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Technical Assistance for Strengthening Fundamental Rights Sector Coordination

COMPARATIVE STUDY ON INSTITUTIONALISATION OF HUMAN RIGHTS (FRANCE-IRELAND-CROATIA)



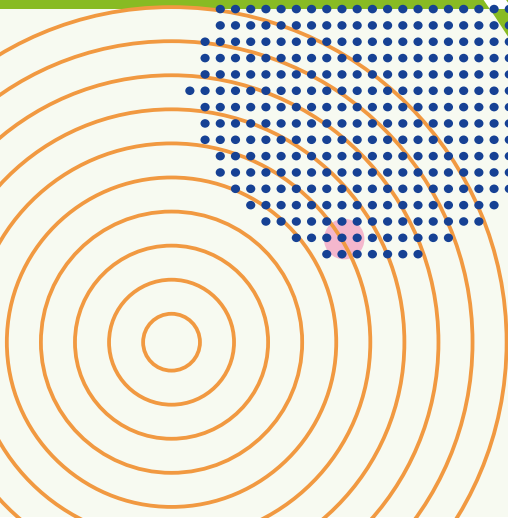
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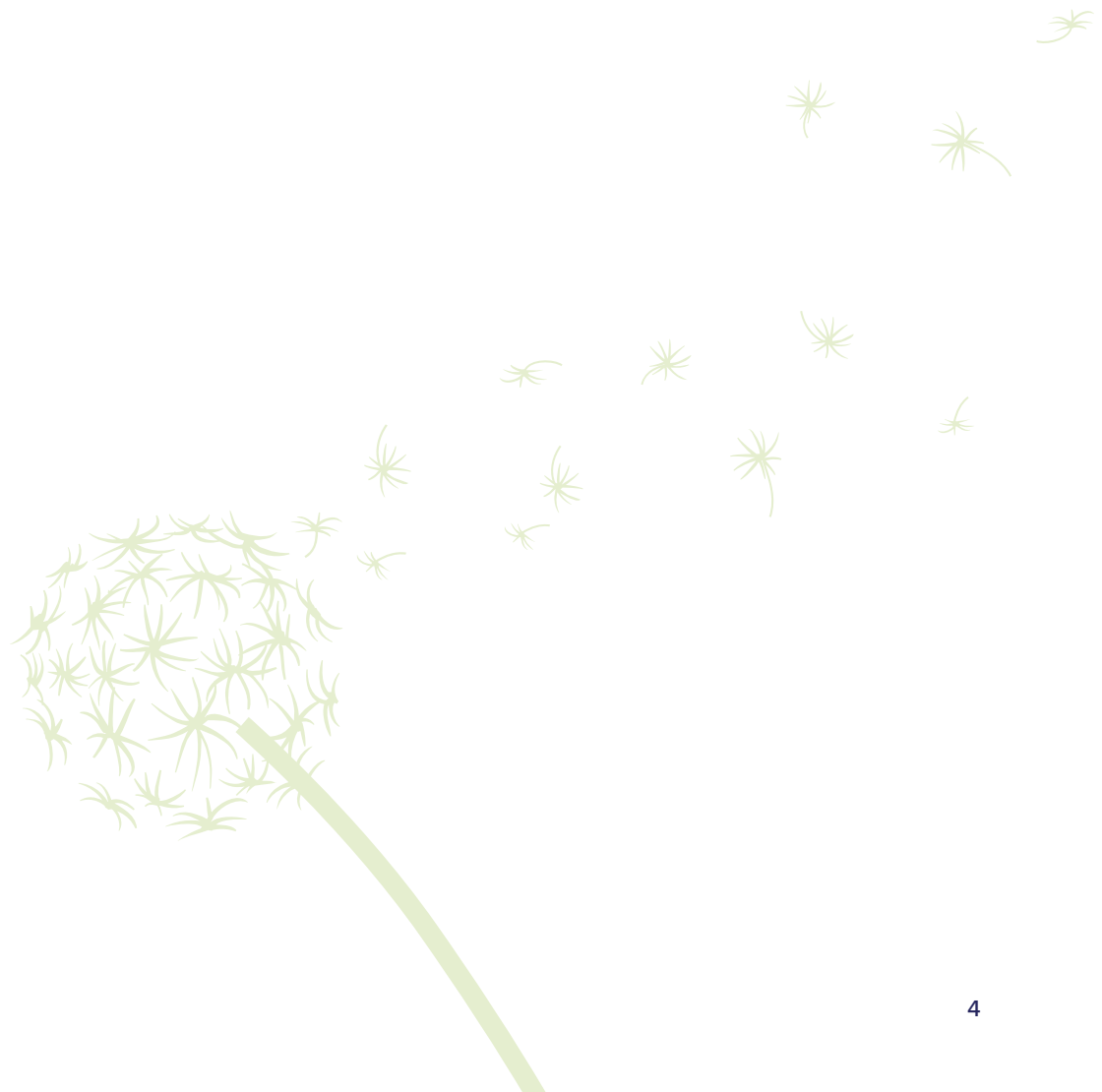
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LIST OF ABBREVIATIONS

EU	European Union
GANHRI	Global Alliance of National Human Rights Institutions
NHRIs	National Human Rights Institutions
UN	United Nations



Introduction



This study is prepared as a comparative study of three Member States (France, Ireland and Croatia) of the European Union (EU) in the area of 'Institutionalisation of Human Rights' under the 'Technical Assistance for Strengthening Fundamental Rights Sector Coordination Project'. To this end, firstly, the study briefly examines the EU acquis in relation to institutionalisation of human rights. Secondly, the reasons behind the selection of the above three Member States for comparison is given. Thirdly, legislation and practices of these three States are discussed in relation to institutionalisation of human rights. Finally, the legislation and practices of the Member States are compared and good practices are identified.

1. Institutionalisation of Human Rights in the European Union Acquis



The institutionalisation of human rights is going through a historical progress where national, international and supranational levels interact. Three main periods can be mentioned in this respect: (i) pre-1990s, (ii) 1990s and (iii) post-2000s. The 'institutionalisation of human rights' can be defined as institutions or mechanisms responsible for protecting and promoting human rights outside the judiciary, especially through the executive branch.¹ There had been a gradual increase in the institutionalisation of human rights at the *national level* during the pre-1990s.²

During the 1990s, there were significant developments in the institutionalisation of human rights at all levels. Mainly, at the *international level*, the Principles relating to the Status of National Institutions, namely the Paris Principles (1993), were adopted by the United Nations (UN).³ Similarly, at the *international level*, this time the Council of Europe adopted the 'Recommendation on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights' (1997) regarding the institutionalisation of national human rights.⁴ On the other hand, at the *supranational level*, the European Union (EU) addressed the institutionalisation of human rights within itself, establishing the European Ombudsman (1993)⁵ and the 'European Monitoring Centre on Racism and Xenophobia' (1997),⁶ which later became the European Union Agency for Fundamental Rights⁷.

During the post-2000s, the institutionalisation of human rights in the EU acquis has accelerated considerably. In general, at the *supranational level*, the EU acts began to provide for the institutionalisation of national human rights. An example for this is the Race and Ethnic Origin Directive (Directive 2000/43/EC).⁸ Moreover, at the *international level*, the Council of Europe re-evaluated the institutionalisation of national human rights, adopting the 'Recommendation on the development and strengthening of effective, pluralist and independent national human rights institutions' (2021), which revised the Recommendation of 1997.⁹

1 See and cf. Steven L B Jensen, Stéphanie Lagoutte & Sébastien Lorion, 'Introduction: The Domestic Institutionalisation of Human Rights: An Introduction', *The Domestic Institutionalisation of Human Rights*, Routledge, New York, 2021.

2 See The Office of the High Commissioner for Human Rights, *Fact Sheet No.19: National Institutions for the Promotion and Protection of Human Rights*, p. 2, 3. <<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet19en.pdf>>

3 General Assembly resolution 48/134, Principles relating to the Status of National Institutions (The Paris Principles), 20 December 1993. <<https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>>

4 Recommendation Rec(97)14 30/09/1997 of the Committee of Ministers to Member States on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights. <<https://rm.coe.int/16804fecf5>>

5 Article 138e of the Treaty establishing the European Community amended by the Treaty of Maastricht.

6 Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia [1997] OJ L 151/1.

7 Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights [2007] OJ L 53/1.

8 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22.

9 Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions.

<https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a1f4da>

Finally, at the *supranational level*, the EU acts seem to leave their mark on the institutionalisation of national human rights in terms of equality bodies. To this end, two legislative proposals regarding standards for equality bodies in the EU were put forth in 2022.¹⁰

Against this background, the institutionalisation of human rights in EU Member States and at the national level is influenced by the international and supranational level. A 'national human rights institution' (human rights commissions, ombudsmen and others) can be broadly defined as national bodies which (i) are responsible for, in whole or in part, promoting and protecting human rights, (ii) are independent, (iii) are administrative, (iv) have consultative mandate and (v) function to give opinions and recommendations or to consider complaints.¹¹ On one hand, the institutionalisation of national human rights in EU Member States is significantly influenced by soft law at the *international level*, in particular the UN Paris Principles (1993) and the Recommendation of 2021 of the Council of Europe.

