

National Human Rights Institutions in Europe

Comparative, European
and International Perspectives

Jan Wouters
and Katrien Meuwissen (eds.)

INTERNATIONAL LAW



intersentia



cost

56.944

NATIONAL HUMAN RIGHTS INSTITUTIONS IN EUROPE

Comparative, European and
International Perspectives

Jan WOUTERS
Katrien MEUWISSEN
(eds.)

cost



Cambridge – Antwerp – Portland



CONTENTS

<i>Acknowledgements</i>	v
<i>COST: European Cooperation in Science and Technology</i>	vii
<i>List of Abbreviations</i>	xvii
National Human Rights Institutions in Europe: An Introduction	
Jan WOUTERS and Katrien MEUWISSEN	1
1. Background and Focus	1
2. Objectives	1
2.1. National Human Rights Institutions in a European Context.....	3
2.2. European NHRIs as Multi-Dimensional Human Rights Actors.....	4
3. Structure	5
National Human Rights Institutions in Europe: Comparative, European and International Perspectives	
Manfred NOWAK	13
1. What are National Human Rights Institutions (NHRIs)?.....	13
2. What are the Paris Principles?.....	14
3. Which Types of NHRIs Exist in the World?	15
4. How are NHRIs Accredited?	16
5. How Many NHRIs Exist Worldwide? (as of February 2013).....	17
6. Where Have NHRIs Been Established in Europe and in the EU? (as of February 2013).....	18
7. Which Types of NHRIs With Status A can be Found in Europe and in the EU?	19
8. Which Types of NHRIs With Status B can be Found in Europe and in the EU?	20
9. Why Should States Establish NHRIs?	21
10. Which Conclusions can be Drawn from this Comparative Survey?....	24

PART I. COMPARATIVE PERSPECTIVES**The Danish Experience: The Danish Institute for Human Rights**

Christoffer BADSE 29

1.	Introduction	29
2.	Background and History.....	30
3.	The 2012 Act: Strengthened Independence and Clear Mandate as a "NHRI"	34
3.1.	The 2012 Act in Denmark.....	34
3.2.	North-Atlantic Dimension of the 2012 Act.....	36
4.	Institutional Structure and Budget.....	37
4.1.	Institutional Structure and Administration	37
4.1.1.	The Board	37
4.1.2.	The Council	38
4.1.3.	Daily Management.....	39
4.1.4.	International Area and National Area, Administration and Communication	39
4.2.	Budget	40
5.	Substantive Functions of the DIHR	40
5.1.	Monitoring Functions.....	40
5.1.1.	Review of Legislative and Administrative Regulation	41
5.1.2.	National Reporting.....	43
5.2.	Research, Education and Information	45
6.	DIHR Interaction with Other Actors Active in the Field of Human Rights	47
6.1.	Relationships with Civil Society	47
6.2.	Relationship with Other National Bodies	50
6.3.	Cooperation with the United Nations and Other International Actors.....	52
6.3.1.	The Universal Periodic Review (UPR)	52
6.3.2.	Interaction with the UN Treaty Body System.....	54
6.3.3.	Visit by Delegations	56
6.3.4.	Reporting to International Networks and Agencies	56
7.	Conclusion: Challenges and Best Practices of the DIHR	57

NHRI in Poland: As good as it gets?

Aleksandra GLISZCZYŃSKA-GRABIAS and

Katarzyna SĘKOWSKA-KOZŁOWSKA

1.	Introduction	61
2.	Status	62
2.1.	Independence	63

2.1.1. Legal Autonomy	63
2.1.2. Appointment and Dismissal	64
2.1.3. Immunity	65
2.1.4. Budget	66
2.2. Pluralism	67
3. Mandate	68
3.1. Key-Competence: a Complaint Body	70
3.2. Impact on a Legislative Process	72
3.3. International Cooperation	73
3.4. Cooperation with Civil Society	76
3.5. Promotion and Education on Human Rights	77
3.6. Research on Human Rights	79
4. Conclusion	80

The Newly Established Netherlands Institute for Human Rights:

Integrating Human Rights and Equal Treatment

Yvonne DONDERS and Marjolijn OLDE MONNIKHOF	83
1. Introduction	83
2. History	84
3. Legal Process	87
4. Mandate and Tasks	91
5. Creating and Developing the NIHR	92
5.1. Developing a Strategic Plan	92
5.1.1. Stakeholders' Consultation	93
5.1.2. Investigative Research	94
5.1.3. The Balancing Framework	95
5.1.4. Vision, Mission and Strategy	96
5.2. Developing the Organisation	97
6. Challenges and Opportunities	98

