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THE ARDUOUS PATH TOWARDS A NATIONAL HUMAN RIGHTS INSTITUTION FOR ITALY

A PUBLIC POLICY ANALYSIS OF THE ITALIAN HUMAN RIGHTS PROTECTION SYSTEM

Supervisor: Prof. PIETRO DE PERINI

Candidate: SOPHIA WILLNER

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Abstract

The thesis examines the lack of a National Human Rights Institution (NHRI) in Italy, and aims at providing answers to the following research question: Which elements play a role in the public policy process of establishing a National Human Rights Institution in Italy and how do they affect the process? First, the history of NHRIs, their current role, and their impact to protect and promote human rights domestically are presented. Subsequently, the current situation of human rights in Italy is analysed by providing an overview of the ratified international human rights treaties, relevant national law, and the institutional human rights landscape, focusing on the fact that Italy remains one of the last two EU countries without an NHRI at all. Building upon this exceptional situation, all the past developments (recommendations by civil society, treaty bodies, and other countries during the UPR, previous failed draft laws, and voluntary pledges by the Italian State) leading to the establishment of an NHRI are presented. Subsequently, the Multiple Streams Approach (MSA) is explained as the theoretical framework applied to analyse this exceptional situation. The MSA is used to examine agenda setting in public policy making and conceptualises decision-making situations as three mutually independent streams (problem, politics, and policy stream) which must be coupled by a policy entrepreneur during a window of opportunity for an agenda change to occur. The MSA is adapted in two aspects to apply it to the Italian political system: The first adaptation concerns the characteristics of parliamentary systems and the more important role of parties. The second adaptation includes focusing on policy formulation instead of agenda setting. The methodology used for the present analysis consists of a content analysis of the protocols of the sessions during which the latest draft bill to establish an NHRI was discussed. In the analysis itself, the adapted version of the MSA is applied to the policy formulation of the latest draft law on the establishment of an NHRI and the related relevant events and indicators. The analysis shows that the problem stream (the lack of an NHRI) and the policy stream (the latest draft bill) were ripe, whereas the politics stream (the composition and behaviour of the First Commission in the Chamber of Deputies) was not ripe. Therefore, the efforts of the identified policy entrepreneurs failed to produce any effects, and the latest draft law failed to materialise before the government crisis in July 2022. Concluding, the analysis confirmed the hypothesis that policy formulation in a parliamentary system fails if the policy stream contradicts the basic ideology of influential members of the politics stream.

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Abbreviations

Art.	Article
CAT	Committee Against Torture
CCPR	Human Rights Committee
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CeSPI	Centro Studi Politica Internazionale
CoE	Council of Europe
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSCE	Conference of Security and Co-operation in Europe
ECOSOC	Economic and Social Council
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ENNHRI	European Alliance of Human Rights Institutions
EU	European Union
FDI	Fratelli d'Italia
FI	Forza Italia - Berlusconi Presidente
FRA	European Union Agency for Fundamental Rights

GANHRI	Global Alliance of Human Rights Institutions (formerly: ICC)
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICHRP	International Council on Human Rights Policy
IV	Italia Viva - Italia c'è
LEGA	Lega - Salvini Premier
MEP	Member of the Parliament
MS5	Movimento 5 Stelle
MSA	Multiple Streams Approach
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe (formerly: CSCE)
para.	Paragraph
PD	Partito democratico
SCA	Sub-Committee on Accreditation
UN	United Nations
UPR	Universal Periodic Review

1 Introduction

The present thesis analyses the Italian human rights protection system focusing on the lack of a National Human Rights Institution (NHRI) and on the public policy process that would create such an institution. As a case study, the public policy process constituting the latest attempt of adopting a legal basis for an NHRI is analysed in detail, aiming to shine light on the persistent deadlock Italy finds itself in regarding the establishment of an NHRI.

An indicator why an enhanced promotion and protection of human rights is needed in Italy can be found in the number of judgements delivered by the European Court of Human Rights (ECtHR). On the regional level across wider Europe, the ECtHR serves as an immensely powerful guarantee for the respect of human rights obligations resulting from the European Convention on Human Rights (ECHR). Since the establishment of the ECtHR in 1959, more than a third of the 24511 delivered judgements concerned three member States: Turkey (3820 judgements), the Russian Federation (3116 judgements), and Italy (2466 judgements).[1] The majority of judgments delivered against Italy concerned the violation of Article 6 of the ECHR – the right to a fair trial (297) and specifically the length of proceedings (1203),[2] underlining the prevailing need to address and most importantly to better prevent human rights violations in order to reduce the burden on the judicial system.

One of the instruments a state can employ to better protect human rights domestically and to prevent appeals to national and regional courts is the establishment of an NHRI. An NHRI is an independent body established by the government of the respective country, by law or under the constitution, and is equipped with a mandate to promote and protect human rights domestically.[3] Such institutions "[…] *are a key component of effective national human rights protection systems and indispensable actors for the sustainable promotion and protection of human rights at the country level*."[4] As the high volume of judgements delivered by the ECtHR shows, regional courts alone do not suffice to advance the respect for human rights within a state. NHRIs thus play a crucial role in closing a gap in the do-

1 ECtHR, 2022, p. 3

2 Ibid., p. 8

3 United Nations Center for Human Rights, 1995, para. 39

4 OHCHR, 2007, p. 5 para 15

mestic human rights architecture. In the words of Dunja Mijatović, CoE Commissioner for Human Rights: "*Independent and effective NHRIs are a jewel of the human rights system. They bring international human rights obligations home to make them a reality in people's daily lives, and act as checks and balances to guard democracy and the rule of law. We need to protect NHRIs so that they can be strong and protect us all*."[5]

As of October 2022, Italy is one of the only two countries in the European Union without a National Human Rights Institution at all.[6] Despite numerous recommendations by civil society, regional and international treaty bodies, other countries during the Universal Periodic Review (UPR), as well as voluntary pledges and commitments by the Italian State, an independent institution for the promotion and protection of human rights has not been set up yet. The persistent lack of an NHRI becomes even more astonishing against the background of roughly 30 years in which draft law after draft law failed to materialise before the end of the legislative period, preventing an Italian NHRI from being established. With the most recent government crisis in July 2022 and the following elections in September, the latest example of a draft bill stuck in one of the two chambers of the Italian Parliament suffered the same fate as all previous legislative proposals. Therefore, the present thesis aims to shine light on the underlying reasons for the deadlock that Italy found itself in during the discussions of the latest draft law. The analysis conducted in this thesis aims at answering the following research question: Which elements play a role in the public policy process of establishing a National Human Rights Institution in Italy and how do they affect the process? In this regard, the thesis argues that policy formulation in Italy's parliamentary system fails if the discussed policy contradicts the basic ideology of influential political decision-makers.

Before conducting the analysis based on the case-study of the latest draft law, the thesis first explores and presents the history and proliferation of NHRIs, taking into account multiple levels of governance. Afterwards, the activities conducted by NHRIs to promote and protect human rights, their structures, and the characteristics of the Paris Principles as guidelines for the establishment of NHRIs are explained. The extent to which NHRIs can have an impact on the domestic human rights situation is explored critically. Subsequently, the next chapter focuses on the human rights situation in Italy. First, the current

5 Council of Europe, 2020, p. 57

6 FRA, 2020, p. 34; FRA, 2021c, p. 3

institutional human rights landscape and the legislative framework applicable in Italy are illustrated, emphasising the gap in the human rights protection system that an NHRI could potentially fill. Second, all relevant developments that pointed towards the establishment of an independent National Human Rights Institution are presented, whereby relevant developments are grouped by external contributions (recommendations and initiatives by treaty bodies, regional organisations, civil society, and other countries during the UPR) and the reactions by the Italian state (failed draft laws, national action plans, and other voluntary pledges). In the next chapter, the political theory applied to analyse the peculiar situation of Italy's persistent inaction is presented. First, the structural elements and the underlying assumptions of the Multiple Streams Approach (MSA) are explained in their basic form, including the three independent streams (problem, politics, and policy stream), policy entrepreneurs and windows of opportunity. Afterwards, in order to apply the framework to the chosen case-study, two adaptions of the MSA in its original form are made. The first adaption takes account of the characteristics of parliamentary systems and the more pronounced role of parties and. The second adaption entails an extension of the framework to include the phase on which the analysis focuses on – policy formulation. Based on these adaptions, the theoretical framework is applied to the policy formulation phase of the latest draft law that aimed at creating an NHRI. This chapter aims at answering the research question of which elements play a role in the public policy process of establishing an NHRI in Italy and how these elements affect the process, and at rejecting or confirming the hypothesis that policy formulation in a parliamentary system fails if the policy stream contradicts the basic ideology of influential members of the politics stream. The methodology used for the analysis consists of a content analysis of the protocols of the Parliamentary Commission in which the latest draft law was under consideration, combined with desk research aimed at identifying relevant events and actors which exerted influence on the policy making process. Regarding the sources[7] used for the present thesis, a combination of primary sources (UN and ECOSOC resolutions, Concluding Observations by treaty bodies, reports by FRA, GANHRI, or ENNHRI, as well as the translated protocols of the Parliamentary Commission) and relevant secondary sources[8] were used.

[7] Whenever a source is available online, the footnote is clickable and leads to the website or online document. The references in the text to other chapters or the appendix are clickable as well.

[8] Most importantly Kingdon, 1984; and Herweg, 2015 for the original form of the MSA, and Herweg, Huß & Zohlnhöfer, 2015; and Ridde, 2009 for the adapted version of the MSA.

2 National Human Rights Institutions

In the following chapter, the history, and the proliferation of National Human Rights Institutions (NHRIs) is presented. The main milestones on the international level (United Nations (UN)) starting from the emergence of the first ideas and discussions to create national human rights information groups to the seminars and workshops that produced the Paris Principles are illustrated.[9] The chapter emphasizes how the Paris Principles were the product of NHRIs themselves but still included enough leeway for states to decide on which organisational form would fit best to their national jurisdiction, considering governmental concerns regarding interference in sovereignty. The Paris Principles constituted general yet clear enough guidelines to spark the proliferation of NHRIs mainly in Europe, the Americas and Africa. Furthermore, the different types of contributions, support, and levels of engagement by the Council of Europe (CoE), the Organisation for Security and Cooperation in Europe (OSCE) and the European Union (EU) with its Fundamental Rights Agency (FRA) towards NHRIs are presented, as well as the role of the Global Alliance of National Human Rights Institutions (GANHRI), its accreditation system and the prerogatives that full compliance with the Paris Principles entails. Thereby, the chapter argues that the different levels of governance interacted with NHRIs to strengthen their core function – serving as a bridge between the international, regional, and national level.

Afterwards, the activities conducted by NHRIs to promote and protect human rights and the characteristics of the Paris Principles as guidelines for the establishment of NHRIs are explained and supplemented with specifications elaborated by GANHRI's Sub-Committee on Accreditation (SCA) in its General Observations. Then the impact of NHRIs on the ground is exemplified presenting a large-scale study on the influence of NHRIs on civil and political rights. Other attempts and systems in place to evaluate the impact of NHRIs are summarised and examined based on criticism by scholars, analysing GANHRI's accreditation system and individual contributions by the scholars and practitioners regarding the assessment of NHRIs. The chapter argues that so far, a comprehensive comparative study on the impact by NHRIs that includes a wide variety of different rights is still missing. Eventually, the chapter concludes with the thesis that assessments

[9] The levels of governance that are considered in the following include the UN, the CoE, the OSCE and the EU (FRA).

of the performance and impact of NHRIs must include a variety of systemic factors considering the entirety of a country's human rights protection system and the synergies between national human rights bodies. NHRIs, albeit their crucial role, constitute only one part of the domestic human rights landscape.

The crucial role NHRIs fulfil includes monitoring state activities, advising the government on harmonising national legislation with international human rights standards, observing the state's compliance with treaty provisions, conducting research, raising awareness, and in certain cases handling individual complaints taking on a quasi-judicial role. Thereby NHRIs serve as a bridge between the government and civil society, and between the international and the domestic level. On the international level, NHRIs participated in the negotiations of the UN Declaration on the Rights of Indigenous People and were involved in the drafting of the UN Convention on the Rights of Persons with Disabilities. NHRIs can make use of their speaking rights during sessions of the Human Rights Council, submit reports to treaty bodies and the Universal Periodic Review (UPR), and serve as contact points for regional mechanisms and their agencies, such as the EU, the CoE or the OSCE.[10] Thus, NHRIs have gained increased recognition for their potential to shape global human rights standards, and for their role in domestic human rights promotion as well.[11]

From the initial idea of creating human rights information groups, to being perceived as a jewel of the human rights system, almost eight decades have passed. In the following, the developments during those eight decades and the history of the emergence and proliferation of NHRIs across the globe are presented.

2.1 History and proliferation of NHRIs

The first discussions regarding the establishment of some sort of national body tasked with promoting human rights took place in the aftermath of WWII, shortly after the foundation of the United Nations.[12] During the second session of the Economic and Social Council (ECOSOC), the idea which constitutes the starting point of the history and the prolifera-

[10] ENNHRI & CNCDH, 2018, p. 7

[11] Goodman & Pegram, 2011, p. 2

[12] De Beco, 2007, p. 333-342; Kumar, 2003, pp. 266-270; Langtry & Lyer, 2021, pp. 13-22

tion of NHRIs was formulated in the 1946 Resolution 9 (II). In its resolution, ECOSOC not only established the Commission on Human Rights, but also invited UN member states to "*consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights.*"[13] This first reference to what is known today as an NHRI served as a crucial starting point, but lacked clear guidelines and specifications on the role and functions of such information groups. Nevertheless, only one year later in 1947, France created the very first NHRI in the world (National Consultative Commission on Human Rights/ Commission nationale consultative des droits de l'homme – CNCDH).

However, due to the resources being tied up in the ongoing drafting of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the creation of further NHRIs failed to gain momentum for the following three decades. Thus, in 1960 and 1962, ECOSOC resorted to adopting two more resolutions reminding states to consider the establishment of national human rights committees.[14] Although the invitations to establish such committees had a rather tentative nature, in these occasions the perception of the human rights committees shifted from pure information groups to advisory committees assisting governments and educating the public with regards to human rights, contrary to the wording in the 1946 Resolution.[15] Some core concepts that would later form minimum requirements for NRHIs, such as advisory functions, awareness raising, and independence from the government, had emerged by the end of the 1960s, and had equally increased the member states' scepticism towards institutions that could potentially interfere with their sovereignty in domestic issues and in the area of human rights.

Although the topic of NHRIs had remained on the agenda of the UN during the 1960s, only in 1978 the next decisive development rendered the concept of such institutions more tangible – the 'Seminar on National and Local Institutions for the Promotion and Protection of Human Rights' in Geneva, organised by the Commission on Human Rights.[16] The goals of this seminar included suggesting "[…] *certain possible guidelines for the structure and*

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13 ECOSOC, 1946, E/RES/9(II), 21 June 1946, p. 521 para. 5

14 ECOSOC Res. 772 B(XXX), 25 July 1960 and ECOSOC Res. 888 F (XXXIV), 24 July 1962

15 Langtry & Lyer, 2021, pp. 15-16

16 UN Commission on Human Rights, 1978, para 3, 4

functioning of national institutions."[17] The participants of the seminar (mostly state representatives) produced a set of quite extensive guidelines that contained provisions both on the functions as well as the structures of NHRIs, taking into account a variety of possible organisational forms in order to accommodate for the fear of interference in sovereignty issues that had emerged in the 1960s.[18] Later that year, the guidelines were endorsed by the UN General assembly and created the official name of 'national institutions for the promotion and protection of human rights', thereby emphasising the two main functions: human rights promotion and protection.[19] The extensive set of guidelines adopted in the UN Resolution in 1978 accelerated the diffusion of such institutions across the different regions of the world, most notably in Europe and in the Americas (see figure 1).

During the following decade, several annual UN GA resolutions which further emphasized the different roles of national institutions for the promotion and protection of human rights were adopted, keeping the topic firmly on the agenda of the international community.[20] Also on the regional level in wider Europe, one of the first organisations recognising the potential of National Human Rights Institutions was the Conference on Security and Co-operation in Europe (CSCE, later: OSCE). In the 1990 Copenhagen Conference on the Human Dimension of the CSCE, participating states pledged to "[…] *facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law, which may also serve as focal points for co-ordination and collaboration between such institutions in the participating States.*"[21] Thereby, the CSCE had opened the door for collaborations between National Human Rights Institutions and transnational mechanisms other than the United Nations.

However, a consensus on what exactly national institutions for the promotion and protection of human rights constituted still lacked among member states of the UN.[22] This lack of consensus resulted partially from the intentional scope for countries to decide which kind of institutional structure fitted best to their national context, and partly from an evident lack of clarity and agreement with regards to the definition of such institutions. Therefore,

17 Ibid.

18 United Nations Division on Human Rights, 1978, ST/HR/SER.A/2, 18-29 September 1978

19 UN Commission on Human Rights, 1978, A/RES/33/46, 14 December 1978

20 For a detailed list of all the relevant annual GA resolutions, see footnote 26 in Langtry & Lyer, 2021, p. 19.

21 Conference on Security and Co-operation in Europe (CSCE), 1990, para. 27

22 Pegram, 2010, p. 733

throughout the 1980s, a variety of different structures that classified as national institutions for the promotion and protection of human rights emerged, ranging from ombudsman institutions to human rights commissions and committees, with estimated numbers of active organisations ranging from eight to twenty in 1990.[23]

In order to draw on the experiences which had already been collected by various forms of national institutions by 1990, the UN Commission on Human Rights convened the 'International Workshop on National Institutions for the Promotion and Protection of Human Rights' in Paris in October 1991'.[24] Among the participants of the workshop were mainly national institutions, specialised agencies of the UN, other intergovernmental bodies and non-governmental organisations in consultative status with the ECOSOC. Contrary to the 1978 seminar in Geneva, during the 1991 workshop the majority of the participants were members of already established national institutions and could draw on several years of experience, which produced an authentic series of recommendations and guidelines.[25] The annex of the report of the workshop included a set of principles,[26] which were subsequently endorsed unamended both by the Human Rights Commission in 1992, and by the UN GA in 1993.[27] Laid down in the UN GA Resolution 48/134, the 'Principles relating to the status and functioning of national institutions for the protection and promotion of human rights' became the minimum standard for NHRIs around the world and were thereafter referred to as 'the Paris Principles'. [28] The Paris Principles constitute a milestone in the history of NHRIs, as they were produced by national institutions themselves and accepted as such by the UN, since both the Commission and the GA annexed the original version to their resolutions without alternating them.[29] The importance of the Paris Principles had been emphasized the same year at the adoption of the Vienna Declaration and Programme of Action, an outcome of the 1993 World Conference on Human Rights. Reaffirming the constructive role fulfilled by NHRIs, the *"World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the 'Principles relating to the status of national institutions' and recognizing that it is the right of*

23 Ibid.; Jägers, 2020, p 296; Linos & Pegram, 2017, p. 629

24 Langtry & Lyer, 2021, p. 20

25 ECOSOC, 1991, E/CN.4/1992/43, 7-9 October 1991

26 Ibid., p. 46

27 UN Human Rights Commission, 1992, E/CN.4/RES/1992/54, 3 March 1992; footnote 26

28 UN GA, 1993, A/RES/48/134, 20 December 1993 (Paris Principles)

29 De Beco, National Human Rights Institutions in Europe, 2007, p. 334

each State to choose the framework which is best suited to its particular needs at the national level."[30] Various comments, training materials, technical and administrative support by treaty bodies and other UN agencies followed throughout the 1990s, for instance the 'Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights' published by the UN in 1995.[31] Thanks to the high level of support, the number of NHRIs had grown rapidly by the end of the 1990s and continued to grow well into the 2000 (see figure 1).

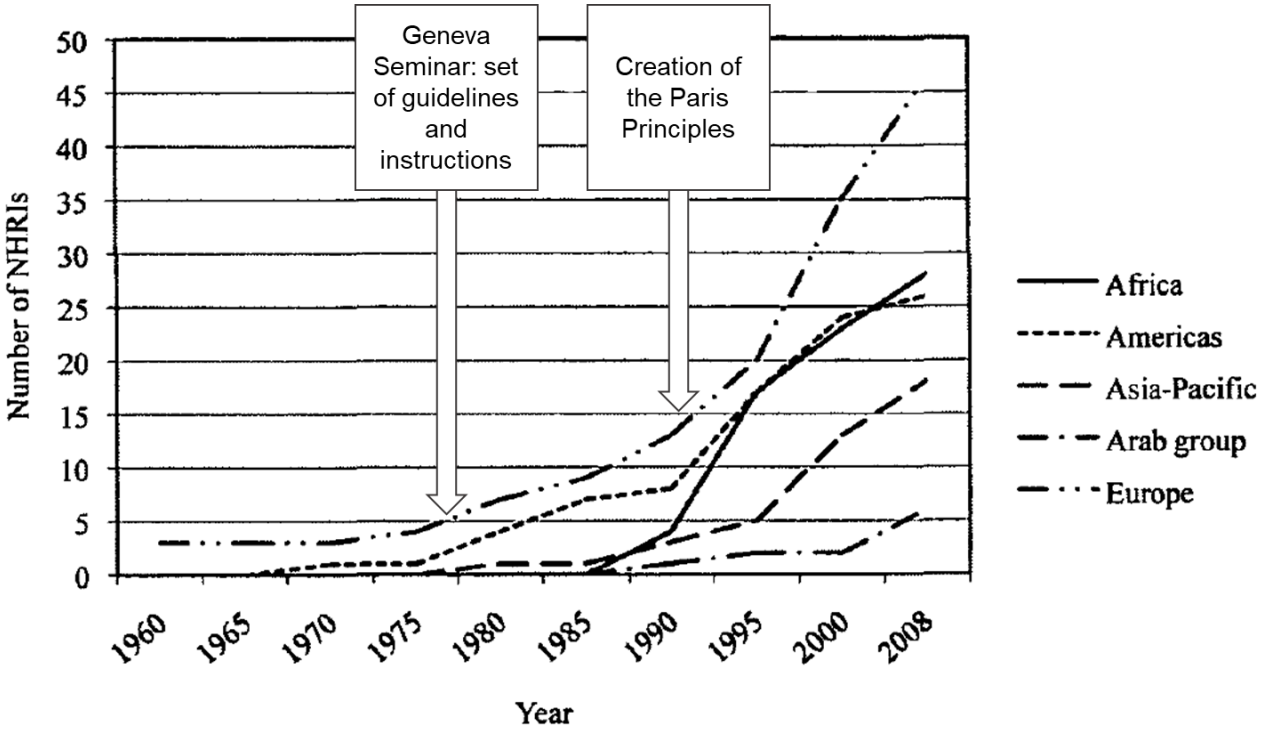

Figure 1: Estimated proliferation of NHRIs, 1960 – 2008, by region (graphic from Pegram, 2010, p. 738, adapted by the author)

Despite the proliferation of NHRIs in Europe, the Americas, and Asia-Pacific, such institutions were generally perceived as having an added value particularly for countries transitioning towards democracy, promoting the rule of law and good governance.[32] Therefore, albeit the growing number of NHRIs in Europe, a certain level of scepticism towards NHRIs could be noted on the part of European states. As it often is the case in the sphere of human rights, the advanced democracies in Europe considered their domestic human

[30] Vienna Declaration and Programme of Action, 25 June 1993, part I, para. 36

[31] UN Center for Human Rights, 1995

[32] De Beco, National Human Rights Institutions in Europe, 2007, p. 338

rights protection systems sufficiently developed, and feared that NHRIs would only duplicate the efforts by an already active and pluralistic civil society.

Since the adoption of the Paris Principles, the proliferation of NHRIs had been accompanied by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which was created by NHRIs during their second international workshop in Tunis in 1993.[33] The ICC, which was composed by NHRIs from the four regional groups of Africa, Europe, the Americas and Asia-Pacific, was tasked with several coordinating functions that aimed at supporting the creation of new NHRIs, as well as the strengthening of already established institutions. Its activities included the interaction with UN bodies, the development and management of best-practice examples, guidelines, and statements, the organisation of conferences, and promoting collaboration among NHRIs and the regional groups and committees.[34] After the establishment of the ICC, a mechanism to officially label NHRIs according to how well they comply with the Paris Principles was put in place in 1998, when the Sub-Committee on Accreditation (SCA) was tasked with the review of all NHRIs. In this peer-review mechanism with rotating members, each from one of the four regional groups, the Sub-Committee analysed the accreditation application sent by NHRIs, and subsequently labelled the institution according to three levels of accreditation entailing different rights and privileges:

- A – fully compliant with the Paris Principles, entitled to full participation and voting rights within the ICC, and to participation and speaking rights during sessions of the Human Rights Council
- B – partially compliant, entitled to observation rights
- C – not compliant, no rights but may be invited to attend meetings at the ICC

On the regional level of governance, by 1997 also the Council of Europe had acknowledged the important intermediary role NHRIs could play between the national and the supranational level when the Committee of Ministers adopted a recommendation calling on Member States to establish independent national institutions for the promotion and protec-

33 Ibid., p. 335.

34 OHCHR, 2010, p. 44

tion of human rights,[35] and a resolution setting the framework for the cooperation between NHRIs and between NHRIs and the CoE.[36] Most recently in March 2021, the CoE Committee of Ministers replaced the 1997 recommendation on the establishment of NHRIs and adopted a renewed recommendation inviting Member States to "*take all necessary measures to establish and, when established, maintain and strengthen an independent NHRI in accordance with the Paris Principles.*"[37]

With the numbers of accredited NHRIs and the variety of institutions increasing steadily into the 21st century, the ICC adopted revised rules of procedure for the accreditation process in 2008, abolishing the category C and keeping only A as compliant, and B as partially compliant.[38] By 2010, the SCA had accredited 67 institutions as compliant with the Paris Principles, and a growing number of NHRIs sought accreditation in the following years since it reflected international acceptance and legitimacy of an NHRI.[39] Indeed, the prerogatives A-Status NHRIs are entitled to serve as incentives to pursue full compliance with the Paris Principles, and, once obtained, entail not only participation and voting rights within the ICC and the Human Rights Council, but also the right to contribute documents to certain UN Treaty Bodies and other important UN processes, such as the UPR. Furthermore, European NHRIs which obtained an A-Status are deemed focal contact points for institutions of the European Union (such as the European Union Agency for Fundamental Rights), for the CoE, and for the OSCE, connecting the various levels of governance.[40]

In 2016, the International Coordinating Committee of National, changed its name to the Global Alliance of National Human Rights Institutions (GANHRI), which cooperates with four regional groups[41] - the European Network of National Human Rights Institutions (ENNHRI)[42], the Network of African National Human Rights Institutions (NANHRI)[43], the Network of National Institutions for the Promotion and Protection of Human Rights in the

35 Council of Europe Committee of Ministers, 1997a, R(97)14

36 Council of Europe Committee of Ministers, 1997b, R(97)11

37 Council of Europe Committee of Ministers, 2021, CM/Rec(2021)1, p. 2

38 GANHRI, 2018a, p. 11

39 OHCHR, 2010, p. 46

40 ENNHRI & CNCDH, 2018, p. 7

41 GANHRI, 2022

42 As of June 2022, ENNHRI comprises 46 accredited NHRIs across wider Europe (ENNHRI, 2022b).

43 As of June 2022, NANHRI comprises 46 accredited NHRIs across Africa (NANHRI, 2021).

American Continent (RINDHCA)[44], and the Asia Pacific Forum of National Human Rights Institutions (APF)[45].

On the level of the European Union, the adoption of the Charter of Fundamental Rights of the European Union (2000) represents the first decisive step in the incorporation of human rights norms into the values and culture of the EU.[46] Although the Charter only became legally binding when the Lisbon Treaty entered into force, already since its adoption the Charter contributed important stimuli to the EU's work on promoting and protecting human rights. In 2007, the EU's efforts on advancing human rights substantiated in the establishment of the EU Agency for Fundamental Rights (FRA), which was mandated to advice EU institutions or governments of member states on how to implement EU law in accordance with fundamental rights.[47] The regulation establishing FRA furthermore stipulates cooperation with "[…] *governmental organisations and public bodies competent in the field of fundamental rights in the Member States, including National Human Rights Institutions*"[48] and drew on the Paris Principles as inspiration both regarding its tasks (for instance raising public awareness, collecting data and producing expert opinions)[49] as well as the pluralistic composition and independence of its management board.[50] Thus, FRA represents one of the most important interlocutors between the EU and NHRIs and vice versa. NHRIs of all member states can contribute their country-specific expertise in the area of human rights to the programmes conducted by FRA, thereby creating a rich exchange and synergies across the European Union. Furthermore, in 2014 the EU adopted a regulation establishing a financing instrument for democracy and human rights worldwide to support achieving the objectives of the Union's external action.[51] In the regulation, the EU acknowledged that the process of democratisation and strengthening the rule of law could be facilitated by, inter alia, supporting NHRIs.[52] Most recently in 2019, the Council of the European Union reminded the member states of "[…] *the necessity of safeguard-*

44 As of June 2022, RINDHCA comprises 18 accredited NHRIs across the Americas (RINDHCA, 2022).

45 As of June 2022, the APF comprises 25 accredited NHRIs across the Asia Pacific region (APF, 2022).

46 Wouters, Meuwissen, & Barros, 2013, pp. 5-6

47 Council of the European Union, 2007, Council Regulation (EC) No 168/2007, Art. 2

48 Ibid., Art. 8 para. 2 a)

49 Ibid., Art. 4 para. 1

50 For an elaboration on whether FRA could qualify as the EU's NHRI, see Wouters, Meuwissen, & Barros, 2013.

51 European Parliament & Council of the European Union, 2014, Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014

52 Regulation (EU) No 235/2014 of 11 March 2014, Art. 2, para. 1 a) ii)

ing an enabling environment for independent National Human Rights Institutions, equality bodies and other human rights mechanisms in light of the 10-year anniversary".[53]

Summarising, since the UN GA Assembly Resolution enshrined the Paris Principles in 1993, the essential role of NHRIs has been endorsed by numerous UN declarations[54]. Furthermore, the UN Convention Rights of the Persons with Disabilities (Art. 33 para. 2) and the Optional Protocol to the Convention against Torture (Art. 18 para. 4) refer directly to the Paris Principles, as well as the founding regulation of the EU Fundamental Rights Agency. Various international and regional institutions, organisations and networks continuously delivered support ranging from technical and administrative support to capacity building, networking and experience sharing as well as providing legal opinions to support the work of NHRIs. Thanks to the support and mutual encouragement by the international community, the global number of reviewed NHRIs grew to 130, 90 of which received an A-Status, and 30 a B-Status accreditation by GANHRI (as of May 2022).[55]

Although the Paris Principle provide the minimum requirements for all NHRIs, due to different contexts and necessities a rich variety of different structures and levels of impact evolved which distinguishes the 130 reviewed institutions around the globe. In the following, the various possible structures, the functions according to the Paris Principles, the possible impact and the effectiveness of NHRIs are examined.

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53 Council of the European Union, 2019, p. 11 para. 22

54 See for example - UN GA A/RES/60/154 of December 16th, 2005; Resolutions A/RES/63/169 and A/RES/63/172 of December 18th, 2008; Resolution A/RES/64/161 of December 18th, 2009; Resolution A/RES/65/207 of December 21st, 2010; Resolution A/RES/67/163 of December 20th, 2012; Resolution A/RES/69/168 of December 18th, 2014; A/RES/71/200 of December 19th, 2016; Resolution A/RES/72/181 of December 19th, 2017; Human Rights Council Resolution A/HRC/17/L.18 of June 16th, 2011; Resolution A/HRC/14/7 of 6th July 2011; Resolution A/HRC/20/L.15 of July 5th, 2012; Resolution A/HRC/27/L.25 of September 25th, 2014 as cited in ENNHRI & CNCDH, 2018, p. 13

55 GANHRI & OHCHR, 2022

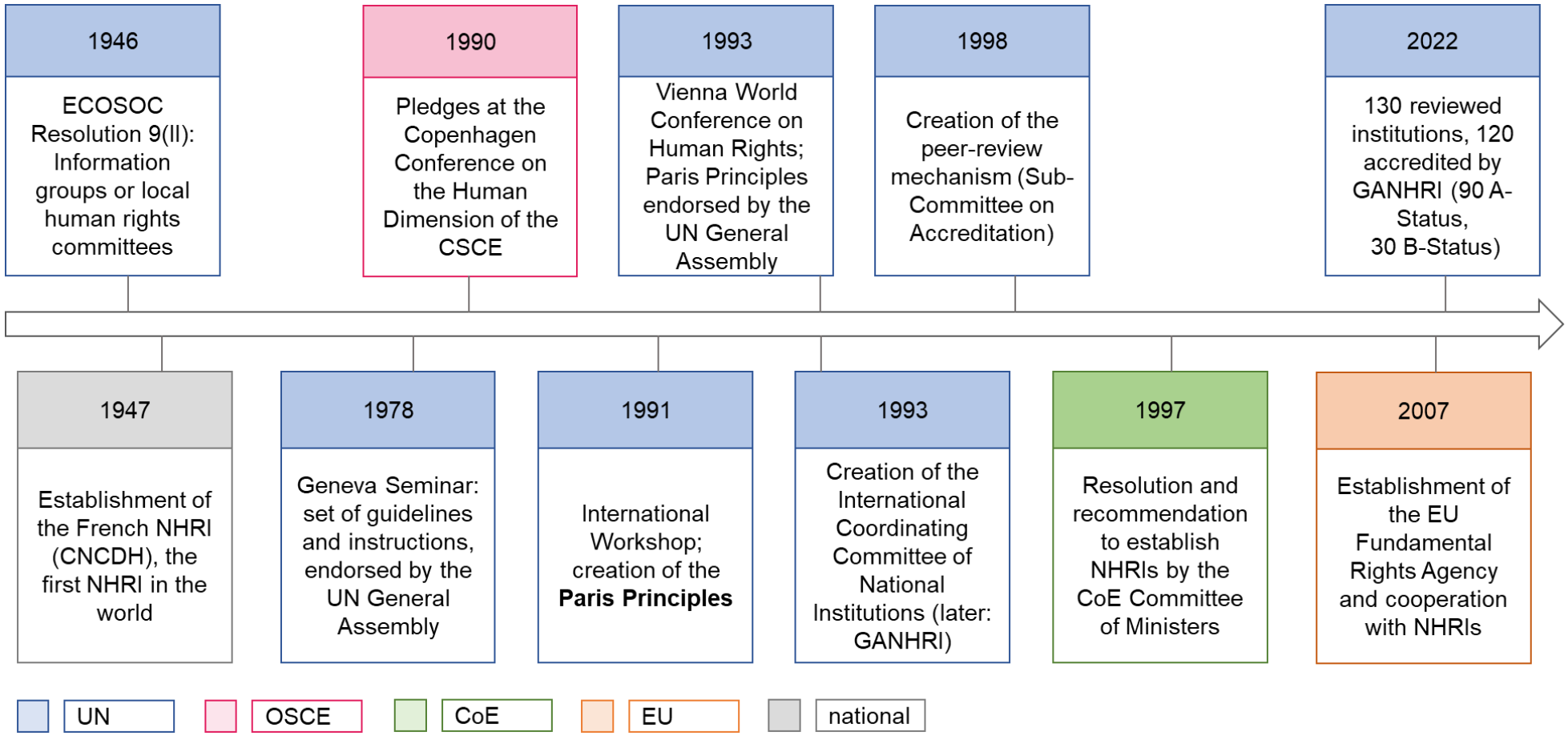

Figure 2: Key moments in the history of NHRIs across wider Europe (own graphic based on De Beco, 2007, p. 333-342; Kumar, 2003, pp. 266-270; Langtry & Lyer, 2021, pp. 13-22)

2.2 Structure, functions, and impact of NHRIs

The Paris Principles serve as a framework and baseline for all national institutions that are mandated to promote and protect human rights in the State that they are located in.[56] The principles contain provisions on four different areas: 1. Competence and responsibilities, 2. Composition and guarantees of independence and pluralism, 3. Methods of operation, and 4. Additional principles concerning the status of commissions with quasi-jurisdictional competence (optional). The Paris Principles must be interpreted as having a general nature instead of viewing them as rigid rules. Especially with regard to the institutional structure the State opts for when setting up an NHRI, the UN GA Resolution stipulates "[…] *the right of each State to choose the framework that is best suited to its particular needs at the national level*".[57] Thereby, the Paris Principles allow for room for manoeuvre to pick the type of organisational structure that best fits to a specific jurisdiction and the national context, which lead to a wide variety of existing NHRI-forms around the globe: Human Rights Commissions, Human Rights Ombuds Institutions, Consultative and Advisory Bodies, Institutes and Centres, and Hybrid Institutions.[58] Different regions in the world typically have a tradition of preferred organisational forms – from the Ombudsmen model prominent in Scandinavian countries, to Human Rights Commissions in Commonwealth member states.[59]

Despite the great variety in organisational structure, a number of general criteria must be met by all national human rights bodies that are established based on the Paris Principles. The formulation of the criteria set out in the Paris Principles vary according to the different interpretations but can generally be condensed to the following characteristics that NHRIs must possess:[60]

1. Be established under primary law or under the Constitution

2. Have a broad mandate to promote and protect human rights

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56 Smith, 2019, p. 155

57 UN GA, 1993, A/RES/48/134, 20 December 1993 (Paris Principles), para. 12

58 GANHRI, 2022

59 Pegram, 2010, p. 738

60 ENNHRI, 2022a; Jägers, 2020, p. 294

3. Be formally and functionally independent (independent appointment procedures of the personnel, independent governing structures)

4. Reflect pluralism in their membership and personnel, representing all parts of society

5. Receive adequate funding, resources, and infrastructure

With regards to the functions, the Paris Principles differentiate between two main functions: protection and promotion of human rights.[61] 'Promotion' of human rights includes those activities which foster a broad understanding and respect of human rights within society, for example raising awareness, conducting trainings, campaigns to educate the public, and general advocacy.[62] 'Protection' includes all activities that protect and assist victims in case of human rights violations, as well as all activities preventing possible violations, for example monitoring of international human rights obligations, investigating on and reporting human rights violations, and (optionally) the handling of individual complaints. In fulfilling the two main roles, NHRIs advise governments and parliaments on all matters that relate to human rights (including the encouragement to ratify international human rights conventions), publish annual reports, and cooperate with civil society, other national authorities, the international human rights system, other NHRIs and regional bodies.[63] The cooperation with regional and international human rights systems depends on the accreditation an NHRI receives, but once obtained, A-Status NHRIs can contribute their expertise to the state reports their country must submit in the framework of UN treaty bodies and can make use of their participation rights in sessions of the UN Human Rights Council.