The UN Paris Principles (1993)¹² introduce arrangements under the headings 'Competence and Responsibilities', 'Composition and Guarantees of Independence and Pluralism', 'Methods of Operation' and 'Additional Principles Concerning the Status of Commissions with Quasi-jurisdictional Competence'. In accordance with the Paris Principles, a national institution (i) must have the mandate to promote and protect human rights, (ii) must be structured in accordance with the principles of independence and pluralism, (iii) must be regulated in a constitutional or legal text, (iv) must have the mandate to freely consider any questions falling within its competence, hear any person and obtain any information and any documents necessary for assessing situations falling within its competence and address public opinion directly or through any press organ, and (v) may be authorised to hear and consider complaints and petitions concerning individual situations.

The Recommendation of 2021 of the Council of Europe¹³ seeks to create a standard that goes beyond the Paris Principles and introduces regulations under the headings 'I. Establishment of NHRIs', 'II. Strengthening of NHRIs', 'III. Securing and expanding a safe and enabling environment for NHRIs', and 'IV. Co-operation and support'. In accordance with the Recommendation of 2021 (in addition to the Paris Principles), Member States should (i) ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles, (ii) ensure that the mandate to protect and promote human rights is as broad as possible, including addressing all alleged human rights violations, (iii) ensure that NHRIs enjoy adequate access to information and to policy makers and legislators, and (iv) foster awareness and the co-operation of all relevant public authorities in relation to NHRIs.

On the other hand, the institutionalisation of national human rights in EU Member States is significantly affected by the *supranational level*, that is, by the EU acts. There are four relevant acts: (i) Directive 2000/43/EC – Race and Ethnic Origin Directive¹⁴, (ii) Directive 2004/113/EC – Equal Treatment in Goods and Services Directive¹⁵, (iii) Directive 2006/54/EC – Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)¹⁶ and (iv) Directive 2010/41/EU – Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity¹⁷. Since these rules are of a similar nature, Directive 2000/43/EC can be cited as an example. To this end, Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.¹⁸ Member States shall ensure that the competences of these bodies include: (i) providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, (ii) conducting independent surveys concerning discrimination, and (iii) publishing independent reports and making recommendations on any issue relating

10 COM(2022) 688 final, Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU and COM(2022) 689 final, Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC.

11 See and cf. Fact Sheet No.19 (fn. 2), p. 3 ff.

12 See fn. 3.

13 See fn. 9.

14 Article 13 of Directive 2000/43/EC (fn. 8).

15 Article 12 of Directive 2004/113/EC. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L 373/37.

16 Article 20 of Directive 2006/54/EC. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L 204/23.

17 Article 11 of Directive 2010/41/EC. Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1.

18 Article 13(1) of Directive 2000/43/EC (fn. 8).

to such discrimination.¹⁹ Finally, two legislative proposals regarding standards for equality bodies in the EU were put forth in 2022.²⁰ When these proposals become law, they should be expected to introduce significant changes in the institutionalisation of national human rights in EU Member States.

2. Member States Selected for Comparison: France, Ireland and Croatia



Three EU Member States, namely France, Ireland and Croatia, were selected for this comparative analysis study.

France²¹ is one of the founding countries of the EU and one of the states implementing the continental European legal system. France is a unitary state in the semi-presidential system – republican government. The principles of freedom, equality and solidarity are emphasised in the Preamble of the 1958 French Constitution.

Ireland²² became a member of the EU with the first enlargement of the EU, applying an Anglo-Saxon legal system. Ireland is a unitary state in the parliamentary system – republican government.

Croatia²³ became a member of the EU with the latest enlargement of the EU, and one of the states implementing the continental European legal system. Croatia is a unitary state in the parliamentary system – republican government.

The differing and similar structures of these Member States have affected their preference of method in the field of institutionalisation of human rights, which led them to adopt institutionalisation models overlapping on the one hand and diverging on the other. For this reason, we considered that it would be useful to examine and compare these three countries. More concretely, these States stand out as examples of good practice, as will be explained in detail below, because:

- (i) The Global Alliance of National Human Rights Institutions (GANHRI) recognises the ‘French National Consultative Commission on Human Rights’ (*Commission nationale consultative des droits de l’homme – CNC-DH*) since 1999, the ‘Irish Human Rights and Equality Commission’ since 2015 and the Ombudsman of Croatia (*‘Pučka Pravobraniteljica’*) since 2008 as ‘A’ status (fully compliant with the Paris Principles).²⁴
- (ii) In the context of institutionalisation of human rights, a triple distinction can be made: human rights, equality and ombudsman institutions. As stated in the Recommendation of 2021 of the Council of Europe, ‘the choice of the model of these institutions should be made by each State in the light of its organisation, particularities and needs’ as long as it is ‘in full compliance with the Paris Principles’.²⁵ The general trend today is to bring together human rights, equality and ombudsman institutions in the context of institutionalisation of human rights. Indeed, France, Ireland and Croatia tried to bring together at least two of the human rights, equality and ombudsman institutions. France *preferred* to gather (human rights) equality and ombudsman institutions under one roof while Ireland has gathered human rights and equality institutions under one roof, and Croatia has gathered human rights, equality and ombudsman institutions under one roof. Moreover, the French National Consultative Commission on Human Rights has been mandated only in relation to human rights and the Defender of Rights (human rights) has been mandated in relation to children’s rights, security personnel ethics and whistleblowers in addition to ombudsmanship and equality. The Irish Human Rights and Equality Commission has been tasked solely with human rights and equality, while the Irish Ombudsman has been mandated in relation to disability issues in addition to ombudsmanship. Finally, the Ombudsman of Croatia has been tasked with ombudsmanship, human rights, equality, as well as in relation to persons deprived of liberty and whistleblowers.

19 Article 13(2) of Directive 2000/43/EC (fn. 8).

20 COM(2022) 688 final (fn. 10) and COM(2022) 689 final (fn. 10).

21 <https://european-union.europa.eu/principles-countries-history/country-profiles/france_en>

22 <https://european-union.europa.eu/principles-countries-history/country-profiles/ireland_en>

23 <https://european-union.europa.eu/principles-countries-history/country-profiles/croatia_en>

24 <<https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>>

25 Article 1 of Recommendation CM/Rec(2021)1 (fn. 9).

- (iii) In accordance with the Paris Principles, a national institution must be regulated in a constitutional or legal text. While France and Croatia have introduced both constitutional and legal rules regarding the national institutions in question, Ireland has introduced legal rules regarding its current national institution.
- (iv) As stated in the Recommendation of 2021 of the Council of Europe, ‘the choice of the model of these institutions should be made by each State in the light of its organisation, particularities and needs’ as long as it is ‘in full compliance with the Paris Principles’.²⁶ Today, the general trend is to organise national institutions either as a ‘single-member institution’ or a ‘multi-member institution’. While the French National Consultative Commission on Human Rights and the Irish Human Rights and Equality Commission are structured as a board, the French Defender of Rights, the Ombudsman of Ireland and the Ombudsman of Croatia are structured so as to have a one person at the top.
- (v) In accordance with the Paris Principles, a national institution must be structured in accordance with the principle of independence. France, Ireland and Croatia established their national institutions in question independently (not affiliated with any institution) and duly provided for independence guarantees in legal texts. This seems to be complied with in practice.
- (vi) Pursuant to the Paris Principles, a national institution may also have the mandate to hear and examine complaints regarding individual cases. However, as set forth in Recommendation of 2021 of the Council of Europe, addressing alleged human rights violations should be part of the mandate of national human rights institutions.²⁷ The French Defender of Rights, the Ombudsman of Ireland and the Ombudsman of Croatia have the mandate to examine complaints.
- (vii) France, Ireland and Croatia all recognise the powers of their respective national institutions to provide assistance to victims, to conduct independent investigations and prepare reports and to offer independent recommendations. Particularly in France, Ireland and Croatia, the institution in question can mainly, upon request or on its own motion, make recommendations for the evaluation, revision or correction of the legal rules (or proposals or implementation) in that Member State in line with its jurisdiction. These recommendations are duly taken into account.
- (viii) The Irish Human Rights and Equality Commission and the Ombudsman of Croatia can both file a lawsuit and be a party to a case on behalf of the victim or ex officio. The French Defender of Rights may be a party to a case.
- (ix) In accordance with the Paris Principles, a national institution should have the mandate to protect and promote human rights as broad as possible. According to Recommendation of 2021 of the Council of Europe, it is essential to ensure that the mandate given to the relevant national institution is ‘as broad as possible’²⁸. In this regard, the Irish Human Rights and Equality Commission has a number of additional powers such as commissioning an audit on equality, preparing an equality action plan or Code of Practice, etc. The Ombudsman of Croatia also has a number of additional powers such as initiating the procedure for the alignment of Croatian law with the Constitution and international agreements, etc.

3. Institutionalisation of Human Rights in the Legislation and Practice of Member States

Four general observations can be provided before continuing with the legislation and practice regarding institutionalisation of human rights in France, Ireland and Croatia. First, in the context of institutionalisation of human rights, a triple distinction can be made: human rights, equality and ombudsman institutions.²⁹ Member States may establish these institutions separately or create an all-encompassing institution by combining all or several of them. Against this background, this study focuses on the institutions that also function as equality institutions since in EU acquis, equality institutions are more prominent than other types of institutions.³⁰ On

²⁶ Article 1 of Recommendation CM/Rec(2021)1 (fn. 9).

²⁷ Article 3 of Recommendation CM/Rec(2021)1 (fn. 9).

²⁸ Article 3 of Recommendation CM/Rec(2021)1 (fn. 9).

²⁹ For example, across Europe, there are the European Network of National Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (Equinet) and the European Network of Ombudsmen (ENO).

