Human Rights and Equality Institutions in Europe: Increasing Efficacy by Finding a Balance between Centralisation and Fragmentation

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National Human Rights Institutions (NHRIs) are state bodies mandated to protect and promote human rights. Their mission is to identify and tackle systemic problems while raising fundamental rights awareness in countries in which they have been established. Human rights instituti-

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ons at the national level include Ombudsman (some specialising in particularly vulnerable groups), Equality Bodies, National Preventive Mechanisms, National Monitoring Mechanisms, Data Protection Agencies, and more. In this article, we analyse the strengths and weaknesses of both centralised and fragmented systems of human rights institutions. Using examples from several European countries, we particularly examine how the fragmentation of institutions affects their resilience to pressures which can adversely impact the promotion and protection of human rights and equality at the national level. We argue that opting for a certain NHRIs' system might exert significant influence on the independence and effectiveness of individual institutions, as well as on the overall comprehensiveness of a nation's human rights infrastructure.

Keywords: human rights protection and promotion, National Human Rights Institutions, human rights commissions, equality bodies, ombuds institutions, specialised ombuds, Paris Principles

1. Introduction

The institutional human rights and equality architecture of European states is diverse, comprising numerous bodies, institutions, agencies, and other organizations. It is widely recognised that these structures are important actors in democratic states based on the rule of law, respect for human rights, and good governance (Reif, 2000; Kumar, 2003; Cardenas, 2014; UN General Assembly, 2020). Over the past 25 years, they have become vital to human rights governance on national, regional, and global levels (Glušac, 2021). In the most general terms, it is possible to group these institutions into three main types: National Human Rights Institutions (NHRIs), Ombuds institutions, and Equality Bodies (de Beco, 2007; Carver, 2011; Cardenas, 2014). Although the work of all three types is complementary, their mandates and functions often overlap, resulting in a fragmented human rights infrastructure. Furthermore, the absence of clear regional or international recommendations leaves to individual states the responsibility to determine their human rights institutional architecture. Whereas some states may establish broader, consolidated,

multi-mandated institutions with limited fragmentation, others create separate institutions, some, perhaps, with mandates limited to particularly vulnerable groups (e.g. ombuds institutions for children, gender equality, persons with disabilities, elderly, the armed forces) or geographic areas (Lloyd, 2004; Somody, 2007; Reif, 2015).

Although the academic literature on human rights institutions is abundant (Kumar, 2003; de Beco, 2007; Carver, 2011; Kim, 2013; Rudolf, 2016; Cardenas, 2014; Reif, 2014; 2015; Kamuf Ward, 2017; Linos & Pegram, 2016, 2017; Crowley & Gaspard, 2018), this topic seems to have been neglected in the Croatian academic community (Aviani,1999; 2016; Musa, 2001; Bačić, 2011; Koprić, Musa & Lalić Novak, 2012, pp. 53–54; 152). Addressing the gap in the Croatian academic research on NHRIs, we will analyse the strengths and weaknesses of both centralised and fragmented systems, as well as the independence and effectiveness of their component institutions, using examples from Croatia, Poland, Finland, and other European countries. We will particularly examine how the fragmentation of institutions affects their resilience to pressures and impacts the overall effectiveness of human rights and equality promotion and protection at the national level. A comparative case study research approach was used methodologically in preparation of this article. The main advantage of this approach is that it permits the combination of different sources of evidence: documents and archives, interviews, and observation. This method allows comparing different national institutions with similar competences and mandates in an academic research setting. It involves in-depth analysis of a small number of cases (in this context, national human rights institutions of Croatia, Poland, Finland, and several other European countries) to gain a deep understanding of their similarities, differences, and factors that influence their effectiveness. Selected countries have national human rights institutions with similar competences and mandates. However, in order to ensure a diverse range of cases, we paid special attention to the fact that the countries analysed have varying political, cultural, and socio-economic contexts. Collection of data on each national human rights institution, its structure, mandate, challenges, and achievements was done through analysis of policy documents along with international and regional binding and soft law standards, and reviews of reports or publications related to the human rights institutions.

In the first section of this article, we list the international and regional standards required to guide the establishment and effective functioning of human rights institutions. In the second, we examine two criteria in particular that guide the work of NHRIs, namely their independence and

broad mandate. In the third, we analyse a variety of other human rights and equality institutions, bodies, and agencies which have been established in addition to NHRIs: ombuds, specialized ombuds institutions and equality bodies. We also lay out the specificities of existing self-standing ombuds institutions in Europe. In the fourth section of the article, we directly address the research question: Do centralised systems comprised of institutions with broad or multiple mandates, or more fragmented systems with many smaller institutions with limited mandates, result in more efficient national human rights institutions? The concluding section of the article synthesises research findings and proposes avenues for governments to take in order to support more efficient human rights and equality institutions.

2. International and Regional Standards Guiding the Establishment and Functioning of National Human Rights Institutions

National Human Rights Institutions are state bodies with a constitutional and/or legislative mandate to promote and protect human rights (OHCHR, 2010, p. 13). Unlike classical ombuds institutions, which play a mediatory role in shaping national human rights policies, NHRIs also have an important preventive role. Minimum international standards for the roles and responsibilities of NHRIs were first established by the United Nations in 1993 in the Principles Relating to the Status of National Human Rights Institutions (Paris Principles).[1] The Principles themselves do not set out requirements for the institutional structure or model of NHRIs since that is a prerogative of each state. This is also stipulated in the Vienna Declaration and Programme of Action, which recognises the right of states to choose the framework, subject to international human rights standards, that best suits their needs at the national level.[2] The Paris Principles set out six main criteria for NHRIs: a broad mandate based on

[1] The Paris Principles were defined at the first International workshop on National institutions for the promotion and protection of human rights in Paris 7–9 October 1991, and adopted by Human rights commission resolution 1992/54, 1992 and General assembly resolution 48/134, 1993.

[2] Adopted at the World conference on human rights held in Vienna on 25 June 1993, UN document A/CONF. 1 57/23 (1993) 23.

universal human rights; autonomy in relation to the government; independence guaranteed by statute or constitution; pluralism, including the one through membership and/or effective cooperation; and adequate resources and adequate powers of investigation. The Paris Principles provide a non-exhaustive list of an NHRI's responsibilities, such as submitting opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights; promoting and ensuring the harmonisation of national legislation, regulation, and practices with international human rights instruments while encouraging their ratification; and cooperating with the UN. The distinctive characteristic of NHRIs compared to other human rights and equality institutions is their broad mandate to promote and protect human rights in accordance with the Paris Principles criteria, against which they are regularly assessed by the Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation (SCA).[3] This internationally recognised and rigorous peer-based procedure (so far the only official accreditation system aiming to ensure these institutions' independence, effectiveness, broad mandate, and pluralism) reviews and accredits NHRIs. Reviews are based on an NHRI's own statement of compliance with the Paris Principles accompanied by supporting documentation, which might also be provided by third parties, most often civil society organisations (Rules of Procedure, Art. 6; see Renshaw, 2012). Additionally, the SCA conducts interviews with institution leadership for the sake of clarification and to gather further information. NHRIs holding "A" status are subject to re-accreditation on a five-year cyclical basis (GANHRI statute, Art. 15). The SCA Rules of Procedure also allow a Special Review (Art. 16), which in exceptional circumstances may result in the urgent suspension of status (Art. 18). Further distinctions are made between institutions that are fully compliant with the Paris Principles ("A status") and those considered partially compliant ("B status") (Art. 10). As of August 2021, GANHRI has 117 members comprised of 86 "A status" accredited NHRIs and 32 B status

