

**United in (national rights protection) diversity?
Some reflections on how many roads could lead to (an NHRI in)
Rome**

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TABLE OF CONTENTS: 1. Introduction. – 2. The added value of an NHRI: filling the protection and translation gap. – 3. The competences toolbox and organisational set-up of an NHRI. – 4. The key component of courageous leadership and great staff.

1. Introduction

The purpose of this volume is to problematise that Italy, a founding member of the European Union (EU), does not (yet) have a National Human Rights Institution (NHRI).¹ One of the paradoxical advantages of being one of the last countries to consider setting up an NHRI is that there is a lot of experiences across Europe to draw from. In that light, the different contributions aim to reflect on whether and, if so, how Italy should (finally) also get an NHRI. This contribution reflects on these questions from the perspective of an outsider with experience in both an NHRI and EU and international level human rights protection mechanisms. It offer three arguments.

First, it is important to be clear about the added value of an NHRI when there are very many human rights institutions, bodies and procedures already in existence at the international, EU and national level. An NHRI adds value precisely by being able to connect all of these dots for the specific context of Italy. But it is important to realise quite how (section 2). Second, to make good on this potential added value, the question becomes what toolbox of competences and organisational set-up would be appropriate for an NHRI to be newly set up. There is often a tendency to compare competences without comparing their lived contexts. In particular, the answer to this question should be based not on the formal existence of other actors or procedures at the international, European Union and national levels, but on what they have so far achieved in and for Italy, and why (section 3). Thirdly, and finally, a brief reflection is offered about why NHRIs that are comparable in competences and resources achieve different impacts. The answer is as overlooked as it is straightforward: courageous

¹ This contribution is an edited version of a speech delivered at Bocconi University (Milan, Italy) in the context of the conference “The role of National Human Rights Institutions in promoting rights and preventing rights-related litigation and conflicts”, 8 September 2025. It is dedicated to Adam Bodnar, former Ombudsman for Human Rights of the Republic of Poland – and one of the most consequential NHRI leaders Europe has ever witnessed.

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principled leadership (section 4). In other words, some reflections on the what, the how and the who.

2. The added value of an NHRI: filling the protection and translation gap

If a country is a member of the United Nations (UN), Council of Europe, and the EU, a signatory to (almost) all UN and Council of Europe human rights treaties and related treaty bodies and courts, and already has various national human rights protection mechanism such as a data protection agency and an agency focused on children rights, why add *yet another* layer or institution? This is not an unreasonable question. If one argues in favour of an NHRI, it is an argument for a tool to address a problem that is not yet properly covered.

As it happens, there are good reasons to add an NHRI even if the international, EU and national level already provide for a wide range of protection mechanisms. In particular, an NHRI is a crucial entity in a national human rights protection landscape for a double reason. First, it fills a *protection gap* between the national government, national courts and national NGOs. There is often a need for an authoritative independent body with privileged access to the government and parliament to provide advice on human rights protection issues based on a compilation and a selection of different contributions. Second, it fills a *translation gap* between these national level actors, on the one hand, and EU and international level actors (IOs, courts, INGOs), on the other.

The translation and protection function works in two directions: an NHRI can give independent and authoritative input to the EU/international level about the human rights situation in a Member State in which it is set up. But it can also just use, or help make for a soft landing or specific transposition, or a selection of EU/international level recommendations in the Member State, selecting the most relevant way and a good timing. Most NHRIs in Europe seem to spend most of their time on the first element (because you can spend your days filling out questionnaires sent out by international and EU bodies). My argument here would be that the second direction of the two-way street is in fact much more important if, as an NHRI, you are serious about filling the national protection gap. A recommendation to Italian friends would be to include this two-way street translation explicitly in any legal founding act of the Italian NHRI.

3. The competences toolbox and organisational set-up of an NHRI

In terms of searching for an optimal set of tasks, competence and substantive focus for a future Italian NHRI, there is *no ideal-type NHRI to serve as an inspiration*.

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Establishing and optimising an NHRI's role depends on the national, European Union, and international legal framework in which it is going to be set up. This is not an exercise that will start from scratch. You need to add to, rather than replace what is effective in the existing landscape when you are the protection/translation gap bridging business. Yet, there are a few lessons that can provide guidance in this effort.