See, respectively, <<https://ennhri.org/>>, <<https://equineteurope.org/>> and <<https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/about/en>>

³⁰ Moreover, reliable data is also available for each of the equality bodies. See fn. 29.

the other hand, other institutions have also been briefly mentioned. Secondly, against this background, each of the Member States has a national body or bodies of the type of equality body in relation to institutionalisation of human rights.³¹ In this regard, Member States seem to have established a body or bodies to promote equal treatment in their domestic law, for example, in accordance with Directive 2000/43/EC – Race and Ethnic Origin Directive, which is examined in detail above.³² Thirdly, as the relevant EU acts are developed, for example when two legislative proposals on standards for EU equality bodies as mentioned above³³ become law, or as the case law of the CJEU regarding these acts is developed step by step³⁴, these will also affect legislation and implementation regarding institutionalisation of national human rights in Member States. Therefore, such EU acts and the case law of the CJEU deserve to be followed separately. Fourth, the legislation and practice of Member States may change over time, sometimes through legislative amendments and sometimes through court decisions.

Against this background, the legislation and practice regarding institutionalisation of human rights in France, Ireland and Croatia³⁵ will be discussed under the following headings: (1) General Legal Framework, (2) Scope of Mandate, Internal Organisation and Independence, and (3) Duties and Powers of National Human Rights Institutions.

3.1. France

3.1.1. General Legal Framework

Regarding institutionalisation of human rights, if a broad distinction is made for human rights, equality and ombudsman institutions, it can be said that France preferred to combine equality and ombudsman institutions in a single national institution while keeping the human rights institution separate. Today, in France, the French National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme – CNCDH*) functions as the human rights institution³⁶ while the ‘Defender of Rights’ (*Le Défenseur des Droits*) functions as the equality³⁷ and ombudsman³⁸ institution. The French National Consultative Commission on Human Rights, officially referred to as the national human rights institution³⁹, has undertaken an (advisory) role in promoting human rights⁴⁰, while the Defender of Rights has also undertaken a role in protecting (in addition to promoting) human rights⁴¹. In this sense, these institutions can be described as ‘complementary to each other’⁴². In this background, this study mainly focuses on the Defender of Rights, but briefly mentions the French National Consultative Commission on Human Rights.

As regards *legal foundations*, according to the Article 71-1 of the French Constitution of 1958 as amended by the Law No. 2008-724:

‘The Defender of Rights shall ensure the due respect of rights and freedoms by state administrations, territorial communities, public legal entities, as well as by all bodies carrying out a public service mission or by those that the Institutional Act decides fall within his remit.

31 See Isabelle Chopin & Catharina Germaine, eds, *A Comparative Analysis of Non-Discrimination Law in Europe 2021*, Publications Office of the European Union, Luxembourg, 2022, p. 105.

32 See *Ibid.*

33 COM(2022) 688 final (fn. 10) and COM(2022) 689 final (fn. 10).

34 For example, in accordance with the established case-law of the CJEU, national law will be interpreted, as much as possible, in line with EU law. See Case C-106/89 (Court of Justice) *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I-4135, para 8.

35 This study is prepared, in general, on the basis of the European Equality Law Network reports, which are available at <<https://www.equalitylaw.eu/document/country>>

36 See <<https://ennhri.org/our-members/>>

37 See <<https://equineteurope.org/european-directory-of-equality-bodies/>>

38 See <<https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/members/all-members>>

39 See <<https://ennhri.org/our-members/>>

40 See European Union Agency for Fundamental Rights, *Strong and Effective National Human Rights Institutions – Challenges, Promising Practices and Opportunities*, Publications Office of the European Union, Luxembourg, 2020, p. 28.

41 For example see Article 71-1 of the French Constitution of 1958 amended by the Law No. 2008-724.

42 See Françoise DUMONT, ‘CNCDH, Défenseur des droits: des institutions indispensables’, *Hommes & Libertés*, N° 180, Décembre 2017, p. 45. <<https://www.lidh-france.org/wp-content/uploads/2018/04/HL180-Dossier-Soci%C3%A9t%C3%A9-civile-3.-CNCDH-D%C3%A9fenseur-des-droits-des-institutions-indispensables.pdf>>

Referral may be made to [the Defender of Rights], in the manner determined by an Institutional Act, by every person who considers his rights to have been infringed by the operation of a public service or of a body mentioned in the first paragraph. He may act without referral.

The Founding Act shall set down the mechanisms for action and powers of the Defender of Rights. [It] shall determine the manner in which he may be assisted by third parties in the exercise of certain of his powers.

[...] This position is incompatible with membership of the Government or membership of Parliament. [...]

The Defender of Rights is accountable for his actions to the President of the Republic and to Parliament.'

The *founding* act of the Defender of Rights is the Law on the Defender of Rights (*Loi relative au Défenseur des droits*) No. 2011-334 (of 29 March 2011).⁴³ In this regard, France has merged its existing national institutions under a single national institution. The Defender of Rights was formed by merging the bodies that existed before May 2011.⁴⁴ The Defender of Rights has replaced four separate bodies: (i) Mediator of the Republic (*Médiateur de la République*), (ii) Defender of Children (*Défenseur des enfants*), (iii) High Authority for Anti-Discrimination and Equality (*Haute Autorité de lutte contre les discriminations et pour l'égalité* (HALDE)) and (iv) National Commission on Security Ethics (*Commission nationale de déontologie de la sécurité* (CNDS)).⁴⁵ Therefore, the Defender of Rights is structured as a single body that assumes different responsibilities in various areas.⁴⁶

Although the French National Consultative Commission on Human Rights was *legally* established in 1947 by Ministerial Decision⁴⁷, it is currently regulated by Law No. 2007-292⁴⁸ and Decision No. 2007/1137⁴⁹.

3.1.2. Scope of Mandate, Internal Organisation and Independence

In terms of *scope of mandate*, the Defender of Rights is entitled to promote and protect rights and freedoms in five areas: (i) protecting the rights of public service users, (ii) protecting the rights of children, (iii) ensuring that security staff such as the police, gendarmerie, private security services comply with ethics, (iv) combating discrimination and promoting equality, and (v) providing guidance to and protecting whistleblowers.⁵⁰

The *internal organisation* of the Defender of Rights can be summarised as the following: The head of the Defender of Rights institution is the 'Defender of Rights'. The Defender of Rights is appointed by the Council of Ministers through a non-renewable and irrevocable act.⁵¹ A number of boards headed by deputies nominated by the Defender of Rights and appointed by the Prime Minister support the Defender of Rights: There are boards on (i) children's rights, (ii) security staff ethics, (iii) anti-discrimination and equality, and (iv) whistleblowers.⁵²

The following statements can be made regarding the *independence* of the Defender of Rights: The Defender of Rights is an independent administrative authority (not affiliated with any institution)⁵³ and does not take or seek any instructions in the exercise of its powers.⁵⁴ The Defender of Rights may freely determine which cases to pursue.⁵⁵ The Defender of Rights has control over the use of its budget.⁵⁶ The Defender of Rights has also the mandate to employ and manage its staff.⁵⁷

The following statements can be made in terms of the *scope of mandate*, *internal organisation* and *independence* of the French National Consultative Commission on Human Rights. The Commission is mainly responsible

43 JORF n°0075 du 30 mars 2011. <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000023781167/2023-04-06/>>

44 Sophie Latraverse, Country Report - Non-Discrimination: France, Publications Office of the European Union, Luxembourg, 2022, p. 100.

45 <<https://equineteurope.org/author/france-dr/>>

Loi n° 2007-292, <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000646724/2023-05-16/>>

46 See Chopin & Germaine fn. 27, p. 105.

47 See <<https://www.cncdh.fr/presentation/historique>>

48 Article 24 of Law No. 2007-292 amended by Article 24 of Law No. 2017-55.

<<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000646724/2023-05-16/>>

49 Decision No. 2007/1137. <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000791293/>>

50 <<https://www.defenseurdesdroits.fr/en/an-independent-institution>>. See also Article 4 of Law No. 2011-334.

51 Article 1 of Law No. 2011-334.

52 Article 11 of Law No. 2011-334.

53 See Latraverse, fn. 41, p. 103., <<https://www.defenseurdesdroits.fr/fr/institution/organisation/defenseur>>

54 Article 2 of Law No. 2011-334.

55 Article 24 of Law No. 2011-334.

56 Article 10 of Law No. 2011-334.

57 Article 37 of Law No. 2011-334.

for making recommendations to public authorities on human rights, monitoring France's compliance with its international commitments in this field, and offering trainings on human rights.⁵⁸ The Commission is composed of⁵⁹ representatives from non-governmental organisations specialised in their relevant fields, international organisations, the main trade union confederations, the Defender of Rights and the Economic, Social and Environmental Council with quotas introduced to ensure pluralism⁶⁰. As a rule, commission members cannot be dismissed.⁶¹ The President of the Commission is elected among the members by the Prime Minister for a renewable period of 3 years.⁶² In addition to the general assembly composed of all members, the Commission has subcommittees responsible for handling specific issues.⁶³ The Commission carries out its duties independently⁶⁴ (and is not affiliated with any institution)⁶⁵. The Commission does not take or seek instructions from any administrative or government authority.⁶⁶ The Commission uses the budget of the Prime Ministry and can freely manage the resources necessary to fulfil its duties.⁶⁷ On the other hand, for example, the Global Alliance of National Human Rights Institutions (GANHRI), in its March 2019 report, renewed the 'A' status of the Commission, while calling on the Commission to 'continue to seek adequate financial resources'.⁶⁸

3.1.3. Duties and Powers of National Human Rights Institutions

The duties and powers of the French Defender of Rights can be examined under five headings.