[3] With a support the Office of the High Commissioner for Human Rights (OHCHR), the NHRIs have created the Global Alliance of National Human Rights Institutions (GANHRI), an independent human rights network of all NHRIs worldwide in 1993. Its name was changed in 2017. With OHCHR acting as Secretariat, GANHRI works through its Geneva-based Head Office in cooperation with four regional networks: the European Network of National Human Rights Institutions (ENNHRI), the Asia-Pacific Forum (APF), the Network of African National Human Rights Institutions (NANHRI), and the Americas, as well as partners from UN and civil society. More information about GANHRI is available at https://ganhri.org/

accredited NHRIs,[4] while ENNHRI embraces 30 "A status" and nine "B status" institutions.[5] NHRIs thoroughly analysed in this article (from Croatia, Poland, and Finland) are all A status.

The accreditation process has led to the improvement and strengthening of participating institutions. SCA accreditation confers credibility and legitimacy to NHRIs, affecting their ability to operate on both international (e.g. by granting participation rights at UN) and domestic levels (de Beco & Murray, 2015). Accreditation ensures coherence among NHRIs through the systematic inclusion of UN information and allows broad opportunities for civil society organisations (CSOs) to participate and contribute. Even more importantly, GANHRI's continuous work on the Rules of Procedure and strict SCA interpretation of the Paris Principles has contributed to a robust process with strong credibility (Brodie, 2011). Examples of the SCA downgrading institutions from "A status" to "B status" for failing to maintain full compliance since their last accreditation powerfully reflects and confirms this point. Despite progress, the accreditation process requires further strengthening. Firstly, GANHRI can continue to clarify its Rules of Procedure internally and update its general observations while formalising a new permanent supporting structure specifically dedicated to accreditation. Secondly, due to the increasing number of NHRIs, which the SCA should be able to review and accredit in a timely manner, additional resources allowing for more sessions would be useful. Additional financial resources are also needed to support the travel-related costs of the SCA members attending two (or more) weekly meetings in Geneva every year. SCA members are currently required to finance the costs themselves, thus enabling only well-resourced institutions to apply for membership while disadvantaging all the others. Also, as the working language of the SCA is English, and documentation is submitted in many different languages, translation services should be provided to ensure that the full range of NHRI representatives can be elected without regard to English proficiency. Additionally, this unique peer review process of accreditation (supported by the Office of the United Nations High Commissioner for Human Rights), which has been crucial for the regular work of the SCA, both in its sessions and in their preparation, should be continuously strengthened by providing sufficient resources and skilled staff to assure the continuation of the SCA's institutional memory.

[4] The full list of NHRIs and their accreditation status can be accessed at https://ganhri.org/wp-content/uploads/2021/08/StatusAccreditationChartNHRIs.pdf

[5] The full list is available at http://ennhri.org/our-members/

Political support for the work of the SCA is particularly important given the ability of its successfully implemented recommendations to directly influence change on the ground. Even NHRIs accredited as "A status" can benefit from recommendations setting even higher standards. States themselves (among other actors) should also be consistently encouraged to contribute (with the NHRIs themselves) to the work of implementation. An important role in this regard can be played by the Treaty Bodies who could include the SCA recommendations in their Concluding Observations. Likewise, with the cooperation of the NHRIs themselves, SCA recommendations can be used to formulate recommendations through the Universal Periodic Review (UPR). Another issue meriting more discussion is using the accreditation process to go beyond the Paris Principles to improve NHRI effectiveness. For example, Murray argues that NHRIs rely too much on legalism and fail to sufficiently examine how institutions can be used as resources for others, especially the most vulnerable (Murray, 2007, p. 194). Using the Paris Principles as a reference while developing new regional and international frameworks can bring renewed and added value to their already strong standing. An example of this can be found in the work of the Council of Europe (CoE), which has offered long-standing support to NHRIs that culminated in 2021 with the adoption of Recommendation on the development and strengthening of effective, pluralist, and independent national human rights institutions. Though to a certain extent overlapping with the Paris Principles, the CoE Recommendation goes a step further by clearly giving preference to the constitutional basis of an NHRI's establishment; by establishing that NHRIs are strengthened by having unfettered access to all premises, individuals, and information, as well as by being involved in policymaking and legislative processes; and by clarifying the role of NHRIs *vis-a-vis* justice systems. In other words, the CoE Recommendation clearly recognises NHRIs as human rights defenders and asks Member States to secure and expand a safe and enabling space for NHRIs while protecting them from threats and harassment. It emphasises their importance with respect to human rights, the rule of law, and democracy. It underlines the importance of effective cooperation and assistance, including that through ENNHRI and other regional and international bodies.

3. National Human Rights Institutions

Globally, the dominant models of NHRIs are human rights commissions and ombuds institutions. Consultative and research hybrid bodies

make up a small number of NHRIs (OHCHR, 2010, p. 15). Looking at the European institutions, out of 39 accredited ENNHRI members, 27 are ombuds institutions,[6] eight are commissions,[7] and two are institutes[8] (while 21 also act as equality bodies).[9] The remaining two, those of Finland and Norway, are unique. In Finland, the NHRI is comprised of the Finnish Human Rights Centre (FHRC) and its Human Rights Delegation, both established in 2012, and the Parliamentary Ombudsman. These three parts constitute the Finnish NHRI together, but all have their own tasks defined by law. Likewise, the Norwegian Centre for Human Rights (NCHR) is organisationally linked to the Parliamentary Ombudsman and subordinate to the Parliament. Many NHRIs possess additional mandates: e.g., forced returns monitoring, whistleblower protection, and being national preventive mechanisms (NPMs) or national monitoring mechanisms (NMMs).

Both the Paris Principles and the CoE Recommendation attach the utmost importance to independence. It is widely recognised in academic literature that *de jure* and *de facto* independence from governments at all levels is the most important and fundamental principle supporting the effective functioning of every NHRI (Reif, 2000; de Becco & Murray, 2014; Roberts, 2013). By being established as independent state institutions – but not a state representative, NGO, or international organisations – Roberts argues that NHRIs occupy a "fourth space" (Roberts, 2013, p. 226). If an institution is not independent, or not perceived as such, it is highly unlikely to be effective. NHRIs must therefore be guaranteed autonomy from the government as well as the security and stability required to exercise their mandate. This includes the freedom to work and comment on any human rights issues as the NHRI sees fit along with sufficient human and other resources. Independence can be defined

[6] These are (as of September 2021): Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Hungary, Latvia, Lithuania, Moldova, Poland, Portugal, Russian Federation, Serbia, Slovenia, Spain, and Ukraine (Status A); Austria, Azerbaijan, Cyprus, Montenegro, North Macedonia, and Sweden (Status B); Czech Republic and Kosovo (not accredited).

