancement for a legal system that had previously lacked a formal catalogue of fundamental rights, was nevertheless insufficient—especially in terms of “spreading knowledge and awareness” of human rights.

Given the traditional British approach to the protection of rights, centred on their articulation through judicial decision-making, it may appear surprising that the parliamentary Committee continued to emphasise the need not to entrust the protection of human rights exclusively to the courts. The Committee observed that “litigation is an essential last resort in protecting the rights of the individual or groups, but it is not the most effective means of developing a culture of human rights”.

Through these words, the Committee made it clear that the development of an attitude of respect for human rights requires the promotion of a human rights culture through the establishment of an ad hoc body, so that the possibility of formal judicial litigation concerning rights violations—while appropriately preserved—would come to play the role of a last resort, in the hopefully increasingly rare and limited event of the failure of the socio-cultural process of internalising the value of respect for human dignity and the rights deriving from it.

Consistently with this approach, the Committee also called for a genuine ethical and cultural paradigm shift on the part of public authorities: no longer a “defensive” stance towards human rights, but rather a proactive approach aimed at disseminating them as “core ethical values” of the State. Accordingly, the task of the proposed human rights body would be to “probe, question and encourage” all public bodies, in order to enhance their awareness of the potential impact of their actions on the development of a human rights culture. The institution was thus envisaged as having a dual role: with regard to public services, a role of assistance in “consolidating advice on compliance with rights”; and, with regard to the courts, a role of preventing rights violations through “the spread of best practice and greater awareness”.

Within this framework, the more specific considerations advanced by the JCHR concerning the relationship between the future institution and the courts are of particular interest, since—as will be shown—this relational aspect constitutes a distinctive feature of the British experience.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

In this respect, the Committee highlighted that the new body should play “a valuable role in assisting the courts in determining human rights questions”, especially by virtue of its “power to act as a friend of the court or as a third party intervener”. At the same time, the Committee did not exclude the possibility of conferring more incisive powers upon the Commission, including powers “in relation to litigation”, such as “supporting strategic cases” and, above all, “seeking judicial review”, namely bringing proceedings against acts adopted by public authorities or by private actors in the exercise of public functions.

As regards the degree of independence to be ensured to the proposed body, the Committee stressed the need for it to be perceived as a “fully independent body with the potential to exercise real influence”. To this end, it realistically emphasised two essential conditions: adequate financial resources, sufficient to enable the fulfilment of such a complex mandate, and rules governing appointments capable of ensuring democratic accountability.

With regard to the configuration of the operational tools available to the institution, the JCHR’s proposal was premised on the assumption that the body should not be conceived as “a body with an adversarial or litigious approach to its mission”, but rather as an entity primarily oriented towards fostering “a culture of respect for human rights”. This was to be achieved, in particular, through raising awareness of the need to promote human rights within public authorities in the delivery of services, as well as by making individuals aware of their rights and guiding them in asserting those rights, in cooperation with non-governmental organisations and with advisory bodies operating within the voluntary and professional sectors—without the institution being perceived as one “driven by the task of handling individual complaints”.

This confirms that, from the perspective of the Joint Committee, the proposed Commission was intended to operate within a broad horizon aimed at the promotion of human rights, giving particular prominence to cooperation with civil society organisations sharing the same ethical commitments in the field of rights, and thereby avoiding a reductive conception of its activity as mere support for individual grievances and complaints.

Following the bicameral Committee’s report, the Labour government published, in May 2004, the White Paper entitled *Fairness for All: a New Commission for Equality and Human Rights*. In that document, the need to establish a national human rights institution was primarily linked to the necessity of protecting the rights of minorities in order to ensure equality and equal opportunities among citizens: “The Government is responding to these challenges, both through new laws to advance equality, and programmes to tackle barriers to participation and reduce disadvantage (...). There is a clear need to provide coherent and integrated support to individuals who have rights under discrimination legislation, and to organisations which will have responsibilities for compliance”.

The document also highlighted the positive outcomes expected from the creation of a single national human rights institution: from the establishment of a body “strong

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

and authoritative for equality and human rights” to the adoption of a “cross-cutting approach” as the Commission’s working method, enabling it to “better tackle barriers and inequalities affecting several groups, and identify and promote strategic solutions”; from the provision of “advice and support on all discrimination issues and information on human rights, in an accessible and user-friendly way” to an enhanced capacity to “address the reality of the many dimensions of an individual’s identity, and therefore tackle discrimination on multiple grounds”; from simplified coordination with employers and service providers through a single access point to greater effectiveness in “promoting improvements to the delivery of public services... guidance and support on human rights good practice and compliance... a cross-cutting seamless approach on the full breadth of equality issues on a sector-by-sector basis”, for example with health authorities, local government and education providers; and finally, from the possibility of achieving “a more coherent approach to enforcing discrimination legislation” to the capacity to combine the strengths of the three pre-existing commissions “with the expertise from key organisations representing the new equality strands, identifying and promoting creative responses”.

*2.1. The Equality Act 2006 and the establishment of the Equality and Human Rights Commission: composition and appointment; autonomy, accountability and funding within the political-institutional framework*

As anticipated, following the opinion of the Joint Committee on Human Rights, Parliament ultimately enacted the Equality Act (EA) in 2006. Through this Act, in addition to the formal recognition of equality and the harmonisation of anti-discrimination law in the United Kingdom, the Equality and Human Rights Commission was established through the merger of three previously existing British authorities operating in the field of human rights protection—namely the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission—which were simultaneously dissolved.

This reorganisation purpose is expressly set out in the preamble, in which the Act defines itself as “an Act to make provision for the establishment of the Commission for Equality and Human Rights; to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to make provision about discrimination on grounds of religion or belief; to enable provision to be made about discrimination on grounds of sexual orientation; to impose duties relating to sex discrimination on persons performing public functions; to amend the Disability Discrimination Act 1995; and for connected purposes”.

Pursuant to Schedule 1 of the Act, the EHRC—classified as a non-departmental public body—is composed of between ten and fifteen Commissioners, appointed for a four-year term (subject to possible renewal), including the Chair and the Chief Executive. They are appointed by the Secretary of State (specifically, the Secretary of

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

State for Education, who also currently serves as Minister for Women and Equalities), on the basis of the following criteria: that candidates possess experience and knowledge relating to the matters within the Commission's remit ("experience and knowledge relating to the relevant matters"), or that they are "suitable for appointment for some other special reason".

Additional requirements provide that the Commission's membership must include:

- (a) a Commissioner who is (or has been) a disabled person;
- (b) a Commissioner appointed with the consent of the Scottish Ministers, with knowledge of conditions in Scotland;
- (c) a Commissioner appointed with the consent of the Welsh Ministers, with knowledge of conditions in Wales.

With regard to the procedures for appointing the Chair and the other members of the Board of Commissioners, these take the form of an open and public selection process initiated by the Commission itself when a vacancy arises. Within this procedure, an Advisory Assessment Panel is tasked with objectively assessing which candidates meet the eligibility criteria for the position and, following interviews with shortlisted candidates, identifying those deemed suitable for appointment. The Panel's assessments are then submitted to the Secretary of State, who makes the final decision on the appointment from among the eligible candidates. It should be noted at the outset that the Secretary of State is also vested with the power to dismiss a Commissioner where, in his or her judgment, that person is "unable, unfit or unwilling to perform his functions" (Schedule 1, para. 3).

From this account, it is apparent that the appointment procedure is not free from certain ambiguities. On the one hand, the public selection process is intended to ensure that appointments are made on the basis of the highest standards of evaluative impartiality; on the other hand, the decisive role of the Secretary of State—an actor within the executive branch—remains intact, albeit within the confines of the shortlist drawn up by the Panel. This is further compounded by the Secretary of State's power to remove Commissioners, albeit subject to the broadly and somewhat generically framed grounds for dismissal set out in the legislation.

That said, the Commission also stands in a relationship with Parliament, which exercises a supervisory role over the EHRC's activities, including the use of public funds. This oversight is reflected in particular in the obligation placed upon the EHRC to submit a regular annual report to the representative body; the report is transmitted by the Secretary of State to the Scottish Parliament and the Welsh Parliament as well, pursuant to paragraph 32 of Schedule 1.