Firstly, in terms of *quasi-judicial functions* and *binding decisions*, although the French Defender of Rights receives complaints and makes administrative decisions on these complaints, it does not perform judicial-like functions, for example, it does not hold hearings or take binding decisions.⁶⁹

Secondly, in terms of *assistance to victims* and *examination of complaints*, the French Defender of Rights, especially upon receiving an individual complaint, helps the person concerned to formulate their complaint and make the appropriate application.⁷⁰ Depending on the case, the Defender of Rights may also conduct an ex officio investigation.⁷¹ Moreover, the Defender of Rights may request explanation from both public and private persons, under its investigative powers, including requesting documents and hearing witnesses.⁷² If the public or private persons who receive this request do not respond, the Defender of Rights will first send a notification to these persons setting a period of time, and if there is no response, the Defender of Rights may request the relevant court to award an appropriate order on the matter.⁷³ The Defender of Rights may close a complaint through mediation as an amicable solution.⁷⁴ On the other hand, the Defender of Rights may close a complaint by giving recommendations that will safeguard human rights.⁷⁵ In this case, public or private persons who receive these recommendations must give feedback to the Defender of Rights within the specified time period.⁷⁶ If the Defender of Rights does not receive any or sufficient feedback on its recommendations, it may issue a warning to the relevant public or private person to take the necessary measures within a certain time period.⁷⁷ If this warning is not heeded, the Defender of Rights may prepare a special report and make it publicly available.⁷⁸ The Defender of Rights has also certain powers in criminal or disciplinary cases, for example, to refer the dispute to the criminal court or to impose certain fines.⁷⁹

Thirdly, in terms of *independent investigations* and *reports*, the French Defender of Rights is authorised to carry out independent investigations and publish independent reports.⁸⁰ Examples of the first category include

58 <<https://www.cncdh.fr/presentation/missions>>

59 Article 1 of Law No. 2007-292 amended by Article 24 of Law No. 2017-55.

60 Article 4 of Decision No. 2007/1137.

61 Article 1 of Law No. 2007-292 amended by Article 24 of Law No. 2017-55.

62 Article 13 of Decision No. 2007/1137.

63 Article 11 of Decision No. 2007/1137.

64 Article 1 of Law No. 2007-292 amended by Article 24 of Law No. 2017-55.

65 See <<https://www.cncdh.fr/presentation>>

66 Article 1 of Law No. 2007-292 amended by Article 24 of Law No. 2017-55.

67 Article 17 of Decision No. 2007/1137.

68 Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 11-15 March 2019, p. 21. <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_March_2019_-_EN_.pdf>

69 See Latraverse, fn. 41, p. 110. See and cf. Article 33 of Law No. 2011-334.

70 See Ibid, p. 104. See Article 27 of Law No. 2011-334.

71 See Article 5 of Law No. 2011-334.

72 See Latraverse, fn. 41, p. 104. See Articles 18 and 20 of Law No. 2011-334.

73 See Article 21 of Law No. 2011-334.

74 See Articles 26 and 28 of Law No. 2011-334.

75 See Article 25 of Law No. 2011-334.

76 See Article 25 of Law No. 2011-334.

77 See Article 25 of Law No. 2011-334.

78 See Article 25 of Law No. 2011-334.

79 See Articles 28 and 29 of Law No. 2011-334.

80 See Latraverse, fn. 41, p. 106. See Article 34 of Law No. 2011-334.

Results of the Call for Statements: Young People, Their Origins and Discrimination in Employment (*Résultats de l'appel à témoignages: Jeunes, origines et discriminations à l'embauche*)⁸¹ and Survey on Access to Rights / Volume 5 – Discrimination in Access to Housing (*Enquête sur l'accès aux droits Volume 5 - Les discriminations sur l'accès au logement*)⁸². Examples of the second category include Biometric Technologies: Report on the Obligation to Protect Fundamental Rights (*Rapport – Technologies biométriques: l'impératif respect des droits fondamentaux*)⁸³ and Report on Human Support for Students with Disabilities (*Rapport – Accompagnement humain des élèves en situation de handicap*)⁸⁴.

Fourthly, in terms of *independent recommendations*, the French Defender of Rights is authorised to give independent recommendations.⁸⁵ The Defender of Rights may make recommendations regarding any legal or administrative regulations or amendments.⁸⁶ The Prime Minister may consult the Defender of Rights on draft laws regarding matters falling within the mandate of the Defender of Rights.⁸⁷ The competent authorities may consult the Defender of Rights on any question relating to matters falling within its mandate.⁸⁸ Upon the request of the Prime Minister, the Defender of Rights may contribute to France's position in international negotiations on matters falling within its mandate.⁸⁹ Moreover, the Defender of Rights can offer recommendations to the government and parliament by preparing annual independent reports.⁹⁰

Fifthly, in terms of *other duties and powers*, the Defender of Rights may carry out communication or information activities deemed appropriate regarding its mandate.⁹¹ In this regard, the Defender of Rights may promote, in particular, the implementation of educational programmes, and to identify and support good practices relevant to promoting rights and equality.⁹² Examples of using this duty and power are the Guide on Whistleblowers (*Guide du lanceur d'alerte*)⁹³ or the Guide on Discrimination due to Pregnancy in the Private Sector (*Guide sur les discriminations en raison de l'état de grossesse dans le secteur privé*)⁹⁴. On the other hand, although the Defender of Rights may be a party to certain cases, it does not have the mandate to directly file a lawsuit.⁹⁵

The following statements can be made in terms of the *duties and powers* of the French National Consultative Commission on Human Rights. The Commission is responsible for offering advice and recommendations to the Government regarding human rights, international humanitarian law and humanitarian action⁹⁶, encouraging consultation between the administration and civil society and non-governmental organisations, contributing to the reports submitted by France to international organisations regarding human rights as well as to training on human rights, and preparing an annual report on anti-racism.⁹⁷ The Commission may, of its own motion, publicly bring measures relating to the protection and promotion of human rights to the attention of Parliament or the Government.⁹⁸ The Commission may also offer opinions and conduct research upon the request of the Prime Minister or members of the Government and disclose them to the public.⁹⁹ The Commission may hear or consult people with expertise in human rights in general.¹⁰⁰ However, for example, the Global Alliance of National Human Rights Institutions (GANHRI), in its March 2019 report, renewed the 'A' status of the Commission, while stating that its duties were limited in terms of 'protecting' human rights, and its functions regarding the protection of human rights may be extended to include monitoring, inquiring, investigating and reporting on human rights violations as well as individual complaint handling.¹⁰¹ However, in France, such functions are carried out by the Defender of Rights, and in this sense the two institutions are 'complementary' to each other.¹⁰²

81 <<https://www.defenseurdesdroits.fr/fr/outils/etudes/etudes-et-resultats-acces-lemploi-et-discrimination-liees-aux-origines>>

82 <<https://www.defenseurdesdroits.fr/fr/etudes-et-recherches/2017/12/enquete-sur-lacces-aux-droits-volume-5-les-discriminations-sur-lacces>>

83 <<https://www.defenseurdesdroits.fr/fr/rapports/2021/07/rapport-technologies-biometriques-limperatif-respect-des-droits-fondamentaux>>

84 <<https://www.defenseurdesdroits.fr/fr/rapports/2022/08/rapport-accompagnement-humain-des-eleves-en-situation-de-handicap>>

85 See Latraverse, fn. 41, p. 107.

86 See Article 32 of Law No. 2011-334.

87 See Article 32 of Law No. 2011-334.

88 See Article 32 of Law No. 2011-334.

89 See Article 32 of Law No. 2011-334.

90 See Article 36 of Law No. 2011-334. For example, see:

<https://juridique.defenseurdesdroits.fr/index.php?lvl=cmspage&pageid=12&id_rubrique=106&opac_view=1>

91 See Article 34 of Law No. 2011-334.

92 See Article 34 of Law No. 2011-334.

93 <<https://www.defenseurdesdroits.fr/fr/guides/guide-du-lanceur-dalerte>>

94 <<https://www.defenseurdesdroits.fr/fr/guides/guide-sur-les-discriminations-en-raison-de-letat-de-grossesse-dans-le-secteur-prive>>

95 See Latraverse, fn. 41, p. 109. See and cf. Article 28 of Law No. 2011-334.

96 Article 1 of Law No. 2007-292 amended by Article 24 of Law No. 2017-55.

97 Article 1 of Decision No. 2007/1137.

98 Article 1 of Law No. 2007-292 amended by Article 24 of Law No. 2017-55.

99 Article 2 of Decision No. 2007/1137.

100 Article 12 of Decision No. 2007/1137.

101 Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 11-15 March 2019, p. 20 <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_March_2019_-_EN_.pdf>

102 See Françoise DUMONT, 'CNCDH, Défenseur des droits: des institutions indispensables', *Hommes & Libertés*, N° 180, Décembre 2017, p. 45 <<https://www.lidh-france.org/wp-content/uploads/2018/04/HL180-Dossier-Soci%C3%A9t%C3%A9-civile-3.-CNCDH-D%C3%A9fen>>

3.2. Ireland

3.2.1. General Legal Framework

Regarding the institutionalisation of human rights, Ireland merged human rights and equality institutions into a single national institution, while keeping the ombudsman institution separate. Ireland has a national institution called the ‘Ombudsman of Ireland’¹⁰³ as an ombudsman institution¹⁰⁴ and the ‘Irish Human Rights and Equality Commission’¹⁰⁵ functioning as the human rights¹⁰⁶ and equality institution^{107, 108}