Federalism, Equality Bodies and NHRIs: A Critical Analysis of the Belgian Debate on Equality Bodies and NHRIs

Jogchum VRIELINK and Stefan SOTTIAUX	105
1. Introduction	105
2. An "Interfederal" Institution vs Federated Institutions	108
2.1. Innovation, Autonomy and Policy Responsiveness	110
2.2. Focus and Subsidiarity	112
2.3. Double Protection and Budgetary Issues	113
2.4. Accountability and Independence	114
2.5. Coordination and Efficiency	115
2.6. Conclusion	116

3.	A Separate Equality Body vs an Integrated National Human Rights Institution	116
3.1.	Advantages	117
3.2.	Disadvantages	118
3.3.	Influencing Factors	121
3.4.	Conclusion	122
4.	Epilogue	123

PART II. EUROPEAN PERSPECTIVES

NHRI and their European Counterparts: Scope for Strengthened Cooperation and Performance towards European Human Rights Institutions

Bruce ADAMSON	127	
1.	Introduction	127
2.	The Origin, Work and Functioning of the European Group of NRHIs	128
2.1.	The Need for a Secretariat for the European Group	132
2.2.	Working Groups	135
2.2.1.	Asylum and Immigration Working Group	135
2.2.2.	Legal Working Group (LWG)	136
2.2.3.	CRPD Working Group	136
2.2.4.	Human Rights Education Working Group	137
2.3.	Proposals for Other Working Groups	137
3.	Engagement with Regional Bodies	138
3.1.	Engagement with the Council of Europe	139
3.1.1.	General Observations on the Engagement with the Council of Europe	139
3.1.2.	European Court of Human Rights	142
a)	Reform of the European Court of Human Rights	142
b)	Amicus Curiae	145
3.1.3.	Council of Europe Commissioner of Human Rights	147
3.2.	Engagement with the European Union and the European Union Agency for Fundamental Rights	148
3.2.1.	European Union	148
3.2.2.	European Union Agency for Fundamental Rights	150
3.3.	Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR)	152
4.	Conclusions	154

(Future) Interaction between Data Protection Authorities and National Human Rights Institutions in the European Union

Peter J. HUSTINX	157
1. Introduction	157
2. Independent Supervision	159
3. Diversity and Deficiencies.....	161
4. Requirement of "Complete Independence"	162
5. Proposals for a New EU Legal Framework for Data Protection	165
5.1. Drivers of EU Review.....	165
5.2. Continuity and Change.....	166
5.3. Substance of the Proposed Regulation	167
5.3.1. Data Subject	167
5.3.2. Data Controller	167
5.3.3. Supervision and Enforcement.....	168
5.3.4. Global Privacy	169
6. Interaction between DPAs and NHRIs	170

The Court's Ears and Arms: National Human Rights Institutions and the European Court of Human Rights

Antoine BUYSE	173
1. Introduction	173
2. Before: Prevention and Information	175
3. During: Interventions	177
4. After: Implementation and Prevention of Renewed Violations	184
5. Conclusion	185

The European Union and National Human Rights Institutions

Jan WOUTERS, Katrien MEUWISSEN and Ana Sofia BARROS	187
1. Introduction: The EU Multi-layered Human Rights Architecture	187
2. EU-NHRI Cooperation: Contribution to a Fundamental Rights Culture within the EU	189
2.1. NHRIs' Relevance for EU Policy and Law-Making in Accordance with Fundamental Rights	190
2.2. NHRIs' Relevance for Ensuring Member States' Compliance with the Charter	198
2.3. The Relevance of NHRIs in Connecting Citizens with their Fundamental Rights.....	201
3. EU-NHRI Cooperation in EU External Relations	203
3.1. NHRIs and EU Development Cooperation	206

3.2. NHRIs as Cross-regional Partners in the UN Human Rights Council	213
3.3. Coherent Thematic Engagement across Human Rights Fora.....	215
4. Concluding Thoughts: Towards a More Structured Integration of NHRIs in the EU Human Rights Architecture?.....	218

PART III. INTERNATIONAL PERSPECTIVES

The Role and Functioning of the International Coordinating Committee of National Human Rights Institutions in International Human Rights Bodies