As regards funding, the Commission negotiates its annual budget with the Cabinet Office, and in particular with the Government Equalities Office, as part of the spending review conducted by the Chancellor of the Exchequer and the Chief Secretary to the Treasury. In this context, each government department submits its budgetary request for the following financial year, while Parliament—more precisely,

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

the House of Commons—approves the allocation of resources as proposed by the Government through the Appropriation Act relating to the budgets of public departments.

In this respect, it is worth highlighting that at the time the Commission became operational in 2007, its funding amounted to approximately £70 million. Between 2010 and 2018, however, this figure was drastically reduced, falling to an annual budget of around £18 million and currently standing at approximately £17 million per year.

It is therefore unsurprising that, in a 2016 letter, a Member of the House of Commons expressed “deep concern” about a 25 per cent cut to the EHRC’s budget—also in connection with staff reductions decided by the Government and accepted by the Commission—emphasising the need to counter the “slow dismantling of that which is key to the cause of equality and human rights in our country”. It cannot be denied, then, that the Government’s power to determine the level of resources allocated to the Commission constitutes a potential constraint on its ability to discharge its functions effectively under conditions of autonomy and self-sufficiency vis-à-vis the executive.

Indeed, it has been widely observed that a persistent issue for all NHRIs lies in the fact that “Governments can endow NHRIs with strong mandates, to indicate compliance with external requirements imposed by international organisations, but they do not necessarily have to support their NHRIs to carry out their mandates”, retaining the power to “allocate insufficient funds, or no resources beyond minimum requirements, making them unable to enforce the mandated powers they hold”. This concern underscores, on the one hand, that theoretical commitments remain ineffectual in the absence of adequate means for their implementation; on the other hand, it betrays the suspicion that governments themselves may not be fully convinced of the importance of the mandate of such bodies, or may even be reluctant to give full effect to the protection of human rights.

*2.2. The powers of the EHRC between general powers and enforcement powers*

The general duty of the Commission, set out in section 3 of the Equality Act, provides that it “shall exercise its functions with a view to encouraging and supporting the development of a society in which:

- (a) people’s ability to achieve their potential is not limited by prejudice or discrimination;
- (b) there is respect for and protection of each individual’s human rights;
- (c) there is respect for the dignity and worth of each individual;
- (d) each individual has an equal opportunity to participate in society; and
- (e) there is mutual respect between groups based on understanding and valuing diversity and on shared respect for equality and human rights”.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

As is apparent from the repeated use of the term, “respect” constitutes the core around which the Commission’s mission is structured. The objective entrusted to the body is undoubtedly desirable, yet equally ambitious: namely, to contribute to the development of a social environment in which an attitude of mutual respect between individuals and between groups is able to take root.

Against this teleological background are situated, first, the Commission’s general powers, which encompass a broad range of tasks and competences of a markedly promotional, educational and persuasive nature, aimed at the social internalisation of human rights. These include, above all, the Commission’s activities consisting in its power to “publish or otherwise disseminate ideas or information, undertake research, provide education or training, [and] give advice or guidance” (section 13). Alongside these, and more incisively, stand the enforcement powers conferred upon the Commission. These include the power to conduct inquiries, whether following complaints or on its own initiative (section 16), as well as the power to carry out investigations (section 20) and to issue unlawful act notices (section 21).

Turning first to inquiries, it is worth noting that Schedule 2 of the Equality Act, in regulating their conduct, imposes a number of procedural obligations on the Commission with regard to adversarial fairness. In particular, it requires that the persons concerned be informed of the opening of the inquiry, of “the nature of the unlawful act which the Commission suspects”, and be afforded “an opportunity to make representations about the proposed terms of reference”.

However, as regards the outcomes of inquiries, the Act—albeit not without a degree of logical inconsistency—appears to exclude the possibility that specific allegations of responsibility for the violation under investigation may be made in the course of the inquiry. Section 16(2)(a) provides that “in continuing the inquiry the Commission shall, so far as possible, avoid further consideration of whether or not the person has committed an unlawful act”; even more explicitly, it is stipulated that, in the report issued at the conclusion of the inquiry, the Commission “may not state (whether expressly or by necessary implication) that a specified or identifiable person has committed an unlawful act” (para. 3(a)). The consequence is that, whatever the findings reached at the conclusion of the inquiry, the Commission may not establish the responsibility of those who have engaged in conduct contrary to the rights protected by the Equality Act, not even implicitly—an evident attempt to preclude any circumvention of the prohibition.

Indeed, if one considers the most recent inquiries conducted by the Commission in relation to adult social care in England and Wales (health and social services being a devolved matter in Scotland and Northern Ireland) and to access to legal aid for discrimination cases, it may be observed that the Commission’s final reports do not attribute specific responsibility to any particular actor. Rather, they elaborate recommendations, primarily addressed to the relevant public authorities, aimed at fostering improved protection of the rights concerned in light of the harmful situations revealed by the inquiry.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

Significantly different from inquiries are the investigations that the Commission may conduct pursuant to section 20 of the Equality Act. This power is of greater substantive weight, as it entails the possibility of attributing to a specific subject either positive responsibility for having committed an unlawful act, or negative responsibility for having failed to take the actions that would have been necessary to prevent a violation of the rights protected by the Equality Act.

Moreover, whereas at the conclusion of an inquiry the Commission may, at most, issue recommendations, in the case of investigations—once it has been established “that a person has committed an unlawful act or has failed to comply with a requirement”—the Commission is empowered to issue an unlawful act notice under section 21. This is done for the purpose of requiring the subject concerned “to prepare an action plan for the purpose of avoiding repetition or continuation of the unlawful act”, as well as to “recommend action to be taken by the person for that purpose”.

It should also be added that, where the Commission considers that a person “is likely to commit an unlawful act”—for example because no action plan has been put in place to bring discriminatory conduct to an end—it may make use of the power conferred upon it by section 24 of the Equality Act. This consists in the power to bring proceedings directly before a County Court or, in Scotland, before the Sheriff, in order to seek an injunction or an interdict preventing the commission of an unlawful act, and thus of discrimination within the meaning of the Equality Act. Paragraph 3 of the same provision further empowers the Commission to apply to the courts so that the subject investigated may be compelled to comply with the Commission’s decision or with what has been ordered by the court.

Confirmation of the distinction outlined above may be found in the fact that, whereas inquiries are not subject to judicial challenge, investigations—or more precisely, the unlawful act notices resulting from them—may be appealed, in view of their potential consequences, before employment tribunals (where they concern discrimination in the context of employment relationships) or before a County Court (or the Sheriff in Scotland). In such cases, the courts retain the power to “affirm, annul or vary a notice or requirement for the preparation of an action plan” issued by the Commission.

Still with reference to the judicial dimension, it should be specified that, pursuant to section 28, the Commission may “assist an individual who is or may become a party to legal proceedings”, providing support, under paragraph 4, in the form of legal advice, legal representation, or any other form of assistance.

Finally—and by no means least in terms of significance—mention must be made of the power conferred by section 30, which provides that the Commission “shall have capacity to institute or intervene in legal proceedings, whether for judicial review or otherwise, if it appears to the Commission that the proceedings are relevant to a matter in connection with which the Commission has a function”. This provision formally establishes the Commission’s capacity to intervene as *amicus curiae* in judicial proceedings concerning matters falling within its remit, and also recognises its full

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

standing to initiate legal proceedings itself, thus acting as a bearer of collective interests capable of justifying its locus standi before the courts.

*2.3. The Equality Act 2010 and the “protected characteristics”*

A few years after the enactment of the Equality Act 2006, a new statute was adopted which reshaped the scope of the Commission’s activity, particularly with regard to the identification of the situations on which its rights-protection mandate is to focus. This reform entailed the repeal, in this respect, of the relevant provisions of the earlier Act, while leaving unaffected the range of powers already conferred upon the Commission in 2006 and discussed in the preceding section.

More specifically, the Equality Act 2010 sets out an explicit list of the “protected characteristics” to be safeguarded and imposes upon public authorities a duty to act “in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage” (section 1).