As regards *legal foundations*, the Irish Human Rights and Equality Commission has a legal basis, not a constitutional one. Accordingly, the Commission was established by the Irish Human Rights and Equality Commission Act (2014)¹⁰⁹. In this regard, Ireland has merged its existing national institutions into a single national institution. The Commission was formed by merging the bodies that existed before 2014. Thus, the Commission has succeeded the Human Rights Commission, which was the national human rights institution of Ireland, and the Equality Authority, which was the specialised equality institution of Ireland.¹¹⁰ Therefore, the Irish Human Rights and Equality Commission is structured as a single body that assumes different responsibilities in various areas.¹¹¹

As regards *legal foundations*, the Ombudsman of Ireland was established by the Ombudsman Act (1980).¹¹² Moreover, the Ombudsman may *inter alia* handle the allegations of discrimination in access to public services.¹¹³

3.2.2. Scope of Mandate, Internal Organisation and Independence

In terms of *scope of mandate*, the Irish Human Rights and Equality Commission has the mandate: ‘(a) to protect and promote human rights and equality, (b) to encourage the development of a culture of respect for human rights, equality, and intercultural understanding in the State, (c) to promote understanding and awareness of the importance of human rights and equality in the State, (d) to encourage good practice in intercultural relations, to promote tolerance and acceptance of diversity in the State and respect for the freedom and dignity of each person, and (e) to work towards the elimination of human rights abuses, discrimination and prohibited conduct.’¹¹⁴

The *internal organisation* of the Irish Human Rights and Equality Commission can be summarised as the following: The Commission consists of not more than 15 and not less than 12 members, one of whom is appointed as the Chief Commissioner of the Commission.¹¹⁵ The members of the Commission are appointed by the President on the advice of the Government, and following the passing of a resolution of each House of the Irish Parliament recommending the appointment.¹¹⁶ The members of the Commission are appointed for a period not exceeding 5 years and can be re-appointed for a further term not exceeding 5 years.¹¹⁷ In practice, each member is appointed for a period of 5 years, but the Global Alliance of National Human Rights Institutions (GANHRI) stated in its June 2021 report, that a minimum term of appointment of 3 years would be more compatible with independence while re-accrediting the Commission with A status.¹¹⁸ The Commission’s human rights and equality functions are integrated and there is no separate structure within the Commission in this regard.¹¹⁹

seur-des-droits-des-institutions-indispensables.pdf>

103 <<https://www.ombudsman.ie/>>

Ombudsman Act (1980). <<https://www.irishstatutebook.ie/eli/1980/act/26/enacted/en/html>>

104 See <<https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/members/all-members>>

105 See <<https://ennhri.org/our-members/>>

106 See <<https://ennhri.org/our-members/>>

107 See <<https://equineteurope.org/european-directory-of-equality-bodies/>>

108 <<https://www.ihrec.ie/>>

109 For the original see <<https://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/print>>

For the revised version see <<https://revisedacts.lawreform.ie/eli/2014/act/25/revised/en/html>>

110 See Judy Walsh, Country Report - Non-Discrimination: Ireland, Publications Office of the European Union, Luxembourg, 2022, p. 90. See Article 43(1) of the Irish Human Rights and Equality Commission Act (2014).

111 See *Ibid*, p. 91.

112 Ombudsman Act (1980). <<https://www.irishstatutebook.ie/eli/1980/act/26/enacted/en/print.html>>

113 See *Ibid*, p. 90.

114 Article 10(1) of the Irish Human Rights and Equality Commission Act (2014).

115 Article 12(1) of the Irish Human Rights and Equality Commission Act (2014).

116 Article 12(3) and 13(1) of the Irish Human Rights and Equality Commission Act (2014).

117 Article 12(3, 4 and 9) of the Irish Human Rights and Equality Commission Act (2014).

118 Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021, p. 18. <<https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>>

119 See Walsh, fn. 86, p. 91.

The following statements can be made regarding the *independence* of the Commission: The Irish Human Rights and Equality Commission is “independent in the performance of its functions”¹²⁰ (and is not affiliated with any institution)¹²¹. In practice, it is stated that “the Commission fulfils its duties independently”.¹²² On the other hand, although the Global Alliance of National Human Rights Institutions (GANHRI), in its June 2021 report, re-accredited the Commission with A status, it offered recommendations on the independence of the Irish Human Rights and Equality Commission. For example, in this regard, it is stated “a process that promotes merit-based selection and ensures pluralism” is necessary to ensure the independence of the senior leadership.¹²³ The Commission’s budget has been increased until today after a sharp decline in 2009 and is reported to have reached an adequate level.¹²⁴ The Commission may, with the consent of the relevant Minister, appoint its staff.¹²⁵

The following statements can be made in terms of the *scope of mandate, internal organisation and independence* of the Ombudsman of Ireland. The Ombudsman is mainly responsible for examining complaints from members of the public who believe they have been unfairly treated by certain public service providers as well as complaints about failures by public bodies to provide accessible buildings, services and information as required under the Disability Act (2005).¹²⁶ The head of the Office of Ombudsman is the ‘Ombudsman’.¹²⁷ The Ombudsman is appointed by the President of Ireland upon a resolution of the Irish Parliament for a term of 6 years and may be re-appointed.¹²⁸ The relevant Minister has the power to determine and appoint the number of Ombudsman staff.¹²⁹ The Ombudsman is independent in the performance of its functions¹³⁰ (and is not affiliated with any institution)¹³¹. The budget of the Ombudsman is mainly determined by the Irish Parliament.¹³²

3.2.3. Duties and Powers of National Human Rights Institutions

The duties and powers of the Irish Human Rights and Equality Commission can be examined under five headings.

Firstly, in terms of *quasi-judicial functions* and *binding decisions*, the Irish Human Rights and Equality Commission does not carry out quasi-judicial functions.¹³³ The Commission does not consider complaints of discrimination.¹³⁴ In this respect, the Workplace Relations Commission (WRC) serves as the primary institution for handling complaints regarding Irish anti-discrimination legislation.¹³⁵ The Irish Human Rights and Equality Commission cannot take binding decisions.¹³⁶

Secondly, in terms of *assistance to victims* and *examination of complaints*, as stated in the above paragraph, the Irish Human Rights and Equality Commission does not examine complaints.¹³⁷ However, the Commission provides assistance to victims in two ways. In this regard, the Commission has the mandate firstly ‘to provide information to the public in relation to human rights and equality’¹³⁸ and second ‘to provide such practical assistance, including legal assistance, to persons in vindicating their rights’^{139,140}. The Commission is mainly responsible for providing

120 Article 9(2) of the Irish Human Rights and Equality Commission Act (2014).

121 See <<https://www.ihrec.ie/about/who-we-are/>>

122 Walsh, fn. 86, p. 92.

123 Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021, p. 16. <<https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>>

124 See Walsh, fn. 86, p. 90–91. See also Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021, p. 17 <<https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>>

125 Article 24(1) of the Irish Human Rights and Equality Commission Act (2014).

126 <<https://www.ombudsman.ie/about-us/who-we-are/>>

127 Article 2(1) of the Ombudsman Act (1980).

128 Article 2(2 and 4) and of the Ombudsman Act (1980).

129 Article 10(1) of the Ombudsman Act (1980).

130 Article 4(1) of the Ombudsman Act (1980).

131 See <<https://www.ombudsman.ie/publications/submissions-and-proposals/developing-and-optimising/>>

132 Article 11 of the Ombudsman Act (1980).

133 See Walsh, fn. 86, p. 103.

134 See *Ibid.*

135 Workplace Relations Act (2015). See *Ibid.*, p. 78.

136 See Chopin & Germaine fn. 27, p. 110.

137 See Walsh, fn. 86, p. 103.

138 Article 10(2/a) of the Irish Human Rights and Equality Commission Act (2014).

139 Article 10(2/f) of the Irish Human Rights and Equality Commission Act (2014). See also for guidelines on applications for legal assistance <<https://www.ihrec.ie/app/uploads/2017/06/Guidelines-on-applications-for-legal-assistance-April-2017-3.pdf>>

140 See Walsh, fn. 86, p. 93.

information to the public regarding the Employment Equality Act (1998)¹⁴¹ and the Equal Status Act (2000)^{142, 143}. To this end, the Commission last published guidelines on the Employment Equality Act (1998) and the Equal Status Act (2000) in 2020.¹⁴⁴ Moreover, the Commission also published information on ‘human rights and equality in business and organisations’.¹⁴⁵ Secondly, a person may apply to the Commission for assistance in relation to proceedings.¹⁴⁶ For example when a person applies to the Commission for discrimination complaints pursuant to the Employment Equality Act (1998) and the Equal Status Act (2000), the Commission may offer assistance to the applicant in relation to legal proceedings initiated or intended to be initiated.¹⁴⁷ This assistance may be ‘(a) the provision, or the arranging for the provision of, legal advice to the applicant; (b) the provision, or the arranging for the provision of, legal representation to the applicant; (c) the provision of such other assistance to the applicant as the Commission deems appropriate in the circumstances’.¹⁴⁸

Thirdly, in terms of *independent investigations and reports*, the Irish Human Rights and Equality Commission is authorised to carry out independent investigations and publish independent reports.¹⁴⁹ In this regard, the Commission has the mandate first ‘to undertake, sponsor, commission or provide financial or other assistance for research and educational activities’¹⁵⁰ and ‘to prepare and publish, in such manner as it sees fit, reports [...]’^{151, 152}. Examples of the first category include Hidden Versus Revealed Attitudes: A List Experiment on Support for Minorities in Ireland¹⁵³ and Irish Human Rights and Equality Commission Annual Poll 2021 Survey Results¹⁵⁴. Examples of the second category include Who Experiences Discrimination in Ireland?¹⁵⁵, Ethnicity and Nationality in the Irish Labour Market¹⁵⁶ and Disability and Discrimination in Ireland¹⁵⁷.