Kirsten ROBERTS	223
1. Introduction	223
2. Rationale for NHRI Engagement at the International Level.....	224
2.1. Role of NHRIs: Domestic v. International.....	225
2.2. Independence.....	226
2.3. Positioning of NHRIs: The “Fourth Space”	227
2.4. Human Rights Focus and Expertise	230
3. The International Coordinating Committee of NHRIs	231
3.1. Regional Groups	232
3.2. The Accreditation Process	234
4. The ICC and International Human Rights Mechanisms	236
4.1. Promoting International Engagement	236
4.2. The Human Rights Council.....	236
4.3. UPR	239
4.4. General Assembly and Other UN Bodies	240
4.5. Treaty Bodies.....	241
4.6. Special Procedures	243
5. Challenges and Opportunities.....	244

Compliance with the Paris Principles and the ICC Sub-Committee on Accreditation

Gauthier DE BECO	247
1. Introduction	247
2. Paris Principles	248
2.1. International Recognition of the Paris Principles	248
2.2. National Human Rights Institutions (NHRIs).....	248
2.2.1. Responsibilities	248
2.2.2. Fundamental Principles	249
3. ICC Sub-Committee on Accreditation	251
3.1. The ICC and the ICC Sub-Committee on Accreditation.....	251

3.2. Advantages and Disadvantages of a "Peer Review"	
Accreditation	253
3.3. Consequences of the Accreditation of NHRIs beyond	
Membership of the ICC	255
4. Accreditation Procedure	255
4.1. Periodic Review and Special Review	255
4.2. Accreditation Procedure	257
4.2.1. Application	257
4.2.2. Summary	258
4.2.3. Recommendation	258
4.2.4. Decision	258
4.3. Illustrations of the Accreditation Procedure	259
5. Evaluation of the Accreditation Procedure	260
 NHRI Participation to United Nations Human Rights Procedures: International Promotion Versus Institutional Consolidation?	
Katrien MEUWISSEN	263
1. Introduction	263
2. NHRI Consolidation in Institutional Frameworks of UN Human	
Rights Mechanisms	265
2.1. UN Human Rights Council	265
2.1.1. From Human Rights Commission to Human Rights	
Council	265
2.1.2. NHRI Institutionalisation in the Procedures of the	
Commission on Human Rights	266
2.1.3. NHRI Participation Rights in the UN Human Rights	
Council	269
2.1.4. HRC as Promoter of UN-NHRI Cooperation Beyond the	
HRC	270
2.2. UN Treaty Procedures	271
2.2.1. UN Human Rights Treaties	271
2.2.2. Treaty Bodies and NHRIs: Rules of Procedure; Working	
Methods and General Comments or Statements	273
2.2.3. Towards Harmonised Treaty Body Interaction with NHRIs	277
3. NHRI Conceptualisation: Participation of "National Institutions"	279
3.1. ICC Accredited NHRIs in the UN Human Rights Council	279
3.2. UN Treaty Bodies: Thematic Focus Regarding NHRI	
Participation	281
4. Conclusion	284

Perspectives on the Need for National Human Rights Institutions in Europe and the World

Jan JAŘAB	287
1. Role of NHRIs as Laid Down in the Paris Principles	287
2. Reasons for Creating NHRIs Based on International Law.....	288
3. Reasons for Creating NHRIs in All European Democracies.....	290
3.1. Central and Eastern Europe: Risks of Immature Democracies...	291
3.2. Imperfections of Mature Democracies.....	292
4. Substantive Reasons for Establishing NHRIs in the 21 st Century	292
5. NHRIs as National and International Actors	294
6. NHRIs in Europe and the World	295

Conclusion: Towards a Better Understanding of European NHRIs in a Multi-Layered Human Rights System

Katrien MEUWISSEN and Jan WOUTERS	299
1. Understanding "National Human Rights Institutions" in Europe	299
2. Towards a More Comprehensive NHRI Landscape in Europe.....	302
3. Understanding European NHRIs as "Multi-Dimensional" Human Rights Actors	304
4. Towards a More Strategic Integration of European NHRIs in the Multi-Layered Human Rights System	306
5. Some Areas for Further Research.....	308

<i>Annex 1: Cost Action IS0702. Recommendations on National Human Rights Institutions.....</i>	313
<i>Annex 2: Principles Relating to the Status of National Institutions (The Paris Principles).....</i>	315
<i>About the Editors and the Authors.....</i>	319
<i>Index</i>	325