The protected characteristics are listed in section 4 of the Act and include, in particular: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

As regards the objectives to be pursued, these are specified in section 8, which provides that “the Commission shall, by exercising the powers conferred by this Act: (a) promote understanding of the importance of equality and diversity; (b) encourage good practice in relation to equality and diversity; (c) promote equality of opportunity; (d) promote awareness and understanding of rights under the Equality Act 2010; (e) enforce the Equality Act; (f) work towards the elimination of unlawful discrimination; and (g) work towards the elimination of unlawful harassment”.

As is apparent, the Commission’s mandate remains oriented towards the general promotion of the values of equality and diversity and of good practices connected with those values. At the same time, it introduces a more precise delineation of the areas in which the risk of discrimination is particularly acute and where the Commission’s contribution is most needed. This specification is articulated across different sectors in which discriminatory situations based on protected characteristics may arise, ranging from broad fields such as employment and education to more circumscribed contexts, such as access to transport for persons with disabilities.

With regard to the situations capable of giving rise to an unlawful act, the Act draws a distinction between two forms of discrimination. “Direct discrimination”, which is always prohibited under section 13, occurs where “a person, because of a protected characteristic, treats another less favourably than they would treat those without the characteristic”. By contrast, “indirect discrimination”, governed by section 19, arises where “a person applies a ‘provision, criterion or practice’ which, although applied to persons with different protected characteristics (for example, males and females), puts one group at a particular disadvantage (for example, disadvantages

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

females but not males)”. Given the indirect nature of its effects and the absence of intentional harm, such conduct may nevertheless be regarded as lawful where it is “proportionate” to the pursuit of a “legitimate aim”.

As has been noted in British scholarship, the Equality Act 2010 constitutes a “detailed anti-discrimination legislation” which “codified the law in this regard in Britain, after decades of incremental development”. Scholarly analysis has also highlighted the differences between the Equality Act and the European Convention on Human Rights, incorporated through the Human Rights Act, and in particular Article 14 ECHR. Whereas the Equality Act 2010 prohibits discrimination only on the basis of a more limited and specified set of “protected characteristics”—such as race or ethnicity, sex, sexual orientation, disability, and religion or belief—Article 14 ECHR enshrines a more general principle of equality.

From the perspective of the effectiveness of anti-discrimination clauses, the comparison further reveals that, while the Human Rights Act operates primarily in a vertical dimension and has only an “indirect horizontal effect” on laws governing relations between private parties, the provisions of the Equality Act apply not only to public bodies—upon which there rests in any event a “positive duty” to eliminate discrimination and promote equality of opportunity—but also to private bodies.<sup>11</sup>

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<sup>11</sup> Among British scholars, Jeffrey Jowell has argued that the principle according to which “persons should be treated as having ‘equal worth’ and not be discriminated against without adequate justification” is “constitutive of democracy” (J. Jowell, *Is Equality a Constitutional Principle?*, in *Current Legal Problems*, 47, 1994, p. 7). In Jowell’s view, it was necessary in particular to move beyond a formalistic conception of equality as a component of administrative rationality review, and instead to regard equality as a core structural common law norm of the British constitutional order. On this understanding, the principle of “equal worth” could serve as an autonomous basis for judicial review. The incorporation of the European Convention on Human Rights through the Human Rights Act 1998 subsequently introduced Article 14 ECHR into domestic law, prohibiting discrimination in the enjoyment of other Convention rights, while the Equality Act 2010 provided the principle with a more organic and coherent statutory framework. Nevertheless, even though courts have “repeatedly emphasised the constitutional significance of the equality principle”, they have remained reluctant to recognise equality as an autonomous ground of review of administrative action, instead subsuming it within the broader framework of reasonableness review, under the general rubric of *Wednesbury unreasonableness*. This approach was reaffirmed in the recent decision of the Supreme Court in *R (Gallagher Group Ltd) v Competition and Markets Authority*, where Lord Sumption stated that “the common law principle of equality is usually no more than a particular application of the ordinary requirement of rationality imposed on public authorities” ((2018) UKSC 25, [50]). On these issues, see also C. O’Cinneide, *Equality – A Core Common Law Principle, or ‘Mere’ Rationality?*, in M. Elliott - K. Hughes (eds.), *Common Law Constitutional Rights*, Oxford, 2020.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

#### *2.4. Notes on the EHRC's practice*

An examination of the practice of the EHRC reveals that the Commission categorises its activities under a variety of headings, reflecting the multifaceted nature of its mandate.

In particular, the Equality and Human Rights Monitor section brings together the reports published by the Commission on the state of human rights. In its most recent report, published in 2023—five years after the previous one—the Commission focuses primarily on the impact of Brexit and the COVID-19 pandemic on persons with protected characteristics. It is also worth noting that, while the Commission does carry out several inquiries and investigations—albeit in smaller numbers than one might expect—legal actions are even rarer. By way of illustration, in 2025 there was only a single case in which legal assistance was provided pursuant to section 28 of the Equality Act, concerning proceedings relating to the obligation of railway companies to assist disabled passengers.

More significantly, at least in quantitative terms, it appears to be the Commission's activity in providing advice to Parliament and Government in relation to legislative proposals affecting the protection of protected characteristics.

Among the most recent instances of such advice, mention may be made of the Commission's intervention in response to the call for views issued by the Scottish Health, Social Care and Sport Committee in relation to the Assisted Dying for Terminally Ill Adults (Scotland) Bill. This is an area that is particularly sensitive in terms of potential discriminatory risks and has already been the subject of debate and several legislative initiatives in the Westminster Parliament, as well as of intervention by the Supreme Court. In that context, the Commission's submission focused on the potential impact of assisted dying legislation on the rights of disabled people, including with specific reference to the definition of terminal illness.

Reference may also be made to the investigation concluded in February 2024 concerning alleged acts of ethnic discrimination committed by the company Pontins in the management of its holiday parks. At the conclusion of the investigation, the Commission found that the service provider had indeed engaged in direct discrimination, by affording less favourable treatment to certain categories of persons on the basis of race, a protected characteristic under section 9 of the Equality Act 2010. Accordingly, the Commission issued an unlawful act notice pursuant to section 21 of the Equality Act, requiring the company to draw up and submit to the Commission an "action plan for the purpose of avoiding repetition or continuation" of the discriminatory conduct.

#### *2.5. An explicative case: the legal definition of "woman" between the EHRC and the UK Supreme Court*

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

The recent case decided by the UK Supreme Court concerning the legal definition of “sex” under the Equality Act 2010 saw the active involvement of the Commission throughout the various stages of the judicial *iter*.

Given the significant public resonance of the case, it is useful to recall that the issue was brought before the Court following an application lodged by the association For Women Scotland, challenging the Gender Representation on Public Boards (Scotland) Act 2018. The applicant argued that section 2 of the Act was incompatible with the Equality Act 2010—while also alleging a violation of the legislative competence settlement between the devolved Nation and the United Kingdom under the Scotland Act—insofar as it provided that the term “woman” included “a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female”.

Before the matter came before the Judges of Middlesex Guildhall, the Commission had set out its position on the correct interpretation of the Equality Act provisions concerning the protected characteristics of sex and gender reassignment (sections 7, 11 and 212 of the Equality Act 2010) in a statement issued on 3 April 2022. In that statement, the Commission emphasised in particular that the term “sex” as used in the Act “is understood as binary—being male or female—with a person’s legal sex being determined by what is recorded on their birth certificate, based on biological sex”. Consequently, it stated that “a trans woman who does not hold a Gender Recognition Certificate is legally male and is treated as a man for the purposes of the sex discrimination provisions”, whereas “a trans woman with a Gender Recognition Certificate” should be treated under the Act “as a woman”.

The Commission thus distinguished transgender persons who hold a Gender Recognition Certificate pursuant to section 9(1) of the Gender Recognition Act 2004—who are to be regarded as belonging to their “acquired” gender (“where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman)”—and those who do not hold such certification, who remain identifiable by the biological sex recorded on their birth certificate, while nevertheless remaining protected as men and women under the Equality Act about the forms of sex discrimination specified therein.