Fourthly, in terms of *independent recommendations*, the Irish Human Rights and Equality Commission is authorised to offer independent recommendations on discrimination.¹⁵⁸ In this regard, the Commission has the mandate firstly ‘to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality’,¹⁵⁹ secondly ‘either ex officio or on being so requested by a Minister of the Government, to examine any legislative proposal and report its views on any implications for human rights or equality’,¹⁶⁰ and thirdly ‘either of its own volition or on being so requested by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights and equality in the State’^{161, 162}. It has been stated that ‘this mandate is used effectively and independently’ in practice.¹⁶³ The Submission on the Review of the Equality Acts (December 2021) can be given as an example in this regard.¹⁶⁴

Fifthly, in terms of *other duties and powers*, the Irish Human Rights and Equality Commission may, and shall, if so requested by the Minister, prepare draft codes of practice for the Minister.¹⁶⁵ The Commission may also invite a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector thereof to carry out an equality review or prepare and implement an equality action plan.¹⁶⁶ In this respect,

141 For the original see <<https://www.irishstatutebook.ie/eli/1998/act/21/enacted/en/print>>

For the revised version see <<https://revisedacts.lawreform.ie/eli/1998/act/21/revised/en/html>>

142 For the original see <<https://www.irishstatutebook.ie/eli/2000/act/8/enacted/en/html>>

For the revised version see <<https://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html>>

143 Article 30(1/b) of the Irish Human Rights and Equality Commission Act (2014).

144 <<https://www.ihrec.ie/documents/a-guide-to-the-equal-status-acts/>>

<<https://www.ihrec.ie/documents/a-guide-the-employment-equality-acts/>>

145 <<https://www.ihrec.ie/guides-and-tools/>>

146 Article 40(2) of the Irish Human Rights and Equality Commission Act (2014).

147 Article 40(1 and 3) of the Irish Human Rights and Equality Commission Act (2014).

148 Article 40(10) of the Irish Human Rights and Equality Commission Act (2014).

149 See Walsh, fn. 86, p. 96.

150 Article 10(2/j) of the Irish Human Rights and Equality Commission Act (2014).

151 Article 10(2/p) of the Irish Human Rights and Equality Commission Act (2014).

152 See Walsh, fn. 86, p. 96.

153 <<https://www.ihrec.ie/app/uploads/2020/07/Hidden-Vs-Revealed-Attitudes-Report-IHREC-ESRI-July-2020-1.pdf>>

154 <<https://www.ihrec.ie/app/uploads/2021/12/IHREC-Amarach-Research-Survey-2021-29122021.pdf>>

155 <<https://www.ihrec.ie/app/uploads/2017/11/Who-experiences-discrimination-in-Ireland-Report.pdf>>

156 <<https://www.ihrec.ie/app/uploads/2018/12/Ethnicity-and-Nationality-in-the-labour-market-20122018.pdf>>

157 <<https://www.ihrec.ie/app/uploads/2018/09/Disability-and-Discrimination.pdf>>

158 See Walsh, fn. 86, p. 96, 97.

159 Article 10(2/b) of the Irish Human Rights and Equality Commission Act (2014).

160 Article 10(2/c) of the Irish Human Rights and Equality Commission Act (2014).

161 Article 10(2/d) of the Irish Human Rights and Equality Commission Act (2014).

162 See Walsh, fn. 86, p. 96–97.

163 *Ibid.*, p. 97.

164 <<https://www.ihrec.ie/app/uploads/2022/01/IHREC-Submission-on-the-Review-of-the-Equality-Acts.pdf>>

165 Article 31(1) of the Irish Human Rights and Equality Commission Act (2014). For example for the draft Code of Practice on Sexual Harassment and Harassment at Work, see <<https://www.irishstatutebook.ie/eli/2012/si/208/made/en/print>>

166 Article 32(1) of the Irish Human Rights and Equality Commission Act (2014).

the Commission serves as ‘a valuable mechanism to ensure compliance with equality law’.¹⁶⁷ The Commission may or shall review the performance of public bodies regarding the elimination of discrimination, promotion of equality of opportunity and protection of human rights.¹⁶⁸ Moreover, the Commission may provide or assist in the provision of education and training on human rights and equality issues.¹⁶⁹ The Commission, either ex officio or if requested by the Minister, may conduct an inquiry if it is considered that there is evidence of a serious violation of human rights or equality or a systemic failure or if the matter is of grave public concern.¹⁷⁰ However, ‘this power has not been used to date’.¹⁷¹ The Commission also consults with such national, EU or international bodies or agencies having a knowledge or expertise in the field of human rights or equality.¹⁷² Finally, the Commission may take the complaint of discrimination, whether identifiable or unidentifiable, to the court on behalf of the victim or ex officio, or may be a party to cases related to discrimination.¹⁷³ On the other hand, although the Global Alliance of National Human Rights Institutions (GANHRI), in its June 2021 report, re-accredited the Commission with ‘A’ status, it notes that the Commission should advocate for an explicit mandate ‘to encourage ratification or accession to international human rights instruments’ and ‘to conduct unannounced visits to all places of deprivation of liberty’.¹⁷⁴

The following statements can be made in terms of the *duties and powers* of the Ombudsman of Ireland. The Ombudsman is mainly responsible for examining complaints regarding unfair treatments by public service providers as well as complaints about failures by public bodies to provide accessible buildings, services and information as required under the Disability Act (2005).¹⁷⁵ The Ombudsman may also conduct investigations ex officio.¹⁷⁶ In any case where the Ombudsman decides not to carry out an investigation regarding a complaint, he sends to the person who made the complaint a statement in writing of his reasons for the decision.¹⁷⁷ Where the Ombudsman carries out an investigation regarding a complaint, he notifies the person who made the complaint of the result of the investigation, the recommendation (if any) and the response (if any) by the relevant public body.¹⁷⁸ If the Ombudsman decides that the measures taken or proposed to be taken in response to a recommendation are not satisfactory, he may prepare a special report on the case.¹⁷⁹ As a rule, the Ombudsman has the right to access relevant persons, information and documents for the purposes of his investigations.¹⁸⁰ The Ombudsman provides a free public service and examines complaints in a fair, independent and impartial way.¹⁸¹

3.3. Croatia

3.3.1. General Legal Framework

In the context of institutionalisation of human rights, Croatia has merged human rights, equality and ombudsman institutions into a single national institution. Today, Croatia has a national institution called ‘Ombudsman’ (*‘Pučka Pravobraniteljica’*)¹⁸² as a human rights¹⁸³, equality¹⁸⁴ and ombudsman institution^{185, 186}

As regards *legal foundations*, primarily, according to the Article 93 of the Croatian Constitution of 1990:

‘The Ombudsperson shall be a commissioner of the Croatian Parliament responsible for the promotion

167 Walsh, fn. 86, p. 98.

168 Article 42(1 and 7) of the Irish Human Rights and Equality Commission Act (2014). See also <<https://www.ihrec.ie/our-work/public-sector-duty/>>

169 Article 10(2/k) of the Irish Human Rights and Equality Commission Act (2014).

170 Article 35(1) of the Irish Human Rights and Equality Commission Act (2014).

171 Walsh, fn. 86, p. 100.

172 Article 10(2/h) of the Irish Human Rights and Equality Commission Act (2014).

173 See Walsh, fn. 86, p. 101. See also Article (41) of the Irish Human Rights and Equality Commission Act (2014).

174 Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021, p. 15-16. <<https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>>

175 <<https://www.ombudsman.ie/about-us/who-we-are/>> See also Article 4(2) of the Ombudsman Act (1980) and Article 40 of the Disability Act (2005).

176 <<https://www.ombudsman.ie/about-us/foi-publication-scheme/procedures-for-conducting/>>

177 Article 6(1) of the Ombudsman Act (1980).

178 Article 6(4) of the Ombudsman Act (1980).

179 Article 6(5) of the Ombudsman Act (1980).

180 See Article 7 of the Ombudsman Act (1980).

181 <<https://www.ombudsman.ie/about-us/who-we-are/>>

182 See <<https://ennhri.org/our-members/>>

183 See <<https://ennhri.org/our-members/>>

184 See <<https://equineteurope.org/european-directory-of-equality-bodies/>>

185 See <<https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/members/all-members>>

186 <<https://www.ombudsman.hr/hr/>>

and protection of human rights and freedoms enshrined in the Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Croatia.

Everyone may lodge a complaint to the Ombudsperson if he/she deems that his/her constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by governmental bodies and the civil service, local and regional self-governmental bodies and bodies vested with public authority.

The Croatian Parliament shall elect the Ombudsperson for a term of eight years. The Ombudsperson shall be autonomous and independent in his/her work.

Conditions for the election and dismissal of the Ombudsperson and his/her deputies, their authority, and the method of their work shall be regulated by law. By law, the Ombudsperson may also be vested with certain powers with regard to legal and natural persons in order to protect the fundamental constitutional rights.

The Ombudsperson [...] shall enjoy the same immunity as deputies in the Croatian Parliament.'