[7] These are (as of September 2021): France, Great Britain, Greece, Ireland, Luxembourg, Northern Ireland, the Netherlands, and Scotland (Status A).

[8] These are (as of September 2021): Denmark and Germany, (Status A)

[9] These are (as of September 2021): Albania, Belgium (Unia), Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Georgia, Great Britain, Hungary, Ireland, Kosovo, Latvia, Montenegro, Netherlands, North Macedonia, Slovakia, Sweden, Turkey, and Ukraine.

and determined according to several criteria. First and foremost, there must be legal autonomy, preferably constitutional, allowing the institution to act independently. Operational autonomy (that is, freedom from any outside influence and freedom to investigate and access information) coupled with functional immunity from civil and criminal proceedings for acts performed by NHRIs in an official capacity are also required. Last but not least, there is financial autonomy, which allows for sufficient resources, staff, premises, and a separate budget line over which it has absolute management and control, not being a part of or having a link to any government ministry budget (OHCHR, 2010). Indeed, restricting or decreasing resources – or adding new mandates and tasks without providing sufficient resources – has been one of the most common ways to attempt to limit the effectiveness and independence NHRIs, as was the situation in Poland in recent years.

Finally, a very important aspect to ensuring independence is through the security of tenure, including the procedures and criteria for appointment and dismissal. The leadership of NHRIs should be personally independent and be able to act in a pressure-free environment. In fact, as Reif put it in her study, the less likely the government is to remove the members of the NHRI, the more likely it is that the NHRI will be perceived as independent (Reif, 2000, p. 25). This was particularly evident in Croatia in 2016 when the parliament rejected the Ombudswoman of the Republic of Croatia's annual report for 2015, but the legal guarantees for the security of tenure prevented the early dismissal of the ombuds. The parliament's rejection of the annual report was seen as strong political pressure, whose failure contributed to the perception of the ombuds institution's independence, thus strengthening its credibility and resilience. All of the requirements for institutional independence are set forth in the Paris Principles. However, as de Beco and Murray (2014, p. 82) argue, the concept of institutional independence has still not been sufficiently and clearly defined. Even compliance with the Paris Principles may not guarantee an NHRI's *de facto* independence. Perceptions may be key in this regard, and much may depend on the personality of the individual holding an NHRI's top position (de Becco, & Murray, 2014). Gliszczyńska-Grabias and Sękowska-Kozłowska (2013, p. 81.) consider the influence of individuals holding the office as equal in importance to the institutional framework because "they draw from a large scope of autonomy in deciding on their priorities and interventions". Particularly when leadership changes, there needs to be an institutional culture of independence which can be beneficial for institutional consistency. Strong, independent institutions are an amalgam

of effective and independent leadership and administration. Proactive and recognised leaders can only take on urgent (and often sensitive) issues in the public domain in the context of an office's supporting structure. Indeed, studies have linked the *de facto* independence of an institution to strong leadership and the effective management of available resources.

The Paris Principles require that NHRIs have as broad a mandate as possible to promote and protect all human rights. Such a mandate enables NHRIs – which possess an overall view of the human rights situation in a country – to help ensure that national human rights policies are preventive, coherent, and consistent in order to provide authorities with a general human rights perspective (de Beco, 2007). However, a broad mandate must be accompanied by appropriate powers plus sufficiently enabling resources. Adding new mandates without providing sufficient resources weakens institutions by making it harder to spread resources between existing and new functions. This was the case in Croatia as the NHRI struggled to secure resources for new mandates, particularly the National Preventive Mechanism and whistleblowers' protection. In Finland, the new mandate given to the Parliamentary Ombudsman to be the Finnish NPM resulted in no additional resources despite repeated requests. Similarly, when the Finnish NHRI was designated the UN CRPD 33.2 National Monitoring Mechanism in 2016, it received minimal resources for the new function: only one post at the FHRC. Having a broad mandate is what differentiates NHRIs from other institutions, particularly specialised ombuds institutions that work on the promotion and/or protection of certain and specific vulnerable groups. It is therefore desirable that the jurisdiction of the institution be precisely defined, not only for the efficiency of its work, but also to avoid jurisdictional conflicts and overlaps with other state institutions. This is one of the core issues relating to the centralisation of (as opposed to the fragmentation of) human rights institutions, which will be examined in more detail later in the text. When looking at best practices in the establishment of equality bodies, Crowley and Gaspard (2018) see three main factors: independence, effectiveness, and accessibility. As with the independence of NHRIs, independence here is seen as the ability to allocate resources, make decisions regarding staff, determine priorities, and exercise powers autonomously. Likewise, effectiveness requires adequate resources, functions, competences, and powers. Finally, equality bodies must be accessible to victims of discrimination with regard to their premises, online and telephone services, outreach activities, and other similar and flexible arrangements. Benedí Lahuerta (2021) elaborates further by distinguishing three layers of a res-

ponsiveness framework for the institutional design of equality bodies: at a general level, there should be *de jure* and *de facto* independence, as well as enough resources. At the bottom level, equality bodies should be accessible and have a support service for alleged victims. At the top level, there is systemic action and coordination.

4. Other Human Rights Institutions: Ombuds Institutions, Special Ombuds, and Equality Bodies

Due to different cultural, historical, and political contexts, a variety of other human rights and equality institutions, bodies, and agencies have been established at the national levels. These institutions either work in parallel with each other or operate as more centralised, multi-mandated bodies. The main aim of them all, however, is to support the effective implementation of human rights and equality norms. In this section of the article, we examine the most common of these: ombuds (that are not NHRIs) and specialized ombuds institutions, and equality bodies.

Ombuds institutions are globally established in more than 140 countries at national, regional, or local levels with different competences. Since there is no standardised model of an ombuds institution, many of previously established ombuds institutions have extended their legal mandates and are also accredited as NHRIs. Though the CoE has advocated for strong and independent ombuds institutions since the 1970s, it was not until 2019 that the European Commission for Democracy through Law (the Venice Commission), the CoE advisory body composed of independent experts in the field of constitutional law, adopted the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) which set up the most comprehensive ombuds-related checklist ever compiled (Glušac, 2021).

Referring to the Paris Principles, the Venice Principles filled the void created by the lack of standards and guidance for ombuds institutions that are not NHRIs. Provisions of the Venice Principles can be grouped into the following categories: (i) the establishment, status, and institutional model; (ii) appointment and the terms of office; (iii) immunity and the security of tenure; (iv) mandate and powers; (v) independence; and (vi) reporting. Of the six, however, independence is the central feature and core principle of the Ombudsman institution, cutting across all the other

categories. Ombudsman independence can relate to several criteria, such as having a stable mandate, appointment and dismissal procedures, an adequate budget, accountability, and reporting procedures. The Venice Principles state that the Ombudsman shall be elected or appointed according to procedures that strengthen (to the highest possible extent) the authority, impartiality, independence, and legitimacy of the institution and that he or she shall not, during his or her term of office, engage in activities incompatible with independence or impartiality nor be given or follow any instruction from any authorities. The essential criteria for being appointed Ombudsman are high moral character, integrity, and appropriate professional expertise and experience, including that in the field of human rights and fundamental freedoms.