In a subsequent letter dated 3 April 2022, addressed to the Secretary of State for Business, Energy and Industrial Strategy and to the Minister for Women and Equalities, the Commission—responding to a request as to whether parliamentary intervention was advisable concerning the definition of the term “sex” used in the Equality Act—further emphasised that identifying “sex” as biological sex would lead to “greater legal clarity”, particularly in certain areas identified by the Commission, and in particular with reference to occupational requirements (namely, requirements that

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

may be imposed on employers and other organisations to ensure gender equality). This position did not, however, exclude the possibility that transgender persons holding a full Gender Recognition Certificate under the Gender Recognition Act 2004 could be recognised as belonging, in legal terms, to the sex acquired upon completion of the transition process.

The position articulated in the two documents referred to above was subsequently reiterated by the Commission in the proceedings before the UK Supreme Court, in which it participated as *amicus curiae*, submitting written observations pursuant to the power conferred upon it by section 30(1) of the Equality Act 2006 to intervene in proceedings relevant to matters falling within its remit.

As recorded by the Supreme Court in the judgment under consideration, the Commission in particular drew the Justices' attention to its interpretation of the terms "sex", "man" and "woman" as used in the Equality Act 2010, reiterating that those terms should be understood as encompassing individuals whose sex had been legally certified under the Gender Recognition Act following the transition process.

On this point, the Court observed that such a "wider definition" could give rise—drawing on the concerns expressed by the Commission itself in the aforementioned letter to the Secretary of State and the Minister for Women and Equalities—to several difficulties in the application of the Equality Act, particularly in the areas of: (i) discrimination on the grounds of pregnancy and maternity; (ii) protection against discrimination on grounds of sexual orientation, and in particular the risk that lesbians and gay men, for whom the biological aspect of same-sex attraction is defining, might be prevented from forming associations which exclude trans women and trans men respectively; (iii) single-sex services; and (iv) communal accommodation.

Such uncertainty in the application of the Act, the Court stressed, was a matter that "Parliament should urgently resolve" (para. 33).

For present purposes, it is noteworthy that the Court paid close attention to the position adopted by the EHRC in support of its interpretation of the Equality Act (paras. 247 ff.). At the same time, it is equally significant that the Court was careful to clarify that, notwithstanding the Commission's mandate and the powers conferred upon it in the field of human rights protection, "it is not for the EHRC to determine the meaning of sex in the EA 2010. That is for the courts to do" (para. 247). Through these words, the Court drew a clear line of demarcation between the Commission's role in advocacy—and, at most, in prompting legislative intervention in the field of rights—and the power and duty of statutory interpretation, which, within the common law tradition, can only lie with the courts for the purpose of resolving concrete cases brought before them.

On the basis of this premise, the Justices—once again departing from the Commission's interpretative approach (para. 250)—held that, to give effect to the

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

Equality Act's provisions on the protected characteristic of sex, the most reasonable reading of the statute is one grounded in biological sex.<sup>12</sup>

Without entering further into the merits of the case, it should be noted that, in the immediate aftermath of the judgment, the EHRC adopted an interim guidance—likely to evolve into a Code of Practice pursuant to section 14 of the Equality Act 2006—addressed to a range of organisations, and in particular to workplaces and services open to the public (including hospitals, restaurants, shops, associations with more than twenty-five members, schools, and similar bodies). Through this guidance, the Commission sought to clarify the implications of the Court's decision, while also indicating practical measures to be adopted in order to avoid potentially discriminatory conduct on grounds of sex.

It is difficult to assess whether this initiative is also capable of reinforcing the obligation—laid down in section 15(4) of the Equality Act 2006—requiring all courts and tribunals, including the Supreme Court, to “take into account a relevant statutory code of practice published by the EHRC in any case in which it appears to the court or tribunal to be relevant”. What is clear, however, is that, as shown above, the force of this requirement is significantly circumscribed by the Supreme Court's firm assertion of the judiciary's primary role in the interpretation of legislation, even vis-à-vis bodies specifically entrusted with the protection of human rights and the combating of discrimination.

### *3. The process leading to the establishment of the Netherlands Institute for Human Rights*

Turning now to the other national institution for the promotion and protection of human rights examined in this contribution, the analysis may begin with the genesis of the Netherlands Institute for Human Rights (hereinafter also referred to as the Institute or NIHR), which became operational in 2012.

The first step towards the establishment of a human rights body in the Netherlands was represented by a document produced in 1999 by the Dutch Section of the International Commission of Jurists.

It was not until 2005 that the Government, in the context of its campaign for membership of the United Nations Human Rights Council, formally declared its intention to endow the country with a national human rights institution, explicitly modelled on the Paris Principles and on the resolution of the European Parliament concerning NHRIs.

The fruitless passage of several subsequent years prompted the National Ombudsman, the Data Protection Authority, the Equal Treatment Commission (the

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<sup>12</sup> For a more specific approach to the Court's arguments and for the British and Italian bibliography about the judgment see F. Nania, *La derogabilità/disapplicazione del diritto ad essere riconosciuti con il proprio “certificata sex” in una recente pronuncia della Corte Suprema del Regno Unito*, in *Diritti Comparati*, 18 novembre 2025.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

body which, as will be seen, constituted the institutional basis upon which the new Authority was built), and the Netherlands Institute of Human Rights to take the initiative in drafting specific reports. Through these reports, the need for the establishment of a human rights Authority was presented to the Government as no longer deferrable.

Of particular interest—both for understanding the reasons advanced in favour of creating the new body and for gaining insight into the constitutional context within which the prospective Institute for Human Rights was to be situated—is the Explanatory Memorandum of the House of Representatives of the States General (the Dutch Parliament), entitled Establishment of the Netherlands Institute for Human Rights, published in the course of the parliamentary process leading to the adoption of the Act.

A reading of the document first of all reveals with particular clarity the close relationship of derivation that was identified between the establishment of the NIHR and the principle enshrined in the amended Article 90 of the Constitution of the Netherlands, according to which “the Government shall promote the development of the international legal order”. The Constitution itself was thus understood to require such a form of implementation of the international rule of law in the field of human rights protection.

At the same time, it is well known that, within Dutch constitutional experience, international law plays a role of such significance that it may prevail even over the Basic Law itself. Suffice it to note that constitutional scholarship does not hesitate to assert that “the Constitution does not play the lead role”, to the extent that “issues of constitutionality of legislation are often downplayed as they are not justiciable in any case”, with the result that “compatibility with fundamental principles is often phrased in terms of compatibility with human rights treaties”. Accordingly, it has been argued in equally categorical terms that “the legal and political Authority of the Constitution is thus overshadowed by European and international (human rights) law (mainly ECHR and EU law), which operates as a substitute constitution”. From this follows the inevitable conclusion that “the limits of governmental and legislative action are found in international treaties”,<sup>13</sup> without any reservation as to the modalities through which international law—whether customary or treaty-based—is incorporated into the constitutional system, and without any claim to preserve the priority of the national constitution in terms of the superior normative force of its fundamental principles.<sup>14</sup>

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<sup>13</sup> L.F.M. Besselink, *The Kingdom of the Netherlands*, in L.F.M. Besselink - P. Bovend'Eert - H. Broeksteeg - R. de Lange - W. Voermans (eds.), *Constitutional law of the EU Member States*, Alphen aan den Rijn, 2014, p. 1207.

<sup>14</sup> It is always useful to recall that, within the Italian constitutional framework—where, as is well known, the effectiveness of customary and treaty-based international law is recognised by Articles 10(1) and 117(1) of the Constitution—the issue of “controlimiti” has been addressed by the Constitutional Court. This doctrine has been developed with specific reference to the operation of the fundamental principles enshrined in Articles 2 and 24 of the Constitution in relation to State immunity from civil

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

Further observations concerning the role of the NIHR and the configuration of its competences and duties may also be drawn from the document produced by the parliamentary assembly.

First, the Memorandum under consideration set out the main features that were to characterise the newly established Authority. It emphasised, above all, the need to endow the new body with a broad mandate in the field of the promotion of human rights protected not only by the national Constitution, but also by international and European instruments in this area. These ranged from more “general” sources—such as the Charter of Fundamental Rights of the European Union, the United Nations Universal Declaration of Human Rights and the European Convention on Human Rights—to instruments specifically aimed at the protection of the rights of particular categories of individuals.