Since 2006, the SCA has developed a sound body of jurisprudence in the form of General Observations, which can be used by NHRIs as interpretive tool of the Paris principles, and by the SCA as a robust base to render the accreditation process more consistent.[64] The General Observations are divided into two thematic areas and contain elaborations on the essential requirements of the Paris Principles (direct interpretation of the Paris Principles), and on the practices that directly promote Paris Principle compliance

61 OHCHR, 2010, p. 21

62 GANHRI, 2018b, General Observation 1.2, p. 7

63 OHCHR, 2010, p. 23 ff.

64 GANHRI, 2018b

(derived from the experience gathered during accreditation processes).[65] The SCA encourages all NHRIs, regardless of their structure, to make use of the General Observations as an accessible tool to enhance their effectiveness and efficiency, thereby acceleration their evolution into mature NHRIs.[66] Thus, the Paris Principles and the General Observations combined contain provisions that aim at guaranteeing an NHRI's independence, its financial and human resources, an adequate infrastructure, its broad mandate, pluralism among its members, cooperation with other human rights bodies and international human rights instruments, and numerous more specifications that undoubtedly strengthen the baseline of an NHRI's ability to promote and protect human rights domestically. However, the mere existence of NHRIs compliant with the Paris Principles does not automatically lead to their effectiveness in advancing human rights domestically. Already in 1995, the UN Handbook on the Establishment of National Human Rights Institutions had emphasised six factors (independence, defined jurisdiction and adequate powers, operational efficiency, accessibility, accountability, and cooperation) that determined the effectiveness of NHRIs, some of which were already present in the Paris Principles.[67] The six factors were further supplemented by scholars and practitioners that identified more aspects that positively or negatively influence an NHRI's capacity of protecting and promoting human rights, such as political support in their creation, the country's state of democracy and political stability, or internal factors as a clear strategic plan and vision, or coherent management systems, managing relations with the media, and operational efficiency.[68] However, the review conducted by the SCA currently contains an assessment of an NHRI's compliance with the Paris Principles and recommendations on how to better implement the principles, but it does not evaluate the actual effectiveness and efficiency of an NHRI's performance and impact on the ground. A comprehensive assessment of the impact of an NHRI would entail establishing causal links between its activities and changes in the human rights situation, and extensive and possibly comparative studies would be needed to obtain meaningful results. In its current form with rotating non-permanent members and limited resources, the SCA would face several challenges if it were to assume the role an

65 Ibid., p. 2 para. 9

66 Ibid., p. 3 para. 7 & 15

67 UN Center for Human Rights, 1995

68 Murray, 2007, pp. 202-210; De Beco & Murray, 2014, p. 141

such an evaluating body.[69] Still, with a growing number of NHRIs around the world occupying a more prominent position in domestic and international human rights protection systems, the need to draw the attention towards evaluating their impact and results increased.

Scholars and practitioners who examined possible ways how to evaluate the effectiveness of NHRIs expressed the criticism that empirical studies evaluating the impact of NHRIs are sparse and that the majority of the existing scholarly contributions focuses on technical differences between NHRIs, such as differences in structure and in mandate, and therefore omit evaluation of results or whether NHRIs actually manage to have an impact on the ground.[70] On the international level, there had been attempts to complement the accreditation process conducted by the SCA, which determines the compliance with the Paris Principles. Albeit their significance as the minimum requirements for the establishment of NHRIs, the OHCHR recognised that the formal structure and compliance with the Paris Principles did not guarantee the effectiveness of an NHRI on the ground.[71] Therefore, the National Institutions Unit of the OHCHR tasked the International Council on Human Rights Policy[72] to conduct a study on and in collaboration with NHRIs to determine how they could assess their own effectiveness and impact. What resulted from the study was a manual containing indicators and benchmarks, both quantitative and qualitative, and guidelines on how to implement them taking potential pitfalls of the indicators into account.[73] The developed indicators were intended to be used by NHRIs to measure or evaluate the human rights situation in their country, their own performance, and their impact on human rights, which aimed at closing the gap between the assessment of the compliance with the Paris Principles and actual impact on the ground.

However, scholarly criticism on the accreditation system and the lack of attention to the actual performance of NHRIs prevailed mainly in two aspects: the reliance on GANHRI's SCA as a peer-review mechanism, and lack of pressure on NHRIs to show results.

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69 De Beco & Murray, 2014, p. 141

70 See Mertus, 2011; Rosenblum, 2011

71 OHCHR & ICHRP, 2005, p. 11

72 The ICHRP was a Geneva-based NGO that ceased to exist in 2012 due to financial constraints.

73 OHCHR & ICHRP, 2005

Firstly, the fact that GANHRI's members consist of NHRIs that are tasked with mutually evaluating their work is criticised as a risk to the neutrality of the peer-review.[74] The accreditation mechanism has been criticized as a "[…] *highly politicized body of peers casting judgment on other peers in their role as gatekeepers",* where political alliances or antagonism might distort the review process[75] – an inherent critique that also concerns other peer-review mechanisms such as the UPR. Examples confirming this criticism can be found in the case of Malaysia, whose NHRI was granted A-Status despite continuous struggle, compared to Switzerland, a country with comparatively high human rights standards but whose newly established NHRI was granted B-Status for unequal treatment of women.[76] However, precisely to prevent such seemingly unequal treatment of applicants, the General Observations are used as institutional memory of the SCA, thereby ensuring consistent application of the accreditation criteria despite the rotational membership of the SCA.[77] Furthermore, peer-review mechanisms hold several advantages and do not automatically lead to a distorted review marked by political alliances. Since the SCA is composed of members from NHRIs with A-Status, during the review they can utilize their own expertise resulting from experiences within a fully compliant NHRI.[78] Furthermore, the equal geographic distribution (one member from each of the four regions) and their term of 3 years further complicates distortion of the review and impedes members to adopt the role of 'gatekeepers'.

The second criticism concerns the missing pressure on NHRIs to show results and the willingness of advocates for NHRIs to accept a lack of impact as 'unfortunate dilemmas'.[79] Such a case of an NHRI finding itself in a dilemma unable to function could be observed in Cameroon, where an ally of the president served as the organisations head for years and thereby prevented it from adequately promoting and protecting human rights in the country.[80] The general and seemingly unconditional support for NHRIs becomes tainted by such cases in which NHRIs act as puppets of authoritarian and oppressive regimes, which

74 Rosenblum, 2011, p. 299

75 Mertus, 2011, p. 78

76 Ibid., p. 78

77 GANHRI, 2018b, p. 3 para. 14

78 GANHRI, 2018a, p. 27

79 Rosenblum, 2011, p. 300

80 Ibid., p. 301

is why NHRIs are viewed by some as a double-edged sword.[81] Such façade human rights bodies acting on behalf of the government can also be observed in dictatorships as Saudi Arabia, Bahrain and Iraq.[82] Furthermore, instead of labelling and accepting an NHRI with inadequate funding or unskilled personnel as an unfortunate dilemma, the international community should rather reveal the underlying intentions of the government to intentionally hamper the work of an NHRI. Still, international organisations tasked with accrediting NHRIs (GANHRI) or capable of influencing reluctant governments (OHCHR, FRA) do not focus on monitoring the actual impact and results produced by NHRIs. External control and pressure on NHRIs to enhance effectiveness therefore is only minimal.[83]

Following this criticism, instead of focusing only on compliance or comparing the mere existence or structure of NHRIs, the attention shifted towards to conducting evaluations of the impact of NHRIs. One of the first large-scale and influential contributions to the scholarly body on evaluation is an empirical study assessing the impact of NHRIs in 143 countries from 1981 to 2004, published in 2013.[84] The study examined what kind of impact different forms of National Human Rights Institutions could have on two types of human rights: physical integrity rights (e.g., prohibition of torture, of extrajudicial killings, of political imprisonment or of forced disappearances), and civil and political rights (e.g., freedom of speech, right to vote, or freedom of religion, etc.). The study produced mixed results: On the one hand, countries that established an NHRI, regardless of its organisational form, could reduce those human rights violations that involved harming a person's physical integrity. On the other hand, such positive long-term effect could not be observed on the reduction of violations of other civil and political rights. However, when comparing the impact of NHRIs on the two types of rights violations, it remains questionable whether besides a correlation also a causality can be observed. Possible explanations of such outcomes can be found in the widely accepted nature of the non-derogable rights guarding the physical and mental integrity and the more contested ones of the civil and political rights viewed as Western in character.[85] It is thus to be expected that NHRIs are generally

81 Kumar, 2003, pp. 265-266

82 Linos & Pegram, 2017, p. 684

83 Rosenblum, 2011, p. 298

84 Cole & Ramirez, 2013 as cited in Linos & Pegram, 2017

85 Cole & Ramirez, 2013, p. 707

more successful in advocating for the respect of rights to physical and mental integrity than in reinforcing all civil and political rights.

Other contributions by practitioners and scholars suggest a positive impact on the protection and promotion of human rights, although there is no comprehensive comparative study on the effectiveness of NHRIs, nor are there external evaluations applying the indicators suggested by the ICHRP. Evaluations so far focus on either a specific right or group of rights[86], or conduct single case studies that produce original indicators and are therefore difficult to compare.[87]

The points of criticism all contain valid and genuine concern that should be followed up by the international community. The use of indicators to measure human rights impact is a relatively new phenomenon[88], but NHRIs around the world would certainly benefit from a universally applied rating system that takes more aspects than the Paris Principles offer into account. For instance, including the indicators and benchmarks suggested by the ICHRP into GANHRI's accreditation system could serve as an incentive for an NHRI to improve its operational efficiency, thus leading to greater credibility and possibly enhanced cooperation between the NHRI and the government.

Still, the expectations of what NHRIs can achieve must be realistic. The scope an NHRI can fulfil is shaped significantly by the economic, political, legal, and social circumstances, as well as by the presence or absence of other mechanisms and bodies of the domestic human rights system.[89] Especially regarding the impact on the human rights situation in the country, the activities NHRIs carry out cannot be examined as if they would happen in a vacuum. The state of human rights is influenced by many different variables which might even influence each other, or they might have a delayed influence, which renders the precise classification of their influence problematic and complex.

86 See Welch, 2017, focusing on torture.

87 See Mertus, 2011; Linos & Pegram, 2017; Murray, 2007

88 See for instance OHCHR, 2012

89 Murray, 2007, p. 191

Concluding, the illustration of the history of NHRIs shows that the creation of the Paris Principles stands out as a clear milestone and that they are directly referenced in other international human rights instruments as well as by regional institutions like the FRA. The Paris Principles must be interpreted as general guidelines for the establishment of NHRIs, and contain provisions that, if implemented, increase an NHRI's potential in effectively and efficiently fulfilling their two main functions of human rights promotion and protection. However, due to their general nature, a variety of organisational structures have emerged around the globe, which makes meaningful comparison difficult. Thus, in 2006, the SCA started issuing General Observations both on each essential element of the Paris Principles and on practices that promote compliance, which the SCA gathered over years of accreditation processes. States can utilize the General Observations as a practical tool to make the Paris Principles more tangible when establishing NHRIs, and NHRIs themselves can use the General Observations to increase their effectiveness and efficiency.

Still, currently no monitoring body on the international level takes on the role of evaluating the efficiency of NHRIs activities and the impact of their work. One large scale study conducted in 2013 found a positive impact of NHRI's on the prevention of violations of physical integrity, such as torture or forced disappearances, but no positive influence on other civil and political rights. Other contributions by scholars and practitioners draw a more positive picture regarding the impact of NHRIs, but no recent large-scale multifaceted study has examined NHRIs' influence on a wide spectrum of rights yet. The challenges of conducting such a large-scale comparative analysis are several: the many varying organisational forms of bodies that qualify as an NHRI, the multitude of variables that influence an NHRI's effectiveness (political stability and support, operational efficiency, interactions with and between other national human rights bodies, etc.), the pitfalls of using indicators to measure impact[90], and the need to establish casual links between specific activities of an NHRI and resulting changes in the human rights situation. Especially regarding promotion of human rights, such links can be indirect, or the influence becomes visible with a time lag, which is why substantiated evaluation should be conducted over a long period. Furthermore, in interaction with a strong civil society and with other bodies of a solid domestic human rights protection system, an NHRI can create synergies out of the combined efforts, thus improving its own effectiveness. However, thereby it becomes more

[90] See OHCHR & ICHRP, 2005, p. 141 for all potential pitfalls of using indicators.

difficult to attribute improvements or deterioration of the human rights situation to specific activities of one national human rights body.

Therefore, rather than assessing the potential impact of an NHRI in isolation from the rest of a country's political and human rights system, the entire human rights landscape, including the various bodies, their interactions, and the influence by different levels of governance must be analysed. To better contextualize the absence of an NHRI in Italy, the organisations and institutions shaping the domestic human rights landscape are examined in the following, as well as all the past developments that had favoured the establishment of a National Human Rights Institution in the country.

3 Human Rights in Italy

In the following chapter, the current human rights framework and infrastructure in Italy are illustrated, starting with the applicable international and national law which constitutes the legal framework protecting human rights in Italy. The various levels of governance on the regional and international level that contribute to the legal human rights protection in Italy include the EU, the CoE and the UN. On the national level on the other hand, Italy's constitution incorporates different principles necessary for the implementation of international human rights standards on the ground. The chapter argues that based on Italy's constitution, its foreign policy, and statements made by political representatives, Italy's self-perception of a country highly valuing human rights becomes evident, which is subsequently challenged in the chapter. First, however, the current human rights landscape in terms of relevant actors and institutions is examined. The different actors are divided into relevant parliamentary bodies (within the Senate or the Chamber of Deputies), governmental bodies, independent public authorities, academic institutions, and civil-society organisations. Their composition, mandates and activities are compared to render their interplay more tangible, but also to emphasize the level of fragmentation of the current institutional landscape and the need for an independent institution covering a wide variety of human rights.

Afterwards, all relevant developments that pointed towards the establishment of an independent National Human Rights Institution are presented. The developments and contributions are grouped by external factors (recommendations and initiatives by treaty bodies, regional organisations, civil society, and other countries during the UPR) and the reactions by the Italian state (failed draft laws, national action plans, and other voluntary pledges). On the national level, relevant contributions to raise awareness and to advocate for accelerating and concluding the process of establishing an NHRI came from scholars, journalists, think tanks, students, and universities and are concentrated around the recent period (2018-2022) in which the latest draft law was under examination. On the regional level, contributions, and recommendations by the CoE, the European Commission against Racism and Intolerance, the OSCE, and FRA are presented. On the international level, recommendations by the treaty bodies of the core human rights treaties ratified by Italy are examined. Finally, the recommendations received during all three UPR cycles are illus-

trated, suggesting that more and more countries became aware of Italy's unfulfilled responsibility to create an NHRI.

Furthermore, reactions and activities by the Italian state suggesting steps towards the establishment of an NHRI are examined and evaluated, starting with the participation in the 'International Workshop on National Institutions for the Promotion and Protection of Human Rights' in 1991 with Italy's interim-NHRI at the time. Since then, the need for a National Human Rights Institution has repeatedly been pushed back on the agenda of Italian policy makers, but actual legislative results never followed. The chapter explains how the arduous path towards the adoption of a law that would establish an NHRI had shown the same pattern since 1989, which consisted of draft laws being discussed in either of the chambers without ever completing the legislative process before the legislative period ended. Other examples of pledges that the Italian state never fulfilled can be found in the country's candidacy letters for the Human Rights Council, and in both the National Action Plans on Human Rights and Business, as is explained in the following.

By juxtaposing all events and contributions advocating for the establishment of an NHRI in Italy, and actual results on the ground, the chapter highlights the extensive mismatch between the agendas of external actors and the Italian government on the one side, and the Italian legislators responsible for the adoption of the law setting up the NHRI on the other side.

As a Senior Human Rights Officer at ENNHRI pointed out in a speech addressing the Chamber of Deputies, Italy and Malta are the two remaining EU Member States without a National Human Rights Institution at all.[91] Furthermore, although ENNHRI acknowledges the existence and the value of specialised human rights bodies or local institutions, an NHRI would close a gap in the otherwise ell-developed human rights landscape in Italy.[92] In the following, the human rights framework and institutional infrastructure in Italy is illustrated, which outlines the current level of human rights protection and promotion, and explains the gap which an NHRI could potentially fill.

[91] Meuwissen, 2019, p. 2

[92] ENNHRI, 2019

3.1 Current human rights framework and infrastructure

The current human rights framework and infrastructure in Italy is shaped by international human rights treaties and their protocols which Italy has signed and ratified, by regional human rights obligations resulting from CoE treaties and protocols, by EU treaties, regulations, directives and decisions, and by Italy's constitution and national legislation.[93] Italy has signed and ratified eight out of the nine core international human rights treaties, all but the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[94] Furthermore, the country has accepted all but two protocols establishing an individual complaint procedures, and all but one protocol establishing an inquiry procedure. On the regional level of the CoE, Italy has signed 178 and ratified 145 Conventions, Protocols, and Agreements.[95] 141 Conventions, Protocols, and Agreements have entered into force, but three Conventions have been denounced.[96]

On the national level, the constitution of the Italian Republic forms the legal framework and base in which several principles necessary for the realisation of international human rights standards are incorporated. Part I of the Italian constitution includes the rights and duties of citizens and is divided into four thematic areas: civil relations, ethical and social rights and duties, economic rights and duties, political rights and duties.[97] Particularly Article 2, 3, 10 and 11 can be considered relevant for safeguarding the fundamental rights of each citizen, the conformity of the Italian legal system with international law, and the international collaboration to ensure peace and justice among nations.

Article 2

"The Republic recognises and guarantees the inviolable rights of the persons, both as an individual and in the social group where the human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be

93 Centro di Ateneo per i Diritti Umani, 2021, pp. 58-75

94 See OHCHR, 2022b, UN Treaty Body Database

95 Council of Europe (CoE), 2022

96 Italy denounced from the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches, the European Convention on the International Classification of Patents for Inventions and the European Convention relating to the Formalities required for Patent Applications.

97 Senato della Repubblica, 1948, Constitution of the Italian Republic

fulfilled."

Article 3

"All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the Country."

Article 10

"The Italian legal system conforms to the generally recognised principles of international law. The legal status of foreigners is regulated by law in conformity with international provisions and treaties. A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence."

Article 11

"Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends."

Italy's self-conception as a country upholding human rights and promoting international cooperation to safeguard peace and democracy is not only incorporated into the country's constitution and its foreign policy, but represents a theme regularly repeated by Italian political representatives towards the international community.[98] In light of the 150th anniversary of both the Universal Declaration on Human Rights and the Italian constitution, Italy's former President, Giorgio Napolitano, stated the following during the 16th session of the

[98] Cofelice, 2017, p. 228

Human Rights Council in 2011: "*The Human Rights Council is built on the same foundations of our Constitution: human rights and international peace, to be sought through dialogue among peoples of different cultures. The values which characterized the Italian Constitution are still fully valid today. It is no coincidence that, after the tragedy of World War Two, Italy's democratic Constitution entered into force in very same year as the Universal Declaration of Human Rights. Same time, same principles, same spirit*."[99]

However, a certain mismatch can be observed between Italy's own national role perception as a catalyst of peace and democracy, and the human rights developments within its territory.[100] This mismatch and lack of actual implementation becomes evident when taking a closer look at the recommendations Italy received during its three UPR sessions in 2010, 2014 and 2019, which displayed relatively steady and recurring trends over the different sessions.[101] The main recurring recommendations highlighted human rights issues related to racial discrimination, migration policies, women's and children's rights, and the persisting lack of a National Human Rights Institution. Tackling the latter would represent an impactful step towards the institutionalisation of domestic human rights protection and would lead to a more robust and complete national human rights system.[102]

Currently, Italy draws on a relatively fragmented national human rights landscape. In the following, an overview of the relevant national bodies that constitute the domestic human rights system and that carry out activities for the promotion and protection of fundamental rights is illustrated.[103] The different actors are divided into parliamentary bodies (within the Senate or the Chamber of Deputies), governmental bodies, independent public authorities, academic institutions, and civil-society organisations (see figure 3). Their composition, mandate or mission, and their activities are examined to render the interplay between the various bodies more tangible and to emphasize the lack of an independent institution with a broad human rights mandate in accordance with the Paris Principles.

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99 Portale storico della Presidenza della Repubblica, 2011

100 Cofelice & de Perini, 2020, p. 257

101 Ibid., p. 261-262

102 Ibid., p. 273

103 The overview is derived from the 2020 edition of the Italian Yearbook of Human Rights (Centro di Ateneo per i Diritti Umani, 2021, p. 79-153). The Yearbook compiles an extensive collection of a variety of different actors, some of which with a very specific mandate (e.g., the Commission for Intercountry Adoptions) or with a geographically limited scope (e.g., regional ombudspersons). For the present analysis, only relevant bodies with a broader mandate on human rights or otherwise similar characteristics to those of an NHRI are presented. A detailed account of all the conducted activities of the Italian human rights bodies can be fund in the editions of the Yearbook of Human Rights.

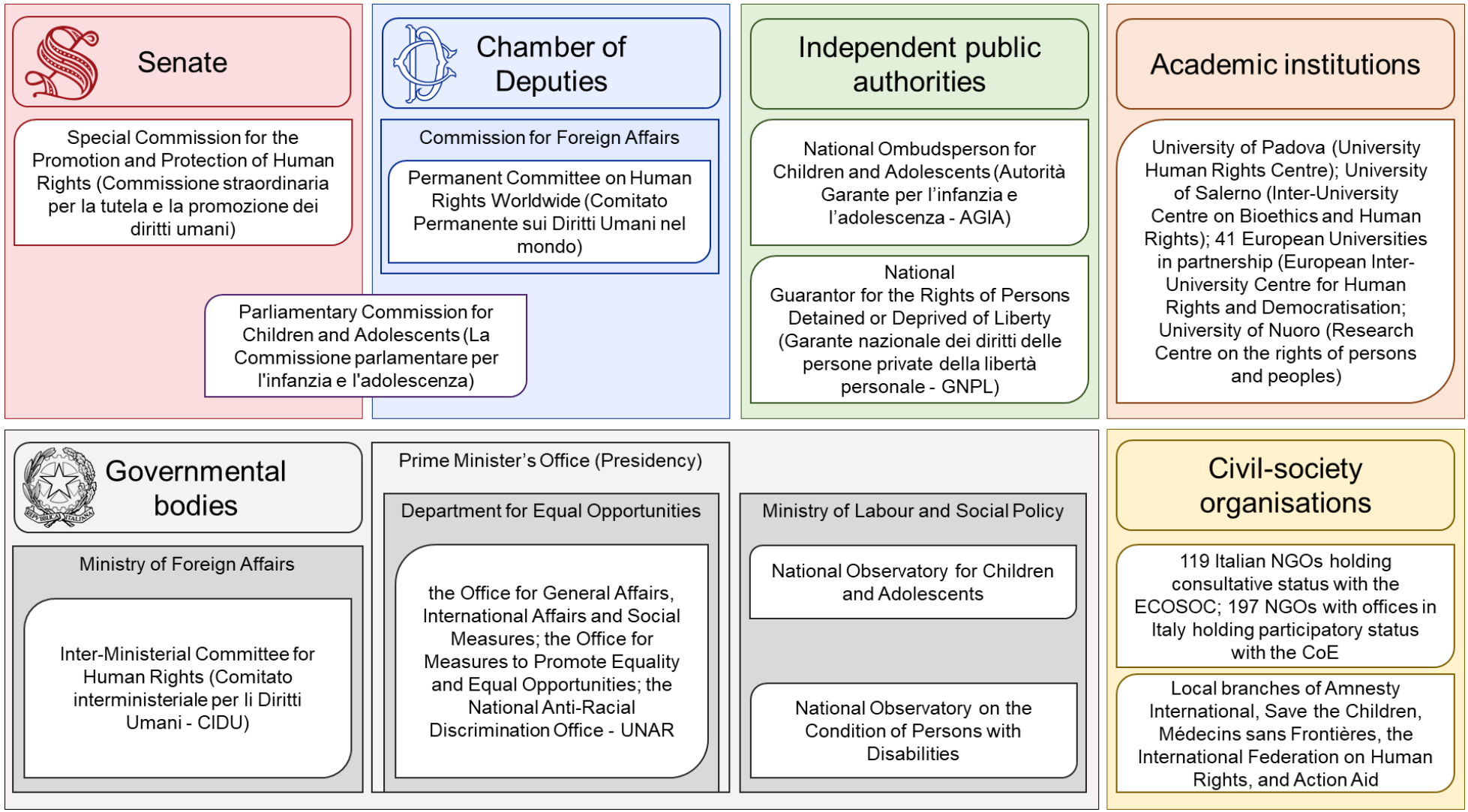

Figure 3: Overview of the Italian human rights landscape 2020 (own graphic based on Centro di Attaneo di Diritti Umani, 2021, p. 79-157)

Starting from the relevant public bodies mandated with human rights promotion and protection situated within or related to the Senate or the Chamber of Deputies, three parliamentary bodies carry out fundamental rights related functions: the Special Commission for the Promotion and Protection of Human Rights of the Senate (an ad hoc, non-permanent commission), the Permanent Committee on Human Rights situated within the Commission for Foreign Affairs (III) of the Chamber of Deputies, and the Parliamentary Commission for Children and Adolescents.

The Special Commission for the Promotion and Protection of Human Rights within the Senate consists of 25 members according to the proportion of the number of seats the different parties occupy in the parliament.[104] The Special Commission is open to civil society and can establish relations and forms of cooperation with other organisations and foreign parliaments. It can convey its concerns and opinion (for example on legislation) to the government, to other institutions and to the public using the instruments of the parliament (resolutions, hearings) and implement its own initiatives.[105] Within the Chamber of Deputies on the other hand, the Commission for Foreign Affairs (III) established the Permanent Committee on Human Rights, which, similarly to the Special Commission in the Senate, informs the parliament of current international human rights developments and issues, and can undertake fact-finding missions with regards to human rights violations relevant to the work of the Commission.[106] Furthermore, the Parliamentary Commission for Children and Adolescents consists of 20 Senators and 20 Deputies appointed respectively by the President of the Senate and the President of the Chamber of Deputies in proportion to the number of members of the parliamentary groups, and thereby serves as an intersection between the two Chambers.[107] The Commission fulfils guiding and monitoring functions regarding the implementation of international human rights obligations with regards to children rights. It may issue observations and proposals to the Chambers concerning existing legislation and point out whether legislation must be adapted to ensure compliance with EU law and the UN Convention on the Rights of the Child. Furthermore, the Commission encourages the exchange of information and promotes collaboration with other bod-

[104] Centro di Ateneo per i Diritti Umani, 2021, p. 80

[105] Ibid.; Senato della Repubblica, 2022

[106] Centro di Ateneo per i Diritti Umani, 2021, p. 83

[107] Ibid., p. 85

ies, institutes and NGOs carrying out activities for the promotion and protection of children and adolescents in Italy and abroad.

On the governmental level, relevant bodies are situated either within ministries, or within the Prime Minister's Office. The Department for Equal Opportunities, one of the departments within the Prime Minister's Office, fulfils a particularly important role regarding human rights policymaking, especially in the area of equal opportunities.[108] The Department is tasked with planning and conducting research activities as well as legislative and administrative initiatives, and is structured in three main offices (see figure 3). In addition to the three main offices, several observatories and collegial bodies with their supporting secretariats operate within the Department covering various human rights related areas (e.g., human trafficking, female genital mutilation, the rights of people with disabilities, gender equality). Within ministries, the Ministry of Foreign Affairs and the Ministry of Labour and Social Policy incorporate several offices tasked with the protection and promotion of human rights, relevant both for the domestic level as well as regarding relations to regional and international organisations (EU, CoE, UN).[109] Within the Ministry of Labour and Social Policy, two observatories carry out monitoring functions of the respective international human rights obligations regarding children and adolescents, and persons with disabilities.[110] Within the Ministry of Foreign Affairs, a number of offices are responsible for the incorporation of human rights into Italy's foreign policy, and for Italy's relations to other countries and international organisations. Furthermore, the Inter-Ministerial Committee for Human Rights (CIDU) fulfils an essential role in ensuring Italy's compliance with international human rights obligation. Representatives of the diplomatic service, other ministries, and important public institutions in the field of human rights constitute the members of the CIDU, which carries out the following tasks:[111]

- to carry out a systematic review of the legislative, regulatory, administrative and other measures adopted in the domestic legal system to implement Italy's commitments under international human rights conventions;

[108] Centro di Ateneo per i Diritti Umani, 2021, p. 110

[109] Ibid., p. 114

[110] Ibid., p. 118

[111] Presidenza del Consiglio dei Ministri, 2007, DPCM 11 maggio 2007, Art. 2

- promote the adoption of necessary measures to ensure the full fulfilment of international obligations already undertaken or to be undertaken by Italy following the ratification of the Conventions it has signed;
- monitor the implementation of international Conventions and their concrete compliance on the national territory;
- oversee the preparation of the periodic Reports that the Italian Government is required to submit to the competent treaty body, as well as other reports and information that may be requested from the Government by such Organisations
- to prepare an annual report to the Italian Parliament, outlining the activities carried out by the Committee and providing an overview of the protection of and respect for human rights in Italy
- collaborate in activities aimed at organising and following up international human rights initiatives in Italy, such as conferences, symposia and celebrations of international anniversaries;
- maintain and implement appropriate relations with civil society organisations active in the promotion and protection of human rights.

The CIDU thereby performs its institutional activities as an interlocutor to the monitoring bodies of the UN, the EU and the CoE. Since the mandate of CIDU is not restricted to a specific thematic area or a convention, the monitoring covers a wide range of human rights related issues.

On the public yet independent level, two Ombudspersons are tasked with the promotion of two specific areas of human rights.[112] The National Ombudsperson for Children and Adolescents is a single-headed body tasked with ensuring full compliance with the International Convention on the Rights of the Child. The Presidents of the two Chambers jointly appoint the Ombudsperson for a term of four years. The Ombudsperson is independent in its functioning, administration, and hierarchical position to other public bodies, and collaborates with a wide range of national actors (civil-society organisations, ministries, provincial

[112] Centro di Ateneo per i Diritti Umani, 2021, p. 126

ombudspersons, etc.) and international actors (e.g., the European Network of Ombudspersons for Children). Furthermore, the Ombudsperson informs the Government, judicial authorities and other relevant bodies on all arising issues relating to the Rights of the Child (e.g., cases of violations of minors' rights, legislative acts concerning the Rights of the Child), prepares the State report for the treaty body of the Convention on the Rights of the Child, and conducts awareness-raising and research activities. The National Guarantor for the Rights of Persons Detained or Deprived of Liberty on the other hand consists of two members and one chair, who are nominated by the Council of Ministers (the principal executive organ) for a term of five years.[113] The mandate of the Guarantor consists of protecting the rights of persons deprived of liberty in accordance with international human rights obligations and Italy's constitution. In order to fulfil this task, the guarantor may visit and inspect structures where prisoners or persons deprived of liberty are detained without prior authorisation. Such structures include police stations, prisons, immigration centres, but also certain parts of hospitals or facilities for elderly or disabled people (on the basis of the UN Convention on the Rights of Persons with Disabilities). After each visit, which aims at identifying problems and resolving critical situations, a report containing the observations and recommendations on steps to be taken is forwarded to the competent authorities. The report, containing the answers by the responsible authorities, is usually published on the website of the Guarantor.[114] Furthermore, the Guarantor is classified as the National Prevention Mechanism pursuant to the Optional Protocol of the Convention against Torture.[115] In accordance with Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, the Guarantor is tasked with monitoring forced return procedures and strengthening the rights of foreign nationals. The Guarantor annually reports its activities and provisions regarding future activities to the Parliament.

Regarding the non-governmental and academic parts of Italy's national human rights landscape, a variety of universities and academic institutions, as well as numerous civil-society organisations actively raise awareness through human rights education, contribute to the protection and promotion of human rights through local and regional programmes,

[113] Ibid., p. 130

[114] Garante nazionale dei diritti delle persone private della libertà personale, n.a.