In many countries, ombuds institutions have evolved over time to work not only on the legality of public authorities' decisions, but also on the protection of human rights in its wider sense, as well as human rights promotion. As Reif described it: "At its core, the ombudsman is an institution designed to monitor illegality, unfairness, and injustice in public administration. In this sense, breaches of human rights laws, either domestic or international obligations, have always been a part of the ombudsman's mission. It has long been recognized that even the classical ombudsman plays a role both in human rights protection and in the implementation of a state's domestic and international human rights obligations" (Reif, 2000, p. 21). This is well recognised by the Venice Principles, which state that Ombudsman is an institution acting independently, not only against maladministration, but also against alleged violations of human rights and fundamental freedoms. Ombuds institutions that fulfil the criteria set forth by the Paris Principles can become NHRIs, as explained in more detail above. In addition, many classical ombuds institutions have been given multiple mandates and entrusted with specific human rights issues, e.g. child rights, privacy, prevention of torture.

Some states have decided to establish specialised ombuds institutions to add particular significance to the promotion and protection of particularly vulnerable groups, such as ombuds for children, ombuds for people with disabilities, and gender-equality ombuds. Even though they carry the name of "ombuds", implying the fulfilment of all criteria as recognised in internationally accepted standards, their legislative and organisational set-up varies in different states. Thematic human rights institutions are not NHRIs and as such cannot be deemed Paris Principles compliant (Reif, 2015). The most common example of a specialised ombuds is an

ombuds for children, a role first established in Norway in 1981.[10] This is not surprising, as children are recognised as one of the most vulnerable groups in society and are in contact with, and can be negatively impacted by authorities in many ways. UNICEF sees an ombuds for children institute as a public institution established for the independent monitoring, promotion, and protection of children's rights, not setting a preference for a specialised or more general type of institution. The establishment of independent children's ombuds – whether established within an NHRI or a self-standing thematic body tasked to promote and monitor the implementation of the UN Convention on the Rights of the Child – is also strongly supported by the UN Committee on the Rights of the Child (CRC) in the General Comment on the Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child (CRC GC No. 2).[11] Regarding countries examined in our research, all have established separate ombuds institutions for children. In Finland, there are two human rights institutions dealing with children's rights: The Ombudsman for Children (which has a promotional mandate) and the Parliamentary Ombudsman (which is part of the Finnish NHRI) both deal with complaints, including complaints from children. However, only the Ombudsman for Children is a member of The European Network of Ombudspersons for Children (ENOC).

Some European states have also established other ombuds institutions dealing with specific vulnerable groups in society, such as self-standing ombuds for persons with disabilities established in Croatia, Austria, and Malta. This can be seen as a requirement stemming from Art. 33.2 of the UN CRPD, which requires state parties to designate or establish a framework, including one or more independent mechanisms to promote, protect, and monitor the implementation of the Convention. By doing so, state parties are expected to consider the Paris Principles, thus clearly implying that this task should be granted to an NHRI. In cases where specialized ombuds institutions are already established, however, they are more likely to be awarded the National Monitoring Mechanism mandate, instead of a broad NHRI. At least this is the case in Croatia, despite the fact that the Ombudsman for Persons with Disabilities is neither an NHRI, nor is it officially designated as the NMM. In receiving complaints regarding

[10] More about the institution can be found at https://www.barneombudet.no/

[11] Committee on the Rights of the child, the role of independent national human rights institutions in the promotion and protection of the rights of the child, 6, UN Doc. CRC/GC/2002/2, Nov. 15, 2002.

the decisions of public authorities, it fulfils the competence of a classical ombuds institution. At the same time, it also operates as an equality body by acting as the country's competent authority regarding discrimination on the grounds of disability, and as such, it is a member of Equinet.

Specialised bodies carrying the name of Ombudsman – such as the Ombud for Equal Treatment in Austria, the Equal Opportunities Ombudsman in Latvia, the Equality and Anti-Discrimination Ombud in Norway, the Equality Ombudsman in Sweden, the Non-Discrimination Ombudsman and Ombudsman for Equality in Finland – operate as equality bodies, having a mandate to promote equality and combat discrimination, as described in more detail below. The work of specialised institutions dealing with specific vulnerable groups and specific human rights issues can thus be seen as examples of interlinked work on human rights, anti-discrimination and, in some cases, even maladministration. Even though they are not Paris Principles compliant and there is no robust system for assessing their reliability and independence (apart from drawing inspiration from the Paris Principles), they can still all benefit from standards – albeit weak – guiding the establishment and strengthening of the equality bodies that will be analysed in the next chapter.

Even though institutions dedicated to promoting equal treatment and tackling discrimination – equality bodies – were already established in some European countries in the 1960s and 1970s, the Member States' obligation to introduce them only came in 2000 (Kadar, 2018). By virtue of the Treaty on the Functioning of the EU (TFEU) in 1999, the Council of the European Union was allowed to adopt legislation combatting discrimination on six grounds: sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation (Art.19/1). Soon after this, in 2000, the Racial Equality Directive (Directive 2000/43/EC) was adopted, requiring the establishment of a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. A similar obligation to designate equality bodies was introduced for discrimination on the grounds of sex with the EU Gender Equality Directives: Art. 12 of the Gender Goods and Services Directive (2004/113), Art. 20 of the Gender Recast Directive (2006/54), and Art. 11 of the Self-Employed Directive (2010/41). Accordingly, equality bodies have been established in all EU Member States to tackle discrimination not only in the framework of these six discrimination grounds listed in the TFEU, but any additional grounds pertaining to other categories of discrimination. Recognition of the NHRIs has been increasing in the EU context as well. As Wouters, Meuwissen and Barros (2013, p. 188) noted,

NHRIs can connect multiple layers of the EU's internal and external human rights architecture by delivering expert advice on human rights, spreading information which is useable to the EU in its multi-faceted human rights promotion and protection, and monitoring the implementation of European and international human rights instruments or even EU development policy in third countries. In recent years, the Rule of Law Mechanism in particular has connected and strengthened links between human and fundamental rights, rule of law, and democratisation in the EU and in Member States through explicitly recognising NHRIs (along with ombudsperson institutions) as an "important topic" and intrinsic contributor to the "checks and balances" at the core of the rule of law. NHRIs have played a role in monitoring the use of various EU funds in some member states. This role is strengthened by the European Commission's legislative proposal for a Common Provisions Regulation COM (2018) 375, which refers to partnership with bodies promoting social inclusion, fundamental rights, gender equality, non-discrimination, and the rights of people with disabilities. For instance, the representative of the Finnish NHRI (the FHRC) is one of the partners invited by the ministries administering funds to help monitor EU funds in the 2021–2027 programming period. EU recognition of NHRIs was also advanced by the European Commission Strategy on the application of the EU Charter of Fundamental Rights (the Charter) and related Council conclusions which embraced NHRIs as key national actors in this area. It must be recognised that the EU relies on the NHRI's accreditation status because no European, soft law, or binding rules or recommendations regarding the set-up and functioning of NHRIs have been established by EU Member States. This lack of a legal basis in the EU law weakens EU support for NHRIs compared to other national bodies, such as equality bodies or data protection authorities and their networks, which enjoy legal support. EU cooperation/involvement could also be further developed through more regular exchanges between EU institutions and NHRIs, in particular with the Council of the European Union and its working parties, as well as with the European Commission with respect to monitoring the Charter. Increased funding opportunities and additional resources for the effective implementation of fundamental rights and the rule of law, and even more consistent reliance on NHRIs and ENNHRI as sources of reliable and credible information, would also serve to strengthen this relationship.