As regards the statutory duties incumbent upon the Authority, the Memorandum referred to the power to conduct investigations; to produce reports and recommendations; to provide advice to political and administrative bodies in relation to draft legislation and ministerial orders liable to affect human rights; to encourage research in the field of human rights; and to call for the ratification and implementation

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jurisdiction for war crimes and crimes against humanity, most notably in judgment no. 238 of 2014 (see M. Luciani, *I controlimiti e l'eterogenesi dei fini*, in *Questione Giustizia*, 1, 2015, p. 84 ff.). The “controlimiti” doctrine has also arisen in constitutional case law concerning the limits to the direct applicability of European Union law—at least in its self-executing dimension—within the Italian legal order pursuant to Article 11 of the Constitution. Beginning with judgment no. 183 of 1973 and extending to order no. 24 of 2017, the Constitutional Court has developed the specific countervailing category of the “supreme principles” (*principi supremi*) of the Constitution. On the “controlimiti” doctrine in constitutional jurisprudence see at least M. Cartabia, *Principi inviolabili e integrazione europea*, Milano, 1995; P. Faraguna, *Ai confini della Costituzione. Principi supremi e identità costituzionale*, Milano, 2015, p. 63 ff.; A. Ruggeri, *Rapporti tra Corte costituzionale e Corti europee, bilanciamenti interordinamentali e “controlimiti” mobili, a garanzia dei diritti fondamentali*, in *Rivista AIC*, 1, 2011, p. 8 ff.; A. Celotto - T. Groppi, *Diritto UE e diritto nazionale: primauté vs. controlimiti*, in *Rivista italiana di diritto pubblico comunitario*, 2004, p. 1309. On the doctrine of “controlimiti” and on the relationship between the Constitutional Court and the Court of Justice of the European Union, see also the volume edited by A. Bernardi, *I controlimiti. Primato delle norme europee e difesa dei principi costituzionali*, Acts of the Conference of the PhD Programme European Union Law and National Legal Orders, Department of Law, University of Ferrara, 7–8 April 2016, Napoli, 2017, in particular the contributions—reflecting the diversity of scholarly positions on the issue—by M. Luciani, *Il brusco risveglio. I controlimiti e la fine mancata della storia costituzionale*, p. 63 ff.; A. Ruggeri, *Primato del diritto sovranazionale versus identità costituzionale? (Alla ricerca dell'araba fenice costituzionale: i “controlimiti”)*, p. 19 ff.; F. Viganò, *Il caso Taricco davanti alla Corte costituzionale: qualche riflessione sul merito delle questioni, e sulla reale posta in gioco*, p. 233 ff.; R. Bin, *Taricco, una sentenza sbagliata: come venirne fuori?*, p. 291 ff.; O. Chessa, *Meglio tardi che mai. La dogmatica dei controlimiti e il caso Taricco*, p. 301 ff.; N. Lupo, *The Advantage of Having the “First Word” in the Composite European Constitution*, in *Italian Journal of Public Law*, 2, 2018, (Special Issue on *Constitutional Adjudication in Europe between Unity and Pluralism*, edited by P. Faraguna, C. Fasone and G. Piccirilli), p. 194 ff.; F. Salmoni, *Unità nella diversità o diversità nell'unità?*, in *Rivista AIC*, 2, 2019, p. 539 ff.; O. Pollicino - M. Bassini, *When Cooperation Means Request for Clarification, or Better for “Revisitation”*, in *Verfassungsblog*, 30 January 2017.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

of international treaties aimed at the protection of human rights. All these competences were to be exercised in a manner conducive to cooperation with civil society, and in particular with non-governmental organisations active in the field of human rights.

*3.1. The NIHR: composition, appointment and funding*

The proposal set out in the Memorandum was ultimately taken up by the Government, which presented an initial draft in 2008, followed by the bill that was to become the Netherlands Institute for Human Rights Act, namely the statute establishing the Netherlands Institute for Human Rights. The Institute thus became operational as of 2012, inheriting the functions of the pre-existing Equal Treatment Commission and extending its field of competence to encompass the full spectrum of human rights.

As stated in Chapter 6 of the Act, concerning transitional and concluding provisions, a “conversion” was effected of the members of the former Commission, as well as of all staff members, pursuant to section 36, into members of the Institute. Section 35 provides in this respect that “the appointments of the members and alternate members of the Equal Treatment Commission, including the chair and two assistant chairs, are converted by operation of law into appointments of the members and alternate members of the Netherlands Institute for Human Rights”.

Turning now to an examination of the institutional configuration of the Institute under the Act just referred to, it should be noted at the outset that it largely mirrors the British model analysed in the preceding section. This is so notwithstanding the importance—when identifying the scope of action of the new Institute—of the long-standing presence in the Netherlands of a body such as the Ombudsman, which may be regarded, *ante litteram*, as a precursor of those institutions entrusted with the protection of fundamental rights through forms of intervention distinct from the judicial remedy aimed at the restitution of infringed rights.<sup>15</sup>

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<sup>15</sup> In the Dutch context, a national Ombudsman had in fact been in place since 1982, entrusted with the protection of fundamental rights—including those deriving from international human rights instruments—with particular regard to relations between individuals and the public administration. The National Ombudsman constitutes an independent, single-member and impartial body to which citizens may turn where they consider that a public Authority has acted in violation of their fundamental rights. Although the Ombudsman’s decisions and recommendations are not legally binding, the institution is endowed with extensive investigative powers, enabling it to conduct investigations either on its own initiative or in response to individual complaints. The Ombudsman’s activity is grounded in a specific statute—the *Wet Nationale Ombudsman*—and is further regulated by the *Algemene wet bestuursrecht* (General Administrative Law Act), as well as by the Dutch Constitution (Article 78a). On the role of the Ombudsman, see in particular J.B.J.M. ten Berge, *The National Ombudsman in the Netherlands*, in *Netherlands International Law Review*, 32, 2, 1985, p. 204 ff.; and J.B.J.M. ten Berge - P. M. Langbroek, *Surplus Value of the Ombudsman*, in *The Danish Ombudsman 2005*, Part III, Copenhagen, 2005, p. 103 ff. In that latter contribution, with specific reference to the Ombudsman’s “persuasive” role in the Dutch context, it is observed that “in almost 90% of cases the administrative authorities do follow

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

Having concluded this preliminary observation, attention may now turn to sections 14 and following of the Act, which provide that the NIHR is composed of a minimum of nine and a maximum of twelve members, including a chair and two assistant chairs. Members are appointed for a term of six years, which is renewable, the statute not laying down any explicit limitation on reappointment.

Article 4 of the establishing Act states that “the Institute is independent in the performance of its duties”, a status that is reflected above all in the procedures governing the appointment of its members and the circumstances in which they may be removed.

Members of the Institute are appointed by royal decree upon the recommendation of the Minister of Security and Justice, who in turn receives an opinion from an Advisory Council composed of the National Ombudsman, the President of the Data Protection Authority, the President of the Council for the Judiciary, and between a minimum of four and a maximum of eight members. These latter members, appointed for a term of four years and eligible for a maximum of two terms, are selected from among non-governmental organisations active in the field of human rights protection, workers’ organisations, and academia (sections 15 and 16). The Advisory Council—also in consultation with the serving members of the Institute—formulates its advice having regard to “the need for an expert and independent Institute and to the wish to ensure diversity in its membership” (section 16).

As may be seen, this is a complex procedure in which, to counterbalance the role of the executive (apart from the formal designation of appointment by royal decree), provision is made for the involvement of an ad hoc consultative body intended to be representative of civil society and thus external to the political-institutional circuit. This is so although the members of the Advisory Council are themselves appointed by the Minister of Security and Justice in agreement with the Minister of the Interior and Kingdom Relations, following mandatory consultation with the serving members of the Institute, the National Ombudsman, and the Chairs of the Data Protection Authority and the Council for the Judiciary.