Duplication is a common problem in human rights protection generally, including at the national level. If there is a super effective national data protection agency, there is no point duplicating it when setting up an NHRI with a more general mandate. If the policy field of equal treatment is really cluttered, when you do get competences in that field but limited resources, you will likely have good reasons to avoid going there yourself. If you have a well-resourced ombuds institution, an NHRI should cooperate rather than compete with it (and indeed, in countries like Spain it is the same thing). In the Netherlands, which I know well, the NHRI came out of an equality body, and stands next to a parliamentary Ombudsman. So starting with a mapping of what is good, and what is less functional, is a good idea. Of course, not everyone will be happy with that exercise. Of course, existing institutions will be protective of their own turf, inflating their scope of competence or relevance. But if an Italian NHRI with added value is the aim, this is a necessary exercise.

An issue that then follows is: is there an institution in Italy whose competences can be expanded to transform it into an NHRI? This is a typical trap of institutional thinking. I would reply to that question by posing my Italian friends a counterquestion: if you look at your total human rights protection landscape, what kind of competences and substantive areas are now not yet properly covered from the viewpoint of the NHRI protection/translation gap perspective, and what are the three to five most important issues in that respect? This might give you an honest first direction.

Make no mistake: there is no perfect solution. Both setting up something separate and new or creating an appendix to something existing comes with its own set of challenges. Just avoid the Dutch situation that you create something new and broad out of something existing and narrow *without* adding proper additional financial resources – that is recipe for disappointment, because you are starting with a promise you can hardly deliver on. It is almost worse than not having an NHRI at all. Fortunately, in The Netherlands, that situation has now been gradually restored.

Then there is the perennial question of whether what you do or say as an NHRI or equality should have *legally binding* effects to be effective. The premiss is always that binding is better. In my experience in The Netherlands this question has, in fact, often been relatively irrelevant. The real issue is whether you are *seen* to be authoritative in terms of what you come up with. When I was solving equality conflicts the results were not formally binding. But, in reality, rulings by the Dutch Equality Body were being followed by public authorities and employers in over 80% of the cases. In fact, *not* issuing legally binding orders has many advantages too. For example, it gives more scope for creativity. And very often these non-binding rulings were used by judges or

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policy makers, just like with recommendations of UN and Council of Europe treaty bodies. So I would suggest a more useful focus is compliance records not the formal legal status of your output. If you are searching a hill to die on, look elsewhere.

There is a final, somewhat related issue. It is often thought that an NHRI's effectiveness can be measured by the number of court cases dealing with human rights elsewhere going down. I do not see much of a link. Sometimes NHRIs can bring court cases themselves, or intervene in them as an *amicus curiae*. That is a useful task to add to the toolbox. But that means that in setting up an NHRI the ambition cannot, and should not be to reduce the number of court cases. The focus in setting up an NHRI should be on bridging the protection/translation gap. Supporting litigation by others is often a very effective method to deliver on that aim.

4. The key component of courageous leadership and great staff

One of the most important elements of making an NHRI deliver on its added value is what typically gets *least* attention. People working for an NHRI – its leadership and staff – trump legal reality when it comes to achieving impact. They are much more important than formal competences or financial resources. But the leadership you pick is by far the most important consideration. They should understand that research findings do not explain themselves. They have to insist that these findings be transformed into something specific enough that they identify a clear actor, a clear target and clear means to reach that target. They have to be focused on optimal timing. And they need to be able to absorb strong criticism and pushback. We have to be honest — this is hard, and many human rights actors, at every level, are doing a suboptimal job.

This may sound obvious, but it is not. It is entirely possible to imagine a well-resourced and richly tasked NHRI not led by someone who dares to speak up. It will be ineffective. It is equally possible to imagine a courageous and principled leader achieving something real, even on a small budget, or with limited competences or under real strain – think, for example, of Adam Bodnar when he was the Ombudsman for Human Rights of the Republic of Poland (2015-2021).

So if – or rather: when! – one day Italy will see its own NHRI, the most important way to make it deliver on its mandate is recruitment of leadership and staff willing to fight for all Italians, and others on its territory, particularly those in a vulnerable position. Because human rights protection rides on principled grid, picking fights with a smile, and being singularly focused on achieving results for real people.

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The author with Adam Bodnar

ABSTRACT: With a view to providing input for the policy ambition to establish an National Human Rights Institution (NHRI) in Italy, this contribution will reflect on the great diversity of NHRIs models that are in operation in Europe. It will argue that rather than focusing on institutional design questions to explain or predict effectiveness, it may be more fruitful to consider and compare the wider national contexts in which they function. Form should follow function, and functionality is context specific. From that perspective it will be examined when, why and how NHRIs, as a proven model of nationally centralised independent and impartial rights protection mechanism, can add value for citizens.

Keywords: NHRI – international human rights – EU law – national added value – personal leadership.

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