An example of this last case is the cooperation of NHRIs and ENNHRI with the EU Fundamental Rights Agency (FRA), which is a natural and important EU interlocutor for NHRIs. The FRA has devoted significant

work to supporting and strengthening the recognition and impact of NHRIs, i.e., its 2020 report showed that while the number of NHRIs compliant with the Paris Principles in the EU is growing, not all EU members have established an NHRI; furthermore, among those which have been established, not all as yet fulfil the required criteria (FRA, 2020). In the end, the efforts to strengthen the capacities of international, regional, and EU stakeholders (along with NHRIs themselves) will only have meaning if they are successfully implemented at the national and local levels, not to mention – most importantly – at the individual level, especially among those who are the most vulnerable. NHRIs that receive complaints can also become more aware of the results achieved, e.g., via feedback from complainants or in the follow-up to the implementation of specific recommendations in individual cases. How international and regional human rights standards are implemented in the everyday lives of rights holders is the ultimate rationale for NHRIs' existence. However, despite the initial European Commission proposal to guarantee structural, constitutional independence when establishing an equality body, the Equality Directives ensured that equality bodies would only have functional independence insofar as their competences include providing independent assistance to victims of discrimination, conducting independent surveys, publishing independent reports, and making recommendations on any issue relating to discrimination (Kadar, 2018). Some countries were therefore able to set up equality bodies as an integral part of a ministerial department, leaving a doubt, as De Witte (2012, p. 66) observes, as to whether an organ which is integrated into the government administration will act entirely independently in performing its tasks. Due to the broad heterogeneity of the European law, as well as historical and political reasons, it is not surprising that, at the time of their establishment, the setup of equality bodies in the national institutional architecture varies. In some Member States, they are connected to previously existing NHRIs (with additional powers, resources, and mandate), while in others they are established as self-standing bodies only mandated to deal with equality and non-discrimination. In addition, some Member States have established two or more equality bodies to deal with discrimination based on different discrimination grounds. But although many Member States have established a small number of single-ground bodies, the dominant trend is the establishment of multi-ground equality ones.

Finland is an example of particularly fragmented equality structures. There are two main equality bodies: The Non-discrimination Ombudsman and the Gender Equality Ombudsman. While both only have functional

independence and are structurally connected to the Ministry of Justice, they differentiate when it comes to the scope of their mandates. The Non-Discrimination Ombudsman deals with cases based on the open list of grounds envisaged in the Non-discrimination Act,[12] while its other mandates are scattered in different laws. The primary law is the Act on the Non-Discrimination Ombudsman, which establishes the ombuds institution and mandates it to supervise the compliance with the Non-discrimination Act in order to promote equality, prevent discrimination and, more specifically, to perform the function of the National Rapporteur on Trafficking in Human Beings. The Aliens Act further mandates it with the monitoring of the rights of foreign nationals and the enforcement of removals from the country. With the adoption of the Ombudsman for Older Persons Act, it will share some of its resources with this newly established specialised ombuds body (which is not an equality body itself). And just in case all this is not enough, there is also a governmental proposal[13] that the Non-Discrimination Ombudsman will take on the tasks of being a Rapporteur on Violence against Women.

Meanwhile, the Gender Equality Ombudsman (established by the Gender Equality Ombudsman Act) was tasked with supervising the Act on Equality Between Women and Men. It deals with matters concerning gender, gender identity and gender expression; promoting equality between woman and men; and improving the status of women, particularly in working life. Adding to the complexity of the situation in Finland, the Non-discrimination Act envisages that some of the supervision powers against discrimination will be given to the National Non-Discrimination and Equality Tribunal, as well as to occupational safety and health authorities. At the other end of this spectrum, the multi-mandated Ombudsman/NHRI in Poland is the equality body dealing with all protected grounds. Croatia also showcases stronger balance through having, in addition to the multi-mandated NHRI which is the central equality body, three additional bodies (the Ombudsman for Persons with Disabilities, the Ombudsman for Children, and the Ombudsman for Gender Equality) focused on anti-discrimination issues (all except the Ombudsman for Children being members of Equinet).

[12] These are: age, origin, nationality language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics, Section 8 of the Non-discrimination Act.

[13] Hallituksen esitys eduskunnalle laiksi yhdenvertaisvaltuutetusta annetun lain muuttamisesta. Retrieved from https://www.finlex.fi/fi/esitykset/he/2021/20210082

This wide variety of equality bodies can be differentiated into those that focus mainly on promotional work and providing advice, those that focus on investigating and deciding cases based on their mandate, and those that have a mix of these powers (Kadar, 2018, 147). Many equality bodies have additional functions and powers, such as initiating and supporting litigation or delivering decisions on discrimination cases with legally binding effect. These differences, however, may result in different levels of protection against discrimination in different Member States, a gap that the setting up of standards for equality bodies was trying to overcome.

In December 2017, the European Commission against Racism and Intolerance (ECRI) adopted a General Policy Recommendation on Equality Bodies to Combat Racism and Intolerance at National Level.[14] Building on the Paris Principles, ECRI recommends that Member States establish equality bodies to combat racism and intolerance by constitutional or legislative provision. The Recommendation puts strong emphasis on the principle of independence. It demands *de jure* and *de facto* independence, a separate legal existence outside the executive and legislature, and the necessary competences, powers, and resources. According to ECRI, equality bodies should function free of political interference by any actor, and should not be given instructions from the outside. Their independence should be assured by appointment, status, and dismissal procedures for persons holding leadership positions and by a separate budget line, subject to the annual approval of the parliament. ECRI also recommends that the equality bodies that form the multi-mandate institutions have, inter alia, their mandate explicitly set out in legislation and access to appropriate human and financial resources. Member States with different equality bodies should have their competences and powers levelled up with adequate co-ordination to address overlaps, enable joint action, and optimise the use of resources. A common interpretation of the anti-discrimination legislation and coordinated use of competences and powers is also needed. Finally, the monitoring of the implementation of the Recommendation should be in the hands of ECRI during (and limited to) the constructive dialogue with Member States.

In 2018, the European Commission adopted a Commission Recommendation on Standards for equality bodies, setting out measures to help im-

[14] ECRI general policy recommendation N°2 revised on equality bodies to combat racism and intolerance at national level – adopted on 13 June 1997 and revised on 7 December 2017. Retrieved from https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2

prove their independence and effectiveness. These standards relate to the national equality bodies' mandate, functions, and independence, as well as coordination and cooperation. The Commission Recommendation underlines the importance of functional independence by providing independent assistance, conducting independent surveys, and by publishing independent reports. However, it goes one step further and, albeit softly, recommends that Member States "consider such elements as the organisations of those bodies, their place in the overall administrative structure, the allocation of their budget, their procedures for handling resources, with particular focus on the procedures for appointing and dismissing staff, including persons holding leadership positions. Such consideration should be without prejudice to Member States' particular national organisational structures" (Section 1.2.1.). To address the gap in the monitoring of the standards and to identify any necessary improvements to the status and work of equality bodies, in 2019, Equinet developed sets of indicators relating to both mandate and the independence of the equality bodies that are currently being tested by institutions on a voluntary and confidential basis.