Turning now to the regulation governing the removal of members of the Institute, the establishing Act refers to section 13 of the Autonomous Administrative Authorities Framework Act. This statute governs the legal regime applicable to independent administrative authorities and, in particular, entrusts the power of removal to the Government—specifically, in the case of the NIHR, to the Minister of Security and Justice—subject to the safeguard that “suspension and dismissal” may occur only where “the person concerned is unsuited or incompetent to do the job in question, or for other compelling reasons relating to the person concerned”.

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the decision of the ombudsman. The conclusion is that, although the ombudsman is not a judge, his decisions have an important effect as far as the complainant is concerned” (p. 8).

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

Having addressed the appointment of members, attention may now be given to the funding arrangements of the Institute. In this respect, it may be observed that funding is likewise regulated in accordance with the general principles laid down in the Autonomous Administrative Authorities Framework Act. In particular, pursuant to section 29 of that Act, the decision regarding the budget of an independent Authority is subject to ministerial approval—in the present case, by the Ministry of Justice and Security—which may be refused only where the financial resources are “incompatible with the law or the public interest”.

As regards the management of resources, the Institute retains—by virtue of the principle of independence enshrined in section 4 of the establishing Act—autonomy in the administration of the funds allocated to it, particularly in setting its own priorities in the pursuit of its institutional objectives. Nevertheless, like other independent administrative authorities, it remains subject to financial oversight pursuant to section 27 of the Autonomous Administrative Authorities Framework Act.

*3.2. The institutional mandate of the Institute*

As regards the institutional mandate of the Authority, section 1(3) of the Act provides that “the object of the Institute is to protect human rights, including the right to equal treatment, in the Netherlands, to increase awareness of these rights and to promote their observance”.

This formulation largely mirrors that found in the British legislation, and reference may therefore be made to the analysis already conducted concerning the task of protecting and promoting the plurality of human rights, albeit with particular emphasis placed on equal treatment. At the same time, as clarified in the Memorandum, the NIHR “does not concern itself with all rights to the same extent”, it being within the Authority’s discretion “to decide on its work and activities and also therefore to set priorities”.

Turning to the statutory duties, section 3 sets out a list that largely reflects the guidelines previously outlined in the Memorandum and which, in view of its specificity, is worth reproducing in full. The Institute is empowered:

- (a) to conduct investigations into the protection of human rights, including investigating whether discrimination has taken or is taking place and publishing its findings on this as referred to in section 10;
- (b) to report on and make recommendations about the protection of human rights, including annual reporting on the human rights situation in the Netherlands;
- (c) to provide advice as referred to in section 5;
- (d) to provide information and encourage and coordinate education about human rights;
- (e) to encourage research into the protection of human rights;

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

(f) to cooperate on a systematic basis with civil society organisations and with national, European and other international institutions engaged in the protection of one or more human rights, for example by organising activities in partnership with civil society organisations;

(g) to press for the ratification, implementation and observance of human rights treaties and for the withdrawal of reservations to such treaties;

(h) to press for the implementation and observance of binding resolutions of international organisations on human rights;

(i) to press for observance of European or international recommendations on human rights.

This enumeration undoubtedly displays a greater degree of accuracy and completeness than its British counterpart, particularly in light of the central role accorded to the task of “pressing” entrusted to the Institute. This, in itself, appears to confer upon the NIHR a broad form of legitimacy, at least insofar as it enables the Authority to undertake unnamed activities and initiatives vis-à-vis those interlocutors whom it deems necessary to sensitise in order to implement human rights standards, especially by giving effect to the guidance issued by international organisations.

*3.3. The powers of the Institute, with particular reference to the power to conduct investigations*

As regards the specific powers conferred upon the Institute, these range from the general power to provide advice to political and institutional bodies in the process of adopting legislative and administrative measures “that relate directly or indirectly to human rights” (section 5), to the power to conduct investigations under section 10, and to the power to initiate legal proceedings provided for in section 13.

It scarcely needs to be emphasised that the power to provide advice enables the Institute to assert its views vis-à-vis the government–parliament circuit as well as the public administration. This is all the more significant given that such advice may be issued either in response to a request from the competent Ministers or from both Chambers of Parliament, or on the Institute’s own initiative.

Concerning investigations, section 10 provides that the Institute may, in response to a formal request, “conduct an investigation to determine whether discrimination as referred to in the Equal Treatment Act, the Equal Treatment (Men and Women) Act or Article 646, Book 7 of the Civil Code has taken or is taking place” (para. 1), and publish its findings. It is further specified that an investigation may also be initiated by the Institute on its own motion “to determine whether such discrimination is systematically taking place”. Not coincidentally, an examination of the Institute’s practice reveals that investigations initiated on the Institute’s own initiative are by far the most numerous.

In any event, a request for the initiation of an investigation by external actors may be submitted by:

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

(a) a person “who believes that he or she is a victim of discrimination within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or Article 646, Book 7 of the Civil Code”;

(b) a “natural or legal person or competent Authority wishing to know whether it is discriminating within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or Article 646, Book 7 of the Civil Code”;

(c) a “person responsible for deciding on a dispute concerning discrimination within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or Article 646, Book 7 of the Civil Code”; (d) a “works council or comparable employee participation body which believes that discrimination within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or Article 646, Book 7 of the Civil Code is taking place in the organisation for which it was appointed”; (e) an “association having full legal capacity or a foundation which, in accordance with its constitution, represents the interests of those whose protection is the objective of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or Article 646, Book 7 of the Civil Code”.

It follows that the possibility of submitting complaints with a view to triggering an investigation by the Institute is not confined to legal persons or associations, but may also originate from individuals who consider themselves to have been subjected to discrimination within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act, or Article 646 of Book 7 of the Civil Code (which governs various types of contracts, including contracts of employment).

Given the reference to anti-discrimination legislation, the Institute, in its capacity as an equality body, may entertain complaints alleging a wide range of discriminatory practices: from discrimination on grounds of race or ethnic origin, religion or belief, and political opinion, to discrimination based on sex or gender (including pregnancy), sexual orientation, marital status, nationality, age, disability or chronic illness. It should be emphasised, however—as already noted in the discussion of the British system—that such forms of discrimination fall within the Institute’s competence only insofar as they arise in specifically identified areas, such as employment, education, housing, healthcare, and similar fields.

It is also worth drawing attention to the fact that the Institute is precluded from dealing with complaints concerning the conduct of public administrative authorities. This limitation, already highlighted in the Memorandum, is clearly intended to avoid overlaps between the powers of the NIHR and those of the National Ombudsman in the field of human rights protection. While borderline situations cannot be entirely ruled out—as evidenced by the establishment of a coordination mechanism between the two bodies—it nevertheless remains the case that only the Ombudsman “is the appropriate Authority to hear complaints about administrative authorities, even where they concern human rights” (Memorandum, at 18).

In light of the foregoing, it should further be noted that, outside the aforementioned sectors, the role of the Institute is essentially reduced to that of an

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

information and guidance point, in the sense that it directs individuals who complain of other types of grievances—particularly those of a different nature—towards the competent bodies, and in particular to the Data Protection Authority or to the National Ombudsman.

Returning to the procedural framework of investigations, following a preliminary assessment the NIHR may request additional information and hear the parties concerned. At the conclusion of the investigation, the Institute issues a reasoned decision which, although not legally binding in a strict sense, is intended to rely on its moral Authority and public support in order to ensure effective follow-up to any recommendations aimed at securing the cessation of the discriminatory conduct (section 11).

As anticipated, the Authority is also vested with the power to initiate legal proceedings (section 13)—again, within the scope of situations deemed to be in breach of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or Article 646 of Book 7 of the Civil Code—in order to seek a judicial declaration that the impugned conduct is unlawful and that its effects be brought to an end.

#### *3.4. Notes on the NIHR's practice: the META case*

Among the most recent cases addressed by the NIHR, the decision adopted in February 2025 concerning the algorithm used by the social network META is particularly emblematic.<sup>16</sup>

The case originated from a petition submitted to the Institute jointly by two non-governmental organisations, Global Witness and Bureau Clara Wichmann. The petition alleged that the algorithm employed by META resulted in gender-based discrimination, in particular with regard to the publication and dissemination of job advertisements on the Facebook platform.