The Ombudsman Law of 2012 (*Zakon o pučka pravobraniteljica*)¹⁸⁷ is the legal basis for the Ombudsman.¹⁸⁸ In this regard, Croatia preferred to equip its existing national institution with new powers.¹⁸⁹ Moreover, although the Ombudsman is the main body for the protected grounds of discrimination, there are special Ombudsmen for three grounds of discrimination with similar powers such as receiving individual complaints, making recommendations and preparing annual reports:¹⁹⁰ (i) in the case of disability, the Ombudsman for persons with disabilities¹⁹¹ deals with the matter, (ii) in the case of gender and sexual orientation, the Ombudsman for gender equality¹⁹² deals with the matter, and (iii) if the victim of discrimination is a child, the Ombudsman for children¹⁹³ deals with the matter.¹⁹⁴ Against this background, the study will mainly focus on the Ombudsman of Croatia, which is structured as a single body with different responsibilities in various areas.

3.3.2. Scope of Mandate, Internal Organisation and Independence

In terms of *scope of mandate*, the Ombudsman of Croatia is mainly responsible for activities related to the behaviour of public bodies, as well as other legal and natural persons, as the case may be, in the following areas:¹⁹⁵ (i) work and working conditions, access to self-employment and occupation, access to vocational training, (ii) education, science and sports, (iii) social security, (iv) health protection, (v) judiciary and administration (excluding judicial decisions), (vi) housing, (vii) public information and the media, (viii) access to goods and services and their provision, (ix) membership and activity in trade unions, civil society organisations, political parties or any other organisations, and (x) access to participation in cultural and artistic creation. The Ombudsman of Croatia is responsible for: (i) the promotion and protection of human rights and freedoms, (ii) the performance of the mandates of the National Equality Body, (iii) the performance of the mandates of the National Preventive Mechanism for the protection of the persons deprived of their liberty, and (iv) external reporting of irregularities within the Whistleblowers' Protection Act.¹⁹⁶

The *internal organisation* of the Ombudsman of Croatia can be summarised as the following: The head of the Ombudsman of Croatia is the 'Ombudsman'. The Ombudsman is elected by the Croatian Parliament for a term of eight years¹⁹⁷ and can be re-elected.¹⁹⁸ On the other hand, although the Global Alliance of National Human Rights Institutions (GANHRI), in its March 2019 report, re-accredited the Ombudsman with 'A' status, it stated that

187 <<https://www.zakon.hr/z/128/Zakon-o-pu%C4%8Dkom-pravobraniteljju>>

188 See also Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*)<<https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije>>

189 See Chopin & Germaine fn. 27, p. 105.

190 See Article 1 of the Ombudsman Act.

191 <<https://posi.hr/?lang=en>>

192 <<https://www.prs.hr/cms/eng>>

193 <<https://dijete.hr/en/homepage-ombudsman-for-children/>>

194 See Ines Bojić, *Country Report - Non-Discrimination: Croatia*, Publications Office of the European Union, Luxembourg, 2022, p. 90.

195 See *Ibid.*

196 See <<https://www.ombudsman.hr/en/about-us/>>

197 Article 93 of the Constitution of Croatia of 1990.

198 Article 10(1) of the Ombudsman Act.

the role of civil society in the selection of the Ombudsman of Croatia should be improved.¹⁹⁹ The Ombudsman has at least three deputies and the deputies are elected by the Croatian Parliament for a term of eight years with the possibility of reappointment.²⁰⁰ The Ombudsman is composed of a number of offices:²⁰¹ (i) office for the protection of human rights, (ii) office for the protection of persons deprived of liberty and the National Preventive Mechanism, (iii) office for anti-discrimination, (iv) communications office, (v) office for human rights cooperation and promotion, (vi) general affairs office.²⁰²

The following statements can be made regarding the *independence* of the Ombudsman: The Ombudsman of Croatia is independent in the performance of his functions²⁰³ (and is not affiliated with any institution)²⁰⁴. Moreover, 'any form of influence on the Ombudsman's work shall be forbidden.'²⁰⁵ As far as reported, its stakeholders also see the Ombudsman as independent.²⁰⁶ On the other hand, although the Global Alliance of National Human Rights Institutions (GANHRI), in its March 2019 report, re-accredited the Commission with 'A' status, it offered recommendation on the independence of the Ombudsman of Croatia. For example, the report states that in order to promote institutional independence, it would be preferable for the number of times that the Ombudsman can be re-appointed to be limited to one reappointment.²⁰⁷ The Ombudsman's budget has been increasing gradually since 2013 and reported to be at an adequate level.²⁰⁸ On the other hand, for example, the Global Alliance of National Human Rights Institutions (GANHRI), in its March 2019 report, renewed the 'A' status of the Commission, while calling on the Ombudsman to 'continue to advocate for the [necessary] funding'.²⁰⁹ The Ombudsman has the mandate to hire its own staff as part of public staff recruitment.²¹⁰

3.3.3. Duties and Powers of National Human Rights Institutions

The duties and powers of the Ombudsman of Croatia can be examined under five headings.

Firstly, in terms of *quasi-judicial functions* and *binding decisions*, although the Ombudsman of Croatia receives complaints and makes recommendations (which are not legally binding), it does not perform quasi-judicial functions or make binding decisions. For example, the Ombudsman does not have the mandate to impose sanctions.²¹¹

Secondly, in terms of *assistance to victims* and *consideration of complaints*, when the Ombudsman of Croatia receives an individual complaint, it can provide the necessary information about legal and other protection options to each relevant person.²¹² In terms of complaints, anyone who considers that a public body or a legal or natural person, depending on the case, has 'jeopardised or violated, through their illegal or irregular work, his/her constitutional or statutory rights and freedoms may lodge a complaint to the Ombudsman with the aim of initiating a proceeding'.²¹³ The Ombudsman may initiate an investigation upon a written or oral complaint, which is not subject to any fee, or on its own motion.²¹⁴ The Ombudsman considers a complaint without conducting an investigation when, on the basis of facts, it can undoubtedly be ascertained that the threat or violation has been committed.²¹⁵ During an investigation, the Ombudsman may request the 'necessary explanations, information and documentation' from the relevant body or the legal or natural person, depending on the case, within a time limit determined by the Ombudsman.²¹⁶ The relevant body/person is obliged to provide all the necessary assistance to the Ombudsman at his/her request²¹⁷, and if the request is not fulfilled by the set deadline, the

199 Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 11-15 March 2019, p. 18. <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_March_2019_-_EN_.pdf>

200 Article 12(1 and 2) and of the Ombudsman Act.

201 See Article 29-30 of the Ombudsman Act.

202 Bojić, fn. 153, p. 91–92. See also <<https://www.ombudsman.hr/hr/sto-radimo/>>

203 Article 93 of the Constitution of Croatia of 1990 and Article 7(1) of the Ombudsman Act.

204 See <<https://www.ombudsman.hr/en/about-us/>>

205 Article 7(1) of the Ombudsman Act.

206 Bojić, fn. 153, p. 93.

207 Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 11-15 March 2019, p. 19 <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_March_2019_-_EN_.pdf>

208 See Bojić, fn. 153, p. 91.

209 Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 11-15 March 2019, p. 19 <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_March_2019_-_EN_.pdf>

210 See *Ibid*, p. 92.

211 See *Ibid*, p. 97. See Article 27 of the Ombudsman Act.

212 See *Ibid*, p. 94. See Article 12 of the Anti-Discrimination Act.

213 Article 20(1) of the Ombudsman Act.

214 Article 20, 21(1 and 5) and 22(3) and of the Ombudsman Act.

215 Article 23 of the Ombudsman Act.

216 Article 24(1 and 2) and of the Ombudsman Act.

217 Article 25 of the Ombudsman Act.

Ombudsman may notify the relevant monitoring authority, the Croatian Parliament or the public.²¹⁸ When the Ombudsman concludes the investigation, he/she shall draft a case report with an assessment of whether there is any threat or violation.²¹⁹ The report, where possible, recommend or propose the way the threat or the violation in question may be averted, and may include the proposal to initiate a criminal, misdemeanour or disciplinary proceeding.²²⁰ Upon receiving the report of the Ombudsman, the relevant body/person shall notify the Ombudsman, within the time limit set by him/her, of the measures undertaken, and if not, the Ombudsman may inform the relevant monitoring body and the government.²²¹

Thirdly, in terms of *independent investigations and reports*,²²² the Ombudsman of Croatia is authorised to carry out independent investigations and publish independent reports.²²³ Examples of the first category include independent surveys such as ‘How Much Do Elderly People Know about the Risks of Life Support Contracts?’ (*Koliko starije osobe znaju o rizicima ugovora o dosmrtnom uzdržavanju?*)²²⁴ and ‘Online Hate Speech Among Young People’ (*Govor Mržnje Među Mladima Na Internetu*)²²⁵. Examples of the second category include independent reports such as Research on Attitudes and Awareness Levels Regarding Discrimination and Discriminatory Forms of Appearance published in 2022 (*Istraživanje O Stavovima I Razini Svijesti O Diskriminaciji I Pojavnim Oblicima Diskriminacije 2022*)²²⁶.