In March 2021, the European Commission took stock of the situation regarding equality bodies across the EU, issuing a report supported by the Staff Working Document on Equality Bodies (SWD), which seeks to aid the implementation of the Racial Equality Directive and the Employment Equality Directive. The Commission Recommendation on SWD provides in-depth insight into the establishment and functioning of equality bodies in the EU Member States. On the subject of independence, the SWD recognises that even though almost all equality bodies are *de jure* independent, this does not guarantee *de facto* independence, particularly when they have been established as part of a ministry. The European Commission perceives this as "a structural weakness" that might be mitigated by strong leadership and internal rules (p. 16). This has implications for budgetary independence, leadership, and accountability. Furthermore, even though many equality bodies established within government structures do enjoy functional independence, granting them structural independence could also build resilience in the face of potential political interference "in less consensual political climates" (p. 19). The SWD clearly recognises that, even though the Recommendation serves as a common standard for the effective and independent functioning of equality bodies, its limited and unequal level of implementation still hinders some equality bodies in the effective exercise of their role, leading to different levels of protection against discrimination across the EU. Therefore, the announcement that

the European Commission will assess whether to propose new legislation to strengthen the role of equality bodies is encouraging.

Indeed, this process has already started. In July 2021, the European Commission launched an initiative to adopt new legislation aimed at strengthening equality bodies by setting binding minimum standards on how they operate in all instances of discrimination and areas covered by EU equality rules, which resulted in a Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services.[15]

5. Towards a More Efficient Implementation of Human Rights: The Centralisation or Proliferation of Human Rights Institutions?

Considering the evolution of the human rights infrastructure at the national level – accompanied by a lack of coherent and decisive international, regional, or supranational guidance – it is not surprising that the discussion around centralisation, as opposed to proliferation, of human rights and equality institutions has reoccurred in many states with differing results. For example, Great Britain's Commission for Equality and Human Rights, established by the 2006 Equality Act, combines three pre-existing bodies: The Commission for Racial Equality, the Equal Opportunity Commission, and the Disability Rights Commission (accredited as an NHRI in 2008) (Cardenas, 2014, p. 298). Similarly, the Irish Human Rights and Equality Commission, established by the Human Rights and Equality Commission Act 2014, merged the former Irish Human Rights Commission and the Equality Authority into a centralised national human

[15] Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Art.13 of Directive 2000/43/EC and Art. 12 of Directive 2004/113/EC. COM/2022/689 final

rights and equality institution.[16] In 2006 in Norway, the Gender Equality Ombud, the Gender Equality Centre, and the Centre for Combating eEhnic Discrimination were merged into a single Equality and Anti-Discrimination Ombud with a clearly expressed intention of establishing one strong equality body to work in all protected grounds, including multiple discrimination, in every area of society.

Most recently, in 2020, the Hungarian Equal Treatment Authority (ETA) was abolished, and its duties assumed by the Commissioner for Fundamental Rights (CFR). This merger raised concerns among certain NGOs due to the absence of any public consultations or an impact assessment concerning the reform. The ETA was perceived as an independent public actor monitoring, e.g., the rights of LGBTQI people in Hungary.[17] The CoE Commissioner for Human Rights (2020) issued a statement emphasising that while "member states have some discretion to organise their national human rights structures as they see fit, it is crucial that in doing so they respect fundamental principles agreed on at international level, especially the need to guarantee and respect the independence and effectiveness of such bodies", adding that the "Equal Treatment Authority is a well-functioning institution, which has rendered important decisions for the fight against discrimination over recent years, whereas the Ombudsman institution's re-accreditation as a Status A Institution […] was deferred in October 2019".[18] These concerns appear to have been validated by the recent SCA report which recommends downgrading the Hungarian CFR to "B status" due to a lack of sufficient independence. This example clearly shows how a merger of institutions in a contentious political climate might be instrumentalised and thus contribute to a weakened protection and promotion of human rights, particularly the rights of the most vulnerable.

In Sweden, in 2009, four anti-discrimination ombuds were merged into a new body, the Equality Ombudsman body, which is also a "B status"

[16] Irish Human Rights and Equality Commission, https://www.ihrec.ie/about/who-we-are/

[17] ILGA-Europe, "ILGA-Europe is alarmed by Hungarian Parliament's moves to abolish the national equal treatment authority", https://www.ilga-europe.org/resources/news/latest-news/ilga-europe-alarmed-hungarian-parliaments-moves-abolish-national-equal

[18] "Commissioner urges Hungary's Parliament to postpone the vote on draft bills that, if adopted, will have far-reaching adverse effects on human rights in the country", https://www.coe.int/ca/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in-.

NHRI. On the other hand, the Swedish institutional framework is still not centralised. The Office of the Parliamentary Ombudsmen also has an advisory and consultative function as regards the correct application of the law, while the Swedish National Institute for Human Rights was finally confirmed by legislation in June 2021.[19] A contrary example was the failure of a 2011 initiative to merge Croatian specialised ombuds institutions (for children, for persons with disabilities and for gender equality) with a constitutionally established Ombudsman. After facing a significant rebuke from civil society, this effort was eventually abandoned with the passing of the 2012 Ombudsman Act which, in place of a merger, imposed an obligation for the four separate institutions to formally cooperate (Art. 32).

In other states, new bodies and institutions are being established and added to already existing structures with limited mandates, functions, and resources. In 2020, e.g., Norway established the Ombud for the Elderly,[20] an "independent national government body" that promotes the interests of older persons in relation to both public and private sectors and monitors the situation of older persons throughout society. Considering this entity a human rights institution *stricto sensu*, however, is debatable when it states that it promotes interests instead of human rights and has been established within the government's structure. Similarly, in Finland in 2021, a new act relating to the ombuds for older persons was adopted following a consultative process which did not include a prior needs assessment. Being set up as a functionally independent authority with a promotional mandate in connection with the Non-Discrimination Ombudsman set limits on its independence, also reflected in the government's proposal that it share not just administrative and office space services with the Non-Discrimination Ombudsman, but also communication functions.

Murray (2007, p. 200) rightly points out that, when establishing new institutions, proposals must be weighed against already existing institutions and gaps in protection that cannot be filled by other institutions. Carver (2011, p. 1) also notices that deciding to have a fragmented or centralised system is a pragmatic decision. In that regard, strategic and comprehensive processes by the government often seem to be absent, as the case of Finland shows. Consequently, instead of building a more resilient

[19] The Office of the Swedish Parliamentary Ombudsmen, https://www.jo.se/en/About-JO/History/

[20] Lov om Eldreombudet (eldreombudsloven), LOV-2020-06-19-80

institutional framework, progressive fragmentation that lacks a strategic approach has the potential to negatively impact the overall realisation of human rights in a country. Finding that balance between a too centralised or overly fragmented system in dynamic and ever-changing national contexts is thus a difficult but necessary task, and inevitably subject to contextualisation at the national level. Arguments for more centralised (as well as for more fragmented) structures lie on both sides of this discussion, as do arguments concerning the different strengths and weaknesses of both arrangements. What benefits would the establishment of new institutions or the merging of existing institutions bring? Factors governments take into consideration are often budgetary; however, in any human rights discussion, budgetary factors should not take precedence over the effectiveness of all the institutions concerned. Other factors include functional and efficiency considerations, political attitudes, and the influence of the international standards (Reif, 2015.