Following the complaint, the Authority initiated an investigation pursuant to section 13 of the Act, ultimately concluding that META was indeed engaging in gender discrimination in the Netherlands in the operation of its job advertising system. Specifically, the Institute found that the management of a job recruitment system allowed META's activity to be classified as the provision of a service within the meaning of equal treatment legislation, thereby imposing on the service provider an "obligation to refrain from discriminating on the ground of gender".

As has just been noted, the Authority thus framed the discriminatory practice resulting from META's algorithm not under the Netherlands Institute for Human Rights Act as a general violation of human rights, but rather within the scope of a breach of the principle of equal treatment of persons irrespective of religion, belief,

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<sup>16</sup> <https://oordelen.mensenrechten.nl/oordeel/2025-17/4a575c22-d4b0-499f-8811-6b5e6720344d>

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status, as laid down in the Equal Treatment Act. In particular, reliance was placed on section 5 of that Act, which provides that “it is unlawful to discriminate in or with regard to: (a) advertisements for job vacancies and procedures leading to the filling of vacancies; (b) job placement; (c) the commencement or termination of an employment relationship; (d) the appointment and dismissal of civil servants; (e) terms and conditions of employment; (f) permitting staff to receive education or training during or prior to employment; (g) promotion; and (h) working conditions”.

The same provision further lays down a series of exceptions to the prohibition, for example in cases concerning “the freedom of an institution founded on religious or ideological principles to impose requirements which, having regard to the institution’s purpose, are necessary for the fulfilment of the duties attached to a post”, or “the freedom of an institution founded on political principles to impose requirements which, having regard to the institution’s purpose, are necessary for the fulfilment of the duties attached to a post”.

In the case at hand, once the investigative phase had been completed, the Authority adopted its final opinion, finding that META had violated the law on the ground that “the algorithm, without monitoring and potential measures, can enhance stereotyping”. Accordingly, the Institute concluded that “the indirect discrimination based on gender is not necessary and thus is not objectively justified. The Institute therefore rules that the respondent has made prohibited discrimination based on gender when showing job advertisements to Facebook users in the Netherlands”, given that META had failed to adduce sufficient elements to demonstrate that it had put in place the necessary monitoring of the algorithm, as well as appropriate “measures to neutralize its reinforcing effects”.

It can thus be confirmed that—consistent with other cases decided by the Authority (such as the Childcare Benefits Discrimination Affair, the Pregnancy and Maternity Discrimination Case, or the Disability and Reasonable Accommodation Case)—the META case likewise resulted in an opinion devoid of legally binding effects for the party found responsible for violating the human rights protection framework falling within the NIHR’s sphere of competence.

Nevertheless, the non-binding nature of such opinions should not lead to conclude for their ineffectiveness. As already noted, the persuasive force of the determinations issued by these bodies operates on a plane distinct from that of legal coercion, relying instead on voluntary compliance, even where such compliance is prompted by reputational considerations.<sup>17</sup>

Furthermore, it is to be noticed that - after the opinion led by the NIHR - the Amsterdam Court of Appeal ruled<sup>18</sup> that Meta must let dutch users easily choose a

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<sup>17</sup> This is truer if one considers that the investigation conducted by the NIHR in the META case attracted wide international attention, as evidenced by the coverage devoted to it by CNN (see *Facebook Enables Gender Discrimination in Job Ads, European Human Rights Body Rules*, 28 February 2025).

<sup>18</sup> Case C/13/774725.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

non-profiling recommendation system and keep that choice in place until the user changes it. This ruling, although not directly connected to the issue decided by the NIHR, nevertheless could constitute a safeguard also against algorithmic discrimination based on the profiling of sex as requested by the Institute.

*3.5. The establishment of the State Commission against Discrimination and Racism: an unusual overlap of roles?*

In light of the considerations set out above—particularly with regard to the Institute’s broad mandate and its role as a body entrusted with the promotion of human rights—it may appear at least somewhat curious that, in 2022, the Dutch Government decided to establish a National Coordinator against Discrimination and Racism. This office was tasked with “bonding and bridging, boosting policy efforts and overseeing their implementation when it comes to tackling discrimination and racism”, as well as with promoting “equality, justice and inclusivity in the European and Caribbean Netherlands”. In addition, at the request of the Tweede Kamer (the lower House of Parliament), a new body was created: the Staatscommissie Discriminatie en Racisme (State Commission against Discrimination and Racism).

As stated on its official website, “the State Commission against Discrimination and Racism examines discrimination and racism across all sectors of Dutch society. In addition, it investigates instances of discrimination and ethnic profiling within, and by, the public administration. Based on its investigations, the Commission informs the Government about the current state of discrimination and racism in the Netherlands. Furthermore, it advises the Government on how to improve policies, laws and regulations, to combat discrimination and racism”.<sup>19</sup>

Within the scope of its activities, the Commission was in particular entrusted with conducting an investigation covering “all sectors of society”, including an audit aimed at identifying ethnic profiling and discrimination within government.

In the course of its work, the Commission addressed in particular three recommendations to the Government aimed at improving the public approach to combating discrimination, while the National Coordinator pursued parallel activities of awareness-raising and public dissemination on issues of racism and discrimination.<sup>20</sup>

Without entering into a detailed analysis of the activities of the Commission and of the National Coordinator, it is difficult not to observe that their respective mandates appear, at least in part, to overlap with that of the Netherlands Institute for Human Rights.

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<sup>19</sup> <https://www.staatscommissietegendiscriminatieenracisme.nl>

<sup>20</sup> <https://www.bureauncdr.nl/actueel/nieuws/2024/03/04/ncdr-on-tour#:~:text=21%20maart%20is%20het%20de,ervaringen%20met%20racisme%20en%20discriminatie>.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

As shown above, the NIHR has long been entrusted with the task of monitoring, promoting and protecting human rights—including those relating to equal treatment—and is empowered to receive and handle individual complaints alleging discriminatory situations. The decision to establish a new ad hoc State Commission may therefore appear redundant, if not even symptomatic of a lack of confidence in the existing Institute. Such an institutional choice also carries the risk of fragmenting public action in the field of equal treatment, potentially leading to a dispersion of resources as well as to a degree of confusion on the part of those concerned.

*4. Concluding remarks on National Human Rights Institutions and the transformations in the landscape of fundamental/human rights protection: suggestions for the establishment of an NHRI in Italy*

The analysis carried out above confirms that NHRIs are entrusted with the task of complementing the “classical” judicial remedies established to protect citizens’ rights. By virtue of their specific specialisation in the field of human rights, they are able to act as interlocutors of institutional actors, and of the courts themselves, as “domestic non-judicial institution(s) for the implementation of international human rights law”.<sup>21</sup> It further follows that the protection of rights simultaneously assumes a multilevel configuration—insofar as claims for protection may be addressed to judicial bodies operating at national, regional and international levels, engaged in dialogue with one another—but also a “diffuse” articulation.<sup>22</sup>

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<sup>21</sup> See L.C. Reif, *The Ombudsman, Good Governance and the International Human Rights System*, Nijhoff, 2004. It has also been observed that NHRIs “by their very nature are capable of multiple activities ... and in that sense provide an exciting vehicle for the delivery of ESR in those societies in which they operate”. This is because, inter alia, thanks to their “institutional flexibility”, they can make a significant contribution to the protection of fundamental rights, and in particular of economic and social rights (ESR), which “require multiple strategies for their realization, ranging from litigation to budget monitoring to advocacy and awareness-raising” (see M. Gomez, *Advancing Economic and Social Rights through National Human Rights Institutions*, in J. Dugard et al. (eds.), *Research Handbook on Economic, Social, and Cultural Rights as Human Rights*, Cheltenham, 2020, 327).