[115] Permanent Mission of Italy to the International Organizations, 2014

and interact with international organisations such as the ECOSOC or the CoE (see figure 3).

Although a National Human Rights Institution in accordance with the Paris Principles still lacks in Italy, certain bodies within the national human rights system display several characteristics similar to the ones of an NHRI. For instance, the Inter-Ministerial Committee for Human Rights (CIDU) has a broad human rights mandate that includes monitoring the domestic implementation of international human rights obligations and periodic reporting to the government, as well as annual reports on the human rights situation to the parliament. Furthermore, the CIDU interacts and consults with civil society organisation active in the field of human rights and serves as the point of contact to regional and international organisations. However, the members of the CIDU consist entirely of public officials representing other Ministries or the diplomatic service and is situated within the Ministry of Foreign Affairs. Thereby, the criteria to guarantee independence and pluralism of the Paris Principles cannot be considered fulfilled, since representatives of government departments should only act in an advisory capacity and the composition of an NHRI should reflect the pluralism of civilian society.[116] Furthermore, the premise and funding of an NHRI must also be independent and detached from the Government and not under financial control.[117] The National Guarantor for the Rights of Persons Detained or Deprived of Liberty on the other hand is independent in its personnel and structure, and is mandated to independently access facilities of detention or to monitor forced returned procedures, thereby fulfilling some functions of the ones of an NHRI.[118] However, since its mandate is restricted to the Rights of Persons Detained or Deprived of Liberty, the Guarantor cannot be considered an NHRI.

The number of international conventions, agreements and protocols ratified by Italy as well as its constitutional and rhetoric commitment to the principles of international law, equality, peace, and justice, suggest a strong commitment to human rights, particularly through Italy's foreign policy. Furthermore, in terms of numbers of recommendations made in the first 19 UPR sessions, Italy occupied the 21st position among all 194 UN member

[116] UN GA, 1993, A/RES/48/134, 20 December 1993 (Paris Principles), part 2 para. 1

[117] Ibid., part 2 para 2

[118] European Union Agency for Fundamental Rights (FRA), 2020, p. 60

states (close to the top 10%), and the 10th position among the 27 EU member states.[119] The relatively active engagement with an international peer-review mechanism to advance fundamental rights reinforces the impression of a country that places a high value on human rights and on the potential for interaction between multiple levels of governance. Still, to avoid that the effects of an increasingly complex body of international human rights law and its monitoring mechanisms end in the void, robust domestic institutions are necessary to transform international human rights into a tangible national reality on the ground. Thus, as Antonio Papisca stated in 2007, "*states which commit to observing international laws and principles must equip themselves with structures which are sufficiently specialised in promotion and protection of fundamental rights, distinguishing between strictly governmental apparati and independent structures*."[120] In Italy, about 15 national committees, observatories, guarantors and commissions with limited mandates and different levels of independence operate in different thematic areas of human rights, but one independent entity with a broad human rights mandate has not been instituted yet.[121]

Italy looks back on a long and arduous path towards the establishment of such an independent structure. The developments that could lead to the creation of an Italian NHRI started already in 1991 with Italy's participation in the International Workshop that produced the Paris Principles[122] and stretch well into the year 2022, with the latest draft law on the 'Establishment of the National Commission for the Promotion and the Protection of Fundamental Human Rights and the Fight against Discrimination' stuck in examination in the Chamber of Deputies, with the last discussion in May 2022.[123] In the following, all relevant developments pointing towards the creation of an NHRI grouped by external developments and events (recommendations and initiatives by treaty bodies, regional organisations, civil society, and other countries during the UPR) and the reactions by the Italian state (failed draft laws, national action plans, and other voluntary pledges) will be presented.

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[119] Cofelice, 2017, p. 232

[120] As cited in Centro di Ataneo per i Diritti Umani, 2017, p. 18

[121] European Union Agency for Fundamental Rights (FRA), 2020, p. 35

[122] ECOSOC, 1991, E/CN.4/1992/43, 7-9 October 1991, para. 234-236

[123] Camera dei deputati, 2020, Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali e per il contrasto alle discriminazioni. Proposte di legge C. 1323 Scagliusi, C. 855 Quartapelle-Procopio e C. 1794 Brescia. 29 ottobre 2020

3.2 Developments towards the establishment of an NHRI

Italy had been one of the 35 countries that took part in the 'International Workshop on National Institutions for the Promotion and Protection of Human Rights' which the UN Commission on Human Rights organised in Paris in 1991 and which created the Paris Principles.[124] At the time, the Italian Commission on Human Rights, which participated in the Workshop, fulfilled little of the criteria that characterised effective national institutions for the promotion and protection of human rights since its mandate only included human rights violations abroad, and only in exceptional cases within the country (regarding the right to asylum).[125] Furthermore, the Commission had been set up as an interim-solution since a draft law establishing a National Human Rights Institution was under examination by Italian Parliament.[126] Although the first prototype of a National Human Rights Institution, the Commission on Human Rights, already displayed certain promising characteristics such as annual reporting to the Parliament and close cooperation with civil-society organisations[127], the draft law that was being discussed in the Parliament at the time would mark the beginning of a long and tragic series of failed draft laws that never materialised.

On the national level, the persistent lack of an NHRI remained largely unnoticed or accepted by the general public. Relevant contributions to raise awareness of draft laws being discussed in the parliament or to advocate for accelerating and concluding the process of establishing the institution came from scholars, journalists, think tanks, students, and universities and are concentrated around the period in which the latest draft law was under examination (2018-2022). A relevant contribution to inform the public includes an article by the journalist Daniele Brunetti, published in an online magazine in December 2020.[128] The article summarised the key points of the persistent issue, and featured a petition created

[124] Representatives of national institutions and ombudspersons of the following countries participated in the Workshop: Australia, Benin, Brazil, Canada, Chile, Denmark, Finland, Guatemala, Iceland, Ireland, Japan, Namibia, Romania, Spain, Sweden, Thailand, United States of America, France, Italy, Morocco, Mexico, New Zealand, Norway, Uganda, Netherlands, Peru, Philippines, United Kingdom, Senegal, Togo, Tunisia, Turkey, Union of Soviet Socialists Republics, Venezuela, Yugoslavia (ECOSOC, 1991, E/CN.4/1992/43, 7-9 October 1991, para. 6-7).

[125] Ibid., para. 234

[126] Ibid.

[127] Ibid., para. 235

[128] Brunetti, 2020

by Filippo di Robilant, the Italian member of FRA's Management Board at the time.[129] The petition included the general key points as well, linked the latest text of the draft law and ultimately appealed to the Chamber of Deputies to respect set deadlines in order to achieve final approval of the draft law by both the chambers of the Parliament by the end of the legislature.[130] By September 2022, the petition had reached 1937 signatures.

Scholarly contributions include the 2017 edition of the Italian Yearbook of Human Rights published by University Human Rights Centre of the University of Padova, which elaborated on Italy's 'Long March" towards Establishing an Independent National Human Rights Institutions' in its preface.[131] Other contributions include analyses by Cofelice (2017), and Cofelice & De Perini (2020), both examining the recommendations received by Italy during the UPR and the subsequent reactions by the state. Both contributions pointed out the 'tied hands' strategy used by Italy when responding to recommendations urging the state to establish an NHRI, which consisted of indicating financial or institutional obstacles as the reason for the persistent delay in implementing the recommendation.[132] Furthermore, a master thesis featuring the latest draft law establishing an NHRI in Italy has been published in 2021 by Serbolisca, a student of the Global Campus of Human Rights network in Venice.[133] Relevant and recent legal reviews were published in February 2020 and in May 2022 by lawyer Ferdinando Lajolo di Cossano.[134] The latest legal review analysed the latest draft law and underlined the need for revision to guarantee effective independence and autonomy of the envisioned NHRI, in accordance with the Paris Principles, and to better define its mandate and position in the domestic institutional landscape.[135]

Furthermore, several events, seminars and roundtables were organised by think tanks and by universities. For instance, in November 2018, the University of Trento in collaboration with the CIDU organised a conference to raise awareness among those most directly involved and the general public about the urgent need to establish an NHRI in Italy, bring-

[129] Più Europa, n.a.

[130] Ibid.

[131] Centro di Ataneo per i Diritti Umani, 2017, pp. 17-22

[132] Cofelice, 2017, p. 247; Cofelice & de Perini, 2020, p. 266

[133] Serbolisca, 2021

[134] Lajolo di Cossano, 2020; Ibid., 2022

[135] Ibid., 2022, p. 100

ing together representatives by different universities, ENNHRI, GANHRI, the Dutch and the Danish NHRIs, FRA, the Italian branch of Amnesty International, CIDU, a member of the Chamber of Deputies, and the National Guarantor for the Rights of Persons Detained or Deprived of Liberty.[136] In May 2019, the Global Campus of Human Rights in Venice together with Amnesty International, ENNHRI and ODIHR, organised a roundtable on 'the need for a National Human Rights Institution in Italy in compliance with the Paris Principles', bringing together representatives by ENNHRI, CIDU, the Italian branch of Amnesty International, ODIHR, FRA, a member of the Chamber of Deputies, and the Human Rights Promotion and Protection Committee of Italy.[137]

One think tank which has been particularly active organising events to bring together relevant policy makers and stakeholders to spread knowledge and to advocate for a speedy adoption of the latest draft law is the Centro Studi Politica Internazionale (CeSPI). The CeSPI organised two seminars on the topic, one in January 2019 and the second one in July 2022. Among the speakers of the first seminar, titled 'A National Human Rights Authority in Italy: the European models, the Italian experience, the expectations of civil society',[138] were professors of the University of Trento, a representative of ENNHRI, the president of CIDU, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty, the president of the Italian section of Amnesty International, a judge emeritus of the European Court of Human Rights, a representative by a UN agency, a member of the parliament,[139] a diplomat, the Italian member of FRA's Management Board at the time, who initiated the petition, and the president of CeSPI.[140] A list of all the participants and not only the speakers, which would give insights into which members of the parliament and which parties participated, is unfortunately not available. The second seminar of July 2022 was organised jointly by the CeSPI and the Special Commission for the Promotion and Protection of Human Rights[141] and presented an international perspective of the issue

[136] Università di Trento, 2018

[137] Global Campus of Human Rights, 2019

[138] In Italian: Un'Autorità nazionale per i Diritti Umani in Italia: i modelli europei, l'esperienza italiana, le aspettative della società civile

[139] Lia Quartapelle Procopio, member of the Democratic Party and initiator of one of the three draft laws (885) which were merged into one basic text – the latest draft law on the establishment of the Italian NHRI.

[140] CeSPI, 2019; the recording, the programme and the presentation by ENNHRI are accessible on the website of CeSPI.

[141] In Italian: Commissione straordinaria per la tutela e la promozione die diritti umani

at hand.[142] Speakers in the second seminar included the President of the Special Commission for the Protection and Promotion of Human Rights, Undersecretary of State at the Ministry of Foreign Affairs, the Director of FRA, the Director of ODIHR, a representative of ENNHRI, the Vice President of the Italian Data Protection Authority, a professor of International Law and Human Rights at the University of Florence, and representatives by CeSPI. Furthermore, the seminar was open to the public and several citizens and representatives of civil society organisations took the opportunity to express their support and the need for the establishment of an NHRI.[143]

Not only actors on the national level, but also other states, regional and international organisations pointed out the lack of an independent National Human Rights Institution and informed the Italian authorities of the added value if such an institution was to be created. Among the regional institutions and treaty bodies were for example the CoE (Council of Europe Commissioner for Human Rights in 2005 and 2009, and the Advisory Committee on the Framework Convention for the Protection of National Minorities in 2010), and the European Commission against Racism and Intolerance (ECRI) in 2002 and 2016.[144] The most recent contribution from a regional body came from FRA, once in January 2021 at an event at Bocconi University of Milan[145], and in October 2021 in a series of meetings conducted by the Director of FRA.[146] During the meetings, FRA's Director met Italian key policymakers at the time, such as the Justice Minister, the Under-Secretary of State at the Ministry of Foreign Affairs, other representatives from the Ministry of Foreign Affairs, representatives from both the Senate and the Chamber of Deputies as well as the Italian National Liaison Officer to FRA, in order to address the establishment of Italy's National Human Rights Institution.

Another regional organisation which contributed to the path towards the establishment of an Italian NHRI was the OSCE through its Office for Democratic Institutions and Human Rights (ODIHR). ODIHR is mandated to conduct, upon request by an OSCE Member State, legal reviews to determine the compliance of draft laws with international human

[142] CeSPI, 2022; the recording is available on the website of CeSPI.

[143] See for instance the contribution by an NGO representative at 1:34:14 in the recording.

[144] Centro di Ataneo per i Diritti Umani, 2017, pp. 19-20

[145] European Union Agency for Fundamental Rights (FRA), 2021a

[146] European Union Agency for Fundamental Rights (FRA), 2021b

rights standards and OSCE human dimension commitments.[147] In August 2021, when the latest draft law to establish an NHRI was under examination in the Chamber of Deputies, the President of the First Commission requested a legal review by ODIHR, which has subsequently been published in November 2021.[148]

On the international level among UN treaty bodies, the lack of an NHRI in Italy has become a reoccurring theme in the list of issues that treaty bodies formulate prior to the session in which the state report is considered as well as in the concluding observations. Examples for the frequent request for updated information regarding the establishment of an NHRI can be found for instance in the in the List of Issues prepared by the Committee on Economic, Social and Cultural Rights (CESCR) in 2020,[149] by the Committee against Torture (CAT) in 2007[150], in 2010[151] and in 2021,[152] and by the Committee on the Elimination of Discrimination against Women (CEDAW) in 2017[153] and in 2021.[154] Typically, the Italian state would reply to the request made in the List of Issues pointing out that *"[…] an important debate is taking place in Italy at all levels of the system*"[155] and/ or that a draft bill to establish an NHRI is under examination in one of the two chambers.[156] Still, in the most recent reporting cycles, all the treaty bodies considered the answer provided by the Italian State as an insufficient explanation of the persistent lack of an NHRI and included the recommendation to either re-initiate or to speed up the process to create an NHRI in the Concluding Observations at the end of the reporting session (see table 1). Thus, by 2022, every single of the treaty bodies of the eight core human rights treaties ratified by Italy had issued a recommendation on establishing an NHRI at least one time, some even repeatedly (see table 1).[157]

147 OSCE & ODIHR, 2017, p. 3

148 ODIHR, 2021

149 Committee on Economic, Social and Cultural Rights, 2020, E/C.12/ITA/QPR/6, 16 April 2020, B, para. 6

150 Committee against Torture, 2007a, CAT/C/ITA/Q/4/Rev. 1, 6 February 2007, Art. 2 para. 6

151 Ibid., 2010, CAT/C/ITA/Q/6, 19 January 2010, Art. 2 para. 4

152 Ibid., 2021, CAT/C/ITA/QPR/7, 02 December 2020, Art. 2 para. 3

153 Committee on the Elimination of Discrimination against Women, 2016, CEDAW/C/ITA/Q/7, 25 Nov. 2016, para. 3

154 Ibid., 2021, CEDAW/C/ITA/QPR/8, 10 March 2021, para. 3

155 Ibid., 2017, CEDAW/C/ITA/Q/7/Add.1, 12 May 2017, para. 17

156 Committee against Torture, 2007b, CAT/C/ITA/Q/4/Rev.1/Add.1, para. 62

157 The highlighting (bold letters) of the relevant text passages in the recommendations has been done by the author.

Committee	Document number	Date	Recommendation
CAT	CAT/C/ITA/CO/5-6	18.12.2017	"While **acknowledging the existence of institutional structures** that monitor the implementation of human rights, the Committee is **concerned** that the State party has not yet established a consolidated National Human Rights Institution (art. 2)." (para. 16) "The Committee **reiterates the recommendation** contained in its previous concluding observations (see CAT/C/ITA/CO/4, para. 8) that the State party **should proceed with the establishment of an independent National Human Rights Institution**, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the **Paris Principles**)." (para. 17)
CCPR	CCPR/C/ITA/CO/6	01.05.2017	"While **noting that a number of specific bodies dedicated to the promotion of human rights** are in operation and the repeated commitment made by the State party to establish a National Human Rights Institution, the Committee **regrets** that no such institution has yet been established (art. 2). (para. 6) "The State party **should expeditiously establish a National Human Rights Institution** in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the **Paris Principles**)." (para. 7)

CED	CED/C/ITA/CO/1	10.05.2019	"The Committee notes the measures taken with a view to establishing a National Human Rights Institution, in particular the **draft law** that has been under consideration by the Senate Constitutional Affairs Committee since November 2018, following a **specialized workshop on the matter organized by the Ministry of Foreign Affairs and the University of Trento**." (para. 10) "The Committee recommends that the State party **expedite the adoption of the law establishing a National Human Rights Institution** in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the **Paris Principles**)." (para. 11)
CEDAW	CEDAW/C/ITA/CO/7	24.07.2017	"The Committee notes the information provided by the delegation about the **pending bill** establishing a National Human Rights Institution. It remains **concerned**, however, about the **continued delays** in adopting that law." (para. 23) "The Committee recommends that the State party **establish an adequately resourced National Human Rights Institution** compliant with the principles relating to the status of national institutions (the **Paris Principles**) that is mandated to protect and promote all human rights, including women's rights." (para. 24)

CERD	CERD/C/ITA/CO/19-20	17.02.2017	"The Committee **regrets** the lack of progress achieved in establishing a National Human Rights Institution, despite its **previous recommendation** in its concluding observations of 2012 and the **commitment expressed by the State party** to do so (art. 2)." (para. 10) "Recalling its **general recommendation No. 17 (1993)** on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party **establish**, without further delay and with the effective **participation** of **civil society actors**, a **National Human Rights Institution** in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the **Paris Principles**)." (para. 11)
CESCR	E/C.12/ITA/CO/5	28.10.2015	"While noting the information provided by the delegation about the **pending draft laws** aimed at establishing a National Human Rights Institution, the Committee remains **concerned** about the **continued delays** in doing so despite its **previous recommendation**." (para 14) "The Committee **urges** the State party to **redouble its efforts** to establish an adequately resourced **National Human Rights Institution** that is compliant with the principles relating to the status of national institutions (**Paris Principles**) and is mandated with the protection and promotion of **all human rights**, including economic, social and cultural rights." (para. 15)

CRC	CRC/C/ITA/CO/5-6*	28.02.2019	"The Committee **recalls its previous recommendation** (CRC/C/ITA/CO/3-4, para. 13) and recommends that the State party: […] c) **Establish a National Human Rights Institution** in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (**Paris Principles**)." (para. 10)
CRPD	CRPD/C/ITA/CO/1	06.20.2016	"The Committee recommends that the State party **immediately establish** and implement an **independent monitoring mechanism** that adheres to the principles relating to the status of national institutions for the promotion and protection of human rights (the **Paris Principles**), and that it provide adequate funding for its functioning and the full involvement of organizations of persons with disabilities in its work." (para. 82) [158]

Table 1: Concluding Observations of the most recent reporting cycles of the eight international human rights treaties ratified by Italy (documents retrieved from the UN Treaty Body Database (OHCHR, 2022b))

[158] CRPD recommends the establishment of an independent monitoring mechanism in accordance with Art. 33 of the Convention on the Rights of Persons with Disabilities. Such monitoring does not necessarily need to be conducted by an NHRI, but the body tasked with monitoring must adhere to the Paris Principles, as specified in Art. 33 and in the Concluding Observation. Assigning this task to an NHRI, which is compliant with the Paris Principles, thus appears appropriate. Hence, the Concluding Observation is interpreted as favourable towards the establishment of an NHRI.

When examining the Concluding Observations formulated by the committees of all the eight core human rights treaties that Italy ratified, a pattern becomes evident. First, the treaty bodies specifically acknowledge the various entities in the Italian human rights landscape that already operate (see table 1 Concluding Observations by CAT and CCPR). Nevertheless, the fact that all the treaty bodies included this recommendation in their Concluding Observations demonstrates that the establishment of a consolidated institution in accordance with the Paris Principles is necessary to fully respect the provisions of the various conventions, confirming the purpose of such an institution – to promote and protect not only a specific group of human rights, but all of them. Second, the treaty bodies are concerned about the continuous delay in adopting a bill that would establish an NHRI and regret the lack of progress in this regard (see Concluding Observations by CAT, CCPR, CEDAW, CERD, and CESCR). The specific terms used in the recommendation convey the level of how problematic the lack of an NHRI is perceived, for instance by reiterating previously made recommendations (such as CAT, CERD, and CESCR) or by using terms as “concerned, regrets, urges” and “redouble its efforts”.

The duty to establish an NHRI had been repeatedly pushed back on the agenda of Italian policymakers, not only by domestic actors (scholars, civil society, etc.) and treaty bodies or regional organisations, but also by other states during the UPR. In the three cycles of the UPR in 2010, 2014 and 2019, the lack of an NHRI has been a consistent theme in the recommendations Italy received by other States during its review (see figure 4).

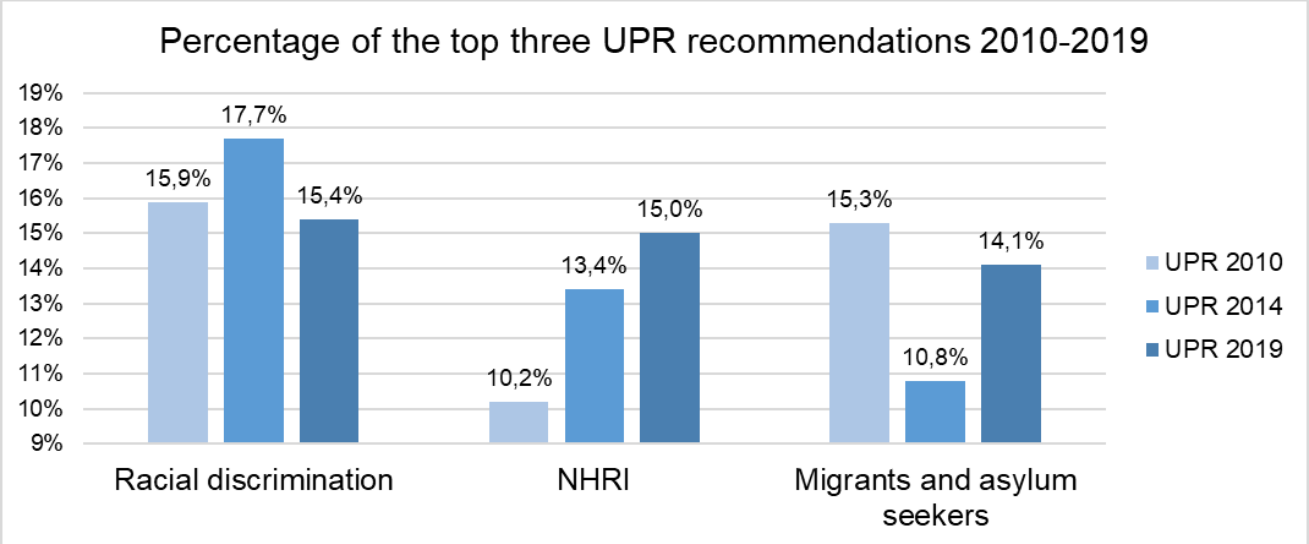

Figure 4: Development of the top three UPR recommendations to Italy 2010 – 2019 (own graphic based on Cofelice & de Perini, 2020, p. 261)

Comparing the themes covered in the recommendations that were issued the most during the three UPR cycles in 2010, 2014 and 2019, it is evident that the unfulfilled responsibility to set up an NHRI has increasingly come to the attention of the international community. In fact, the absolute number of recommendations to establish an NHRI has nearly tripled over the course of the three cycles, starting at 16 in 2010 and arriving at 46 in 2019.[159]

However, as the reactions by the Italian state confirm, a mismatch between the solicitation by the international community or national actors and the actual impact and action on the ground can be observed. For instance, in 2019, only 2% of the bills under examination in the parliament covered the topic of establishing a National Human Rights Institution – compared to 15% of the total recommendations received by Italy during the UPR.[160] Thus, Italian legislator consider setting up an NHRI a lower priority as treaty bodies and the Italian civil society do, which is also reflected by the three decade long history of failed draft laws aiming to establish of a National Human Rights Institution.[161] The practice of submitting a draft bill only for it to remain blocked in one of the two chambers until the end of the legislative period has become the tragic fate of all bills submitted between 1989 and 2022.[162] The numerous failed attempts of adopting a law that would establish an NHRI are thus criticised as the application of "[…] *double standards, for which countries that define themselves as advanced democracies, in fact do not apply and respect those same international standards regarding the promotion and protection of human rights on the contrary highlighted and evidenced in relation to third countries*."[163] In addition, it should be noted that the modus operandi where draft laws fail to materialise before the end of a legislative period and subsequently require to be resubmitted to parliament draws on extremely high financial and human resources.

The pattern of statements which do not materialise into policies or laws can be observed in other the reactions by the Italian state as well. For instance, Italy included voluntary pledges to establish an NRHI in both its candidacy letters for the Human Rights

[159] Cofelice & de Perini, 2020, p. 262

[160] Ibid., p. 263

[161] Centro di Ataneo per i Diritti Umani, 2017, p. 20; Santiemma, Terenzi, & Gressi, 2020, pp. 108-119 (for a detailed list of all failed draft laws)

[162] Ibid.

[163] Santiemma, Terenzi, & Gressi, 2020, p. 108

Council in 2007 and in 2011.[164] In the note verbale for the 2007-2010 term, the Permanent Representative of Italy to the United Nations pledged to "*establish the National Independent Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms*".[165] However, it should be noted that this voluntary pledge was listed as the very last point out of two pages of commitments, suggesting a low priority. In the candidacy letter for the 2011-2014 term, Italy referred to its recently concluded UPR cycle and confirmed "*its willingness to implement in a timely manner all accepted recommendations, including […] the commitment to establish a national independent human rights institution in accordance with the Paris Principles*", again listed as the very last pledge.[166] In the candidacy for the 2019-2021 term, no reference to set up an NHRI was made at all. However, the integrated approach of the 2030 Agenda for Sustainable Development as well as the UPR mechanism were supported in Italy's candidacy letter.[167] Both the Agenda 2030 and the UPR favour the creation of an NHRI. SDG 16 refers to peace, justice, and strong institutions, and indicator 16.a.1 which measures the extent to which the target of strong national institutions has been reached is measured by the "*Existence of independent National Human Rights Institutions in compliance with the Paris Principles*".[168] The UPR mechanism on the other hand supports the establishment of an NHRI through all the recommendations in this regard which Italy has accepted in all three cycles.

Furthermore, in both national action plans regarding business and human rights, the creation of an NHRI was featured as a pledge by the Italian government. The first Italian National Action Plan on Business and Human Rights 2016-2021 lists the government's commitment to expedite setting up an NHRI in accordance with the Paris Principles, and indirectly reinforces this pledge by claiming to implement all recommendations received during the UPR.[169] The Second National Action Plan on Business and Human Rights 2021-2026 lists the creation of an NHRI as one of the two main structural challenges in the implementation of the first action plan, which suggests that the establishment of such an institution would have constituted a key structural change to allow the realisation of further

[164] UN GA, 2007, A/61/863; UN GA, 2011, A/65/733

[165] UN GA, 2007, A/61/863, p. 6

[166] UN GA, 2011, A/65/733, p. 7 para. 29

[167] UN GA, 2019, A/73/72, para. 3, 7

[168] UN Statistics Division, 2022, indicator 16.a.1

[169] Comitato interministeriale per i Diritti Umani (CIDU), 2016, p. 10

elements of the action plan.[170] The establishment of an NHRI is in fact again listed under ongoing activities and future commitments as an activity to fulfil the first part of the foundational principles necessary to decrease human rights violations in the business sector.[171]

Consequently, the discrepancy between demands and recommendations by national actors, other states, and international organisations on the one hand, and the actual implementation by Italian legislators has widened steadily over the years. The history of failed draft laws culminated after the latest government crisis in July 2022, when the President of the Italian Republic signed the decree to dissolve the Senate of the Republic and the Chamber of Deputies[172] and the decree to convene elections on 25 September 2022.[173] Thereby, the last draft bill containing the unified text[174] suffered the same fate as all the previous legislative proposal and failed to be adopted before the end of the legislative period. The future of the still missing Italian National Human Rights Institution thus remains uncertain.

Concluding, the illustration of the national human rights framework in Italy showed that, despite the ratification of international human rights treaties and a constitution that would favour a strong human rights protection, the institutional human rights landscape is quite fragmented. Although certain human rights bodies display some of the characteristics contained in the Paris Principles, such as the CIDU with its general mandate, or the National Guarantor for the Rights of Persons Detained or Deprived of Liberty with its independence in its personnel and structure, an independent institution covering the full range of human rights and the entire geographic area of Italy's jurisdiction while displaying pluralism in its membership is still missing. Furthermore, the central function of an NHRI – serving as a bridge between the national and the international level, and between the State and civil society – cannot be fulfilled as long as there is no institution fully independent from the government.

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[170] Ibid., 2021, p. 71

[171] Ibid., p. 14

[172] Presidenza della Repubblica, 2022a

[173] Ibid., 2022b

[174] Camera dei deputati, 2020, Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali e per il contrasto alle discriminazioni. Proposte di legge C. 1323 Scagliusi, C. 855 Quartapelle-Procopio e C. 1794 Brescia. 29 ottobre 2020

The examination of past developments that constituted steps towards the establishment of an NHRI showed that by 2022, a wide variety of different actors had taken efforts to advocate for a timely adoption of a legal basis that would create Italy's NHRI. Even the State itself had committed in various occasions to the establishment of an NHRI, for instance twice in its candidature for the Human Rights Council, in both National Action Plans on Business and Human Rights, and by accepting recommendations during the UPR. However, the illustrations in the chapter showed that there is an evident lack of connection between the efforts by civil society, academia, regional and international organisations, the voluntary pledges by the State on the one hand, and the Italian legislators responsible for adopting the law on the other hand. The wide discrepancy between roughly thirty years of failed draft laws, several pledges and voluntary commitments by the government, several appeals by a variety of actors both nationally and internationally, and the absence of substantial action on the ground thus represents a peculiar anomaly.

In the following chapters, the Multiple Streams Approach (MSA) is explained as the theoretical framework applied to analyse and explore this anomaly. First, the MSA is explained in its original form, and then two adaptions to the theoretical framework are presented to render the theory applicable to the case-study in the present analysis. As a case-study, the MSA is applied to the parliamentary discussions of the latest draft law and takes account of the relevant developments which occurred during the time span during which the draft law was under examination in the parliament (November 2018 to September 2022). The analysis aims at exposing which elements play a role in the public policy process of establishing a National Human Rights Institution in Italy, and how the different elements affect the process. Furthermore, the goal of the analysis is also to shine light on the underlying causal links responsible for the deadlock Italy finds itself in.

4 Theoretical framework

In this chapter, the basic theoretic assumptions and the main structural elements of the Multiple Streams Approach (MSA) are elaborated in detail. The MSA is a political theory which can be applied to explain the moment when political agenda change occurs. In the following, the concept of organised anarchy, a central assumption of the MSA, is divided into its individual components of ambiguity, time constraints, problematic preferences, unclear technology, and fluid participation. Since these characteristics accurately describe organisations involved in political decision-making, the chapter argues that the MSA is a suitable political theory to examine the public-policy process chosen for the present analysis – the process to establish a National Human Rights Institution in Italy. Before adapting the theoretical framework for the application to the case-study, the main structural elements of the MSA are illustrated. The MSA consists of three independent streams: the problem stream, the politics stream, and the policy stream, depicting three different conditions that must be fulfilled to enable political agenda change. The chapter explains how the mere fact that the conditions are fulfilled does not automatically lead to agenda change, but that instead the three streams must be coupled by the so-called policy entrepreneur through a window of opportunity in order for change to occur. Thereby, the basic form of the MSA as well as the detailed characteristics and interactions between the structural elements are explained.

In a second step, the MSA is adapted in two aspects to render it applicable to the present case-study. Subject of the case-study is the latest examination of the draft law to establish an NHRI as well as correlating events. Therefore, the chapter argues that the two adaptions of the theoretical framework must take account of a) the parliamentary system of Italy (instead of the presidential system the MSA originally stems from), and b) of the different stage of the policy making process, namely policy formulation (instead of agenda setting). Regarding the former adaption, the chapter illustrates how the more pronounced relevance of parties, party ideologies, and institutions must be taken into account before applying the MSA to parliamentary systems. Regarding the latter adaption, an extension of the original MSA is proposed in order to apply the framework to the policy phase that follows agenda setting – policy formulation. In this extension, the basic assumptions and the structural elements of the MSA remain unchanged (apart from the necessary considerations to take account for policy processes in parliamentary systems). Instead, a second

coupling process is added to the theory, which describes the phase and conclusion of policy formulation. The chapter then elaborates on the changed characteristics and the interactions of the different structural elements between the two applications of the MSA, one depicting agenda setting, and the other policy formulation.

The overall objective of the chapter is to lay the theoretical foundation to analyse the persistent deadlock of the policy formation phase, a part of the policy process which would lead to the creation of an NHRI in Italy. To this end, in the following, the MSA in its original form, as well as an adaption and extension are explained.

4.1 The Multiple Streams Approach (MSA)

The Multiple Streams Approach (MSA) was developed by Kingdon in 1984, adapted in 1995 and in 2010, and is a well-accepted and widely applied theoretical framework to analyse public policymaking and policy processes.[175] Before explaining the MSA in detail, it should be noted that the term Multiple Streams Approach was not introduced by John W. Kingdon himself. Originally, he described his model as " […] *a revised version of the Cohen-March-Olsen garbage can model of organisational choice*".[176] This description has subsequently been shortened by Zahariadis (e.g., 2007) to the term 'Multiple Streams Approach' which can be regarded as the established term in current usage (as well as 'Multiple Streams Framework'). The MSA was originally formulated by Kingdon as an approach to explain agenda-setting at the federal level in the United States and has since then been applied to explain policy processes in various countries, thematic areas, institutional contexts, and different levels of governance.[177]

The MSA derives from the garbage can model of Cohen et al. (1972) and is based on the concept of organised anarchy, which is characterised by the following assumptions: ambiguity, time constraints, fluid participation, problematic preferences, and unclear technology.[178] In the following, the basic assumptions are explained briefly before introducing the core structural elements of the MSA.

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175 Herweg, 2015, p. 325

176 Kingdon, 1984, p. 20 as cited in Herweg, 2015, p. 326

177 For a meta-review on 311 MSA applications, see Jones, et al., 2016

178 Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 18; Herweg & Zahariadis, 2018, p. 32

Ambiguity

The concept of ambiguity entails that the subject matter of a problem can be perceived and interpreted in multiple ways when decision-making takes place under conditions of ambiguity.[179] Other than in decision-making under uncertainty, more information at hand does not resolve the ambiguity. Thus, a multitude of possible solutions to a problem can be determined, and policy-goals remain vaguely defined among the involved actors. In this context, policy decisions do not result from rational problem solving but rather from temporal sorting.[180]

Time constraints

The time constraints policymakers face while taking decision result from processes taking place simultaneously within the entire organisation (e.g., governments, parties).[181] While the individuals involved in decision-making regarding a certain subject matter can attend only one issue at a time, governments or parties can process multiple issues at once due to labour division. What results from this modus operandi is that these multiple issues simultaneously demand the policymakers' attention, and thus a sense of urgency to decide is created. Therefore, both the time which policymakers can dedicate to the elaborated solutions and the number of proposed solutions are limited.