A central question concerning which system – centralised or fragmented – is more efficient is whether the rights of particularly vulnerable groups in society (women, LGBTIQ, ethnic minorities, people with disabilities, children, older people, to name a few) are more efficiently monitored, promoted, and protected by institutions that focus specifically on one of these groups, or through all of them being included in a larger, multi-mandated institution. One of the most important arguments for the specialisation of human rights and equality institutions is that they clearly reflect priorities in the protection and promotion of certain vulnerable groups, bring more visibility to the vulnerable group they are mandated for, and have the expertise and resources (albeit often very limited) to focus on specific issues within their mandate. This position has been taken by NGOs and different interest groups in many countries when advocating for their establishment or advocating against the merger of specialised institutions into an institution with a broader mandate. However, as Carver (2011, p. 1) rightly points out, if more institutions mean rights are better protected, should states continue to add them, and up to what point? In recent years, many new tasks and functions that could potentially be set up as new institutions or added as new tasks to existing ones have been discussed. In addition to the already existing NPMs and NMMs, these are, e.g., anti-corruption and whistleblowing mandates, independent border monitoring, preventing violence against women, combating trafficking in human beings, and monitoring the use of artificial intelligence. But establishing separate institutions would further fragment the human rights and equality framework and risk becoming a never-ending process. This

may be the case in Finland, where the discussion on the next new specialised ombuds for persons with disabilities has gained strength following the establishment of the Ombudsman for Older Persons in 2021.

In a fragmented system, numerous challenges hamper the efficient and comprehensive promotion and protection of human rights and equality. The most obvious are gaps in protection that either stem from gaps in legislation or are due to the institutional interpretation of the norm. Examining the issue from the perspective of rights holders, it is also likely that a fragmented system comprised of several institutions with limited mandates will create confusion as to the best-placed competent authority in cases involving complex human rights issues (e.g., the issues of a mother of a Roma child with disabilities). Likewise, our research showed that there are cases of jurisdiction overlap which are not only confusing but can potentially be very problematic (e.g., if two institutions issue different opinions on the same issue), contributing to the lack of systemic coherence. This is particularly the case regarding complaints-handling institutions. The example of Croatia shows that when there are a number of these overlaps (e.g., the Ombudsman for Children and the Ombudsman for Persons with Disabilities are both in charge of issues relating to children with disabilities), the ORC body, being the central equality body, deems itself competent for issues relating to ethnic discrimination against children or to multiple discrimination, even if one of the multiple grounds is dealt with by a specialised ombuds, etc.

The finding of this research is that it is crucial to establish systemic cooperation between institutions, as the lack of such cooperation is another potentially contested issue in more fragmented systems. In order for the overall human rights and equality institutional framework to function in a comprehensive manner, to assure its effectiveness, and to avoid the duplication of work, as well as gaps in protection, the cooperation between institutions is *conditio sine qua non*. While this is a legally established obligation in Croatia, following the unsuccessful attempt to merge all ombuds institutions, there is no such obligation in Poland. However, the CHR has the obligation to undertake activities at the request of the Ombudsman for Children. In Finland, the interviews revealed that cooperation between institutions has been historically positive and that all human rights, equality, and specialised bodies cooperate in the context of the Human Rights Delegation, a pluralistic organ of the FHRC of which they are all members. Practical experience shows that cooperation in fact strongly relies on institutional leadership, which might be problematic, particularly when leadership changes. While all stakeholders in Croatia emphasize

cooperation has been very good, in Poland, there has been more emphasis on the technical exchange of information between institutions and less on cooperation with regard to sensitive issues such as anti-discrimination and LGBTI issues.

There are other risks involved with a diverse and fragmented system. For example, institutions sometimes create a culture of competition amongst themselves, competing for public attention, resources, and interesting cases which might negatively affect their cooperation and overall impact and effectiveness. Lacking a strategic approach to the design of the overall framework, the mandate of a newly established institution might be perceived, or even exercised, in a manner that sets *de facto* limits on the mandate of an already existing and broader institution without possessing the accompanying powers and resources of that institution. Designing several smaller institutions with narrow and limited mandates affects their development and growth – not surprisingly, they stay small, with limited resources and powers, including powers related to complaints handling and access to information. Finally, a more fragmented system makes a comprehensive overview of human rights and equality issues more difficult and by putting significant emphasis on specific vulnerable groups risks losing sight of "the big picture".

While each institution in fragmented systems has its own normative framework, which might diverge significantly from the constitutional one, in a more centralised system, there is a coherent legal framework and consistent powers regarding all vulnerable groups. A more centralised system helps to overcome the challenges of protection gaps and/or overlaps, particularly in cross-related issues, and better enables the sharing of best practices, thus maximizing the impact of institutional resources. Therefore, it is not surprising that merging with an institution that has a broad mandate can be seen by specialised institutions as a significant threat.

Carver (2011, p. 3.) holds the opinion that a centralised model will be more effective provided it possesses guarantees that particular vulnerable groups will be sufficiently prioritized and not neglected, and that greater authority and influence on the part of a more centralised institution vis-ã-vis the government and other bodies is likely. The latter argument can be extended to the institutions' relations with other stakeholders, particularly the media, the general public, and, in the case of complaints handling institutions, complainants. Along the same lines with regard to children's rights institutions, Reif (2015, p. 437) adds that the Paris Principles, becoming dominant in the human rights community, subtly discourage states from establishing or retaining separate national-level thematic in-

stitutions. Similarly, the FRA Report (2010, p. 9) on NHRIs implies a preference for more centralised organisations, emphasising "a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions – such as a visible and effective overarching NHRI that can act as a hub to ensure that gaps are covered and that all human rights are given due attention".

Noting all of the strengths of more centralised institutions with broad or multiple mandates, our research showed that one of their weaknesses is the lack of effective internal processes for cooperation between mandates. Nor does having separate mandates make the institution immune to internal competition when it comes to prioritising issues, visibility opportunities, and, not least, competition for resources. Another issue central to this discussion is the question of independence, which is crucial in any analysis of the effectiveness of institutional models. Concerning NHRIs, this is regularly assessed against the Paris Principles. The same cannot be said for other types of institutions. While the Venice Principles have, to a certain extent, established a peer review (which still needs to prove its relevance) for the equality bodies, there are still no assurances of their organisational independence, making them more vulnerable to external pressures. This also strongly relates to leadership, as poor leadership in a single institution can have deleterious consequences for the human rights protection system as a whole (Carver, 2011, p. 9). This inevitably leads to the question of resilience. Faced with political pressure or insufficient budgetary resources, both centralised and fragmented structures face significant challenges. The smaller, less resourced, specialised bodies are easier targets and more susceptible to attempts to weaken their functions, particularly if they deal with politically sensitive issues. In other words, excessive "atomisation" of human rights and equality structures puts resilience at risk, especially if coupled with numerous operational limitations. In fact, one way to attack a strong NHRI is to introduce legislation that will atomise its mandate and compartmentalise its powers. On the other hand, if similar attempts are made against a multi-mandated NHRI, it affects all of its mandates and functions.