<sup>22</sup> Among the extensive doctrine on this subject, see S. P. Panunzio, *I diritti fondamentali e le Corti in Europa*, in Id. (ed.), *I diritti fondamentali e le Corti in Europa*, Napoli, 2005; P. Ridola, *Diritto comparato e diritto costituzionale europeo*, cit., p. 187 ff., p. 240 ff., p. 273 ff.; P. Ridola, *Il “dialogo tra le Corti”: comunicazione o interazione?*, in Id., *Esperienza Costituzioni Storia. Pagine di storia costituzionale*, Napoli, 2019, 61 ff.; G.F. Ferrari (ed.), *Corti nazionali e Corti europee*, Napoli, 2006; M. Luciani, *Costituzionalismo irenico e costituzionalismo polemico*, in *Giurisprudenza costituzionale*, 2, 2006, esp. para. 5; G. Zagrebelsky, *Corti costituzionali e diritti universali*, in *Rivista trimestrale di diritto pubblico*, 2, 2006, p. 297 ff.; G. de Vergottini, *Oltre il dialogo tra le Corti. Giudici, diritto straniero, comparazione*, Bologna, 2010; C. Pinelli, *Trapianti, innesti, dialoghi. Modalità di trasmissione e circolazione del diritto straniero*, in *Rivista trimestrale di diritto pubblico*, 2, 2011, p. 495 ff.; G. Repetto, *Argomenti comparativi e diritti fondamentali in Europa. Teorie dell’interpretazione e giurisprudenza sovranazionale*, Napoli, 2011; A. Schillaci, *Diritti fondamentali e parametro di giudizio. Per una storia concettuale*

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

From a more specific perspective, it is likewise confirmed that the bodies under consideration, in view of the powers they possess (or, if preferred, of those they lack), cannot be subsumed—for classificatory purposes—within any of the traditional categories of public power, and in particular neither within the administrative nor within the judicial sphere.

In light of these considerations, it appears persuasive to locate such bodies within the category of the “fourth branch institutions”<sup>23</sup>, that is among those autonomous and independent actors which cannot be ascribed to any of the classical branches of power and yet are empowered to interact with each of them through modes of intervention and dialogue that are non-binding in nature. Through these forms of engagement, NHRIs articulate a human rights-based perspective by virtue of coordination with other actors—whether institutionalized or not—that are proactively active in the field of human rights.

Moving on to the Italian context, it is at present characterized by a fragmentation with a multitude of bodies and organizations competing (such as the National Guarantor for the Rights of Persons Deprived of Liberty, the Authority for Children and Adolescents, the National Office Against Racial Discrimination), most of which are part of the government structure and are bound by a limited sectoral mandate.<sup>24</sup>

An Italian NHRI with specific guarantees of independence, whereas, might and should be capable of acting as a single interlocutor with supranational and international institutions as well as with civil society and with courts (this was as well the situation, as mentioned earlier, especially in the UK where the EHRC has been indeed constituted by the Equality Act through the merger of a series of public bodies that were engaged in the promotion of rights of certain minorities).

As mentioned in the introduction of this paper, one reason for a kind of scepticism towards such an institution could stem from the idea that an Italian NHRI could even be “useless” within a context characterized by rights protected at constitutional level and guaranteed by independent judges (as well as by international courts) and in which the supremacy of the Constitution and fundamental rights are also upheld by a Constitutional Court.

However, the suggestions and the “good practices” from the British EHRC and the Dutch Institute prove - on the contrary - that these kind of institutions are certainly able to make a contribution in protecting human rights, complementing the traditional framework of rights’s protection without of course taking an alternative stance with respect to judicial’s safeguards. As discussed above, they are indeed capable to move on different levels: fostering a culture of human rights performing rights-promotion

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delle relazioni tra ordinamenti, Napoli, 2012; F. Saitto, *Giurisdizione costituzionale e protezione dei diritti fondamentali in Europa. I sistemi accentrati di fronte alle sfide della legalità costituzionale europea*, Milano, 2024.

<sup>23</sup> Following the definition by M. Tushnet, *The New Fourth Branch. Institutions for Protecting Constitutional Democracy*, Cambridge, 2021.

<sup>24</sup> G. Repetto, *Le National Human Rights Institutions: una nuova frontiera nella protezione sistemica dei diritti fondamentali e l’urgenza italiana*, cit., p. 14.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

activities, conducts researches and investigations, intervene before courts and creating a connection with judicial sphere, adopt acts that may affect protection of fundamental/human rights of individuals and minorities.

In this regard, it should be recalled that steps have been taken - as known - towards the creation of an Italian NHRI, with different bills under discussion in Parliament at date.<sup>25</sup>

It can only be mentioned here that while two of these projects envisage assigning the functions of NHRI to the Data Protection Authority<sup>26</sup>, others (esp. C 426 in the Chamber of Deputies, S 424 in the Senate and the constitutional bill C 580) provide for the establishment of a new body (whether in the form of a Commission or an Authority) but not through a merger - as in the British experience which had embraced a criterion of “simplification” on this point - with the other bodies already operating in the field of human rights.

The solution proposed, if it might allow to maintain a separate set of institutions to protect more effectively the rights of various vulnerable groups<sup>27</sup>, could on the other hand lead to the dispersion of enforcement efforts across multiple actors specialising in specific groups. With the risk, without underestimate the different identities<sup>28</sup> of the persons seeking equal protection, that such fragmentation could ultimately weaken the legitimacy of the NHRI itself.

Finally, with regard to competences, the Italian bills follow the model of the two NHRIs examined in this paper in terms of independence, promotional function, collaboration with other institutions and civil society, power to receive and assess notices of human rights violations or restrictions. But a gap in terms of functions compared to the EHRC and the NIHR could be identified with regard to the fact that no litigation powers - such as the powers to provide legal assistance, bring legal proceedings before courts or intervene in legal proceedings brought by others - are provided for. It should also be noted that the constitutional amendment bill C 580 provides for the possibility for the Authority to raise the question of constitutional legitimacy when it considers that a state or regional law violates human rights. Although, in this respect, it is more realistic to assume that a prospective NHRI would

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<sup>25</sup> On the different bills see V. Tudisco, *La creazione di un'istituzione nazionale per i diritti umani in Italia*, in G. Repetto (ed.), *Una National Human Rights Institution per l'Italia: problemi e prospettive*, cit., p. 49 ff.

<sup>26</sup> G.C. Feroni, *I tentativi di istituire una NHRI nel contesto istituzionale italiano: quale ruolo per il Garante per la protezione dei dati personali?*, in G. Repetto (ed.), *Una National Human Rights Institution per l'Italia: problemi e prospettive*, cit., p. 19 ff.

<sup>27</sup> R. Carver, *One NHRI Or Many? How Many Institutions Does It Take To Protect Human Rights? – Lessons From The European Experience*, in *Journal of Human Rights Practice*, 3, 1, 2011.

<sup>28</sup> On the paths of “recognition” of identities that articulate the social body see A. Schillaci, *Le storie degli altri. Strumenti giuridici del riconoscimento e diritti civili in Europa e negli Stati Uniti*, Napoli, 2018. On the relationship between identity and rights in the private sphere P. Ridola, *Cittadinanza, identità, diritti*, in *Osservatorio costituzionale*, 1, 2022, par. 2, p. 20 ff.

Federico Nania

*National Human Rights Institutions as instruments for integrating rights protection:  
a comparative analysis of the United Kingdom and the Netherlands*

rather be able to intervene before the Constitutional Court as *amicus curiae*<sup>29</sup> —as well as before the ECtHR— nonetheless establishing an important channel of dialogue in relation to human rights protection.

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**ABSTRACT:** The paper compares two National Human Rights Institutions created on the basis of the Paris principles - the UK Equality and Human Rights Commission and the Netherlands Institute for Human Rights - focusing on their legal mandates, powers, and activities. Particular attention is devoted to the promotional role these institutions are meant to fulfil in advancing equality and human rights, and to the key differences between the two models.

It is also discussed - even through the analysis of some practices - if these kinds of bodies, acting beyond traditional powers and especially judiciary power, may play a relevant role in integrating the protection of rights and equality in modern democracies as fourth branch's institutions.

Finally, the article considers whether these experiences may offer useful suggestions and “good practices” for the establishment of a National Human Rights Institution in Italy, in light of the draft bills currently under examination in Parliament.

**KEYWORDS:** National Human Rights Institutions – equality – fourth branch – UK – Netherlands – integrating.

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<sup>29</sup> Following the amendment of the Supplementary Rules for the Proceedings before the Constitutional Court in 2020 and the introduction of article 4 *ter*.