Problematic preferences

Connected to the condition of ambiguity, problematic preferences means that the policy preference of the actors involved are not fixed or static.[182] Instead, preferences emerge only in interaction, and both preferences and goals are ambivalent and changeable, or in extreme cases even contradictory.

Unclear technology

Unclear technology implies that the individual member of an organisation is aware of his or her own responsibilities, but does not know, or only partially knows his or her position and

[179] Herweg, 2015, p. 327

[180] Herweg & Zahariadis, 2018, p. 32

[181] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 19

[182] Herweg, 2015, p. 328

influence in the organisation's overall relational structure.[183] An example would be an entity composed of various different committees (such as the EU) that are involved in the policy-making process, where members of the committee are aware of their own tasks and the functioning of the committee, but lack knowledge on how their committee affects the policy-making process of the entire entity.

Fluid Participation

Fluid participation is the case when the composition of the decision-making group is composed differently depending on each decision-making situation.[184] However, changing participation refers not only to the composition of the decision-making body but also to the fact that the participants invest different amounts of time and are committed to different degrees depending on the subject of the decision.

According to the MSA, problematic preferences, unclear technologies, and a changing group of participants with fluid participation levels accurately characterise the organisations (e.g., government, committees, parties, administration) involved in political decision-making, which is why the approach classifies the political system as an organised anarchy. However, Kingdon emphasises that the 'organised proportion' is more pronounced than anarchy, since decision-making is shaped by processes that exhibit structures and patterns.[185]

In addition to the basic assumptions that characterise organised anarchy, the MSA applies five structural elements to conceptualise decision-making situations in organised anarchy.[186] The elements include three separate and independent streams (problem stream, politics stream, and policy stream), which must be coupled by the policy entrepreneur through the policy window in order for change to occur. In the following, these structural elements and their interaction are explained.

[183] Herweg & Zahariadis, 2018, p. 32

[184] Ibid.

[185] Herweg, 2015, p. 327

[186] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 20

Problem Stream

The problem stream consists of issues that are perceived as problems, that are changeable and that should be changed politically.[187] In this context, problems can be defined as a "*mismatch between the observed conditions and one's conception of an ideal state*".[188] According to Kingdon, three mechanisms can lead to the perception of an issue as a deviation from the ideal state: indicators (collected once or regularly), focal events (such as disasters, crises, and personal experiences), and feedback (in the form of systematic monitoring, evaluation studies, informal channels or the feedback by administrative employees regarding their experiences in the implementation of policies).[189] Furthermore, Kingdon lists two ways of defining a deviation from the ideal state: comparing one's own performance with that of others or assessing one's own performance based on an assessment criterion.[190] Consequently, how and if a certain state is perceived as a problem depends on two factors: can the issue attract enough attention to be perceived as deviation from the ideal state, and which object of comparison or assessment criterion is selected as a base for the evaluation.

Politics stream

The politics stream is characterised by three factors: public opinion, interest groups, and forces from the political-administrative system, more precisely the parliament, the government and the administration.[191] The central question for capturing this stream is: Is there a change in public opinion, campaigns by interest groups or personnel changes in the political-administrative system, which causes certain issues to experience a rise in popularity? According to Kingdon the change in public opinion and the change in personnel associated with elections exert a strong influence on the priority of issues, while interest group campaigns tend to occur when an issue has already found its way onto the agenda and the concrete formulation of a policy is being wrangled over.[192] Regarding the public opinion, Kingdon does not equate this term with the results of opinion polls, but instead defines

[187] Ibid., p. 21; Herweg, 2015, p. 328
[188] Kingdon, 1984, p. 116
[189] Herweg, 2015, p. 328
[190] Kingdon, 1984, p. 118
[191] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 24-26
[192] Kingdon, 1984, p. 151

public opinion as "*the notion that a rather large number of people out in the country are thinking along certain common lines"*.[193] In this regard, obtaining reliable knowledge on the public opinion regarding a specific subject matter is irrelevant. The decisive point is how elected decision-makers *perceive* the public opinion to be, for instance based on personal visits, media coverage, communications towards them, and discussions with their constituents.[194]

Policy Stream

Finally, the policy stream consists of ideas and proposals to solve the problem, which are elaborated in policy communities.[195] Policy communities can be defined as "[…] *a loose connection of civil servants, interest-groups, academics, researchers and consultants (the so-called hidden participants), who engage in working out alternatives to the policy problems of a specific policy field*".[196] In the policy community, policy field specialists interact with each other sharing a common interest in a certain issue.[197] The process during which the policy proposals are elaborated is called 'softening up', and takes place within the framework of interactions between the members of a policy community.[198] 'Softening up' includes recombining or modifying existing ideas and (although much less frequently) developing completely new ideas, whereby members of the policy community try to convince other members of their proposals by means of better arguments. Kingdon compares the process of softening up with the selection process originating from evolutionary theory, meaning that a few elaborated policy alternatives emerge from a multitude of ideas, which he refers to as the 'primeval soup'.[199] Only those elaborated alternatives that meet the following five criteria have a chance to emerge from the 'primeval soup' of alternatives: technical feasibility, financial feasibility, normative acceptability, anticipated public approval and receptivity of elected decision-makers.[200] Normative acceptability means that elaborated alternatives must be in line with the values of the policy field specialists forming the

[193] Ibid., p. 153
[194] Ibid., p. 170
[195] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 22-24
[196] Herweg, 2016, p. 132
[197] Herweg, 2015, p. 331
[198] Ibid.
[199] Kingdon, 2011, p. 116
[200] Ibid., p. 131-136

policy community. Furthermore, if it can be assumed that the public is positively inclined towards them and that political decision-makers are also open-minded, the chances of survival of the policy alternatives are high.

Coupling of the streams

According to the MSA, whether an agenda change will occur depends on the following factors: the maturity of the three streams, the existence of a policy window and the activities of a policy entrepreneur.[201] Regarding the streams, agenda change presupposes that the problem, politics, and policy stream are ripe. The problem stream is considered ripe when a problem definition has been established and accepted, and the corresponding problem is also perceived as such. The politics stream, on the other hand, is considered ripe when the political climate carries an agenda shift, meaning that both policymakers and the public are in favour of political change.[202] Finally, the policy stream is mature as soon as at least one solution has been elaborated and accepted by the policy community in the form of a policy alternative.

Policy Window

Even if all three streams are ripe and ready for coupling, this will not automatically lead to agenda change.[203] According to the MSA, agenda change is likely to happen at a certain point in time, which the MSA refers to as the opening of a policy window. A policy window is defined as "[…] *an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems*".[204] Depending on the stream in which the policy window opens, the MSA distinguishes between problem windows and politics windows.[205] A problem window opens for example when an indicator which draws attention to the urgency of solving an already perceived problem is published. A politics window on the other hand opens for instance with the inauguration of a new government that includes a set of announced legislative projects in its government programme. Furthermore, the MSA dis-

[201] Herweg, 2015, p. 331-332
[202] Kingdon, 1984, p. 171
[203] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 26
[204] Kingdon, 1984, p. 173
[205] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 26

tinguishes between predictable and unpredictable policy windows.[206] For example, while elections at the end of a legislative period are predictable, this is not the case for a natural disaster or new elections due to a government crisis. Regardless of the stream in which change occurs, as soon as the policy window opens, the issue receives attention by government officials or by individuals associated with government officials and is thereby put on the government agenda, which is when the activities by the policy entrepreneur become crucial.[207]

Policy Entrepreneur

Policy entrepreneurs are "[…] *advocates who are willing to invest their resources – time, energy, reputation, money – to promote a position in return for anticipated future gain in the form of material, purposive, or solidary benefits*".[208] This definition implies that it is not the position of an actor that qualifies them as a policy entrepreneur, but their activities. In theory, any of the actors considered by Kingdon can act as a policy entrepreneur, although the activity is typically performed by only one or a few individuals.[209] Policy entrepreneurs couple the problem, politics, and policy streams, and thereby make an issue enter the decision agenda. The way coupling takes place depends on the stream in which a policy window opens, which also determines the point in time and the stream in which a policy entrepreneur becomes active. In the policy community, the activities conducted by policy entrepreneurs can be subsumed under the term advocacy.[210] In this process, policy entrepreneurs try to ensure acceptance of and agreement with their ideas, both within the policy community and among the broader interested professional public and the public at large. In the problem stream, policy entrepreneurs try either to draw attention to certain problems or to problematise an issue by redefining the ideal state and thereby pointing out a deviation from the desired state.[211] Drawing attention succeeds, for example, through press releases or speeches in which a certain issue is addressed. Redefining the ideal state is achieved by assessing the status quo based on a new criterion. In this context,

[206] Herweg, 2015, p. 332
[207] Kingdon, 1984, p. 3
[208] Ibid., 2011, p. 179
[209] Herweg, 2015, p. 332
[210] Ibid., p. 331
[211] Ibid., p. 330

policy entrepreneurs may adopt manipulative strategies such as framing, by means of which they enforce a very concrete problem perception for an ambiguous issue.[212]

Certain characteristics of policy entrepreneurs and policy communities can favour agenda change.[213] With regard to policy entrepreneurs, successful coupling is more likely if they have a claim to be heard by decision-makers, are well connected politically, have negotiating skills and are persistent.[214] Policy entrepreneurs who are known as experts in the relevant subject area, who are representatives of an (interest) group or who have decision-making powers themselves are more likely to be heard than policy entrepreneurs who do not meet these criteria. Thus, they are more likely to succeed in coupling the streams. Regarding the policy communities, the degree of integration of policy communities also affects the likelihood of agenda change, as it influences how many elaborated policy alternatives are available.[215] In policy communities characterised by a high degree of integration, common views, orientations, and ways of thinking emerge. Since a survival criterion for alternatives in the 'primeval policy soup' is that they must correspond to the commonly shared values of the policy community, a high degree of agreement within the policy community tends to lead to less policy alternatives and thus to agenda stability.[216]

Summarising, the Multiple Stream Approach depicts how different and independent streams (problem, politics, and policy stream) must be coupled by a policy entrepreneur as soon as a window of opportunity arises in order to achieve agenda change (see figure 5). Therefore, the central epistemological interest of the MSA does not lie in the explanation of the concrete form of a policy that policy makers decide on, but in explaining at what point in time change can occur.[217]

However, whenever scholars intend to apply the MSA to other political systems or stages in the policy making process as originally intended by Kingdon, the framework must be adapted accordingly.[218] Regarding the application to parliamentary systems and to

[212] Zahariadis, The Multiple Streams Framework. Structure, Limitations, Prospects, 2007, p. 77
[213] Herweg, 2015, p. 333
[214] Zahariadis, 2007, p. 75
[215] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 23
[216] Ibid.
[217] Herweg, 2015, p. 327
[218] Jones, 2016

the stage of policy formulation, Herweg, Huß, and Zohlnhöfer (2015) offer a promising adaption of the MSA, which is explained in the following before applying the adapted framework to the public policy process of establishing an NHRI in Italy.

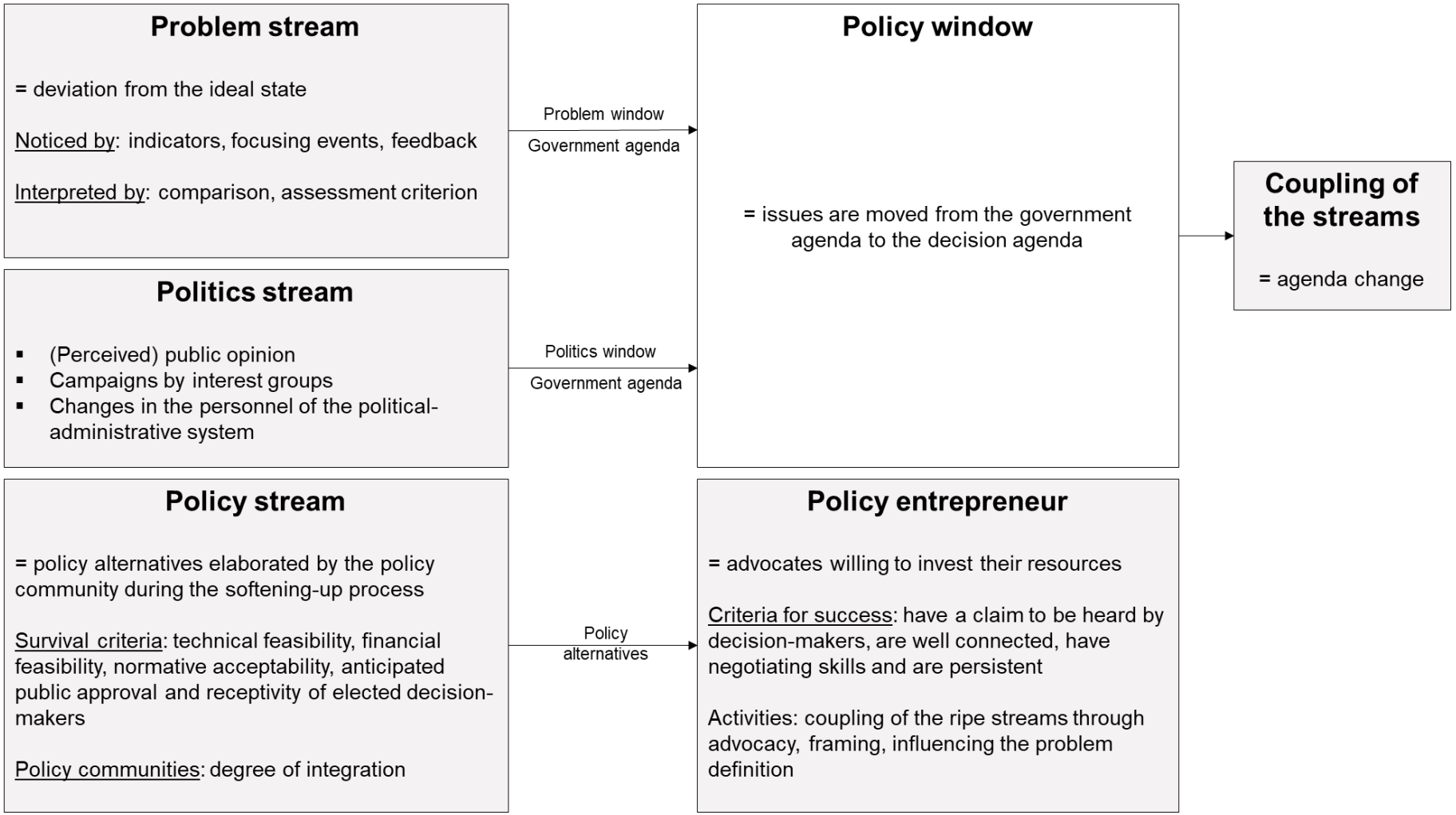

Figure 5: The Multiple Streams Approach (MSA) (own graphic based on Herweg, 2015, p. 329; and Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 17-29)

4.2 Adaption to parliamentary systems and policy formulation

In the present analysis, the MSA is applied to the public policy process of establishing a National Human Rights Institution in Italy, and more precisely, to the stage containing the formulation of the law which would create the NHRI. For the present analysis, the MSA must be adapted in two aspects – taking account of the parliamentary system of Italy, and of the policy formulation phase as a part of the policy making process (see figure 6). In order to render the former more tangible, the present analysis bases the structure of the policy process on the different stages contained in the policy cycle derived from Laswell (1956) (see figure 6).

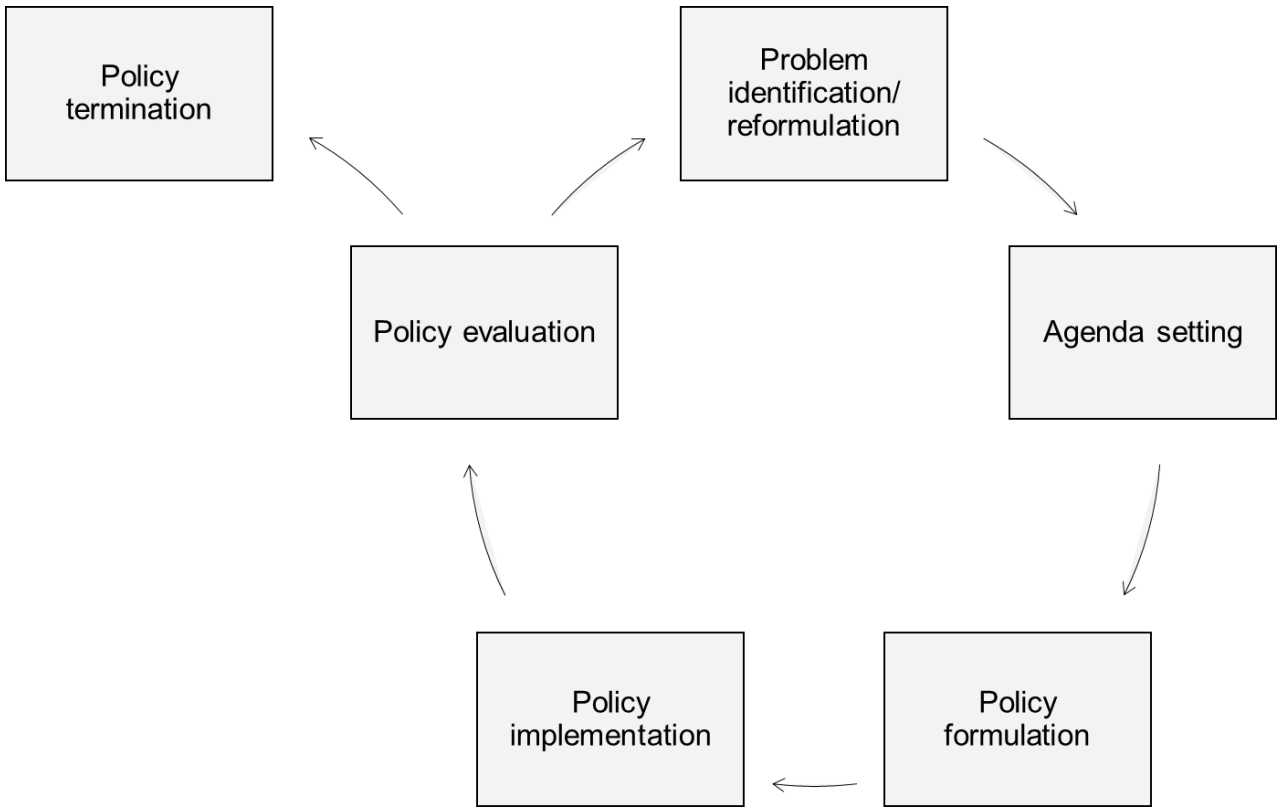

Figure 6: The Policy Cycle (own graphic based on Schubert & Klein, 2020, p. 367)

The adaption of the theoretical framework is necessary for two reasons: First, as the developments illustrated in chapter 3.2 show, the need to establish an NHRI had long been on the agenda of the Italian government and policymakers. Therefore, applying the MSA to explain the moment of agenda change would not offer an added value. Instead, the present analysis examines the stagnant phase of policy formulation in order to expose the underlying causal links of the deadlock Italy found itself in during the latest discussion of the draft law. Second, since the Italian state is a Republic with a bicameral parliamen-

tary system, the MSA must be adapted to parliamentary multi-party systems to take account of the more pronounced importance of parties and party ideologies.[219]

In most research applying the MSA empirically, the MSA is used to explain the moment of agenda change.[220] In some recent contributions however, the steps after agenda setting, namely policy formulation and policy implementation (see figure 6), are also included, offering promising extensions of the model.[221] In contrast to the phase of agenda setting where many actors are involved in attracting attention for their framing of the problem or their pet solutions, during policy formulation the primary goal is to obtain the majority for a specific policy alternative.[222] Thus, a smaller number of actors tends to be involved in this decision-making phase compared to the phase of agenda setting. Not only the number of actors involved, but also the institutional setting constitutes a relevant difference between agenda setting and policy formulation. During policy formulation, the 'organised part' in the organised anarchy is more pronounced, since decision-making takes place in a more structured setting, creating the need to take the involved institutions into account.[223] Since in the original formulation of the MSA no significant relevance was attributed to institutions during policy formulation, this aspect alone calls for an adaption of the theoretical framework.

Herweg, Huß, and Zohlnhöfer (2015) offer an adaption which takes both the relevance of institutions and parties in a parliamentary system into account, and which includes an extension to apply the MSA to the stage of policy formulation. In their model, the original formulation of the MSA including the basic assumptions and the structural elements remain intact. Additionally, an extension depicting the policy formulation is added which includes a 'decision- window' with the associated coupling process. Thus, Herweg, Huß and Zohlnhöfer (2015) differentiate between 'agenda windows' including the agenda coupling process on the one side, and 'decision windows' including the decision coupling process

[219] Although Italy classifies as a parliamentary republic as many other European countries, the Italian party system differs tremendously from the majority of parliamentary republics: the Italian political system is characterised by a high electoral, parliamentary, and governmental volatility (Cicchi & Calossi, 2018), by a high number of political parties (Valbruzzi, 2013, p. 629) and by party destructuration (Karremans, Malet & Morisi, 2019, p. 138). All these peculiarities of the Italian political system are considered in the analysis of the present case-study.

[220] See Jones, et al., 2016; Herweg, Zahariadis & Zohlnhöfer, 2018, p. 30-31

[221] Regarding formulation, see Ridde, 2009; and Herweg, Huß & Zohlnhöfer, 2015, and regarding implementation, see Fowler, 2020; Zahariadis & Exadaktylos, 2015; Bodswell & Rodrigues, 2016; and Ridde, 2009.

[222] Herweg, Zahariadis & Zohlnhöfer, 2018, p. 30

[223] Ibid., p. 31

on the other. The opening of an agenda window constitutes an opportunity for an agenda coupling process, where the three streams are coupled. In case the agenda coupling process is successful, a decision window opens. Finally, if the subsequent process of decision coupling is successful, a bill is adopted.[224] Therefore, the extension proposed by Herweg, Huß, and Zohlnhöfer (2015) constitutes an adequate theoretical framework to analyse the formulation and discussion of the draft bill to establish an NHRI in Italy. The characteristics of this extension to the MSA are explained in the following before applying the framework to the case study of the present analysis. In a first step, the MSA is adapted for an application to parliamentary systems but still focuses phase of agenda setting (see figure 6). In a second step, an extension is added in order to apply the model to the phase of policy formulation.

In the adaptation to parliamentary systems as proposed by Herweg, Huß, and Zohlnhöfer (2015) the importance of political parties for a parliamentary system is emphasised. The basic assumption contains a distinction between policy experts and the party leadership of a particular party.[225] The experts are part of the policy community and try to gain support for a specific policy alternative in their party. The party leadership, on the other hand, takes the national mood into account when agreeing to a proposal. The extent to which parties play a role in the different streams of the MSA when applied to parliamentary systems is explained in the following.

Problem stream

In the original formulation of the MSA, a central basic assumption is that problems can be perceived and defined differently.[226] Their perception depends on the one hand on the definition of the ideal state and a deviation from it, and on the other hand on the use of various mechanisms (focusing events, feedback, indicators). Regardless of the political system, a problem is therefore not automatically recognised as such and addressed by the government. In this respect, ‘problematic preferences’ play a decisive role, since in the parliamentary system, political decision-makers have unclear preferences with regard to the policy alternative or the problem definition, but not with regard to the next election out-

[224] Ibid., p. 31

[225] Herweg, Huß & Zohlnhöfer, 2015, p. 436

[226] Herweg, 2015, p. 327

come or the next government formation.[227] From these political preferences, those problems that are considered relevant by the political decision-makers can be deducted. For instance, a problem that poses a risk to the re-election of a party or a decision-maker is considered relevant precisely because of its possible influence on the outcome of the next elections.[228] However, this connection does not imply that political decision-makers classify relevant problems and predict the next election outcome in a rational manner. Similar to the perception of the public opinion, it suffices if policymakers perceive a certain issue as a risk to their own re-election (regardless of empirical demonstrable evidence). Therefore, policy entrepreneurs tend to find it easier to attract the attention of political decision-makers to the issue that could jeopardise their re-election. Nevertheless, it should be noted that policy makers are not exclusively interested in their own re-election when it comes to deciding which problems should be addressed, but their interest in being re-elected cannot be neglected in the analysis either. Consequently, it is more likely that a policy window will open in the problem stream as soon as an issue threatens the re-election of the decision-makers.[229]

Politics stream

In the original formulation of the MSA (Kingdon, 1984), the policy stream is composed of (the perceived) public opinion, campaigns by interest groups and changes in the personnel of the political-administrative system, although not all three elements must encourage change simultaneously in order to classify the stream as ripe.[230] In parliamentary system, interest groups in particular play a significant role in the politics stream.[231] Their potential to influence the stream stems from the decline of party ideology and the increasing volatility of the electorate. Electoral volatility means that voters may change electoral behaviour rapidly and in an unpredictable way, which is why political decision-makers pay closer attention to changes to and influences on the public opinion (and thus to the chance of being re-elected).[232] Therefore, when considering the politics stream the individual elements of

[227] Herweg, Huß & Zohlnhöfer, 2015, p. 436
[228] Ibid., p. 437
[229] Ibid.
[230] Herweg, Zahariadis & Zohlnhöfer, 2018, p. 24-26
[231] Herweg, Huß & Zohlnhöfer, 2015, p. 438
[232] Ibid.

the stream must be examined in relation to the behaviour of the parties.[233] In particular, party policies or coalitions that shape the government are crucial variables. Consequently, parties tend to favor those proposals that are conducive to their re-election. These proposals are in turn influenced by the public opinion and by interest groups. Thus, parties are more likely to accept those proposals which will not cause resentment among influential interest groups, and which enjoy popularity among voters[234]

Policy stream

In order to adapt the policy stream for application to parliamentary systems, the influential role of parties must also be taken into account (more so than Kingdon (1984) had done with regard to the presidential system of the US when developing the MSA). In the parliamentary system, it must be assumed that the policy experts of the parties are involved in the development of policy alternatives (softening-up process).[235] During this process, the policy experts try to influence the policy output in such a way to make them correspond to their political preferences. The policy experts have two possibilities of participating in the softening-up process: Either policy experts of a party draft their own proposals within a smaller working group and then put this proposal to a vote within the working group so that it can then be presented to the whole party, or policy experts take up proposals that are not part of their own party politics but have been developed by external experts or interest groups. Then, as soon as policy experts are convinced of a policy alternative which they promote and push it accordingly, their role changes and they become policy entrepreneurs. The party leadership on the other hand differs from the policy experts since they put more emphasis on the party's political objectives and take the public opinion into account when considering the proposals put forward. Consequently, in agenda setting the policy stream can be declared ripe as soon as a viable policy alternative is adopted by the party as a whole.[236]

[233] Ibid., p. 439
[234] Ibid., p. 440
[235] Ibid., p. 441
[236] Ibid., p. 442

Policy window and coupling

In the original formulation of the MSA, Kingdon (1984) distinguishes between policy windows, opportunities for change that arise in either the politics window or the problem window.[237] Depending on where a window opens, policy entrepreneurs can use different tactics to gain the support of decision-makers. In the problem window, policy entrepreneurs try to present their own solution as a suitable approach by framing a recently identified problem in a way that fits to their solution.[238] In the politics window, policy entrepreneurs try to profit from changes in the political landscape in order to gain support from the new governing parties. Several characteristics of the policy entrepreneur can favor successful stream coupling.[239] However, in parliamentary systems, personal characteristics of a policy entrepreneur are less influential than access to key policy makers.[240] Thus, the better the policy entrepreneur can access decision-makers to make his or her claim heard, the higher the probability that coupling of the streams is successful.

Extension of the MSA to policy formulation

The original formulation of the MSA can be extended in order to apply the framework to the policy phase of policy formulation, more precisely to include the final decision at the end of the formulation phase. Herweg, Huß and Zohlnhöfer (2015) suggest leaving the structural elements of the MSA completely intact and adding a second coupling process.[241] The first process concerns the agenda-setting phase and is identical to the original MSA (apart from attributing higher relevance to parties in parliamentary systems). The second process concerns the negotiations on the concrete design of the policy proposal. In a nutshell, during the first process an agenda window opens and once the coupling of the streams is successful, an agenda change takes place. In the second process a decision window opens and once the coupling of the streams is successful, a bill is adopted (see figure 7).

[237] Kingdon, 1984, p. 173
[238] Herweg, 2015, p. 330
[239] Ibid., p. 333
[240] Herweg, Huß & Zohlnhöfer, 2015, p. 443
[241] Ibid., p. 444

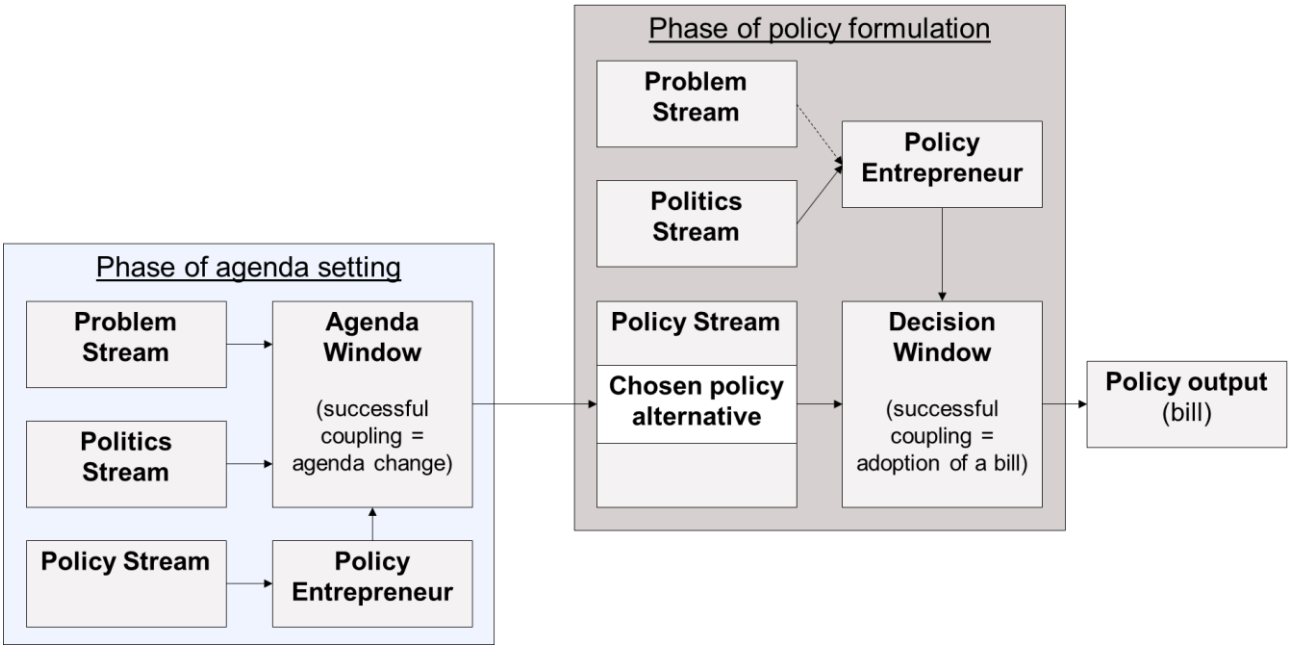

Figure 7: The Multiple Streams Approach extended to Policy Formulation (own graphic based on Herweg, Huß & Zohlnhöfer, 2015, p. 445; and Ridde, 2009, p. 942)

A key distinguishing feature of the two coupling processes is in which streams they open. The agenda window, as in the classic MSA, opens either in the problem stream or the politics stream as soon as changes occur within these streams. The decision window (located in the policy formulation phase), on the other hand, opens in the policy stream, in the form of a policy alternative that has previously been given agenda status.[242] Once a policy alternative has reached agenda status, actors in the policy stream (e.g., members of the parliament, coalition partners, interest groups) inevitably try to influence the detailed design of this policy alternative. Since the policy stream is decisive in determining which of the alternatives is placed on the agenda and thus put up for discussion, it plays the most influential role in the policy formulation phase. Nevertheless, the politics stream can also exert a significant degree of influence on the decision coupling process and on the success of policy entrepreneurs.[243]

Once a decision window opens, the policy entrepreneur must win the required majority in the decision-making body (e.g., the parliament) for the policy alternative that opened the

[242] Ibid., p. 444

[243] Ridde, 2009, p. 941

window. Winning the majority can be characterized by varying degrees of difficulty.[244] For example, a decision will come about easily if the policy alternative already had the support of the governing party or the majority coalition during the agenda-setting process.[245] However, decision-making becomes more difficult as soon as a second chamber has to approve the bill, in which members of the opposition party constitute the majority.[246] A lack of party cohesion of the party that proposed the policy alternative or the need for an absolute majority also render gaining the necessary majority to adopt a decision difficult. Especially in these cases, the activities of the policy entrepreneur are essential.

Policy entrepreneurs

The role of the policy entrepreneur must also first be adapted to parliamentary systems, since Kingdon assumed in the original formulation of the approach that in agenda setting only one or a few persons assume the role of policy entrepreneur.[247] In this regard, Herweg, Huß and Zohlnhöfer (2015) propose to integrate the concept of 'collective entrepreneurship' according to Roberts & King (1991) into the approach. This concept states that several people simultaneously exert influence during different phases of the policy process, but these actors hold different positions, knowledge and skills, contrary to the original assumption of only one or a small number of policy entrepreneurs. Furthermore, a distinction can be made between policy entrepreneurs inside and outside the governmental system, whereby those who exert influence from the outside necessarily dependent on the support of the policy entrepreneurs located inside.[248] Insider policy entrepreneurs, who can invoke the authority that results from their position (e.g., elected leaders), thus have better chances of success in coupling the streams.[249]

Furthermore, policy entrepreneurs have three basic strategies at their disposal to push for the coupling the streams: package deals, concession and manipulation.[250] Package deals implies that policy entrepreneurs combine a policy alternative with other projects that

[244] Herweg, Huß & Zohlnhöfer, 2015, p. 445
[245] Ridde, 2009, p. 942
[246] Herweg, Huß & Zohlnhöfer, 2015, p. 445
[247] Herweg, 2015, p. 332
[248] Roberts & King, 1991, p. 169
[249] Ibid., p. 152
[250] Herweg, Zahariadis & Zohlnhöfer, 2018, p. 31

policymakers already support, making the policy package more appealing overall.[251] Concessions entail that trade-offs have to accepted and the policy alternative must be changed in such a way to secure the approval of the required decision-makers. Manipulation, on the other hand, involves policy entrepreneurs utilizing the problem stream. This stream should be less relevant in the policy formulation phase since consensus on a problem definition has already been reached during the agenda-setting phase.[252] Nevertheless, policy entrepreneurs can resort to this strategy as soon as the policy formulation phase stagnates due to disagreements on the details of the policy alternative. In this case, policy entrepreneurs may convince decision-makers that a certain problem – which the policy alternative under discussion would solve – constitutes a pressing problem among voters. As soon as the decision-makers equate the ongoing discussions with a failure to timely act on a problem, and thus losing voters, their willingness to compromise increases.[253]

Concluding, the overview of the basic theoretic assumptions and the structural components of the MSA presented in the chapter emphasized the following key elements: First, in the problem stream, a problem can be defined as the deviation from the ideal state or from a criterion of comparison, and three mechanisms can lead to the perception thereof: indicators (collected once or regularly), focal events (such as disasters, crises, and personal experiences), as well as feedback (in the form of systematic monitoring, evaluation studies, informal channels or the feedback by administrative employees). Second, the politics stream consists of the perceived public opinion, interest groups, and forces from the political-administrative system, more precisely the parliament, the government, and the administration. Third, the policy stream consists of ideas and proposals to solve the problem. Only if all three streams are ripe, meaning the problem is identified, the political climate carries change, and consensus on a policy alternative is reached, agenda change is possible, but does not occur automatically. In this case, the chapter emphasized how the activities of one or more policy entrepreneurs (individuals who are willing to invest their resources to push for change) become crucial, since policy entrepreneurs must seize the opening of a window of opportunity to push their solution. Only if the activities of the policy

[251] Herweg, Huß & Zohlnhöfer, 2015, p. 446

[252] Ibid.