By comparing the cases analysed above, we are drawing conclusions about the factors that contribute to or hinder the effectiveness of national human rights institutions with similar mandates. Having all that in mind, the available academic literature, as well as our research, shows that when looking into the strengths and challenges of both centralised systems with institutions that have broad or multiple mandates, and those of fragmented systems with many smaller institutions with limited man-

dates, the weight does somewhat prevail in the direction of stronger, more centralised systems. They are often better resourced, have stronger legal (or constitutional) mandates, and offer a comprehensive overview of the overall human rights situation with limited gaps in protection and a clear position in the eyes of the rights holders. At the same time, the lack of prioritisation in such institutions may lead to some vulnerable groups in society demanding additional monitoring, protection, and promotion. Therefore, the decision of whether or not to establish a new institution lies in the hands of the political decision makers and their priorities.

6. Conclusion

The landscape of institutional human rights and equality frameworks across European states is marked by diversity, reflecting historical, social, and political factors. Despite their similarities, no two national frameworks are the same but exist upon a spectrum. Whereas Poland has centralised its institutions, Finland's variety of bodies working on different human rights and equality issues with different levels of *de jure* and *de facto* independence, scopes of mandate, and competences displays a high degree of fragmentation. The question of whether to adopt a more centralized or fragmented approach to human rights institutions has been a recurring one, driven by various considerations. The case studies of different countries presented above illustrate the advantages and challenges associated with each approach. We acknowledge the limitations of the research presented above, since a relatively small number of cases explored and the specific contextual factors of European NHRI architecture might not apply generally. Fragmented systems with specialized institutions dedicated to specific vulnerable groups bring expertise, visibility, and focused advocacy to those issues. However, they can struggle with multi-sectoral concerns and limited resources. The findings of the comparative research presented above suggest that, due to their limited mandate, they also often encounter challenges in dealing with multi-sectoral issues and lack adequate resources. In fragmented systems, both gaps and overlaps in protection are often encountered, resulting in citizens and stakeholders not knowing which institution to address, particularly when inter-institutional cooperation is poor. In addition, the independence of smaller and fragmented institutions is often hindered by political influence operating through complex legal arrangements that dictate their establishment, prioritisation of issues, and budgetary resources. On the other hand, cen-

tralized institutions with broader or multiple mandates, such as NHRIs, especially if established constitutionally and in accordance with international standards contained in the Paris Principles, provide a more comprehensive human rights and equality mandates. Whether broadly mandated or multi-mandated, when established on a constitutional basis, they embrace a more comprehensive overview of the human rights and equality situation under their jurisdiction. Such institutions are better equipped to tackle multi-faceted issues, maintain resilience against political pressures, and hold authoritative positions vis-ã-vis the government and stakeholders. They also offer a clearer point of contact for individuals dealing with complex and interconnected human rights matters. Most importantly, from the perspective of rights holders, consolidated and more centralised institutions are easier to approach, particularly when it comes to complex and inter-related human rights and equality issues. However, this is not to say that only centralized institutions are efficient and fulfil their purpose. Ultimately, striking the right balance between a centralized and a fragmented approach is key. A well-designed framework should prioritise the overall protection of human rights and equality, ensure systemic cooperation among diverse institutions, and address the needs of the most vulnerable groups. Achieving this balance demands careful consideration of mandates, independence, resources, and cooperation mechanisms. In conclusion, to achieve a comprehensive overview of the human rights and equality situation at the national level, to avoid both gaps and overlaps in protection, and to ensure the implementation of human rights and equality standards at the national level, governments should aim to find a balance between an overly centralised system and a too fragmented one. Provided that all concerned institutions have their mandate clearly set in the text of legislation, ensuring their full independence and sufficient resources, the most resilient framework seems to be the one that keeps in mind the overall protection of human rights and equality, ensures the systemic cooperation of both central and fragmented equality bodies, and prioritises issues faced by especially vulnerable groups.

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HUMAN RIGHTS AND EQUALITY INSTITUTIONS IN EUROPE: INCREASING EFFICACY BY FINDING A BALANCE BETWEEN CENTRALISATION AND FRAGMENTATION

Summary

National Human Rights Institutions (NHRIs) are state bodies mandated to protect and promote human rights. Their mission is to identify and tackle systemic problems while raising fundamental rights awareness in countries in which they have been established. Human rights institutions at the national level include Ombudsman (some specialising in particularly vulnerable groups), Equality Bodies, National Preventive Mechanisms, National Monitoring Mechanisms, Data Protection Agencies, and more. In this article, we analyse the strengths and weaknesses of both centralised and fragmented systems of human rights institutions. Using examples from several European countries, we particularly examine how the fragmentation of institutions affects their resilience to pressures which can adversely impact the promotion and protection of human rights and equality at the national level. We argue that opting for a certain NHRIs' system might exert significant influence on the independence and effectiveness of individual institutions, as well as on the overall comprehensiveness of a nation's human rights infrastructure.

Keywords: *human rights protection and promotion, National Human Rights Institutions, human rights commissions, equality bodies, ombuds institutions, specialised ombuds, Paris Principles*

INSTITUCIJE ZA LJUDSKA PRAVA I JEDNAKOST U EUROPI: POVEĆANJE DJELOTVORNOSTI USPOSTAVOM RAVNOTEŽE IZMEĐU CENTRALIZACIJE I FRAGMENTACIJE

Sažetak

Nacionalne institucije za ljudska prava imaju mandat zaštite i promicanja ljudskih prava na nacionalnoj razini. Osim toga, u njihovoj je nadležnosti rješavanje sistemskih problema i podizanje svijesti o temeljnim pravima u zemljama u kojima djeluju. Uz njih, na nacionalno razini prisutne su i institucije ombudsmana, uključujući i onih koji štite prava posebno ranjivih skupina u društvu, tijela za jednakost, nacionalni preventivni mehanizmi i druge institucije (primjerice, nacionalni mehanizmi za praćenje i agencije za zaštitu podataka). U ovom članku analiziramo prednosti i slabosti centraliziranih i fragmentiranih sustava za zaštitu i promicanje ljudskih prava. Na temelju primjera nekoliko europskih zemalja ovaj članak ispituje utječe li fragmentiranost institucija za ljudska prava na njihovu otpornost na pritiske te na učinkovitost promicanja i zaštite ljudskih prava i ravnopravnosti. U članku smo utvrdile da izbor strukture funkcioniranja nacionalne institucije za ljudska prava može značajno utjecati na sveobuhvatnost infrastrukture za ljudska prava, kao i na neovisnost i učinkovitost takvih institucija.

Ključne riječi: *zaštita i promicanje ljudskih prava, nacionalna tijela nadležna za ljudska prava, komisije za ljudska prava, nezavisna tijela za jednakost, pučki pravobranitelj, ombudsman, ombuds institucije, specijalizirani pravobranitelji, „Pariška načela“*