[253] Ibid., p. 447

entrepreneur(s) are successful, meaning they are successful in coupling the streams, agenda change occurs.

In a second step, the chapter presented an adapted and then an extended version of the MSA, which take account of the characteristics of a parliamentary system and of the stage during which policy formulation and the adoption of a law occur. Regarding the former, the chapter emphasized how the more pronounced role of parties, party ideologies, and institutions must be integrated into to theoretical approach, for instance by taking account of party politics and parties' interest in being re-elected. Regarding the latter, an extension of the original MSA illustrated how to apply the framework to the policy phase that follows agenda setting – policy formulation. The chapter highlighted the necessity of adding a second coupling process to the theory, which depicts the policy phase of policy formulation and its conclusion (see figure 8).

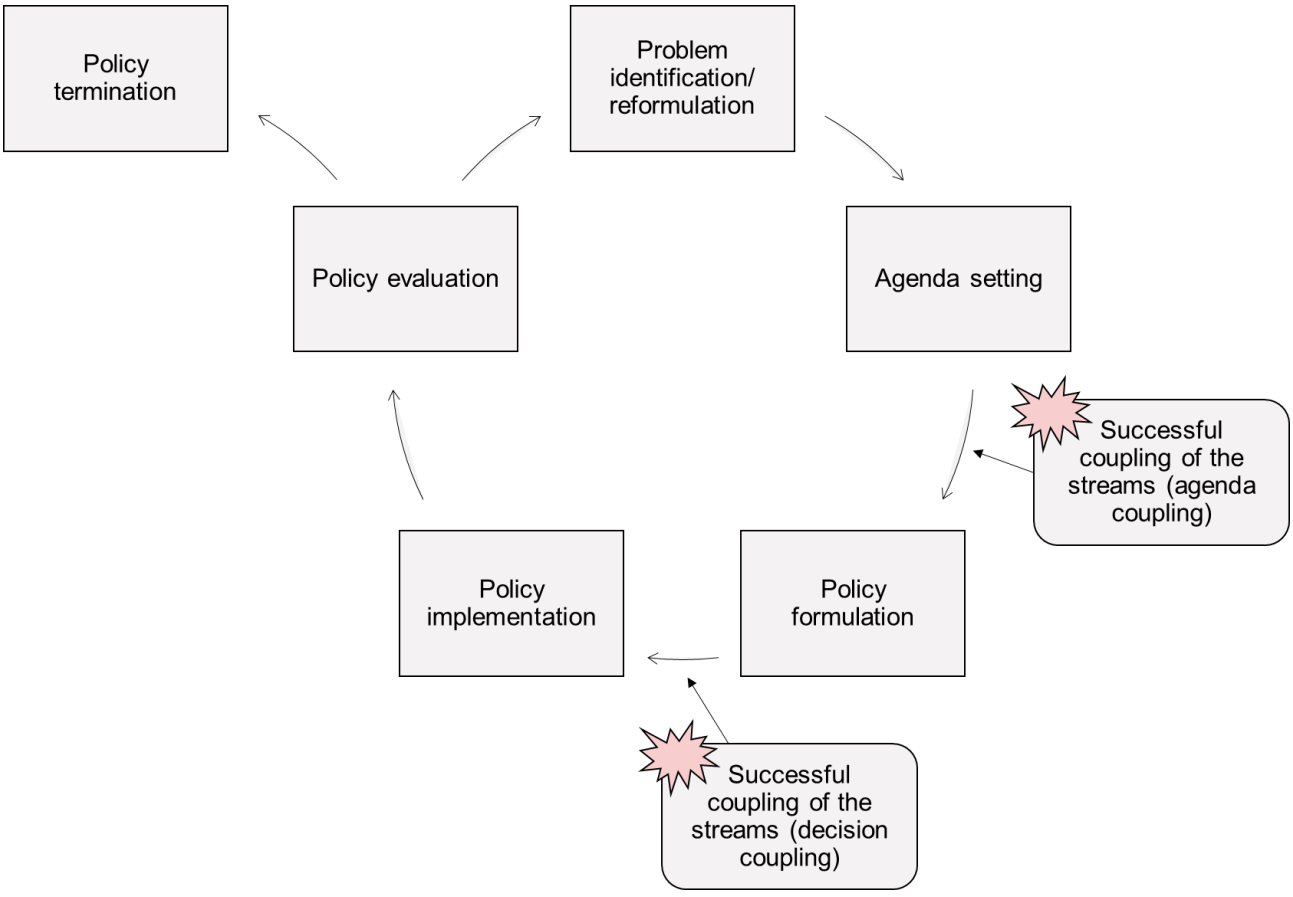

Figure 8: The Coupling Processes in the Policy Cycle (own graphic based on Schubert & Klein, 2020, p. 367; and Herweg, Huß & Zohlnhöfer, 2015)

Compared to the first coupling process that would lead to agenda change, the second coupling process (leading to the adoption of a law) differs in the following aspect: First, the number of involved decision-makers is lower than during agenda setting, since the process of policy formulation takes place in more structured and institutionalized settings, such as a working group or a committee. Second, the goal is not to gain the attention of policymakers for a certain proposal, but to convince the necessary majority within the decision-making body of a specific policy alternative. Third, the window of opportunity opens in the policy stream in the form of a policy alternative that has previously reached agenda status, which is how the two coupling processes are connected. However, the chapter also highlighted how also the politics stream can exert a significant degree of influence on the coupling process and on the success of policy entrepreneurs, for instance in case a second chamber with different political preferences must approve the proposed draft law. In case the phase of policy formulation stagnates, policy entrepreneurs may resort to different strategies to encourage the finalization of the phase, taking party specifics such as the fear to lose votes into account.

In the public policy process of creating a National Human Rights Institution in Italy, a stagnating policy formulation phase could be observed since 1989 when the tradition of failed attempts to adopt the decisive law began. Therefore, the epistemological interest of the following analysis lies in explaining the underlying reasons for the persistent deadlock Italy finds itself in. As a case study, the adapted and extended version of the MSA is applied to the latest discussions of the draft law on the ’Establishment of the National Commission for the Promotion and the Protection of Fundamental Human Rights and the Fight against Discrimination’, containing the unified text based on three previously proposed draft laws (C. 855 Quartapelle Procopio,[254] C. 1323 Scagliusi[255] and C. 1794 Brescia[256]). The discussions of the first two draft proposals (C. 855 Quartapelle Procopio and C. 1323 Scagliusi) started in November 2018, the examination of the third proposal (C. 1794 Brescia) started in July 2019, and the examination of the unified draft law containing the unified text (see appendix 2) started in October 2020 and has not been concluded in the

[254] Camera dei deputati, n.a. a, proposta di legge: Quartapelle Procopio ed altri: "Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali" (855), 28 November 2018

[255] Camera dei deputati, n.a. b, proposta di legge: Scagliusi ed altri: "Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali" (1323), 28 November 2018

[256] Camera dei deputati, n.a. c, proposta di legge: Brescia ed altri: "Istituzione dell'Autorità garante per il contrasto delle discriminazioni e modifiche al decreto legislativo 9 luglio 2003, n. 215" (1794), 31 July 2019

Commission for Constitutional Affairs, the Presidency of the Council and Home Affairs (hereinafter: the First Commission).[257] The last session took place in May 2022 without any substantial decision.[258]

[257] In Italian: I Commissione (Affari costituzionali, della presidenza del consiglio e interni)

[258] The chronological course of the discussions in the Chamber of Deputies can be accessed on the webpage of each of the three legislative proposals cited above (Camera dei deputati, n.a. a, b, c). An English translation of the sessions from November 2018 to May 2022 can be found in the appendix.

5 Analysis of the policy formulation process

In the following chapter, the adapted and extended version of the MSA, taking the characteristics of parliamentary systems and the process of policy formulation into account, is applied to the discussions of the latest draft law on the ’Establishment of the National Commission for the Promotion and the Protection of Fundamental Human Rights and the Fight against Discrimination’, containing the unified text based on three previously proposed draft laws (C. 855 Quartapelle Procopio,[259] C. 1323 Scagliusi[260] and C. 1794 Brescia[261]), and to the correlating relevant events. The structural elements of the MSA, meaning the problem, politics and policy stream, policy entrepreneurs and the coupling of the streams are applied to the case study. Thereby, the chapter aims at explaining which elements play a role in the public policy process of establishing a National Human Rights Institution in Italy and how the different elements affect the process of policy formulation. Furthermore, the goal of the application of the adapted and extended version of the MSA is to either reject or confirm the hypothesis that policy formulation in a parliamentary system fails if the policy stream contradicts the basic ideology of influential members of the politics stream.

5.1 Problem stream

According to the MSA, problems can be defined as a "*mismatch between the observed conditions and one's conception of an ideal state*"[262] whereby a deviation from the ideal state can be expressed by comparing one's own performance with that of others or assessing one's own performance based on an assessment criterion.[263] In the present case study the persistent lack of an NHRI was identified as deviation from the ideal state both by comparing Italy’s performance to that of other countries and by using the lack of an NHRI itself as an assessment criterion. For instance, in a speech addressing the members of the Chamber of Deputies, a Senior Human Rights Officer at ENNHRI compared Italy

[259] Camera dei deputati, n.a. a, proposta di legge: Quartapelle Procopio ed altri: "Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali" (855), 28 November 2018

[260] Camera dei deputati, n.a. b, proposta di legge: Scagliusi ed altri: "Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali" (1323), 28 November 2018

[261] Camera die deputati, n.a. c, proposta di legge: Brescia ed altri: "Istituzione dell'Autorità garante per il contrasto delle discriminazioni e modifiche al decreto legislativo 9 luglio 2003, n. 215" (1794), 31 July 2019

[262] Kingdon, 1984, p. 116

[263] Ibid., p. 118

and Malta to the rest of the EU Member States, emphasising that only those two countries still lacked an NHRI.[264] Furthermore, selecting an assessment criterion in this regard is a simple process because the assessment criterion that measures the lack of an NHRI as a deviation from the ideal state (the existence of an NHRI) is identical to the problem that it measures (the lack of an NHRI). In this context, the UN GA Resolution 48/134 provides for the criterion that all countries committed to fulfil – to establish an NHRI according to the Paris Principles.[265]

Furthermore, according to the MSA, the mechanisms that can be employed to lead to the perception of an issue as a deviation from the ideal state are: indicators (collected once or regularly), focal events (such as disasters, crises, and personal experiences), as well as feedback (in the form of systematic monitoring, evaluation studies, informal channels or the feedback by administrative employees regarding their experiences in the implementation of policies).[266] Regarding the unfulfilled duty to establish an NHRI, the topic had been regularly brought to the attention of the Italian State in the form of feedback (see chapter 3.2).

During the time span of October 2018 to September 2022, which is relevant for the present analysis, FRA conveyed the feedback pointing out the lack of an NHRI as an unfulfilled responsibility once in January 2021 at an event at Bocconi University of Milan[267], and in October 2021 in a series of meetings conducted by the Director of FRA.[268] FRA's Director spoke directly to Italian key policymakers at the time, such as the Justice Minister, the Under-Secretary of State at the Ministry of Foreign Affairs, other representatives from the Ministry of Foreign Affairs, representatives from both the Senate and the Chamber of Deputies as well as the Italian National Liaison Officer to FRA. Thus, the feedback was conveyed by one of the key institutions in the field of human rights in the EU, and it was delivered in a direct form to the relevant policymakers and presumably at least in part to the relevant decision-makers tasked to formulate and decide on the draft law (the members of the Chamber of Deputies). Other examples of such direct feedback being con-

[264] Meuwissen, 2019, p. 2

[265] UN GA, 1993, A/RES/48/134, 20 December 1993 (Paris Principles), p. 3 para. 3

[266] Herweg, 2015, p. 328

[267] European Union Agency for Fundamental Rights (FRA), 2021a

[268] European Union Agency for Fundamental Rights (FRA), 2021b

veyed to the members of the Chamber of Deputies are the two seminars organised by the Centro Studi Politica Internazionale (CeSPI) in January 2019, and in July 2022.[269] On those two occasions, the need for an NHRI was again conveyed directly by representatives of key institutions in the field of human rights (ENNHRI, Amnesty International, FRA, and ODIHR) and by relevant state bodies (CIDU, the Ministry of Foreign Affairs, and the Special Commission for the Promotion and Protection of Human Rights). Furthermore, on the international level, every single of the treaty bodies of the eight core human rights treaties ratified by Italy had issued a recommendation on establishing an NHRI at least one time (see chapter 3.2 table 1). However, during the time span in which the draft laws were under consideration in First Commission, two of the eight treaty bodies issued their Concluding Observations: the CED in May 2019, and the CRC in February 2019. Also, the List of Issues prior to reporting featured the need for action by the Italian State several times, for instance in the in the List of Issues prepared by the Committee on Economic, Social and Cultural Rights (CESCR) in 2020,[270] by the Committee against Torture (CAT) in 2021,[271] and by the Committee on the Elimination of Discrimination against Women (CEDAW) in 2021.[272] Thus, the systemic human rights monitoring conducted by the treaty bodies generated feedback that pointed out the deviation from the ideal state (the persistent lack of an NHRI) on several occasions during the time span in which the First Commission was examining the draft laws. Lastly, another form of direct feedback by other states constitutes the third UPR cycle in 2019, when the recommendations to establish an NHRI reached their peak arriving at a total number of 46, representing 15% of the total recommendations.[273]

Concluding, the still missing NHRI was identified as a deviation from the ideal state and conveyed in the form of feedback on several occasions. In fact, the Italian state itself framed the persistent failure to set up an NHRI as a problem that should be resolved. In the second National Action Plan on Business and Human Rights 2021-2026, the creation of an NHRI was labelled as one of the two main structural challenges in the implementation of the first action plan, confirming that the CIDU (the body that is responsible for the

[269] CeSPI, 2019; CeSPI, 2022

[270] Committee on Economic, Social and Cultural Rights, 2020, E/C.12/ITA/QPR/6, 16 April 2020, B, para. 6

[271] Ibid., 2021, CAT/C/ITA/QPR/7, 02 December 2020, Art. 2 para. 3

[272] Ibid., 2021, CEDAW/C/ITA/QPR/8, 10 March 2021, para. 3

[273] Cofelice & de Perini, 2020, p. 261

compilation of the National Action Plan) viewed the failure to set up an NHRI as an obstacle to fulfil their commitments – a deviation from the ideal state.[274] However, the fact that the candidacy letter for the Human Rights Council for the 2019-2021 term lacked a direct reference to the creation of an NHRI and only included indirect support through the UPR and the Agenda 2030 could suggest a decline in importance and urgency perceived by the Italian government. Still, due to the extraordinary amount of feedback and of indicators that declared the lack of an NHRI as a problem, the problem stream can be regarded as ripe.

However, the critical aspect in the problem stream of the present analysis is not the identification of the problem or the lack of feedback, quite the opposite. The lack of an NHRI has been voiced frequently by a variety of different actors, but in the specific stage of policy formulation in the present case-study, whether the issue is actually *perceived* as a problem depends on the decision-makers in the First Commission in the Chamber of Deputies. Therefore, the adaption of the theoretical framework to parliamentary systems is crucial. In this respect, 'problematic preferences' play a decisive role, since in parliamentary systems, political decision-makers have unclear preferences with regard to the policy alternative or the problem definition, but a problem that poses a risk to the re-election of a party or a decision-maker or that is in line with the party's basic ideology is considered relevant.[275] Thus, the most relevant stream of the present case-study – the politics stream – is analysed in the following.

5.2 Politics stream

In the MSA, the politics stream is characterised by three factors: public opinion, interest groups, and forces from the political-administrative system, more precisely the parliament, the government and the administration, although not all three elements must encourage change simultaneously in order to classify the stream as ripe.[276] In the present case-study, interest groups that could exert influence on the public opinion can be neglected, since the topic of NHRIs can be considered relatively unnoticed by the general public (see the lack of media coverage or the number of signatures of the petition, chapter 3.2). Thus, in the

[274] Comitato interministeriale per i Diritti Umani (CIDU), 2021, p. 71

[275] Herweg, Huß & Zohlnhöfer, 2015, p. 437

[276] Herweg, Zahariadis & Zohlnhöfer, 2018, p. 24-26

present analysis, in particular the First Commission of the Chamber of Deputies and the Government are relevant forces that exert influence on the outcome of the policy formulation phase (the adoption of a bill). Thus, the analysis in the following focuses on these two influential elements, their political preferences and the extent to which they encourage or discourage change.

During the time the draft bill establishing an NHRI was under consideration in the First Commission of the Chamber of Deputies (October 2018 – September 2022), the composition of the First Commission reflected the proportion of the parties represented in the Chamber (see table 2).

Party	**Percentage**	**Number of MEPs**
Lega - Salvini Premier (LEGA)	20%	9
Misto	17%	8
Partito democratico (PD)	15%	7
Forza Italia - Berlusconi Presidente	13%	6
Movimento 5 Stelle (M5S)	11%	5
Fratelli d'Italia (FDI)	9%	4
Insieme per il futuro - Impegno Civico	7%	3
Italia Viva - Italia c'è (IV)	7%	3
Liberi e uguali - Articolo 1 -Sinistra Italiana	2%	1
Total		**46**

Table 2: Composition of the First Commission in the Chamber of Deputies in September 2022 (own graph based on Camera dei deputati, n.a. d)

The composition of a permanent Commission, like the First Commission, is renewed every two years and their members may be reappointed.[277] In practice, the members of the Commissions seem to change more often, which is indicated on the webpages displaying information on each Member of the Parliament (MEP). For instance, MEP De Angelis (LEGA) had been member of the First Commission until August 2020,[278] MEP Giglio Vigna (LEGA) until September 2019,[279] and MEP Maturi (LEGA) until October 2020.[280] This frequent change of involved policymakers accurately confirms one of the basic assumptions

[277] Camera dei deputati, n.a. e

[278] Ibid., n.a. g

[279] Ibid., n.a. h

[280] Ibid., n.a. i

of the MSA – fluid participation. Furthermore, Italian MEPs also seem to change their party affiliation relatively frequently.[281] For instance MEP Vinci had been affiliated to the LEGA from March 2018 to February 2021, and then changed to Fratelli d'Italia in February 2021, but had only been part of the First Commission until March 2021.[282] MEP Migliore had been affiliated to the Partito Democratico (PD) until September 2019, then changed to Italia Viva-Italia c'è (IV).[283] MEP De Toma had been affiliated with the Movimento 5 Stelle (M5S) from March 2018 to January 2020, then changed to the 'mixed group' (Misto), not being affiliated with any party, and ultimately changed to Fratelli d'Italia (FdI) in March 2021.[284] Thus, due to high electoral, parliamentary, and governmental volatility,[285] the generally high number of political parties compared to other European countries[286], and the relatively frequent restructuring and reformation of parties,[287] making general claims and predictions on the behaviour of parties in Italy becomes complex.

Therefore, instead of deducting general claims on party behaviour and ideologies, the present analysis focuses on precisely those decision-makers who were involved in the discussions of the draft law in the First Commission (see table 2). To this end, all the protocols of the in total 14 sessions during which the first two draft laws and then the unified draft law were under consideration in the First Commission were translated to English (see appendix 1). In the following, relevant parts of the protocols are examined with regards to the preferences of the political forces represented in the Commission, as well as the Government's preference expressed by the Undersecretary of State of the Ministry of Foreign Affairs.

In the first session on 28 November 2018 the first draft bill, C. 855 Quartapelle Procopio on the 'Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights' was presented to the Commission combined with the second draft bill, C. 1323 Scagliusi, as it related to the same subject matter. On this occasion, a member of the M5S reminded the present members of the pledges commitment made by

[281] Cicchi & Calossi, 2018

[282] Camera dei deputati, n.a. j

[283] Ibid., n.a. k

[284] Ibid., n.a. m

[285] Cicchi & Calossi, 2018

[286] Valbruzzi, 2013, p. 629

[287] Karremans, Malet, & Morisi, 2019, p. 138

Italy as one of the signatory states of the United Nations General Assembly Resolution No. 48/134 of December 20, 1993 (Paris Principles). The MEP also recalled that in the past, a bill establishing an NHRI had already been approved, albeit only shortly before the dissolution of the Chamber, which is why the bill could not complete the process of approval by both the Chamber and the Senate.

During the third session on 19 December 2018 (see appendix 1, 3rd session), the first occasion occurred where a member of FdI voiced aversion to the legislative measure that would create an NHRI, expressing "*[…] perplexity about the appropriateness of setting up this Commission in a country like Italy that does not present any problems from the point of view of respect for human rights, pointing out that other forms of protection for citizens would be more appropriate."* This statement shows how, despite the vast number of recommendations and encouragement by the Italian civil society, regional and international organisations, and other states during the UPR, the members of FdI present in the First Commission do not consider the lack of an NHRI a problem. Furthermore, a basic assumption of the MSA – ambiguity – can be detected in the fact how the same issue – the lack of an NHRI – is perceived differently by the policymakers involved. For the policymakers in favour of the draft bills, the lack of an NHRI that engages in human rights protection and promotion poses a serious problem that can only be tackled by concluding the legislative process and setting up the NHRI. For the opposition (FdI in this case), the lack of an NHRI is not perceived as a problem, and instead of focusing on human rights, other forms of protecting the citizens are perceived as more important issues that need the attention of the parliament. However, despite the opposition expressed by the FdI, the First Commission proceeded to adopt draft bill C. 1323 Scagliusi as the basic text for further consideration.

The following three sessions on 12 March 2019, 20 November 2019, 4 December 2019 all had to be postponed. The reason for rescheduling the sessions was that 338 amendments to the draft bill C. 1323 had been submitted, which required a considerable time to be examined (see appendix 1, 4th session). Of the 338 submitted amendments, the vast majority (319 amendments, 94%) were submitted by MEPs affiliated with the LEGA (see figure 9).

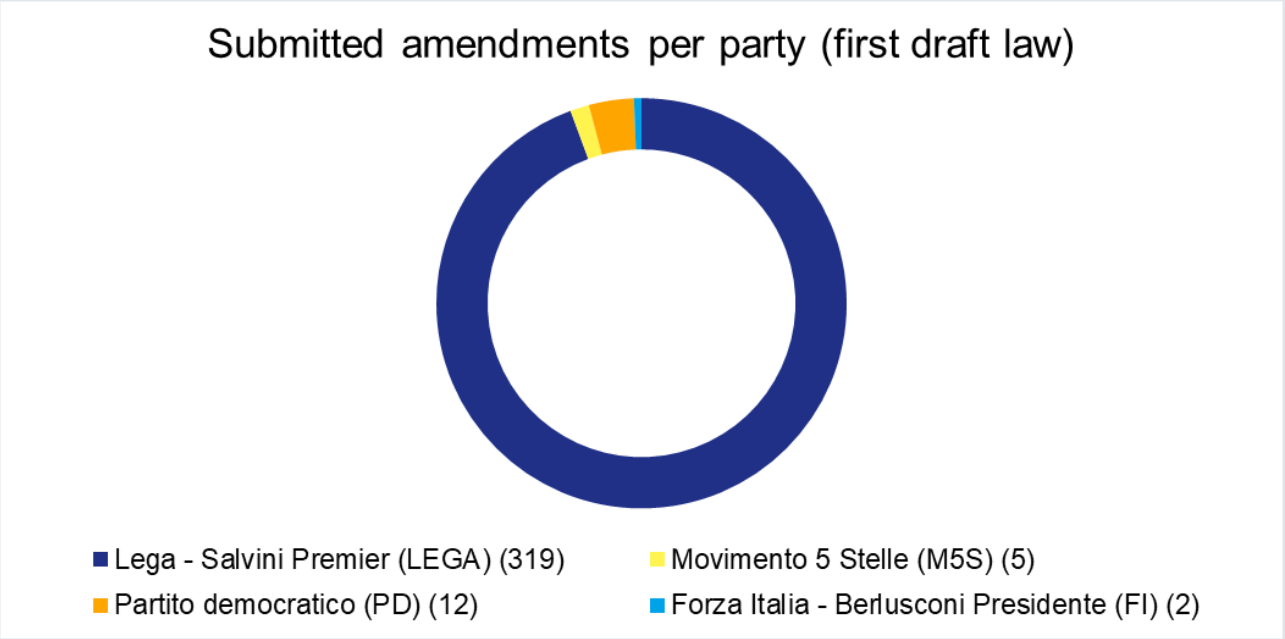

Figure 9: Number of submitted amendments per party (first draft law) (own graphic based on Camera dei deputati, n.a. b)

A closer look at some of the amendments submitted by the LEGA reveals that the proposed changes to the draft law included for instance depriving the future NHRI of its own staff (see amendment 2.22) and of its own premises (see amendment 2.23), and instead requiring the future NHRI to "*make use of the staff and premises of the Presidency of the Council of Ministers*" (see amendment 2.24), which directly contradicts the Paris Principles.[288]. The 319 submitted amendments by the LEGA therefore show three aspects: First, the act of submitting 319 amendments and thereby altering the entire draft bill conveys a clear and overall aversion on the part of the LEGA towards the formulations of the legislative act. Second, examining the content of certain amendments more closely, the amendments also demonstrate a categorical aversion towards a functioning NHRI that would adhere to the Paris Principles, especially by depriving the NHRI of its own staff and premises. Third, the sheer number of amendments to a draft bill that contains eight articles[289] clearly represents the intention to block the draft law in the Chamber of Deputies so that it

[288] „The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence." (UN GA, 1993, A/RES/48/134, 20 December 1993 (Paris Principles), para. 2 under Composition and guarantees of independence and pluralism)

[289] The text of the draft bill C. 1323 Scagliusi can be accessed on the webpage of the Chamber of Deputies under "testi" (Camera dei deputati, n.a. b).

cannot be voted on in both chambers within the legislative period. This extraordinary degree of opposition by the LEGA was confirmed in the 7th session on 11 December 2019, when a member of the LEGA reiterated *[…] the opposition by the LEGA group to the bills in question, pointing out that any delay in their consideration should nevertheless be considered positive"*. The behaviour of MEPs affiliated with the LEGA prompted the President of the First Commission to resort to holding a round of hearings on the bills in question aiming to draft a new basic text. The then following hearings (roughly 10 in total) postponed the legislative process to draft a bill for another ten months.

In the 8th session on 29 October 2020 (see appendix 1, 8th session), the Rapporteur of the First Commission presented a unified draft law which took the information gathered during the hearings, the previous two draft laws, and another newly introduced draft law (C. 1794 Brescia) into account. The unified basic draft law contained specifications on the tasks of the future National Commission for the Promotion and Protection of Fundamental Human Rights and for Combating Discrimination and defined the areas of competence between the future NHRI and other bodies, such as UNAR, more clearly. In this session, the second occasion occurred where members of FdI voiced extraordinary aversion against the legislative act and employed strategies to divert attention from the topic of the session to other, in their regard, more relevant matters. For instance, one MEP of FdI "[…] *finds it surreal - as if one were in a grotesque comedy - that in Parliament, in such a situation, one should concentrate on discussing measures of all kinds - from electoral law, to the fight against homophobia, to immigration - inspired by ideological and demagogic convictions and absolutely out of touch with the needs of the public*" and pointed out that strengthening the police force or facing "*the country's real emergencies*" would be more important than discussing the bill in question. He also "[…] *wonders why no measures are being taken in favour of the law enforcement agencies, for example by enabling the testing of certain self-defence instruments, such as the Taser, in view of the repeated attacks against police officers, which have also occurred in reception centres*." Thereby, the FdI group once again demonstrated its opposition to engage in drafting a bill that would create an NHRI, even though such matters fall within the competence of the First Commission even during times of crisis, as the Rapporteur of the Commission reminded. Thus, the statement by the MEP of FdI confirms the basic assumptions of the MSA – time constraints and fluid participation. Time constraints result from the fact that at the time of the session, the COVID-19 pandemic required immediate attention by the policymakers, creating a sense of urgency and priority of those matters that relate to the health crisis and the

resulting economic problems. Similarly, fluid participation refers not only to the changing members of the First Commission, but also to the different levels of engagement according to the legislative measure under consideration.[290] For the MEPs affiliated with FdI, the levels of engagement towards the topic of national security for instance would be significantly higher than towards the topic of creating an NHRI.

Then, MEPs from the M5S, PD, and IV replied to the remarks by the FdI group, noting the collective regret towards any attempts of further delaying the legislative process and emphasising the long overdue need to establish an independent Commission for the protection of fundamental rights, while acknowledging the need to devote the attention to other urgent matters, such as the health crisis, as well. Nevertheless, despite the continuous aversion and reluctance expressed by MEPs affiliated to FdI, the First Commission adopted the unified text.

In the following session on 13 January 2021, the scenario of the first two draft laws in 2018 repeated itself, since 913 amendments were submitted to the draft law C. 1794 Brescia (see appendix 1, 9th session). The vast majority (763 and 73) were submitted by MEPs affiliated with the LEGA and FdI respectively (see figure 10). Together the amendments made by the LEGA and FdI accounted for 92% of all amendments made to the unified draft law. The extreme degree of aversion which had been demonstrated by MEPs affiliated with the LEGA and FdI over the course of the legislative process leading to the unified draft bill culminated again in a strategy to block the draft law in the Chamber, thereby preventing the adoption of the bill. Since examining 913 amendments required an extraordinary amount of time, further elaboration of the draft bill had to be postponed for another 10 months.

[290] Still, it must be emphasised that ‘time constraints’ and ‘fluid participation’ do not justify the topics brought up by MEPs of FdI completely. Introducing the topic of security in reception centres into the discussion of the draft bill in question must rightfully be interpreted as a political act of opposition, as pointed out by the other members of the First Commission.

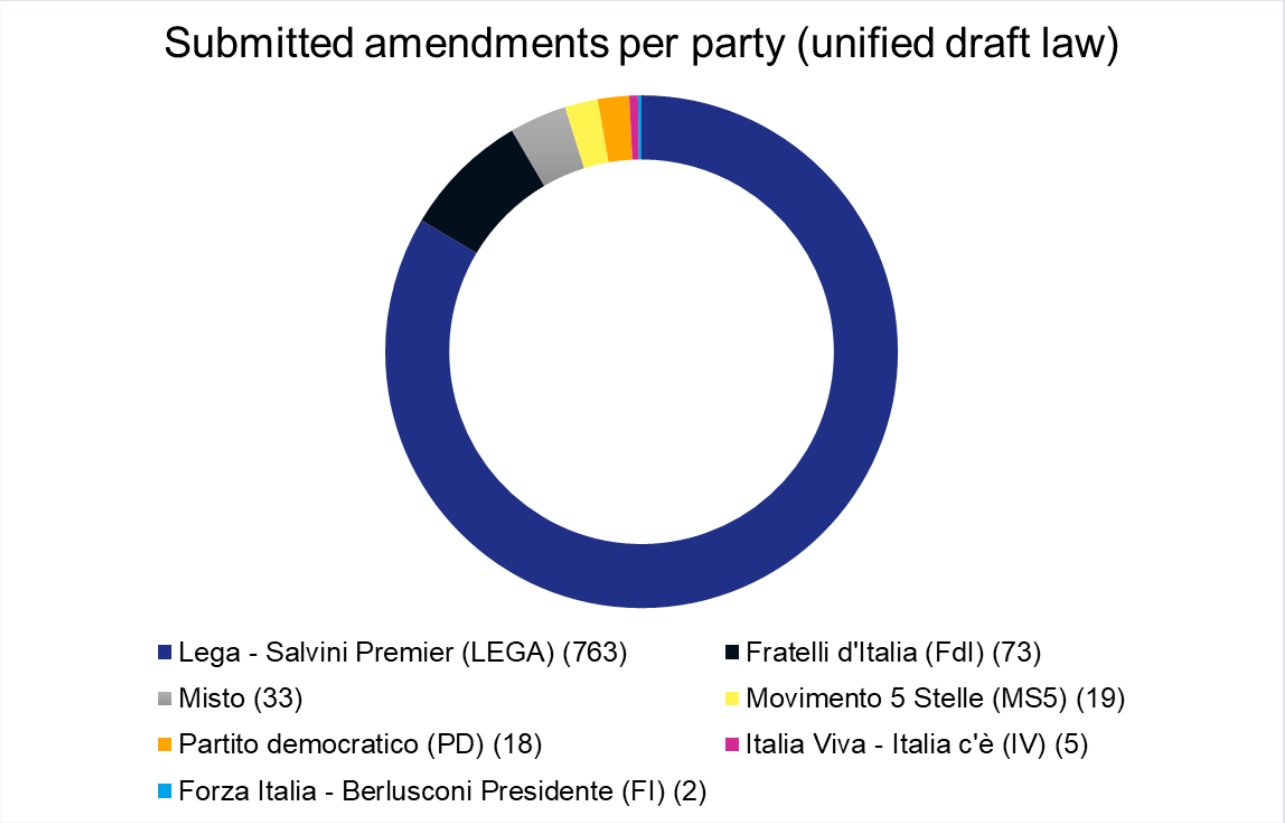

Figure 10: Number of submitted amendments per party (unified draft law) (own graphic based on Camera dei deputati, n.a. c)

In the 10th session on 3 November 2021 (see appendix 1, 10th session), Undersecretary of State of the Ministry of Foreign Affairs, Benedetto Della Vedova, participated in the session and addressed the members of the First Commission with a speech, underlying several crucial factors: First, he reiterated how Italy has been called upon several times by the UN, the EU (in particular by the FRA) and the CoE, by other countries during the UPR; as well as by many political and social bodies within the country. Second, he emphasised that "[…] *the first line of defence of human rights takes place within domestic legal systems and, where this system proves to be substantial, functional and in accordance with international law, not only do victims obtain a just recognition of the violation suffered but appeals to international bodies are also avoided. He therefore highlights that independent national human rights institutions are precisely an attempt to keep protection 'close to home*' […]". Undersecretary Della Vedova then reminded the members of the First Commission that despite the various pledges and commitments Italy had made to set up an NHRI, Malta and Italy were still the last two EU countries without such an institution. Thereby, Italy essentially excludes itself from playing any kind of role in independent bod-

ies such as GANHRI and ENNHRI. Furthermore, he also recalled that an NHRI would in no way a substitute the judicial function, but would prevent violations of the law and possible appeals, thus helping to reduce public spending on justice. Therefore, it is not a question of establishing 'yet another bandwagon', but of making violated rights more enforceable and Italy more in line with international standards. Furthermore, Undersecretary Della Vedova also pointed out that simply creating a "*façade body that risks concealing future inactions*" must be avoided, and that the future NHRI should be functioning, in line with the Paris Principles, while avoiding overlapping with existing independent authorities. Finally, he ended his speech by ensuring full support by the Government with regards to the draft bill under consideration.

In the session on 31 March 2022, the President of the First Commission, in his function as Rapporteur, started the process of examining the submitted amendments. In short, he proposed dropping certain amendments (see appendix 1, 12th session), while considering others, to which the government's representative, Undersecretary Della Vedova, expressed support. An MEP affiliated to FdI promptly expressed criticism of the procedure, pointing out that the government's representative should have expressed his opinion regarding the amendments, and not the legislative measure itself, and that the government would thereby make a political statement. In response, Undersecretary Della Vedova reiterated the government's neutral position, limiting itself to agreeing to a legislative measure which is long overdue.

In the session on 18 May 2022 (see appendix, 14th session), the Fist Commission continued to examine and vote on the amendments that were submitted. On this occasion MEPs of FdI and of the LEGA expressed their support for amendment 01.01 De Toma (see appendix 1, 9th session). The amendment in question aimed at replacing the entire draft bill, and instead creating a *Parliamentary* Commission for the Promotion and Protection of Fundamental Human Rights, composed of 20 Members of the Chamber of Deputies and 20 Members of the Senate (see appendix 1, 9th session, Art. 5 of the proposed amendment). The suggested amendment would directly contradict the Paris Principles[291]

[291] „The composition of the national institution and the appointment of members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights […]." (UN GA, 1993, A/RES/48/134, 20 December 1993 (Paris Principles), para. 1 under Composition and guarantees of independence and pluralism)

and GANHRI's General Observation 1.9[292]. Also, a Parliamentary Commission would risk duplicating already existing bodies in the Italian human rights landscape, such as the Special Commission for the Promotion and Protection of Human Rights in the Senate, the Permanent Committee on Human Rights Worldwide in the Chamber of Deputies, and the Parliamentary Commission for Children and Adolescents, consisting of 20 Members of the Chamber and 20 Members of the Senate (see chapter 3.1, figure 3). Nevertheless, the amendment received support by MEPs of FdI and the LEGA. The same MEPs also criticised that the draft bill under consideration provides for a mandate of the future NHRI which would be too broad since it includes combatting discrimination, and that the members of the future NHRI would "[…] *include representatives of NGOs involved in human trafficking, who would monitor even the work of the police forces*". Criticising the fact that combatting discrimination is included in the mandate of the future NHRI contradicts Art. 3 of the Italian constitution, which stipulates that "*All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions*. […]"[293] as well as numerous provisions stipulating the right to equality and non-discrimination in the international human rights treaties ratified by Italy.[294] Criticising the fact of including representatives of NGOs and the NHRI's mandate to investigate human rights violations committed by the police forces also contradicts the Paris Principles[295] and GANHRI's General Observation 1.2.[296]

The MEPs affiliated to the LEGA also expressed concern regarding the mandate of the NHRI, criticising the future NHRI again for being a body with political connotations, "[…] *empowered to receive reports and to carry out inspections and investigations, taking the place of the judicial authorities, even in workplaces or even police stations, in a truly Soviet style on the basis of reports that could well be instrumental or motivated by political intentions*". The LEGA group then declared itself open for discussions only if the First Commission opted for "*a more limited measure, using existing bodies*". In response to the re-

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[292] „[…] government representatives and members of parliament should not be members of, nor participate in, the decision-making of organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on both the real and perceived independence of the NHRI." (GANHRI, 2018b, p. 24)

[293] Senato della Repubblica, 1948, Constitution of the Italian Republic

[294] For instance, Art 2. UDHR, Art. 2, 26 ICCPR, Art. 2 para. 2 ICESCR, Art. 2 CRC, Art. 5 CRPD, as well as CEDAW prohibiting discrimination on the ground of gender CERD on the ground of race.

[295] UN GA, 1993, A/RES/48/134, 20 December 1993 (Paris Principles), para. 1 a) under Composition and guarantees of independence and pluralism

[296] „Specifically, the mandate should: […] authorize the full investigation into all alleged human rights violations, including the military, police and security officers." (GANHRI, 2018b, p. 7)

peated criticism, the President of the First Commission explained that in order to prevent the future NHRI to be biased towards certain parties, Article 2, paragraph 4, of the draft law stipulates that the members of the NHRI shall be appointed by a joint decision of the Presidents of the Senate of the Republic and of the Chamber of Deputies, by a two-thirds majority of their respective members, and in accordance with the procedures established by the parliamentary regulations. This provision was introduced precisely to provide the greatest possible guarantee of the impartiality and independence of the members of this body. The President further reminded that the future NHRI would provide assistance to the persons concerned in judicial or administrative proceedings, but with full respect for the powers and functions of the judicial authority, which it does not intend to replace, just as Undersecretary Della Vedova explained in his speech during the 10th session on 3 November 2022 (see appendix 1, 10th session).

Despite the clarifications provided by the President of the First Chamber and a MEP affiliated with the PD, the discussions continued to revolve around the mandate of the future NHRI, the inclusion of combatting discrimination, and the interpretation of the Paris Principles. With no consensus in sight, the President of the Chamber offered discussing the draft law in an informal forum, such as a restricted committee, aiming to reach a shared understanding and positive conclusion of the process.

This session on 25 May 2022 was the last of 14 sessions. With the latest government crisis in July 2022 and elections on 25 September 2022, the unified draft law on the ‘Establishment of the National Commission for the Promotion and the Protection of Fundamental Human Rights and the Fight against Discrimination’ never materialised, just as all the failed attempts in setting up an NHRI since the creation of the Paris Principles.

Concluding, the analysis of the politics stream illustrated how the Government on the one hand was in favour of the draft bill which would have established an NHRI, as it has been confirmed by Undersecretary Della Vedova. MEPs affiliated with FdI and the LEGA on the other hand demonstrated an extreme degree of opposition against the legislative measure under consideration (the chosen policy alternative), but also categorically against creating an NHRI in compliance with the Paris Principles. Since the MEPs opposing the draft bill could exert a significant influence on the policy formulation process, most notably

by submitting an extremely high number of amendments and thereby preventing a vote on the adoption of the act, the politics stream cannot be classified as ripe.[297]

5.3 Policy stream

The policy stream consists of a specific policy alternative chosen to solve the identified problem.[298] According to the adapted and extended version of the MSA (see chapter 4.2), the process of policy formation can be depicted as a second coupling process, following an agenda coupling process.[299] The second process depicts the negotiations on the concrete design of the policy proposal, whereby the policy stream contains the policy alternative that has previously given agenda status.[300] In the process of policy formulation, a window of opportunity opens in the policy stream, since decision-makers (e.g., members of the parliament, coalition partners) will try to influence the detailed design of this policy alternative as soon as it is submitted for discussion. Consequently, in parliamentary systems, the policy stream can be declared ripe as soon as a viable policy alternative is introduced to the decision-makers and the process of negotiating the detailed design of the alternative starts.[301]

In the present case study, the number of policy alternatives available during the process of agenda-setting had already been very limited beforehand, since the identified problem (the lack of an NHRI) required a very specific solution (the establishment of an NHRI). Furthermore, the analysis of the politics stream showed that one of the survival criteria of the policies developed in the agenda-setting process (see figure 5), namely the anticipated receptivity by elected policymakers does not apply to certain members of the Firs Commission during the period in which the draft law was under consideration. However, the crucial point relevant for the present analysis is the moment in which the detailed design of the chosen policy alternative, meaning the detailed design of the draft law creat-

[297] The practice of prolonging the debate on a proposed bill to delay or prevent a decision is referred to as 'filibustering', a form of 'obstructionism' (Romaini, 2017, p. 11). The tactics employed by the LEGA and FdI in the present case-study consisted of submitting an extraordinary number of amendments and of holding extensive speeches, also on unrelated topics, and can therefore be defined as 'technical obstructionism'. 'Technical obstructionism' makes use of the parliamentary rules of procedure as opposed to 'physical obstructionism', which would resort to verbal or physical violence (Romanini, 2017, p. 15-16).

[298] Herweg, Zahariadis, & Zohlnhöfer, 2018, p. 22-24

[299] Herweg, Huß & Zohlnhöfer, 2015

[300] Ibid., p. 444

[301] Herweg, Huß & Zohlnhöfer, p. 442

ing an NHRI started. Thus, the unified draft law (C.1323 Scagliusi, C. 855 Quartapelle Procopio and C. 1794 Brescia), which was introduced to the First Commission in November 2021, constitutes the latest stage of the policy stream.[302] Thus, in the present case study, from the moment on in which the unified draft law was introduced for discussion into the First Commission, the policy stream can be classified as ripe.

5.4 Policy entrepreneurs and coupling of the streams

According to the MSA, policy entrepreneurs are "[…] *advocates who are willing to invest their resources – time, energy, reputation, money – to promote a position in return for anticipated future gain in the form of material, purposive, or solidary benefits*".[303] Policy entrepreneurs couple the problem, politics, and policy streams, which, in the coupling process depicting policy formulation, results in the adoption of a bill. Since the present case-study depicts policy formulation in a parliamentary system, the concept of 'collective entrepreneurship' is applied.[304] 'Collective entrepreneurship' entails that several people holding different positions, knowledge and skills simultaneously exert influence during different phases of the policy process. Furthermore, in parliamentary systems there are policy entrepreneurs inside and outside the governmental system, whereby those who exert influence from the outside dependent on the support of the policy entrepreneurs located inside.[305]

In the policy-formulation phase, the policy entrepreneur must win the required majority in the decision-making body (e.g., the parliament) for the policy alternative that opened the window of opportunity. [306] Winning the majority for a specific policy alternative will be easy if the policy already had the support of the governing party or the majority coalition during the agenda-setting process, or if the chosen policy is in line with the basic ideology of influential members of the politics stream.[307] However, decision-making becomes more difficult as soon absolute majority is needed, or whenever a second chamber has to approve

[302] See appendix 2 for the English translation of the unified draft law.

[303] Kingdon, 2011, p. 179

[304] Roberts & King, 1991

[305] Ibid., p. 169

[306] Herweg, Huß & Zohlnhöfer, 2015, p. 445

[307] Ridde, 2009, p. 942

the bill, in which members of the opposition party constitute the majority.[308] In situation where policy-formulation stalls and reaching a consensus becomes difficult, policy entrepreneurs can use three strategies to encourage the coupling of the streams: package deals, concession and manipulation/ framing (see chapter 4.2).[309] In the following, the policy entrepreneurs relevant for the present case-study, as well as their strategies, if they used specific ones, are identified.

During the period in which the draft law establishing an NHRI was under consideration in the First Commission, the following actors invested resources to promote a specific position (see chapter 3.2):

- The think tank CeSPI organised two seminars bringing together civil society, MEPs, state representatives, and regional/ international organisations, advocating for a prompt establishment of the NHRI.

- Lawyer Ferdinando Lajolo di Cossano published two legal reviews, the latest of which analysed the unified draft law and underlined the need for revision to guarantee effective independence and autonomy of the envisioned NHRI, in accordance with the Paris Principles, and to better define its mandate and position in the domestic institutional landscape.[310] He also participated in the second seminar organised by CeSPI where he presented a series of arguments in favour of the position outlined in his legal review. [311]

- Filippo di Robilant, the Italian member of FRA's Management Board at the time, created a petition collecting signatures to urge the parliament to conclude the legislative process by adopting the law that would create the NHRI, and he participated in the first seminar organised by CeSPI, and in the conference organised by the University of Trento. In the petition he created, he used the strategy of 'framing', stating that Italy is the only EU member state that has not even begun to set up a body, although this deficit has been reported several times.[312] The way the lack of

[308] Herweg, Huß & Zohlnhöfer, 2015, p. 445

[309] Herweg, Zahariadis & Zohlnhöfer, 2018, p. 31

[310] Lajolo di Cossano, 2022, p. 100

[311] CeSPI, 2022; see 1:31:12 in the recording of the seminar, which is available on the website of CeSPI.

[312] Più Europa, n.a.

an accredited NHRI is framed in his petition emphasises the urgency and gravity of the problem, instead of presenting the lack of an accredited NHRI as a problem that indeed concerns three other countries in the EU.[313]

- Katrien Meuwissen, senior Human Rights Officer at ENNHRI, participated in both seminars organised by CeSPI and also used the strategy of 'framing', since she chose to emphasise that only Malta and Italy did not have an NHRI yet, instead of mentioning the lack of an *accredited* NHRI in Czechia and Romania as well.[314]

- The Director of FRA, Michael O'Flaherty, participated in the second seminar organised by CeSPI, and conducted a series of meetings where he spoke with key policymakers, such as the Undersecretary Della Vedova, advocating for the need to establish an NHRI.

The identified actors all invested their resources into advocating for the establishment of a NHRI compliant to the Paris Principles during the time under which the draft law was under consideration. However, since these policy entrepreneurs could not participate directly in the design of the policy during policy formulation, the strategies at their disposal were limited to advocacy and lobbying, instead of applying strategies such as package deals which can be applied only by policy entrepreneurs who are directly involved in the policy formulation. Furthermore, since the above-mentioned individuals are situated outside of governmental or parliamentary structures, they depended on the support of either decision-makers or influential policy entrepreneurs inside or with access to the decision-making body. Thus, the following policy entrepreneurs inside governmental and parliamentary structures (in this case the First Commission) must be considered particularly relevant:

- Undersecretary Della Vedova participated in the second seminar organised by CeSPI, talked to the director of FRA during the series of meetings, and took part in the 10th and the 12th session of the First Commission discussing the unified draft law (see appendix 1). During the 10th session, he emphasised the 28 years in which

[313] Romania, Czechia, Malta, and Italy all lack an accredited NHRI. However, Romania and Czechia each established institutions carrying out NHRI activities, but the institutions are not accredited yet. Italy and Malta on the other hand completely lack a fully independent institution that carries out the activities of an NHRI and cannot, with the existing institutions, apply for accreditation (FRA, 2020, p. 34; FRA, 2021c, p. 3).

[314] Meuwissen, 2019, p. 2

no NHRI was established, the various recommendations by international organisations or during the UPR Italy received, and the anomaly of Italy being one of only two EU countries without an NHRI. He also reminded the members of the First Commission of the pledges and commitments Italy had made in various occasions, and the presence of an independent national human rights institution was one of the criteria for a country to be considered as respecting the rule of law, and he pointed out the funds that could be saved by reducing the workload of the judicial institutions with the help of an NHRI preventing human rights violations.

- MEP Quartapelle (PD) was the initiator of draft bill C. 885 and participated in the first seminar organised by CeSPI, and in multiple sessions of the First Commission.

- MEP Iezzi (LEGA) repeatedly voiced the opposition by the LEGA during the sessions and submitted, together with the MEPs affiliated with the LEGA and FdI, the extraordinary number of amendments to block the draft law in the First Commission. During the 14th session, he used the strategy of 'concession', declaring the LEGA's openness to discussion if, instead of setting up a new body, the First Commission opts for a more limited measure, using existing bodies. Since the LEGA categorically opposes the establishment of an NHRI in compliance with the Paris Principles, discussing the use of existing bodies constitutes a compromise between the positions held by the other parties and the LEGA/ FdI.

- MEP Brescia (M5S) invested a significant amount of his resources into the design of the draft laws (in his function as President of the First Commission, and as first signer of the draft bill C. 1794 Brescia). During the various parliamentary sessions, during which the first draft law and then the unified draft law were discussed, he employed the strategies of 'package deals' and 'concession' to convince the opposition and win the majority. First, the draft bill proposed by Brescia (1794) can be considered a 'package deal' since it connected the establishment of an NHRI with the abolishment of the Office for the Promotion of Equal Treatment and the Elimination of Discrimination based on Racial or Ethnic Origin (UNAR). This suggestion was justified by a) the amount of resources that would be saved and b) the fact that civil society had repeatedly expressed the need to remove UNAR from the govern-

mental structure (currently in the Department for Equal Opportunities) and to guarantee the office real autonomy and independence.[315] By coupling the abolishment of UNAR with the establishment of an NHRI, Brescia effectively connected a measure that would presumably receive support by the majority of the members of the First Commission, namely the opportunity to save funds and to thereby not create the need for any further public spendings for the NHRI. Second, after the unified text was adopted as the new basic text of the draft proposal, he presented a 'concession' in the form of an added provision regarding the appointment of the members of the NHRI.[316] Since a reoccurring argument presented by the opposition of the law consisted of declaring the NHRI as a political body and fearing its instrumentalization by certain parties (see chapter 5.2 or appendix 1, 14th session), the president presented a provision that was included in the draft law precisely to assure the opposing parties that the NHRI could not be biased or hostile to certain political parties. [317] This provision was criticised by ODIHR in its legal opinion since it provides for a selection panel that consists entirely of political, governmental, or administrative representatives, without including civil society and risking the politicisation of the selection process.[318] Therefore, introducing a provision that reduces the likelihood of achieving an A-accreditation represents a concession towards the opposing parties of the draft law.

Summarising, a variety of actors invested time and resources to argue in favour of their position and can thus be classified as policy entrepreneurs conducting 'collective entrepreneurship'. The identified policy entrepreneurs outside governmental or parliamentary structures employed strategies of advocacy and lobbying, arguing in a more general way in favour of the establishment of an NHRI and raising awareness among the general public.[319] The policy entrepreneurs inside the government on the other hand could employ

[315] Camera dei deputati, n.a. c, under the sessio of 31 July 2019.

[316] Technically, the new basic text was formulated by MEP Anna Macina (M5S) in her role as rapporteur. In the present analysis, the provision in question is classified as a strategy used by Brescia since he used the provision as an argument during the sessions of the First Commission, thus being more vocal about it than the rapporteur.

[317] Art. 3, para. 4 of the unified draft law (see appendix 2) provides that the Commission members "shall be appointed by a decision requiring the agreement of the Presidents of the Senate and the Chamber of Deputies, by a two-thirds majority of the respective members, according to terms established by parliamentary rules".

[318] ODIHR, 2021, p. 30 para. 90

[319] An exception to the more general approach can be observed in the legal reviews published by lawyer Lajolo di Cossano, which presented detailed and specific legal analysis of the first two and the unified draft law.

more specific strategies that are at the disposal of policy entrepreneurs in parliamentary systems involved in policy formulation, such as package deals and concession. However, none of the employed strategies could effectively secure the required consensus necessary to complete the policy formulation process in the First Commission. Thus, none of the involved policy entrepreneurs succeeded in coupling the three streams before the process was interrupted by the government crisis in July 2022. Thus, the second coupling process depicted in the adapted version of the MSA failed to occur preventing the draft law from continuing its legislative procedure in the Senate.

Concluding, the application of the adapted and extended version of the MSA to the policy formulation phase of the latest draft bill that aimed at creating an NHRI (unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia) showed that the problem stream (the lack of an NHRI, pointed out multiple times by various actors and acknowledged by the government) and the policy stream (the chosen policy alternative resulting from the agenda coupling process, meaning a chosen policy to establish the NHRI) were ripe, whereas the politics stream (the government and, in this phase of policy formulation, the First Commission) were not ripe (see figure 11).

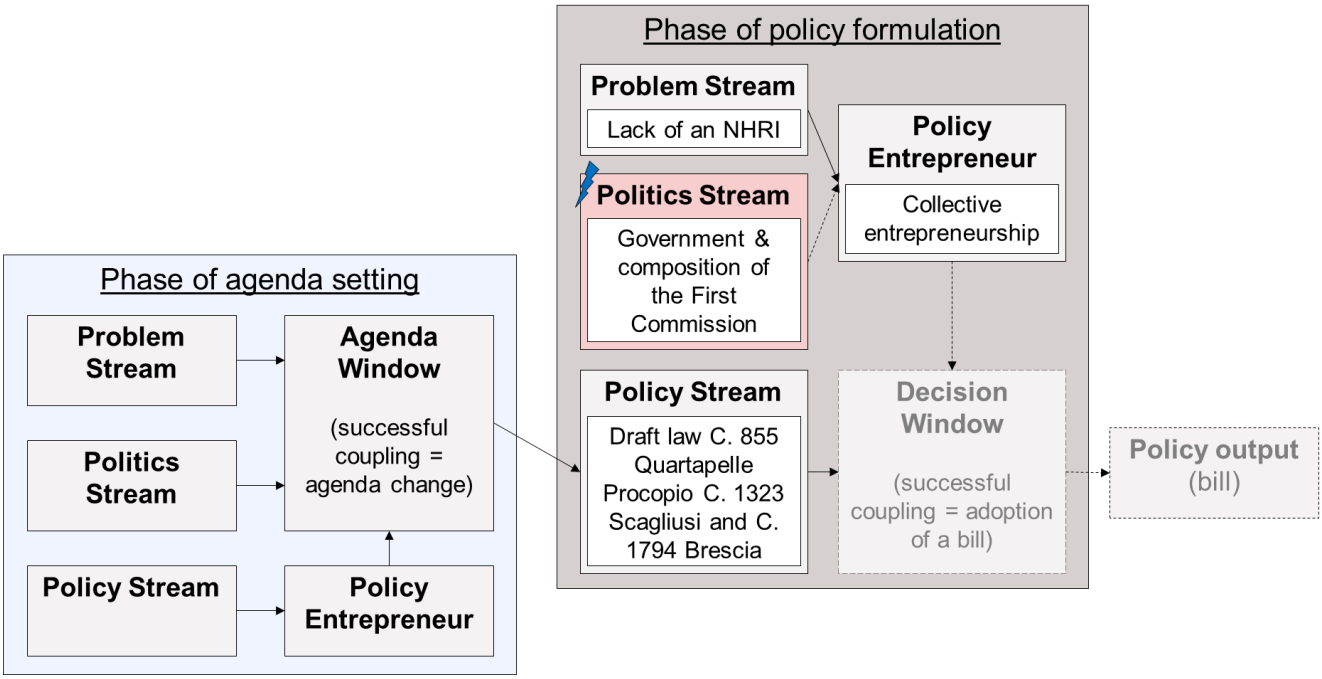

Figure 11: The MSA applied to policy formulation of the unified draft law (own graphic based on chapter 5, Herweg, Huß & Zohlnhöfer, 2015, p. 445; and Ridde, 2009, p. 942)

Although the government expressed its support for a measure that would create an NHRI in accordance with the Paris Principles, influential members of the First Commission opposed the draft bill, which results in classifying the politics stream overall as not ripe. Despite the activities and strategies employed by the various policy entrepreneurs, inside or outside governmental and parliamentary structures, the coupling of the streams was impossible precisely because one of the streams was not ripe yet. Thus, the policy output, meaning the adoption of a bill, could not emerge.

In the following chapter, a conclusion on the arguments presented in the thesis is drawn, and an answer is provided to whether the hypothesis raised for the present analysis can be confirmed or rejected.

6 Conclusion

An overall conclusion comprising key highlights and the main arguments of the present thesis is presented in the following. Furthermore, the result of the analysis is examined in order to confirm or reject the hypothesis that policy formulation in a parliamentary system fails if the policy stream contradicts the basic ideology of influential members of the politics stream.

The illustration of the national human rights framework in Italy and demonstrated that, despite the ratification of international human rights treaties and a constitution that would favour a strong human rights protection, the institutional human rights landscape in Italy is quite fragmented. Although certain human rights bodies in Italy display some of the characteristics contained in the Paris Principles, such as the CIDU with its general mandate, or the National Guarantor for the Rights of Persons Detained or Deprived of Liberty with its independence in its personnel and structure, an independent institution covering the full range of human rights and the entire geographic area of Italy's jurisdiction while displaying pluralism in its membership is still missing. Furthermore, the central function of an NHRI – serving as a bridge between the national and the international level, and between the State and civil society – cannot be fulfilled as long as there is no institution fully independent from the government. Thus, the Italian human rights landscape displays a gap which can only be closed by an NHRI compliant to the Paris Principles.

Furthermore, the examination of the history and role of NHRIs highlighted how the Paris Principles stand out as a key development sparking the proliferation of NHRIs around the globe and serve as necessary guidelines for States intending to establish an NHRI. The Paris Principles, supplemented with the General Observations issued by GANHRI's Sub-Committee on Accreditation thus serve as powerful guarantees to increase an NHRI's potential in effectively and efficiently fulfilling their two main functions of human rights promotion and protection. In this regard, the analysis of the discussion of the latest draft law to create an NHRI in Italy exposed how the proposals by the opposing parties (FdI and LEGA) directly contradicted provisions in the Paris Principles and in the General Observations. Thereby, the MEPs in question demonstrated their overall opposition towards creating an NHRI that would adhere to the principles of independence and pluralism and that would effectively pursue its role of human rights protection and promotion. Against the background of all past advocacy efforts for the establishment of an NHRI, a concerning

lack of connection can be detected between the efforts by civil society, academia, regional and international organisations, the voluntary pledges by the State on the one hand, and the Italian legislators responsible for adopting the law on the other hand.

Examining this lack of connection, the present analysis showed how the problem stream (the lack of an NHRI, pointed out multiple times by various actors and acknowledged by the government) and the policy stream (the chosen policy alternative resulting from the agenda coupling process, meaning a chosen policy to establish the NHRI) were ripe, whereas the politics stream (the government and the First Commission) were not ripe. Although the government expressed its support for a measure that would create an NHRI in accordance with the Paris Principles, influential members of the First Commission greatly opposed the draft bill, which is why the politics stream overall must be classified as not ripe. Still, a policy entrepreneurs conducted ‘collective entrepreneurship’ and invested time and resources to argue in favour of their position. The identified policy entrepreneurs outside governmental or parliamentary structures employed strategies of advocacy and lobbying, arguing in a more general way in favour of the establishment of an NHRI and raising awareness among the general public. The policy entrepreneurs inside the government on the other hand could employ more specific strategies that are at the disposal of policy entrepreneurs in parliamentary systems involved in policy formulation, such as package deals and concession. However, the reason why none of the employed strategies could effectively secure the required consensus to complete the policy formulation process in the First Commission was that one of the three streams – the politics stream – was not ripe yet. Thus, none of the involved policy entrepreneurs succeeded in coupling the three streams before the process was interrupted by the government crisis in July 2022, preventing the draft law from continuing its legislative procedure in the Senate. Thus, the policy output, meaning the adoption of a bill, could not emerge. As a result of the conducted analysis, the hypothesis that policy formulation in a parliamentary system fails if the policy stream contradicts the basic ideology of influential members of the politics stream, can be confirmed.

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Appendix

Appendix 1: Protocols First Commission (Chamber of Deputies)

The following protocols were downloaded and translated from the website of the Commission for Constitutional Affairs, the Presidency of the Council and Home Affairs of the Chamber of Deputies.[320] The original protocols in Italian can be accessed on the webpage of the Chamber of deputies.

1st session – 28 November 2018

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights. (C. 855 Quartapelle Procopio and C. 1323 Scagliusi)

Giuseppe BRESCIA, president, announces that Bill C. 855 Quartapelle Procopio, on the "Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights," was assigned to the Commission yesterday for referral, which is combined with Bill C. 1323 Scagliusi, as it relates to the same subject matter.

Anna MACINA (M5S), rapporteur, notes how the Commission is called upon to examine, in the referent session, Bill C. 1323 Scagliusi, on the establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights, to which Bill C. 855 Quartapelle Procopio, concerning the same subject matter, has been combined.

She then highlights how the bills aim to establish the National Commission for the Promotion and Protection of Human Rights in order to implement United Nations General Assembly Resolution No. 48/134 of December 20, 1993, which commits all signatory states, including Italy, to establish authoritative and independent national bodies for the promotion and protection of human rights and fundamental freedoms.

She recalls that the establishment of a National Human Rights Commission to implement UN Resolution 48/134 was the subject of parliamentary debate particularly during the 16th Legislature. Indeed, in 2009, the Senate Constitutional Affairs Committee had begun

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the consideration of two parliamentary draft bills on the subject. Subsequently, on June 7, 2011, the government had also presented its own a bill (A.S. 2720) approved, with some amendments, by the Senate Assembly on July 20, 2011. The government's initiative had originated from Italy's commitment, once it joined the UN Human Rights Council, to establish an independent human rights body to implement Resolution No. 48/134 of 1993. The text transmitted to the Chamber of Deputies (A.C. 4534) was examined in referral by the I Commission on Constitutional Affairs, which had made some amendments before approving it on December 18, 2012, a few days before the dissolution of the Chambers: therefore, the measure did not complete its approval process.

Turning to the content of the bills, she notes how Article 1 of Bill C. 1323 sets out, in Paragraph 1, the general principles of the measure, which, in implementation of the aforementioned United Nations General Assembly Resolution 48/134, aims to promote and protect fundamental human rights, in accordance with the principles of the Constitution, international law and humanitarian, covenant and customary law, and in compliance with the deliberations of the Council of Europe and the Organization for Security and Cooperation in Europe - OSCE.

Paragraph 2 provides that the Commission may point out to the Government among the international conventions on human rights and fundamental freedoms those that have not yet been ratified by Italy and make proposals for their implementation. One of the Commission's tasks, dealt with at length in Article 3, is thus anticipated.

Article 2 of Bill C. 1323 and Article 1 of Bill C. 855 provide for the establishment of the Commission, identify its purpose and forms of autonomy, and its composition. Both bills specify that the purpose of the Commission is to promote and protect the fundamental rights of the person, and in particular those established by the Constitution and international conventions to which Italy is a party, and is an independent body as provided for in the Paris Principles adopted by the 1991 UN Commission on Human Rights.

The Commission is an independent body and enjoys autonomy, organisational, functional and accounting autonomy, operates with full administrative, judgement and evaluation independence, and has its own staff and headquarters.

Paragraph 3 of Article 2 of Bill C. 1323 stipulates that the Commission shall be composed of 7 members, chosen from persons who, in addition to offering guarantees of un-

questioned morality, recognized independence, integrity and high professionalism, have proven competence in the field of human rights, children's rights and human sciences in general and must have carried out activities in the protection of personal rights in Italy and abroad.

Paragraph 4 of Article 2 of Bill C. 1323 also stipulates that 3 members shall be chosen from representatives of nongovernmental organizations, 2 from individuals working in civil society, and 2 from academics.

Paragraph 5 of Article 2 of Bill C. 1323 establishes a procedure for the appointment of the members in several stages.

In detail, the provision stipulates, in the first stage, that the relevant committees of the House and Senate will proceed to compile three lists, one for each of the three categories mentioned above, consisting of 10 individuals for NGOs and 6 individuals for the other two categories, half designated by the House committees, half by the Senate committees. It is envisaged that the designations will be made through a transparent and public evidence procedure, which takes into account: respect for equal opportunities relative also to the ethnic diversity of society and the "range" of vulnerable groups; respect for diversity; pluralistic representation of social forces involved in the promotion and protection of human rights.

In a second stage, members are appointed by the Presidents of the House and Senate, who, by mutual agreement, choose members from the three lists.

The chairperson of the Commission is then elected from among the members of the Commission by the members themselves by a two-thirds majority vote; he or she serves for one year and cannot be re-elected. During the five-year term, therefore, 5 out of 7 members will serve as chairperson on a rotating basis, the term of office being a maximum of one year.

Paragraph 6 of Article 2 of Bill C. 1323 provides that the members of the Commission shall serve 5-year terms and may be renewed only once. Using the same procedures adopted for appointment, it is provided that members of the Commission may be removed at any time if legal obligations are violated. It is also stipulated that halfway through the term of office, the members are to undergo a control procedure to ascertain whether they have failed to meet the requirements and qualities prescribed for appointment and to as-

sess the effectiveness of the determinations made and the results obtained, with a view to possible confirmation of the appointments or their revocation. However, the members remain in office until new members are appointed.

On this issue, Article 1 of Bill C. 855, on the other hand, stipulates that the Commission shall be composed of 4 members, also chosen from subjects with expertise in the field, elected, respectively, 2 by the Senate and 2 by the House, by a two-thirds majority of the members. Nominations are vetted in advance by the relevant parliamentary committees through the hearing of candidates and consultation with NGOs representing civil society. Constituents serve 5-year terms and elect a chairperson and vice-chairperson. In particular, the members shall be chosen from persons of the highest moral standing, recognized independence, integrity, "courage" and high professionalism, with proven experience in the field of human rights.

Bill C. 855 provides, in Article 1, paragraph 3, that the Commission "shall be a collegial body composed of four members" and specifies, in paragraphs 5 and 6, that the president shall be elected by the four members of the Commission.

It is stipulated that they may not, in any case, hold elective office or assume government or other public office of any kind, nor may they hold office on behalf of an association or political party or movement.

Moreover, according to paragraph 6 of Article 1 of Bill C. 855, the members of the Commission, if they are tenured university lecturers, are placed on unpaid leave.

Paragraph 7 of Article 2 of Bill C. 1323 establishes several incompatibilities with the office of Commission member.

In particular, they may not hold or hold, on pain of disqualification: public or private employment; positions of administration, management or control of public or private companies (the text specifies that the ownership of shares in such companies is also incompatible); professions and entrepreneurial activities; positions, including elective or governmental positions; positions in associations that carry out activities in the field of human rights; activities within or on behalf of associations, political parties or movements.

According to Paragraph 8 of Article 2 of Bill C. 1323, members of the Commission, if they are employees of public administrations, are to be placed outside their posts. It is also

stipulated that magistrates in service may not be members of the Commission (it seems to follow that magistrates on leave of absence may consequently be members). For tenured university professors, the provision specifies that they are placed on unpaid leave pursuant to Article 13 of Presidential Decree No 382 of 1980. The provision also specifies that staff placed on non-tenure or leave of absence may not be replaced.

Paragraph 9 of Article 2 of Bill C. 1323 grants the members of the Commission a function allowance of €80,000, the text referring to one-third of the maximum limit for remuneration for public offices, gross of social security and welfare contributions and tax charges payable by the employee, provided for in Article 13, paragraph 1, of Decree-Law No. 66 of 2014 in the amount of €240,000. The provision also excludes any additional allowance for those serving as President.

Paragraph 7 of Article 1 of Bill C. 855, on the other hand, refers - as an upper limit for the function allowance - to the total annual salary due to the office of the First President of the Court of Cassation.

Both bills provide that the office of member of the Commission, in addition to the natural expiry of the term of office or death, ceases exclusively in the event of resignation or proven lack of the requisites and qualities prescribed for appointment. As regards the replacement of members who have ceased to hold office, Article 2, paragraph 10 of Bill C. 1323 provides for the same procedure to be followed for the appointment, while Bill C. 855 entrusts the assessment and the procedure for the appointment of the new member to the Presidents of the Chambers, in agreement with each other.

Paragraph 11 of Article 2 of Bill C. 1323 provides that representatives of State administrations and representatives of the Italian Government in international bodies responsible for monitoring the fulfilment of Italy's obligations under the ratification of international human rights conventions may attend meetings of the Commission - should the need arise when dealing with specific problems of a technical nature. These persons participate in an advisory capacity, without deliberative voting rights and without remuneration.

Paragraph 1 of Article 3 of Bill C. 1323 sets out in detail the tasks of the Commission, including in particular

in paragraph a), to monitor respect for human rights and any abuses perpetrated against peoples, in Italy and abroad; under letter b), to promote the culture of human rights

and their dissemination, involving educational institutions, as well as promoting information campaigns

in paragraph c), to formulate opinions, recommendations and proposals, including those relating to the adoption of legislative initiatives, to the Government and the Chambers on all matters concerning respect for human rights: to this end, the Government is required to submit to the Commission for its opinion draft legislative and regulatory acts that may have a direct or indirect impact on such rights, having consulted the Interministerial Committee for Human Rights, operating within the Ministry of Foreign Affairs

in paragraph d), to express opinions and make proposals to the Government whenever negotiations are underway for the conclusion of multilateral or bilateral agreements concerning matters falling within the competence of the Commission

also in subparagraph d), to propose to the Government that it consider, in cases of blatant and serious violations of human rights, the possibility of cancelling any type of contract entered into with the person who committed the violation

in paragraph e), to ensure that adequate consideration is given to the promotion and protection of human rights when making foreign policy determinations

under paragraph f), verify the implementation of international conventions and agreements ratified by Italy on human rights;

also in subparagraph (f), to contribute to the drafting of reports that Italy is required to submit to the competent international bodies and to the Interministerial Committee for Human Rights

under paragraph g), to cooperate with international bodies and with the institutions of other European and non-European States operating in the fields of the promotion and protection of human rights, the fight against crimes against humanity and war crimes

in paragraph (h), to promote contacts with public bodies, such as ombudsmen, to which the law attributes specific competences in relation to the protection of human rights

under (i), receive reports of specific violations or limitations of the aforementioned rights;

under paragraph l), to promote and support the actions necessary for the realisation of educational and research projects on human rights issues (the provision appears partly similar to the one under paragraph b) concerning the promotion and dissemination of the culture of human rights)

at paragraph m), to promote the diffusion of the culture of human rights in first and second grade secondary schools, through the inclusion of the relevant themes among the subjects of study (this provision also appears partly analogous to those at letters b), and l)

in point (n), to provide assistance and give advice to public administrations wishing to include subjects relating to respect for human rights and fundamental freedoms in staff training and refresher courses

in paragraph (o), to publish, on the institutional website of the Commission, a bulletin listing the acts and documents adopted and the activities carried out;

in paragraph p), promote the establishment of a permanent forum for public discussion, the procedures for the establishment of which shall be laid down by decree of the President of the Council of Ministers, in agreement with the Ministers concerned

in subparagraph q), to establish a permanent forum for public debate on the work of the Commission, including through the provision of an internet platform enabling citizens to express their opinion on any relevant issue (this provision appears to be partly similar to subparagraph p)

in paragraph r), to promote, within the professional categories, the inclusion in the codes of ethics of rules for the promotion and protection of human rights

in paragraph (s), to submit to the President of the Council of Ministers, to the competent Ministers and to Parliament an annual report on the activity carried out and the state of implementation of international acts concerning the promotion and protection of human rights and on respect for human rights in Italy and abroad.

Instead, Bill C. 855 defines the tasks assigned to the Commission, in paragraph 1 of Article 2, in the following terms

- monitoring respect for human rights in Italy

- assessing reports of human rights violations or limitations coming from the persons concerned or their representative associations;

- verifying respect for the rights of persons detained or deprived of their liberty, including by inspecting, with the consent of the person concerned, the documents contained in the file of the person concerned and by accessing the facilities where persons subjected to measures restricting their liberty are kept, including centres for asylum seekers and refugees and centres for the "identification of migrants

- monitor the implementation of international human rights conventions and agreements ratified by Italy on national territory;

- to cooperate with other public bodies with competencies in the protection of human rights; to formulate opinions, recommendations and proposals, also with reference to legislative or regulatory measures, to the Government and the Chambers. The bodies against which the opinions, recommendations and proposals are formulated are required to give a reasoned response within 90 days indicating the measures they intend to adopt;

- to promote the culture and teaching of human rights, as well as the dissemination of knowledge of national and international norms governing the subject;

- promote dialogue with civil society, through public campaigns and initiatives; prepare and transmit an annual report on their activities to the Houses of Parliament.

Paragraph 2 of Article 3 of proposed Law C. 1323 empowers the Commission to request information and documents from public and private entities (in compliance with the provisions on the protection of personal data), in accordance with the request modalities defined by the Commission itself by regulation, similarly to what is provided by paragraph 2 of Article 2 of proposed Law C. 855.

Paragraph 3 of Article 3 of Bill C. 1323 specifies that, in the event of a refusal or omission, or of untruthful answers to the aforementioned request for information or documents, the Commission may apply to the president of the court having jurisdiction over the territory, 'who shall, without delay, issue a reasoned decree on the Commission's request'.

Paragraph 4 states that the Commission may order inspections and audits at the facilities referred to in the reported human rights violation.

Paragraph 5 states that in carrying out its tasks, the Commission shall make use, in an advisory capacity, of the Office for the Promotion of Equal Treatment and the Elimination of Discrimination based on Racial or Ethnic Origin - UNAR.

Paragraph 6 states that the Commission may be entrusted with further functions deriving from international commitments provided for by laws implementing international human rights conventions.

Paragraphs 7 to 9 regulate in detail the investigation procedure carried out by the Commission following the submission of an application or complaint of a human rights violation. Such a determination entails the examination by the Commission and, in case of merits, the allocation to the person responsible for the violation of a time limit for the cessation of the conduct in violation of human rights.

In particular, it is established that when the Commission proceeds with an investigation in relation to the submission of a petition or complaint by a person for an alleged violation of human rights recognised by the laws in force, it is obliged to inform the parties concerned of the opening of the proceedings, except in cases where, due to the sensitivity of the situations represented or the urgency to proceed, such communication must be made later.

After having taken the necessary information, the Commission, if it considers the request or complaint to be well founded, shall assign to the person responsible a time limit for the cessation of the conduct complained of, indicating the measures necessary to protect the rights of the person concerned and setting a time limit for their adoption. The measure shall be communicated without delay to the parties concerned. If the party concerned does not intend to comply with the Commission's request, it must communicate its reasoned dissent within 30 days of the communication.

In the event that the interested party does not communicate its reasoned dissent within the prescribed time limit, or in the event that the Commission considers the reasoning provided to be insufficient, it is provided that the Commission, if the conditions are met, will refer the matter to the competent judicial authority.

It is also provided that where the person is a public administration, in the event that it fails to comply and the reasoned dissent is not communicated within the time limit set or the reasoning is not deemed sufficient, the Commission shall refer the matter to the offices above the one originally concerned. If the higher offices decide to act in accordance with the Commission's request, they are obliged to institute disciplinary proceedings against the employee to whom the inaction is attributable. If, on the other hand, the super-ordinate offices decide not to accede to the request, the Commission may ask the competent judicial authority to annul the act it considers unlawful, or to order the offices concerned to behave accordingly.

Paragraph 10 provides that, for the purpose of investigating reports of specific violations or limitations of rights (referred to in the tasks listed above), the Commission may request, after hearing the Guarantee for the protection of personal data, access to public databases, with the exception of the Data Processing Centre of the Ministry of the Interior, Central Directorate of the Criminal Police and the national DNA database established at the Ministry of Justice.

Bill C. 855 also regulates, in Article 2(2), the access to public databases by the Commission, subject to a request to the persons concerned and notification of the request to the Garante per la protezione dei dati personali.

Paragraph 11 of Article 3 of Bill C. 1323 provides, in fine, that in the case of visits, accesses and verifications by the Commission, the public administrations in charge of the facilities subject to the visits, accesses or verifications, and, where necessary, other state bodies, shall cooperate with the Commission within the limits of available human, instrumental and financial resources.

Article 4 of Bill C. 1323 regulates the organization and operation of the Commission's secretariat office.

Under Paragraph 1, it is stipulated that the Commission shall be housed in a public building exclusively intended for it, suitable for accommodating also persons with disabilities, to which everyone has the right of access without limitations.

Paragraph 2 provides that the Commission shall have a secretarial office, which shall consist of an initial staff of 10, including a director, a deputy director, a secretary general

and seven clerks, a staff that may be subsequently varied for proven needs. In contrast, Bill C. 855 provides in this regard, in Article 3(2), for an initial staffing of no more than 50.

The provision specifies that the recruitment of staff by the Commission shall be by open competition on the basis of requirements set by the Commission, including, in particular, adequate knowledge of major foreign languages.

Paragraph 3 of Article 4 of Bill C. 1323 stipulates that the functioning, internal organization, budgets, reporting and management of expenses, the functions of the director of the secretariat office and the procedures and modalities for recruiting the office's staff shall be regulated by a special decree of the President of the Council of Ministers, to be issued within 90 days of the entry into force of the law, upon the proposal of the Minister of Foreign Affairs, in consultation with the Ministers of Economy and Finance and for Public Administration, after the opinion of the relevant parliamentary committees and after hearing the Commission itself.

Also Bill C. 855, in Article 3, Paragraph 3, defers to a decree of the Prime Minister the definition of the organization and functioning of the Commission, setting a maximum limit, of 120 units, to its staffing. However, it is stipulated that amendments to the regulations following the publication of the dPCM may be adopted by a resolution of the same Commission, to be published in the Official Gazette, which may also amend the staff complement.

Paragraph 4 of Article 4 of Bill C. 1323 specifies that the economic and legal treatment of said personnel shall be governed by the national collective bargaining agreement for the ministries sector.

Paragraph 5 indicates that the director, deputy director, secretary general and employees of the secretarial office are accountable exclusively to the Commission.

Under Paragraph 6, the Commission's Secretariat Office prepares the financial management statement, which is subject to audit by the Court of Auditors. It is also provided that the statement of accounts shall be published on the website of the Commission and the Ministry of Foreign Affairs in a form suitable to ensure its accessibility to users.

Bill C. 855, in Article 3(4), also provides for similar control by the Court of Auditors.

Article 5 of Bill C. 1323 directly regulates some of the Commission's modalities of operation by providing, in Paragraph 1, that the Commission shall submit a report to the competent judicial authority if it becomes aware of facts that may constitute a crime or conducts investigations on its own initiative, based on individual or collective reports, even if the relevant complaint is not submitted to the judicial authority.

Paragraph 2 provides that the Commission may request the cooperation of state administrations and other public entities or invite the relevant authorities to take measures to restore the rights of persons who have suffered a violation of their basic human rights.

Paragraph 3 imposes an obligation on the Commission to base its activities on principles of transparency and impartiality and to give reasons for the acts it adopts.

Paragraph 4 stipulates that in case of violation of the information and documentation obligations placed in Article 3, Paragraph 2, an administrative fine of 4,000 to 15,000 euros shall be applied in case the obligated parties refuse or fail to provide information and documents.

Under Paragraph 5, in the case of providing false documents and information, on the other hand, a criminal penalty of imprisonment from 6 months to 3 years is provided, provided that the act does not constitute a more serious crime. In addition, it is stipulated that the members of the Commission and the secretarial office, as well as those whose services are used by them in the performance of their duties, are bound by official secrecy as stipulated in Article 15 of the Consolidated Text of the provisions concerning the status of civil employees of the State approved by Presidential Decree No. 3 of 1957.

Paragraph 6, provides for the obligation to publish, according to criteria of transparency, the measures of the Commission, which may take further initiatives to disseminate the knowledge of the measures adopted and the activity carried out.

Article 6 of Bill C. 1323 stipulates that the Commission may avail itself, without further burden on public finance, of the collaboration of universities, study centers, research, non-governmental organizations, associations and other bodies of proven competence and professionalism in the field of promotion and protection of human rights.

Article 7 of Bill C. 1323 repeals the Prime Minister's Decree of April 13, 2007, establishing the Committee of Ministers for Policy and Strategic Guidance on the Protection of

Human Rights at the Presidency of the Council of Ministers - Department for Equal Opportunities.

The reason for the repeal is that with the entry into force of the law, this Committee would no longer have any reason to exist, as it would be exercising the same tasks as the newly established Commission.

Article 8 of Bill C. 1323 provides financial coverage for the costs arising from the implementation of the measure, amounting to 1,600,000 euros annually from 2018. The relevant financial coverage is to be met by a corresponding reduction in the appropriation of the special current account fund entered, for the purposes of the 2018-2020 three-year budget, within the program "Reserve and special funds" of the mission "Funds to be allocated" of the budget of the Ministry of Economy and Finance for the year 2018, for the purpose of partially using the provision relating to the Ministry of Foreign Affairs and International Cooperation.

The explanatory report points out in this regard that "The amount is based on a rough calculation, namely: 560,000 euros total for the seven councillors, 80,000 euros for the director, 55,000 euros for the deputy director, 50,000 euros for the secretary general and 40,000 euros (280,000 total) for each of the seven units in the office, about 270. 000 euros the expenses for the headquarters (rent and furniture), about 50,000 euros for the provision of services (maintenance, technical assistance, utilities, heating, etc.), about 30,000 euros for other expenses (postage, transportation, representation, stationery), and the inevitable expenses for consultancy and missions of the office members and staff, amounting to about 160,000 euros."

With regard to the aforementioned financial coverage profiles, Bill C. 855, Article 4 provides that the financial resources to be allocated to the Commission are to be identified by a Prime Ministerial Decree, to be adopted, in consultation with the Minister of Foreign Affairs and the Minister of Economy and Finance, within one year from the date of entry into force of the law. The provision provides for the quantification of the burdens arising from the implementation of the law, estimated at 662,575 euros for the year 2018 and 1,735,150 euros annually as of the year 2019; the related financial coverage is similar to that provided for in the above-described Article 8 of Bill C. 1323.

With regard to respect for constitutionally defined legislative powers, it highlights how the establishment of a National Commission for the Promotion and Protection of Human Rights falls under the subject matter of the ordering of the State and national public bodies, which falls under the exclusive legislative power of the State pursuant to Article 117, second paragraph, letter g), of the Constitution.

She then points out how in this regard the exclusive state legislative power in the matter of the State's international relations under Article 117, second paragraph, letter a), of the Constitution also comes into play, due to the purpose of implementing the commitments undertaken in the aforementioned UN resolution.

Stefano CECCANTI (PD) informs that MEP Quartapelle Procopio, the presenter of the associated bill C. 855, has informed him that she was unable to attend today's session due to commitments related to her political activity, advising that she will not fail to participate in the work of the Commission in the continuation of the examination.

Giuseppe BRESCIA, president, no one else asking to speak, postponed the continuation of the examination to another sitting.

2nd session – 5 December 2018

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights. (C. 855 Quartapelle Procopio and C.1323 Scagliusi)

Giuseppe BRESCIA, president, recalls that the previous session saw an explanation of the measure by the rapporteur, Macina.

No one asking to speak, he points out that next week will presumably see the adoption of the basic text and the setting of the deadline for the submission of amendments. He notes that the modalities for the continuation of the process will in any case be defined within the Bureau, integrated by the representatives of the groups, of the Commission.

He then postpones the continuation of the examination to another session.

3rd session – 19 December 2018

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights. (C. 855 Quartapelle Procopio and C. 1323 Scagliusi) (Continuation of consideration and referral - Adoption of the basic text).

Giuseppe BRESCIA, president, in place of the rapporteur, Macina, who is unable to attend today's session, proposes to adopt as a basic text for the continuation of the examination Bill C. 1321 Scagliusi.

Emanuele PRISCO (FdI) expresses his perplexity about the appropriateness of setting up this Commission in a country like Italy that does not present any problems from the point of view of respect for human rights, pointing out that other forms of protection for citizens would be more appropriate.

The Commission resolves to adopt Bill C. 1323 Scagliusi as the basic text for further consideration.

Giuseppe BRESCIA, president, no one else asking to speak, postpones the continuation of the examination to another session, specifying that the modalities for the continuation of the procedure will be defined in the bureau, integrated by the representatives of the groups, of the Commission.

4th session – 12 March 2019

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights. (C. 1323 Scagliusi and C. 855 Quartapelle Procopio.)

Gianluca VINCI, president, announces that, following the re-opening of the deadline for tabling amendments, some 340 amendments had been submitted (see annex 3) to Bill C. 1323 Scagliusi, on the 'Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights', adopted as the basic text, to which Bill C. 855 Quartapelle Procopio was linked.

Anna MACINA (M5S), rapporteur, in the light of the large number of amendments submitted, asked to postpone the continuation of the consideration of the measure to tomorrow's session, in order to be able to fully assess its content.

Gianluca VINCI, president, in consideration of the request made by the rapporteur, and no one else asking to speak, postponed the continuation of the examination to the sitting already convened for tomorrow.

Amendments to Bill C. 1323 Scagliusi:[321]

In total, 338 amendments to the Bill C. 1323 Scagliusi were submitted. The vast majority (319 amendments) were submitted by the MEPs Iezzi, Bordonali, De Angelis, Giglio Vigna, Invernizzi, Maturi, Stefani, Tonelli, and Vinci. At the time when the amendments were submitted, all of the above-mentioned MEPs were affiliated with the LEGA.

Examples of the amendments include:

- In paragraph 2, second sentence, delete the words: “of its own staff and.”
  2. 22. Iezzi, Bordonali, De Angelis, Giglio Vigna, Invernizzi, Maturi, Stefani, Tonelli, Vinci.

- In paragraph 2, second sentence delete the words: “and its own premises.”
  2. 23. Iezzi, Bordonali, De Angelis, Giglio Vigna, Invernizzi, Maturi, Stefani, Tonelli, Vinci.

- In paragraph 2, second sentence, replace the words: “shall have its own staff and its own premises” with the following: “shall make use of the staff and premises of the Presidency of the Council of Ministers.”
  2. 24. Iezzi, Bordonali, De Angelis, Giglio Vigna, Invernizzi, Maturi, Stefani, Tonelli, Vinci.

- In the second sentence of paragraph 2, replace the words: it shall have its own staff and its own headquarters with the following: and shall be staffed by the Interministerial Committee on Human Rights and located at the Ministry of Foreign Affairs and

[321] The amendments in Italian can be accessed on the webpage of the Chamber of Deputies under the protocols of the session on 12 March 2019 under “Proposte emendative” (Camera dei deputati, n.a. b).

International Cooperation.

2. 25. Iezzi, Bordonali, De Angelis, Giglio Vigna, Invernizzi, Maturi, Stefani, Tonelli, Vinci.

- In paragraph 2, second sentence, replace the words: and its own seat with: and is located at the Presidency of the Council of Ministers.

  2. 26. Iezzi, Bordonali, De Angelis, Giglio Vigna, Invernizzi, Maturi, Stefani, Tonelli, Vinci.

5th session – 20 November 2019

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights.(C. 1323 Scagliusi and C. 855 Quartapelle Procopio)

Anna MACINA (M5S), rapporteur, requests the consideration to be postponed until next week to allow for the preparation of a unified text to be submitted to the Commission.

Stefano CECCANTI (PD) supports the request made by the rapporteur.

Giuseppe BRESCIA, president, believes that the request can certainly be granted, also in view of the fact that the opportunity to postpone the discussion of the measure by the Assembly, originally scheduled to begin next Monday, November 25, has already been represented to the President of the Chamber of Deputies.

No one else asking to speak, he therefore postpones further consideration to another sitting.

6th session – 4 December 2019

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights.(C. 1323 Scagliusi and C. 855 Quartapelle Procopio)

Anna MACINA (M5S), rapporteur, asks to postpone the examination of the measures to another session, in order to complete the work of preparing the unified text to be submit-

ted to the Commission, in which she specifies that she will also take into account the proposed amendments submitted by the groups.

Emanuele PRISCO (FDI), in light of the rapporteur's intention to present a new basic text, considers it appropriate for the presidency to consider - subsequent to the adoption of such a text - the setting of a new deadline for the presentation of amendment proposals by the groups.

Giuseppe BRESCIA, president, points out that, once the new basic text prepared by the rapporteur has been adopted, a new deadline for the submission of amendments will be set, specifying that, in any case, the modalities for the continuation of the process will be defined within the bureau, supplemented by the representatives of the groups.

No one else asking to speak, he then postpones the continuation of the examination to another session.

7th session – 11 December 2019

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights.(C. 1323 Scagliusi and C. 855 Quartapelle Procopio)

Giuseppe BRESCIA, president, in light of informal interlocutions with the rapporteur on the measure, Macina, represents the need to hold a round of hearings on the bills in question, with a view to preparing a new basic text. These hearings, as already reported when the previous agenda item was held, may take place in conjunction with those related to Bill C. 1794.

Igor Giancarlo IEZZI (LEGA) asks the Presidency to clarify how he intends to proceed, expressing perplexity about the path outlined and recalling how in the session of December 4, 2019, the rapporteur Macina announced the presentation of a new basic text. He also reiterates the opposition by the LEGA group to the bills in question, pointing out that any delay in their consideration should nevertheless be considered positive.

Giuseppe BRESCIA, president, expresses regret for the position of opposition expressed by MEP Iezzi, since on an issue as important as fundamental human rights it would be reasonable to expect an attitude of sensitivity from all political forces.

Simona BORDONALI (LEGA) believes that the procedure envisaged by the President is irregular, since it is proposed to hold a round of hearings that could deal with the topics covered by two autonomous bills, one of which, moreover, has been under consideration for a long time. She therefore calls on the majority groups to provide clarity, indicating which course of consideration they prefer to take and which text they intend to identify as a basis for discussion.

She also points out that, with regard to the examination of the proposals in question, the rapporteur has repeatedly announced the presentation of a text to be adopted as a basic text, of which, however, there is still no trace.

Giuseppe BRESCIA, president, believes that the continuation modalities envisaged with reference to the process of the bills in title are normal, since the Commission, in the course of the preliminary investigation, has the faculty to avail itself of all the necessary cognitive instruments to assess the necessity and effectiveness of the regulatory intervention, noting that this need arises before the adoption of the basic text. This is also true in the case at hand, considering that the rapporteur Macina reserved for some time now the right to present a text to be adopted as a new basic text, for the complex elaboration of which the need to acquire, through some hearings, further elements of knowledge has emerged.

No one else asking to speak, he therefore postpones the continuation of the examination to another session.

8th session – 29 October 2020

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights. (C. 1323 Scagliusi and C. 855 Quartapelle Procopio. (Continuation of and referral - Combination of Bill C. 1794 - Adoption of a new basic text)

Giuseppe BRESCIA, president, following up on what was already indicated at yesterday's meeting of the Bureau of the Presidency, supplemented by the representatives of the groups, announces that the cycle of informal hearings envisaged for the purposes of the legislative enquiry on the measures is now over, given that some 10 hearings have already been held to date. Therefore, the measures were placed on the Commission's

agenda for today, so that the rapporteur, Ms Macina, could formulate a proposal for a new basic text.

In this context, he recalls that at an earlier stage of the process, Bill C. 1323 was adopted as the basic text, to which numerous amendments were submitted, but that the Commission subsequently decided to carry out a broader legislative inquiry into the measure, proceeding to the above-mentioned round of informal hearings, with a view to adopting a new basic text.

He also proposes to combine with the bills already under consideration the bill C. 1794 of his first signature, bearing the title "Establishment of the Guarantor Authority for the fight against discrimination and amendments to the legislative decree n. 215 of 9 July 2003", which deals with a topic closely related to that of the above-mentioned bills, as evidenced by the fact that the cycle of hearings held covered all three measures.

The Commission approves the proposal of combination put forward by the President.

Anna MACINA (M5S), rapporteur, presents a unified text of the bills under consideration (see annex), which she proposes to adopt as a new basic text. Explaining its content, she dwells in particular on the tasks of the National Commission for the Promotion and Protection of Fundamental Human Rights and for Combating Discrimination, referring in particular to those indicated in Article 3, paragraph 1, letters a) and b), which she considers in full harmony with the content of Article 3, first paragraph, of the Constitution.

After then pointing out that her proposal for a unified text more clearly defines the areas of competence between different bodies, for example with respect to UNAR, she points out how it also provides for full involvement between different national institutions, given that this Commission draws up an annual report to Parliament and the Government on its activities.

She therefore declares herself open to discussion with the other groups with a view to improving the text, and hopes that a wide-ranging debate can be held on it.

Emanuele PRISCO (FDI) points out that, in light of the parliamentary work that has been going on in the last few days, a deep disconnection from the real country seems to

be evident in the majority political leadership, which seems to be unconcerned about the significant needs felt by Italian citizens in this historical phase of health and economic emergency. He notes, in fact, how the majority seems to be interested exclusively in discussing measures that have nothing to do with such obvious priorities, as if to divert attention from what are the country's real emergencies.

He finds it surreal - as if one were in a grotesque comedy - that in Parliament, in such a situation, one should concentrate on discussing measures of all kinds - from electoral law, to the fight against homophobia, to immigration - inspired by ideological and demagogic convictions and absolutely out of touch with the needs of the public. He therefore condemns the profound detachment between politics and civil society, which prevents serious answers being given to citizens, as demonstrated by the lack of measures to strengthen the police force, which is forced to bear an increasingly heavy workload due to the epidemiological emergency.

Vittoria BALDINO (M5S), while understanding that the opposition plays the role of antagonist with respect to the majority, in a game of the parties that is part of the political dynamic, strongly disagrees with the critical remarks made by MEP Prisco, reminding him that, as a member of the I Commission, he too must deal with the important issues that fall within the competence of that Commission, including the subject of the measure under consideration. She points out that the 1st Commission, dealing with, among other things, constitutional and security affairs, has the right and duty to consider as a priority the issue of the protection of fundamental rights and the fight against all forms of discrimination, an issue, moreover, that she considers to be relevant to the concrete lives of the many people who are victims of violence.

Lia QUARTAPELLE PROCOPIO (PD) first of all thanks the rapporteur Macina for the excellent synthesis work done, since she was able to take into account the contents of the different measures under consideration in the preparation of the proposed unified text.

Responding then to MEP Prisco, she points out that parliamentarians, in the exercise of their mandate, have a great responsibility, as they have the duty to deal with many issues, in different sectoral areas, while respecting certain priorities imposed by the particular historical conjuncture. Therefore, she does not consider it objectionable that Parliament, while ensuring the consideration of more urgent measures concerning the health

emergency, should also deal with other matters, continuing the ordinary process of examining bills that have already been presented.

In this spirit, she emphasises how the measure under consideration provides concrete answers that are long overdue, given that Italy is the only country in the European Union that does not have an independent Commission for the protection of fundamental rights. She therefore does not believe that the measure under consideration can be secondary, as it aims to fulfil certain commitments undertaken at international level, pointing out that it would not do honour to the country's tradition of justice not to follow up on these commitments.

Gennaro MIGLIORE (IV), echoing some of the comments made by MEP Prisco, points out that the majority has shown itself to be largely responsible, convinced that it can quickly and concretely tackle the current emergency by getting to the heart of the issues. He notes that it was the opposition, on the contrary, through the presentation of numerous amendments on numerous measures, that followed a purely demagogic and obstructionist intent, in order to lengthen the time of parliamentary work in any way.

Carmelo MICELI (PD), referring in turn to some comments made by MEP Prisco, points out that every parliamentarian must be aware of the complexity of his or her role, which leads him or her to deal with complex issues. He therefore believes that, especially in the current crisis, it is necessary to abandon useless and sterile confrontations and focus on the substance of the issues, with a sense of responsibility on the part of all political parties.

He considers it essential to involve the opposition in this process of confrontation, and therefore hopes that the minority groups will participate actively, without aprioristic objections, abandoning political propaganda. He points out that, otherwise, the majority could only acknowledge the impossibility of real dialogue.

Anna MACINA (M5S), rapporteur, after pointing out that the measure under consideration is a long-awaited legislative intervention, considers that, in a period of emergency such as the current one, there is nothing left for parliamentarians but to work seriously to honour their mandate, in the service of the country. She considers it necessary, therefore, to avoid populism and useless political propaganda, concentrating on all the topics that

Parliament deems appropriate to address, following, therefore, the agreed order of priorities, while respecting the different areas of competence.

In conclusion, she reiterates her willingness to discuss the substance of the issues and declares herself open to considering any proposals for amendments aimed at improving the text.

Giuseppe BRESCIA, president, pointing out that the text under consideration deals with issues that should be considered important by all political alignments, recalls that it was the majority of the centre-right government, then led by Berlusconi, with the support of the Lega, that brought these issues to the attention of the political debate, presenting a similar measure that was discussed at length, without however receiving the approval of the two branches of Parliament. He therefore believes that the time has come to address the issue once and for all by passing a long-awaited measure.

Emanuele PRISCO (FDI) points out that he certainly does not intend to call into question the protection of fundamental rights, which he considers essential in a democratic state, but simply to point out that the majority, in a time of emergency such as the current one, seems to be concerned with everything except the concrete problems that are most felt by citizens. Noting the government's reluctance to accept the opposition's proposals, hindering its involvement in the choices to be made at such a delicate time, he calls on the majority groups to really get in touch with civil society, realising how many protests are taking place in the streets. He recalls, in particular, the demonstrations by tourism operators, the police, and representatives of companies penalised by the measures taken by the government, noting that the majority should explain to these citizens the reasons why their rights are not being cared for.

He therefore considers it appropriate to put the country's list of priorities in order to prevent the political class from losing credibility and authority in the absence of serious and concrete answers to the public.

In this regard, he wonders why no measures are being taken in favour of the law enforcement agencies, for example by enabling the testing of certain self-defence instruments, such as the Taser, in view of the repeated attacks against police officers, which have also occurred in reception centres.

Wondering why no account is taken of the progressive increase in the number of immigrant arrivals, which is always in danger of placing a burden on the operators responsible for security, he finally notes with regret that the majority groups, relying on sheer force of numbers, continue to schedule measures that are only useful for squaring internal political balances, ignoring the real needs of the people.

The Commission adopts as a new basic text for the continuation of the examination the unified text of the bills drafted by the rapporteur.

Giuseppe BRESCIA, president, announces that the deadline for submitting amendments to the new basic text adopted by the Commission will be set by the Bureau, supplemented by the representatives of the groups, of the Commission.

No one else wishing to speak, he therefore adjourned the continuation of the debate to another sitting.

9th session – 13 January 2021

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and for the Fight against Discrimination. (Unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia.)

Giuseppe BRESCIA, president, announces that some 930 amendment proposals (see annex) have been submitted to the unified text of the bills adopted as the basic text.

Anna MACINA (M5S), rapporteur, in view of the large number of amendments tabled, asked to postpone the continuation of the debate.

Giuseppe BRESCIA, president, no one else asking to speak, therefore postponed the continuation of the examination to a sitting to be convened next week; he therefore warned that the sitting already scheduled tomorrow for the examination of the measure would not take place.

Amendments to Bill C. 1794 Brescia:[322]

In total, 913 amendments to the Bill C. 1794 Brescia (containing the unified draft text) were submitted. The vast majority (763 and 73) were submitted by MEPs affiliated with the LEGA and FdI respectively. Together the amendments made by the LEGA and FdI accounted for 92% of all amendments made to the unified draft law.

Another amendment which is relevant for the protocols of the following sessions is amendment 01.01 made by De Toma (Misto, then FdI):

ART. 1.

In Article 1, insert the following:

Art. 01.

Establishment of the Parliamentary Commission for the Promotion and Protection of Fundamental Human Rights and for Combating Discrimination

1. A Parliamentary Commission for the Promotion and Protection of Fundamental Human Rights and for Combating Discrimination, hereinafter referred to as the "Commission", is hereby established with the task of guiding and monitoring the concrete implementation of international agreements and legislation relating to fundamental human rights.

2. The Commission shall in particular work for the widest protection, including through powers of investigation and consultation, of the fundamental rights established by the Constitution and those identified and recognised by the international conventions to which Italy is a party, including the rights of persons with disabilities, as well as for the control and guarantee of equal treatment and opportunities among citizens and for the effective operation of the instruments of protection against all forms of discrimination.

3. The Commission, in the exercise of its powers of consultation, shall acquire data, favour the exchange of information and promote appropriate synergies with the bodies and institutes for the promotion and protection of human rights operating in Italy and

[322] The amendments in Italian can be accessed on the webpage of the Chamber of Deputies under the protocols of the session on 13 January 2021 under “Proposte emendative presentate” (Camera dei deputati, n.a. c).

abroad and with associations, non-governmental organizations and all other entities operating in the field of the protection and promotion of human rights. The Commission may be supplemented from time to time, at the proposal of the President, by representatives of other state administrations with responsibility for specific subjects of deliberation. The Commission may avail itself of the services of experts from outside the public administration, provided they have acknowledged competence in the matters covered by the work of the Commission, in a number not exceeding 10, to whom no remuneration or attendance fee shall be due, except for the reimbursement of travel expenses incurred in attending the Commission meetings to which they are invited. Persons who hold elective public offices or positions in political parties or organisations, including trade unions, or who have continuous collaborative or consultancy relationships with organisations active in the fields of intervention of the Commission may not take on the role of experts referred to in the previous sentence.

4. The Commission shall report to the Houses of Parliament, at least once a year, on the results of its activity and shall formulate observations and proposals on the effects, limits and possible need to adapt the legislation in force, in particular to ensure its compliance with European Union regulations and with reference to the rights provided for by the Conventions and international acts on human rights ratified by Italy.

5. The Commission shall be composed of 20 Members of Parliament and 20 Senators, appointed respectively by the President of the Chamber of Deputies and the President of the Senate of the Republic upon nomination by the parliamentary groups, respecting the existing proportions among the groups themselves. If no such designation has been received within five days of the date of entry into force of this Law, the Presidents of the Chambers shall make the appointment directly.

6. The members of the Commission may, for the duration of their work, also be permanently replaced, on request, in the standing committees to which they belong. In plenary sittings, members of the Commission who are absent because they are engaged in the work of the Commission shall not be counted in establishing the quorum.

7. The Presidents of the Chambers shall convene the Commission within ten days of the date of entry into force of this Law. At its first meeting the Commission shall elect its President by secret ballot. In the election, if no one obtains an absolute majority of the votes, a ballot shall immediately be held between the two candidates obtaining the highest

number of votes. In the event of a tie, the oldest candidate by age is proclaimed elected or enters the ballot. Immediately afterwards, the Commission elects a Bureau consisting of three vice-presidents, by secret ballot and limited to one, and four secretaries, by secret ballot and limited to two. Whoever obtains the highest number of votes shall be elected. In the event of a tie, the oldest candidate shall be elected.

8. The work and the operation of the Commission shall be governed by rules of procedure approved by the Commission before the commencement of its work. Each member may propose amendments to the Rules of Procedure. The operating costs of the Commission shall be shared proportionally between the Chamber of Deputies and the Senate of the Republic.

9. No further burdens on the public budget shall arise from the implementation of this law.

Consequently, Articles 1, 2, 3, 4, 5, 6, 7, 8 shall be deleted.

01.01. De Toma.

10th session – 3 November 2021

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and for the Fight against Discrimination. (Unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia.)

Giuseppe BRESCIA, president and rapporteur, noted that the Commission was today resuming its examination, in referral, of the unified text of bills C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia, on the establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and the Fight against Discrimination, adopted as the basic text.

He points out that some 930 amendments were submitted to the unified text of the bills adopted as the basic text.

He therefore points out that the establishment of the Commission for the Promotion and Protection of Fundamental Human Rights and the Fight against Discrimination, envis-

aged by the text under consideration, constitutes the implementation of an international commitment undertaken by Italy several years ago and cannot therefore be postponed any longer.

He therefore hopes for the cooperation of all the groups in order to achieve this objective by the end of the legislature.

Undersecretary Benedetto DELLA VEDOVA notes that the establishment of an Independent National Commission for the Promotion and Protection of Human Rights in Italy has been called for many years by the United Nations, the European Union (in particular by the EU Agency for Fundamental Rights) and the Council of Europe, as well as by many political and social bodies in our country. He points out that in the almost 28 years since Resolution 48/134 was passed by the UN General Assembly and voted on by Italy, we have gradually moved from immobility to omission.

As the European Court of Human Rights has repeatedly reminded us, it points out that the first line of defence of human rights takes place within domestic legal systems and, where this system proves to be substantial, functional and in accordance with international law, not only do victims obtain a just recognition of the violation suffered but appeals to international bodies are also avoided. He therefore highlights that independent national human rights institutions are precisely an attempt to keep protection 'close to home' as the English-speakers say.

He also notes how the creation of such a body was recommended to Italy several times in the framework of the Universal Periodic Review (UPR) of the Human Rights Council in Geneva, an examination procedure on the human rights situation to which all member states submit themselves. On the occasion of the Third Round of Italy's review conducted in 2019, there were some 45 recommendations made to us by other member states regarding precisely the establishment of an independent national human rights body.

He then points out that, while it is true that resolution 48/134 is merely "encouraging" in nature, it is equally true that Italy has committed itself to establishing such an independent body with formal and binding acts, for example with the so-called "pledges", e.g., "commitments", made on the occasion of its candidature for election to the UN Human Rights Council for the three-year periods 2007-2010 and 2011-2014. He notes that the United

Nations also considers the presence of an independent national human rights institution to be one of the criteria for a country to be considered as respecting the principles of the rule of law. Considering that, to date, more than 128 UN States already have such a body in their country - all EU countries except Italy and Malta -, the wish to establish an effective advocacy instrument in Italy too reflects the need not to be excluded from new and important avenues of international dialogue. In fact, he points out how, at a global level, networks of independent bodies have already emerged, such as the GANHRI (Global Alliance of National Human Rights Institutions) and the ENNHRI (European Network of National Human Rights Institutions), which promote important reflections and opportunities for debate on human rights issues. From this neuralgic observatory of confrontation and identification of new phenomena, our country has excluded itself from playing any role by not having its own independent national commission.

In this context, it also considers it appropriate to recall that the National Commission is in no way a substitute for the judicial function, given that it cannot and must not issue penalties or establish compensation. Rather, he notes that its strength, if it functions as it should, lies in its ability to act preventively with respect to violations of the law and possible appeals, thus helping to reduce public spending on justice. It is not, therefore, a question of establishing 'yet another bandwagon', as feared by some, but rather of making violated rights more enforceable and Italy more in line with international standards.

He therefore reiterates the Government's full support for the establishment of the National Human Rights Commission, in line with the Paris Principles of 1993 and the requirements of United Nations General Assembly Resolution No. 48/134, and declares the Government's full willingness to work with Parliament, in a constructive spirit, so that the law establishing it can be adopted as soon as possible and in any case within this legislature. He points out that it is difficult to justify such an absence in our legal system, especially when it comes to dialogue with the independent national commissions of other countries - such as Afghanistan, for example - where it has been established.

He points out, however, that the effort to be made does not end with the establishment of such a commission, as it will be necessary to ensure that it functions properly, with measurable results, without overlapping with other independent authorities that have so far proved their effectiveness. He also emphasises that it is necessary to assume responsibility for setting up a body capable of carrying out the tasks of promoting and protecting

rights, in full compliance with the Paris Principles, and which has considerable room for action and the right of initiative, precisely in light of the fact that national Commissions are called upon to be involved - as provided for in the aforementioned Resolution No. 48/134 of the General Assembly of the United Nations - "in every case of violation of human rights that it decides to deal with". In other words, it considers it necessary to avoid creating a façade body that risks concealing future inactions.

In conclusion, he believes that the time has really come for Italy to equip itself with this fundamental instrument, noting that it serves to better guarantee and protect everyone, indiscriminately, by strengthening national protection mechanisms, in addition to European and international ones.

Giuseppe BRESCIA, president, assures, in the function as rapporteur, that he is fully willing to facilitate a constructive discussion that will enable the widest possible consensus to be reached on the measure under consideration.

No one else wishing to speak, he therefore postponed the continuation of the debate to another sitting, which would take place next week.

11th session – 30 March 2022

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and for the Fight against Discrimination. (Unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia.)

Giuseppe BRESCIA, president and rapporteur, in view of the fact that Undersecretary Della Vedova, who is engaged in the Senate, is unable to attend today's sitting, he postpones, in agreement with the Commission, the continuation of the examination to the sitting already scheduled for tomorrow, Thursday 31 March.

12th session – 31 March 2022

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and for the Fight against Discrimination. (Unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia.)

Giuseppe BRESCIA, president and rapporteur, recalled that some 930 proposed amendments had been submitted to the unified text of the bills adopted as the basic text.

He then recalled that the representative of the government had spoken at the sitting of 3 November 2021, to indicate the importance and necessity of the legislative intervention.

Moving on to express opinions on the amendment proposals, he proposed the dropping the amendments Costa 1.18, Quartapelle Procopio 1.15, Misiti 1.13 and 1.14, Bordonali 1.51, Stefani 1.49, Bordonali 1.45, Vinci 1.50, Migliore 2.17, Quartapelle Procopio 2. 8, Bordonali 2.47 and 2.49, Costa 2.29, Invernizzi 2.55, Quartapelle Procopio 2.9, Magi 2.41, Quartapelle Procopio 2.10, Costa 2.31 and 2.30, Vinci 2.82, Iezzi 2.84, Ziello 2.83, Iezzi 2.94, Costa 2.32, Quartapelle Procopio 2.11, Magi 2. 40, Ziello 2.103, Bordonali 2.129, Iezzi 2.139, Fogliani 2.131, Quartapelle Procopio 2.12, Vinci 2.149, the identical amendments Quartapelle Procopio 2.13 and Magi 2.42, amendments Iezzi 2.406, 2.407, 2.404 and 2.405, Quartapelle Procopio 2. 14, Prisco 2.3 and 2.2, Quartapelle Procopio 2.15 and 2.16, Vinci 2.402, Molteni 2.398, Costa 3.27, Quartapelle Procopio 3.11, Prisco 3.19, Quartapelle Procopio 3.1, Ziello 3.217, Invernizzi 3.190, Marco Di Maio 3.12, Costa 3.28, Magi 3.50 and Lucaselli 3.36.

He also proposes dropping the amendments Iezzi 3.197, Stefani 3.261, Magi 3.51, Iezzi 3.193, Vinci 3.263, Mollicone 3.23, Costa 3.30, Magi 3.52, Iezzi 3.238, Lucaselli 3.39, Bordonali 3.188, Iezzi 3.243, Magi 3.49 and 3.53, Costa 3.31 and 3.33, Invernizzi 3.256, Ravetto 3. 260, Tonelli 3.258, Molteni 3.259, Iezzi 3.257, Lucaselli 3.43, Bordonali 3.265, Invernizzi 3.266, Stefani 3.279, Magi 3.54, Prisco 3.18, Magi 3.55, Lucaselli 3.46, of the identical amendments Bordonali 3.296 and Prisco 3.21, of the amendments Ziello 3.294, Iezzi 3.306, Stefani 3. 302, Ravetto 3.314, Quartapelle Procopio 4.6, Magi 4.23, Molteni 4.35, Bordonali 4.34, Ravetto 4.36, Migliore 4.9, Quartapelle Procopio 4.7, Costa 4.13, Prisco 4.10, of the identical amendments Ziello 4.28 and Lucaselli 4.18, of the amendments Quartapelle Procopio 4.8, Molteni 4. 52, Quartapelle Procopio 5.2 and 5.1, Stefani 5.35, Iezzi 5.36 and 5.49, Bordonali 5.50 and 5.46, Tonelli 6.10, Fogliani 6.13, Bordonali

6.28, Ravetto 6.8, Fogliani 6.30, Iezzi 6.29, of the identical amendments Migliore 7.2 and Lucaselli 7.3 and of the amendments Magi 7.4 and Quartapelle Procopio 8.1.

He expressed a contrary opinion on the remaining amendment proposals.

Undersecretary Benedetto DELLA VEDOVA expressed an opinion in line with that of the rapporteur.

Giuseppe BRESCIA, president and rapporteur, orders dropping the amending proposals on which he, as rapporteur, has just made a proposal to that effect.

Emanuele PRISCO (FDI), considering that the measure under consideration concerns a strictly parliamentary matter, points out that it would have been more appropriate for the representative of the Government to refer to the Commission on the amendment proposals, instead of making a political statement by associating himself with the opinion of the rapporteur.

Undersecretary Benedetto DELLA VEDOVA notes that the government has no partisan attitude, having limited itself to agreeing to an intervention that is long overdue and in line with the country's commitments made on several occasions at the international level.

After pointing out that the body in question has already been set up by almost all other EU countries, he notes how it would be called upon to play a neutral role. He points out, moreover, that a two-thirds majority of the members of the two chambers is required for the appointment of its members, which would take place in the next parliamentary term, and thus a broad consensus on the part of the parliamentary political forces is expected.

He hopes, therefore, that a calm and fruitful discussion between the groups can take place, so that Parliament can design a measure that is as effective as possible.

Giuseppe BRESCIA, president and rapporteur, notes that in all international fora Italy is referred to on the subject of the measure under consideration and that this was most recently the case at the meeting held yesterday, in which he took part together with the President of the Senate's Constitutional Affairs Committee, Mr Parrini, on the European Commission's Report on the Rule of Law in the European Union.

He therefore considers it appropriate that the work on the measure under consideration should be developed in full synergy with the Government, in order to facilitate the approval

of a shared text, and in this regard he expresses satisfaction at the Government representative's agreement with the opinions rendered.

He also emphasises how, precisely in the spirit of arriving at a text with the widest possible consensus, all the amendment proposals that could be considered were dropped.

As no one else asks to speak, he postpones the continuation of the debate to another sitting.

13th session – 18 May 2022

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and for the Fight against Discrimination. (Unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia.)

Mr Giuseppe BRESCIA, president and rapporteur, recalls that in the previous session, as rapporteur, he had delivered his opinions on the amendment proposals and had also set some of them aside. The Government representative gave an opinion in agreement with the rapporteur.

The votes on the amendment proposals will therefore begin in today's sitting.

Augusta MONTARULI (FDI) comments on the proposed article De Toma 01.01, expressing her wish for its approval.

She points out that this amendment proposal is aimed at establishing a Parliamentary Commission for the promotion and protection of fundamental human rights and for the fight against discrimination, enhancing the role of the Parliament.

Simona BORDONALI (LEGA) announces her group's vote in favour of the article De Toma 01.01, considering it appropriate that the issue of the promotion and protection of fundamental human rights is referred to parliamentary bodies and not to the National Commission, established by the measure under consideration, of which parliamentarians are not part.

She also notes that the scope of action of this national commission is too broad, compared to the provisions of international sources, which, in fact, make no reference whatsoever to the issue of combating discrimination, recalling that such a scope of competence is not envisaged for similar bodies set up in other European countries. In conclusion, she declares her total opposition to the measure in question.

Vittoria BALDINO (M5S) notes that the presentation by the LEGA of a very high number of amendment proposals highlights the clear opposition of this political force to the measure as a whole.

She states, in particular, that she does not understand the League's prejudicial aversion to extending the competences of the Commission to combat discrimination. She also notes how the position held by the LEGA contradicts the fact, that senators affiliated to the LEGA signed an agenda, presented in the Senate during the examination of the European delegation law and accepted by the Government, bearing the commitment to provide for an independent institution for the promotion and protection of fundamental human rights, as the measure under consideration is in full harmony with the commitments made in this regard.

Igor Giancarlo IEZZI (LEGA) points out that the draft bill under consideration has no connection with the agenda referred to by MEP Baldino, as the draft bill provides for a Commission, which includes representatives of NGOs involved in human trafficking, who would monitor even the work of the police forces. He notes that such a commission is nowhere near the independent authority referred to in the aforementioned agenda.

The Commission rejects the amendment De Toma 01.01.

Giuseppe BRESCIA, president, postponed the continuation of the examination to another sitting.

14th session – 25 May 2022

Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and for the Fight against Discrimination. (Unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia.)

Giuseppe BRESCIA, president and rapporteur, announces that consideration of the proposed amendments will resume with amendment Iezzi 1.22.

He also announces that the consideration of the measure will continue until 3.40 p.m., in order to allow the consideration of the next item on the agenda and the holding of the meeting of the Bureau of the Presidency, supplemented by the representatives of the groups, of the Commission in time for the resumption of voting in the Assembly.

Igor Giancarlo IEZZI (LEGA) points out first of all that it is inappropriate for the discussion of amendment proposals to take place, as in this case, when a considerable amount of time has elapsed since their presentation.

Turning to the substance of the measure, he notes that, in principle, no one can declare themselves against the establishment of a Human Rights Commission, but points out that the composition and tasks of the body proposed to be established by the measure under consideration must be carefully assessed.

He notes, first of all, that the criteria for identifying the five members of the Commission to be established are vague and general, referring to unspecified requirements such as unquestionable morality, recognised independence and professional experience in the field of human rights promotion and protection. He therefore expresses concern that these criteria may allow NGO representatives to be appointed as members of the Commission, expressing in particular great perplexity about the provision that professional experience may have been gained in Italy and abroad, wondering whether this specific provision should be interpreted to mean that foreign nationals may also be called upon to serve on the Commission.

He also expresses concern about the provisions regarding the tasks assigned to the Commission, which would take the form of a body of political derivation, in that it would be appointed by Parliament, and which would nevertheless be enabled to receive reports and to carry out inspections and investigations, taking the place of the judicial authorities, even in workplaces or even police stations, in a truly Soviet style, on the basis of reports that could well be instrumental or motivated by political intentions.

He also assures that his group is open to discussion if, instead of setting up a new body and assigning it such invasive tasks, the First Commission opts for a more limited measure, using existing bodies.

Giuseppe BRESCIA, president and rapporteur, in relation to certain considerations made by MEP Iezzi, notes that the new unified text under consideration, in Article 2, paragraph 4, provides that, in order to ensure the pluralism and representativeness of the Commission, the members of the Commission shall be appointed by a joint decision of the Presidents of the Senate of the Republic and of the Chamber of Deputies, by a two-thirds majority of their respective members, in accordance with the procedures established by the parliamentary regulations.

He therefore points out that this provision was introduced precisely to provide the greatest possible guarantee of the impartiality and independence of the members of this body, and therefore considers that it is not conceivable that the composition of the Commission could be biased or hostile to certain political parties.

He also notes that the Commission is called upon to take up any allegations of specific violations or restrictions of fundamental rights, which it could follow up only after careful assessment, carried out impartially and with full respect for the powers and functions of the judicial authority, which it certainly does not intend to replace, and only for the purpose of providing assistance, in judicial or administrative proceedings undertaken, to the persons concerned.

He declares, in conclusion, his full willingness to discuss the substance, provided that the intention of the groups, in particular the LEGA group, is not to hamper the examination process with obstructive behaviour, as has been the case up to now, but to seriously address the issues at stake, possibly pointing out a series of amendments to be studied in depth, even within an informal forum, such as a restricted committee, with a view to an effective improvement of the text.

Igor Giancarlo IEZZI (LEGA) believes that the remarks just made by the president and rapporteur are particularly important, and hopes that there will be a full correspondence between what has just been said and what will then be envisaged in the text of the measure, in relation to the purposes that this national commission should pursue.

Laura BOLDRINI (PD), recalling the work carried out by the Permanent Committee on Human Rights Worldwide, of which she is the chairperson, points out that the various persons heard in that parliamentary context, both representatives of the European institutions and of the United Nations, have had the opportunity to emphasise the anomaly represent-

ed by the lack of an independent body for the promotion and protection of fundamental human rights in our country.

In response to the remarks made regarding an alleged overlap between the functions of this body and those of others already in operation, she points out that many of the bodies mentioned, for example UNAR, lack the requirements of impartiality and third party status. She then points out how the establishment of the National Commission aims to implement UN General Assembly Resolution 48/134 of 1993, voted by Italy, regarding the fight against discrimination.

After pointing out that only Cyprus and Italy have not yet set up such a body, she considers that this certainly does not do credit to our country. She then emphasises how the basic text under consideration guarantees the utmost impartiality and professionalism of the members of this body, hoping that the LEGA group will focus on the substance of the issues and abandon its obstructive behaviour.

Simona BORDONALI (LEGA) believes that it is one thing to set up a national commission effectively aimed at the promotion and protection of fundamental human rights, which her group would certainly be in favour of, and quite another to envisage a body filled with ideology, such as the one envisaged by the text under consideration.

Indeed, she considers that what is envisaged in the basic text does not fully correspond to what is required by UN General Assembly resolution 48/134 of 1993, which, for example, makes no mention of the fight against discrimination, as the very title of the measure in question refers to. She notes, moreover, how other European countries have provided for the establishment of bodies quite different from the one that this text now intends to establish.

She also stresses the need to avoid overlapping with other bodies that already operate in this field, and expresses serious doubts about the composition of this national commission, which could include NGOs that are sympathetic to certain political alignments, without any parliamentary representation, as it is however envisaged by the aforementioned UN resolution.

Finally, she considers that the investigative powers attributed to this body are excessive, with the risk of interference in the activities of the judiciary.

Giuseppe BRESCIA, president and rapporteur, considers that the remarks made by MEP Bordonali are significant, as they show a sign of openness to dialogue. If there is a willingness to engage in such a debate, possibly focusing on specific proposals for amendments to the text that are deemed more in line with the content of UN General Assembly resolution 48/134 of 1993 and with the commitments undertaken at international level, it would be possible to consider holding such a dialogue between the groups in a more informal forum, with a view to reaching a shared and positive conclusion to the process.

He therefore asks the Lega group whether there is a willingness to have a serious discussion on the substance of the issues at stake.

Igor Giancarlo IEZZI (LEGA), pointing out that the President's proposal will be the subject of careful consideration by his group, hopes, however, that this proposal has not been formulated to somehow force the decisions of the Lega group. Indeed, he finds it paradoxical that the presidency considers the conformity of the basic text with the content of resolution No 48/134 of 1993 to depend solely on the choices of the Lega group, thus implicitly admitting the serious shortcomings of the basic text. Indeed, he observes that it would have been up to the president and rapporteur to formulate a basic text that already adhered to international commitments.

In this context, he points out that it is one thing to set up a national commission for the protection of human rights, and quite another to set up a 'Soviet-style' commission with extremely broad powers of investigation and intervention, to which anyone could turn to report any kind of discrimination, at the risk of overstepping the jurisdiction of the judiciary. He therefore considers that the groups supporting the measure should admit with transparency the aims they intend to pursue.

Giuseppe BRESCIA, president and rapporteur, emphasises that the fact that he has repeatedly expressed his willingness to discuss the substance of the issues, with a view to improving the text, in a spirit of cooperation between the groups, cannot be interpreted instrumentally as an implicit admission that the text under consideration does not adhere to the commitments made at international level.

He therefore considers that the modalities for the continuation of the process can be defined at a forthcoming meeting of the bureau, integrated by the representatives of the groups.

Laura BOLDRINI (PD), recalling verbatim the content of resolution 48/134 of 1993 of the General Assembly of the United Nations, points out that the task of the National Commission in question is to point out to the authorities in charge possible situations of discrimination, recommending them to pursue the necessary policies to remove them.

Laura RAVETTO (LEGA), referring to what has just been said by MEP Boldrini, points out that the tasks envisaged by the resolution of the UN General Assembly are very different from those envisaged by the text under consideration, which instead provides for disproportionate investigative and sanctioning powers.

Giuseppe BRESCIA, president and rapporteur, believes that important elements have emerged from today's debate, which could indicate a greater willingness on the part of the groups to engage in a debate on the substance, and that this could be seen as a huge step forward towards a successful conclusion of the process.

Edoardo ZIELLO (LEGA) notes that his group has no prejudice with respect to the issue of human rights, pointing out, however, that the text under consideration goes in a different direction from the UN General Assembly resolution. In fact, he notes that the text envisages the establishment of a body with political connotations - holder of excessive investigative powers - that could be activated by anyone, even in relation to the provision of public services by the PA, with the risk of causing a temporary interruption to the disadvantage of the community.

Giuseppe BRESCIA, president, believes that in the framework of the Bureau of the Presidency, integrated by the representatives of the groups of the Commission it will be possible to define the most appropriate modalities of continuation of the procedure to guarantee the carrying out of these necessary in-depth studies.

There being no one else asking to speak, he postponed the continuation of the examination to another sitting.

Appendix 2: English translation of the unified draft law

In November 2021, ODIHR issued a legal opinion on the latest draft law on the 'Establishment of the National Commission for the Promotion and Protection of Fundamental Human Rights and for the Fight against Discrimination' (Unified text C. 855 Quartapelle Procopio C. 1323 Scagliusi and C. 1794 Brescia).[323] ODIHR kindly sent the English translation of the draft law which ODIHR used for its legal opinion via e-mail to the author.

Annex to Opinion on the Draft Law on the National Commission for the Promotion and the Protection of Fundamental Human Rights and the Fight against Discrimination (in English)

Thursday 29 October 2020 *Commission I*

ANNEX

Establishment of the National Commission for the Promotion and the Protection of FundamentalHuman Rights and the Fight against Discrimination. Draft Laws C. 1323 Scagliusi, C. 855 Quartapelle Procopio and C. 1794 Brescia.

CONSOLIDATED TEXT ADOPTED AS NEW BASIC TEXT

Article 1.
(General principles)

1. The present law, in implementation of United Nations General Assembly resolution 48/134 of 20 December 1993 and of European legislation to combat discrimination, contains provisions for the promotionand the protection of fundamental human rights, equal treatment of all persons and the removal of any formof discrimination, in respect of and in conformity with the fundamental principles of the Constitution, of customary international law and of international treaties and conventions to which Italy is a party.
2. In order to ensure the implementation of the provisions of paragraph 1 of this Article, the Commission referred to in Article 2 may inform the Government of the International Conventions on HumanRights, Fundamental Freedoms and the Fight against Discrimination, which have not yet been ratified by Italy and may draw up proposals to transpose them into national law.

[323] ODIHR, 2021

Article 2.

(Establishment and composition of the National Commission for the Promotion and the Protection ofFundamental Human Rights and the Fight against Discrimination)

1. The National Commission for the Promotion and the Protection of Fundamental Human Rights andthe Fight against Discrimination, hereinafter referred to as the "Commission", is set up with the aim of promoting and protecting fundamental human rights, in particular those laid down in the Constitution and those identified and recognised by the international conventions to which Italy is a party, and to monitor andguarantee equal treatment and the effectiveness of the instruments of protection against all forms of discrimination.
2. The Commission shall operate with full independence of judgement and evaluation and has full organisational, functional, and financial autonomy, its own staff, and its own premises.
3. The Commission is a collegial body made up of five members chosen among persons who offer guarantees of undisputed morality, acknowledged independence and integrity and with a high degree of professionalism, with proven competence and multi-year experience in the field of promotion and protectionof human rights, children's rights, and human sciences in general, in Italy and abroad, or who have held managerial positions in public or private international organizations.
4. In order to guarantee the pluralism and the representativeness of the Commission, the members of the Commission shall be appointed by a decision requiring the agreement of the Presidents of the Senate andthe Chamber of Deputies, by a two-thirds majority of the respective members, according to terms establishedby parliamentary rules. The members of the Commission shall be chosen following an expression of interest, ensuring adequate gender representation, taking into account ethnic diversity in society, the full range of vulnerable groups and ensuring respect for diversity as well as the pluralist representation of the social forcesinvolved in the promotion and protection of human rights. The Members of the Commission shall elect theirPresident from amongst their members by majority vote. The President remains in office for two years and six months and cannot be re-elected until the expiry of the term of office.
5. The members of the Commission hold office for five years and their term of office is not renewable.The first appointment of the members of the Commission shall be made within thirty days after the date of entry into force of this law. The members of the Commission may be revoked at any time in the event of a manifest breach of official duties or of the guarantee of undisputed morality and integrity, following the same procedures adopted for their appointment.
6. The offices of president and member of the Commission are incompatible, under penalty of nullity,with any elective or governmental office, with any other public or private employment, with any administrative office in public or private companies, with the exercise of entrepreneurial activity and with offices in associations that carry out activities in the field of human rights. The president and the members of the Commission cannot carry out any activity within or on behalf of associations, parties or political movements.
7. Upon acceptance of the appointment, the president and the members of the Commission shall be granted leave of absence if they are employees of public administrations; if they are tenured university professors, they shall be placed on unpaid leave in accordance with article 13 of DPR No 382 of 11 July 1980. Personnel on leave of absence or unpaid leave may not be replaced while working for the Commission.Active magistrates cannot be members of the Commission.
8. The president and the members of the Commission shall be entitled to an allowance amounting to one third of the maximum wage provided for in article 13, paragraph 1, of Legislative Decree No 66 of 24 April 2014, converted, with amendments, by Law No 89 of 23 June 2014. No additional allowance may be envisaged for the period during which the office of President is held.
9. In addition to the natural expiry of the term of office or death or proven or ascertained physical or mental impediment, the office of member of the Commission ceases exclusively in

case of resignation or established lack of the requirements and qualities prescribed for the appointment. The substitution of the outgoing members is carried out according to the modalities set forth in paragraph 4.

10. If the issues to be examined present specific problems of a technical nature, the Commission may call to participate in its meetings, in an advisory capacity, without the right to vote and without remuneration,representatives of the administrations of the State and representatives of the Italian Government working ininternational bodies or in the European Union and in charge of monitoring the fulfilment of the obligations assumed by Italy with the ratification of international conventions on human rights and equal treatment.

Article 3.
(Tasks of the Commission)

1. The tasks of the Commission are:

a) to supervise the respect of human rights and any abuses perpetrated against peoples in Italy with reference to domestic law and to international rules and treaties;

b) to ensure equal treatment and the effectiveness of the protection instruments, for the removal of anyform of discrimination based on nationality, sex, race, language, religion, political opinions and personal and social conditions;

c) to receive reports of specific violations or limitations of rights recognised in the relevant international acts and to provide assistance, in judicial and administrative proceedings, to persons who consider themselves victims of discriminatory behaviour, including the procedures laid down in article 425 of the Code of Civil Procedure;

d) to carry out enquiries to verify the existence of discriminatory phenomena and the respect of humanrights, in compliance with the prerogatives and functions of the judicial authority;

e) to formulate recommendations and opinions to the Government and to Parliament on issues relatedto discrimination and the respect for human rights, as well as draft amendments to existing legislation, also based on elements emerging from the monitoring activities referred to in letters *a)* and *b)*. In particular, it may promote the signing or the ratification of international agreements on human rights and the fight against discrimination. The Government shall submit to the Commissionfor opinion, draft legislative and regulatory acts that may have a direct or indirect impact on theserights.

f) to draw up an annual report for the Government and Parliament on activities carried out, on the stateof implementation of international acts concerning the promotion and protection of human rights inItaly and abroad, on the respect of human rights and on the effective application of the principle ofequal treatment and the effectiveness of protection and removal of discrimination mechanisms;

g) to disseminate as much knowledge as possible on the protection instruments in force, also through actions to raise public awareness of the principle of equal treatment and to organise information andcommunication campaigns;

h) to promote studies, research, training courses and exchanges of experience, also in cooperation with the associations and bodies referred to in article 6 of Legislative Decree No

215 of 9 July 2003, withother non-governmental organisations operating in the sector and with specialised statistical institutes, also with a view to drawing up guidelines to fight discrimination;

i) to promote a culture of human rights, equal treatment and anti-discrimination by promoting information campaigns and involving schools of all levels, through educational and information programmes;

j) to cooperate with public authorities, institutions, and bodies, such as ombudsmen, guarantors of rights of detainees, however named, and the Office for the promotion of equal treatment and the removal of discrimination based on race or ethnic origin (UNAR) set up within the Presidency of the Council of Ministers - Department for Equal Opportunities - which has specific competences inrelation to the protection of human rights and the fight against discrimination, conferred to it by central or local law, also resorting to the administrative coordination role of the Inter-Ministerial Committee for Human Rights (CIDU), as well as with international human rights bodies, in particular those of the United Nations, the Council of Europe and the European Union, and with similar bodies set up by other States in the field of the promotion and protection of human rights. For matters of mutual competence, the Commission shall work in synergy with the National Guarantor of the rights of persons detained or deprived of liberty and the Authority for children and adolescents;

k) to provide assistance and give opinions to public administrations and private entities who intend to include subjects relating to the respect for human rights and fundamental freedoms and equal treatment in training and refresher courses for their staff. Furthermore, in the context of the variousprofessions, it shall promote including in their codes of ethics norms for the promotion and protection of human rights and the fight against discrimination, as well as for monitoring their implementation, also by turning to of those in charge of monitoring and reporting;

l) to set up a permanent forum for public debate on the work of the Commission, which voluntary organisations, associations, foundations, and movements may join if their statutes provide for aimsor objectives relating to the protection of human and civil rights and the fight against discrimination.The forum is consulted at least once every six months.

2. In compliance with the provisions on the protection of personal data, the Commission may ask public administrations, as well as any other entity or public body, to provide the information necessary to carry out its institutional tasks; the administrations and other recipients must respond within thirty days afterthe date of the request. The Commission may also ask public bodies and administrations for access to databases and archives, it must inform the Guarantor for the protection of personal data of their request.

3. In order to verify the reports mentioned in paragraph 1, letter *c)*, the Commission may also order access, inspections and checks at the facilities where the reported violation took place, in order to achieve useful findings, and it may call upon other bodies of the State to cooperate if necessary.

4. The Commission may be assigned tasks deriving from international commitments laid down by laws implementing international conventions on human rights.

5. In order to verify the reports referred to in paragraph 1, letter *c)*, the Commission may ask public bodies and administrations for access to databases and archives in their possession, after consulting the Guarantor for the protection of personal data. The provision in the first sentence

shall not apply to data and information stored in the data processing centre referred to in Article 8 of Law No 121 of 1st April 1981 or in the national DNA database referred to in Law No 85 of 30 June 2009.

6. The public administrations in charge of the premises subject to visits, accesses, and verificationsand, where necessary, other State bodies shall cooperate with the Commission within the limits of the human, instrumental and financial resources available under the relevant legislation.

Article 4.
(Secretariat of the Commission)

1. The Commission shall have its office in a public building exclusively dedicated to it, suitable also for persons with motor and sensory disabilities. Everyone has the right to have unrestricted access to the Commission's premises.

2. In order to perform the tasks entrusted to it, the Commission shall have its own secretariat, whose initial staff shall consist of 30 persons, a director, a deputy director, a secretary general and 27 employees. This staff may subsequently be modified by the regulation referred to in paragraph 3, should this prove to be necessary. Staff shall be recruited by means of an open competition aimed at selecting staff meeting the requirements established by the Commission for the performance of its duties and, in particular, having adequate knowledge of the main foreign languages. Pending the implementation of the provisions set forth in paragraph 3 of this article, in order to allow the immediate start of its activities, the Commission shall initially avail itself of a first contingent of administrative and technical staff, not exceeding thirty units, assigned to it within six months after the appointment of its members as per article 2 paragraph 5, selected from among the public administration personnel with the necessary skills, professionalism and experience requirements, placed on leave by the relevant administrations, according to the provisions of their respectiveregulations, within the modalities set forth in article 17, paragraph 14, of Law No 127 of 15 May 1997. Services rendered for the Commission are equivalent for all legal purposes to services rendered for the administration of origin. From the moment of placement on leave and for the duration of this leave, the statutory posts in the administration of origin left vacant shall remain vacant.

3. Within thirty days of the date of entry into force of this law, by decree of the President of the Councilof Ministers, on the proposal of the Minister for Foreign Affairs and International Cooperation, in agreementwith the Ministers for the Economy and Finance and for Public Administration, after hearing the opinion ofthe competent parliamentary committees and after consulting the Commission, regulations concerning the functioning, the staffing, the internal organisation, the budgets, the accounts and the management of expenses, the functions of the Director of the Secretariat and the procedures and methods for recruiting the Office's staff shall be adopted.

4. The Director, the Deputy Director, the Secretary-General, and the employees of the secretariat shallbe granted the economic and legal conditions envisaged by the national collective labour agreement for staffworking in a Ministry.

5. In order to guarantee their responsibility and autonomy, the director, the deputy director, the secretary general and the employees of the secretariat shall be answerable exclusively to the Commission.

6. The secretariat shall draw up the financial management accounts, which shall be subject to audit bythe Court of Auditors. The report, once approved by the Commission, is published on the institutional websites of the Commission and the Ministry of Foreign Affairs and Cooperation, in such a way as to ensure that it is disseminated and accessible to all users.

Article 5.
(Obligation to report, professional secrecy and sanctions)

1. The Commission shall submit a report to the competent judicial authority whenever it becomes aware of facts that may constitute a criminal offence and shall carry out investigations on its own initiative,based on individual or collective complaints, even when not reported to the judicial authority.
2. The Commission may request the co-operation of State administrations and other public bodies andmay invite the competent authorities to take measures for the restoration of the rights of persons who have suffered a violation of their fundamental human rights or discriminatory acts.
3. The Commission shall ensure that the measures taken in the performance of its activities are basedon the principles of transparency and impartiality and shall state the reasons for the acts it adopts.
4. Any person who, without a valid reason, refuses or omits to provide the information or to produce the documents referred to in Article 3, paragraph 2, shall be fined 4,000 to 15,000 Euros.
5. Anyone who declares false information or circumstances to the Commission or produces false deedsor documents shall be punished with imprisonment from six months to three years, unless the fact constitutesa more serious offence.
6. The members of the Commission and of the secretariat, as well as the persons who carry out their duties for them, are bound by a duty of confidentiality in respect of acts and information to which they become privy by virtue of their functions, in accordance with article 15 of the consolidated text of provisionsruling the general status of civil servants, as per DPR n. 3 of 10 January 1957.
7. The Commission publishes its measures in a transparent manner and may take any step it deems appropriate to disseminate knowledge of the measures adopted and of the work carried out to the general public.

Article 6.
(Cooperation with research bodies, study centres, universities, and organisations)

1. The Commission may avail itself of the collaboration of universities, study and research centres, aswell as non-governmental organizations, social and professional organizations, associations and national observatories and other bodies, with renown and proven competence and professionalism, operating in the field of the promotion and protection of human rights.
2. The implementation of this article shall not entail new or additional costs for public finance.

Article 7.
(Repeals and coordination rules)

1. The DPCM of 13 April 2007, published in the *Gazzetta Ufficiale* No 141 of 20 June 2007, shall berepealed.
2. In article 7 paragraph *2)* of Legislative Decree No 215 of 9 July 2003 the letters *a)*, *b)* and *f)* shall be deleted.

Article 8.
(Financial coverage)

1. The cost deriving from the implementation of this law, estimated at 2,500,000 euros per year startingfrom the year 2021, shall be covered by a corresponding reduction in the projections of the current special fund appropriations entered for the purposes of the 2020-2022 three-year budget, under the programme "Fondi di riserva e speciali" of the mission "Fondi da ripartire" of the estimate of the Ministry of the Economyand Finance for the year 2020, thus partially using the appropriation relating to said Ministry for this purpose.

2. The Minister of the Economy and Finance is authorised to introduce the necessary changes in the budget by means of own decrees.

Formal declaration

"I declare that I have written this thesis independently, have not submitted it elsewhere for examination purposes, have acknowledged all sources and aids used, and have marked quotations both verbatim and in spirit."

Padova, 31.10.2022 S. Willner

Place, Date Signature