Fourthly, in terms of *independent recommendations*, the Ombudsman of Croatia is authorised to give independent recommendations.²²⁷ In general, the Ombudsman may give recommendations, opinions, proposals and warnings to a public body or a legal or natural person, depending on the case.²²⁸ In specific terms, the Ombudsman primarily makes recommendations upon an application or following investigations the Ombudsman starts on its own motion, as detailed above.²²⁹ Moreover, the Ombudsman may make recommendations through regular annual reports or special reports submitted to the Croatian Parliament.²³⁰ As reported, ‘the effectiveness of the recommendations of the Ombudsman is questionable’ and it is difficult to measure this effectiveness in practice.²³¹ Furthermore, the Ombudsman may draw the attention of the Croatian Parliament and the government to the need to adopt or amend certain regulations, in terms of matters within its mandate.²³² The Ombudsman also participates in the proceeding of drafting the regulations within his/her scope.²³³

Fifthly, in terms of *other duties and powers*, the Ombudsman of Croatia has the mandate to (i) monitor the status, (ii) create and update a database, (iii) inform the public regularly and timely, (iv) maintain cooperation with civil society organisations, international organisations and scientific and research institutions, and (v) promote the alignment of legislation with international and European standards and its consistent application.²³⁴ Moreover, the Ombudsman monitors the alignment of the Croatian law with the Constitution and the ratified international agreements, and may initiate the proceeding of a review of conformity of laws.²³⁵ The Ombudsman has never used this mandate until today.²³⁶ Finally, the Ombudsman may take the complaint of discrimination to the court on behalf of the victim or may be a party to cases related to discrimination.²³⁷ Although the Ombudsman could initiate *actio popularis* proceedings, it has never done so to date.²³⁸

218 Article 24(3) of the Ombudsman Act.

219 Article 26(1 and 2) and of the Ombudsman Act.

220 Article 26(3 and 4) and of the Ombudsman Act.

221 Article 27 of the Ombudsman Act.

222 See also Article 5 of the Ombudsman Act.

223 See Bojić, fn. 153, p. 94.

224 <<https://www.ombudsman.hr/hr/download/istrazivanje-o-ugovorima-o-dosmrtnom-uzdrzavanju-prezentacija/?wpdm=9101&refresh=645a2a9d-b0a191683630749>>

225 <<https://www.ombudsman.hr/hr/download/istrazivanje-o-govoru-mrznje-medu-mladima-prezentacija-s-predstavlanja-istrazivanja/?wpdm=9100&refresh=645a2ad644a8d1683630806>>

226 <<https://www.ombudsman.hr/hr/download/istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2022/?wpdm=15351&refresh=645a295ef33ff1683630430>>

227 See Bojić, fn. 153, p. 95.

228 Article 15 of the Ombudsman Act.

229 Article 26 of the Ombudsman Act. See Bojić, fn. 153, p. 95.

230 Article 16 of the Ombudsman Act. See *Ibid.*

231 *Ibid.*

232 Article 17 and 18(1) of the Ombudsman Act.

233 Article 18(2) of the Ombudsman Act.

234 Article 5 of the Ombudsman Act.

235 Article 6 of the Ombudsman Act.

236 See Bojić, fn. 153, p. 96.

237 See *Ibid.* See Article 12 and 21 of the Anti-Discrimination Act.

238 See *Ibid.*

4. Comparison of Legislation and Practices of Member States on Institutionalisation of Human Rights and Good Practices



4.1. General Legal Framework

The following two statements can be made regarding the comparison of France, Ireland and Croatia in terms of general legal framework of the national institutions in question.

1. In general, France, Ireland and Croatia tried to bring together at least two of the human rights, equality and ombudsman institutions in terms of institutionalisation of human rights. As of today, France *preferred* to gather equality and ombudsman institutions under one roof, while Ireland has gathered human rights and equality institutions under one roof, and Croatia has gathered human rights, equality and ombudsman institutions under one roof. Moreover, in general, France and Ireland merged some of their existing national institutions into a single national institution regarding institutionalisation of human rights, while Croatia preferred to provide for new powers for its existing national institution. Since each Member State in question brings together at least two institutions, the institutions in question, namely the French Defender of Rights, the Irish Human Rights and Equality Commission and the Ombudsman of Croatia respectively, are constructed as a single body with different responsibilities in various areas.

Against this background, one general and one specific statement can be made. *In general*, for all Member States, there has been ‘a tendency over the last decade to merge existing institutions into a single body to exercise different responsibilities in various fields’.²³⁹ While the advantages of a single body can be broadly summarised as (i) facilitating access, (ii) cost-effectiveness and (iii) increased capacity, its disadvantages can be stated as (i) applying different standards in different areas and (ii) having to ensure a balance in different areas.²⁴⁰

Specifically, differences between the Member States in question are clear. For example, in France, the French National Consultative Commission on Human Rights, dating back to 1947, was officially kept as the (promoting) national human rights institution, while the Defender of Rights succeeded various institutions, first as an equality and ombudsman institution, but also by taking on a (protective) role in the field of human rights. In Ireland, the Irish Human Rights and Equality Commission replaced various institutions as a human rights and equality institution, but the Ombudsman, dating back to 1984, was kept as an ombudsman institution. In Croatia, although the Ombudsman of Croatia appears to be the *general* human rights, equality and ombudsman institution, there are also some *special* national institutions such as the Ombudsman for persons with disabilities, the Ombudsman for gender equality and the Ombudsman for children.

Based on these findings, *good practice* varies from State to State since, as stated in Recommendation of 2021 of the Council of Europe, the critical point is ‘full compliance with the Paris Principles’ while ‘the choice of the model of these institutions should be made by each State in the light of its organisation, particularities and needs’.²⁴¹

2. While France and Croatia have introduced both constitutional and legal rules regarding the national institutions, Ireland has introduced legal rules regarding its existing national institution. *In general*, it can be said that more than half of Member States have constitutional rules, while the others have legal rules.²⁴² As an example of *good practice*, institutionalisation of national human rights should have a constitutional basis.²⁴³

239 Chopin & Germaine fn. 27, p. 105.

240 Cf. *Ibid.*, p. 106.

241 Article 1 of Recommendation CM/Rec(2021)1 (fn. 9).

242 See European Union Agency for Fundamental Rights, fn. 36, p. 46.

243 See *Ibid.*

4.2. Scope of Mandate, Internal Organisation and Independence

The following three statements can be made regarding the comparison of France, Ireland and Croatia in terms of scope of mandate, internal organisation and independence of the national institutions in question.

Firstly, in terms of *scope of mandate*, the national institutions in question are mainly structured as a single body that undertakes different responsibilities in various fields. For example, the Defender of Rights (France) has been mandated in relation to children's rights, security personnel ethics and whistleblowers in addition to ombudsmanship and equality. The Irish Human Rights and Equality Commission has been tasked solely with human rights and equality, while the Ombudsman of Croatia has been tasked with ombudsmanship, human rights, equality, as well as in relation to persons deprived of liberty and whistleblowers. On the other hand, the French National Consultative Commission on Human Rights has been mandated solely in relation to human rights while the Ombudsman of Ireland has been tasked for disability in addition to ombudsmanship. In general, national human rights institutions have 'multiple mandates'.²⁴⁴ This diversity is related to 'adjustment for national context and legal tradition' in terms of national human rights institutions²⁴⁵, and *good practice* in this regard varies from State to State depending on what is required to ensure 'effective functioning'²⁴⁶.

Secondly, in terms of *internal organisation*, the national institutions in question are organised either as 'single-member institutions' or 'multi-member institutions'.²⁴⁷ While France (Defender of Rights) and Croatia (Ombudsman) are structured with a single person at the top, Ireland (Human Rights and Equality Commission) has a board structure. Similarly, France (Defender of Rights) and Croatia (Ombudsman) are structured so as to have sub-committees and offices, while Ireland (Human Rights and Equality Commission) has not established such a sub-division. On the other hand, the French National Consultative Commission on Human Rights has a board structure and the Ombudsman of Ireland is structured so as to have a single person at the top. In this regard, *best practice* varies from State to State since, as stated in Recommendation of 2021 of the Council of Europe, the critical point is 'full compliance with the Paris Principles' while 'the choice of the model of these institutions should be made by each State in the light of its organisation, particularities and needs'.²⁴⁸

Thirdly, in terms of *independence*, the national institutions in question mainly appear to be in compliance with the Paris Principles regarding independence.²⁴⁹ In this regard, the Defender of Rights, the Irish Human Rights and Equality Commission and the Ombudsman of Croatia are legally defined as independent, and there is no situation to the contrary in practice. Likewise, the French National Consultative Commission on Human Rights and the Ombudsman of Ireland are legally defined as independent institutions. It is *good practice* to properly regulate independence-related safeguards in legal documents and to comply with them in practice.²⁵⁰

244 See *Ibid*, p. 5.

245 See *Ibid*, p. 25.

246 See *Ibid*.

247 For this division, see *Ibid*, p. 27.

248 Article 1 of Recommendation CM/Rec(2021)1 (fn. 9).

249 See European Union Agency for Fundamental Rights, fn. 36, p. 33.

250 See Article 2 of Recommendation CM/Rec(2021)1 (fn. 9).

4.3. Duties and Powers of National Human Rights Institutions

The following table details the comparison of France, Ireland and Croatia in terms of duties and powers of national institutions in question.

Table 4: Remedies and National Bodies / Equality Bodies

	France (Defender of Rights)	Ireland (Irish Human Rights and Equality Commission)	Croatia (Ombudsman of Croatia)
Does it have a quasi-judicial function?	No	No	No
Can it take binding decisions?	No	No	No
Does it have the mandate to examine complaints?	Yes	No	Yes
Does it have the mandate to conduct <i>ex officio</i> inspection/investigation?	Yes	Yes	Yes
Does it provide assistance to victims?	Yes	Yes	Yes
Does it prepare independent research?	Yes	Yes	Yes
Does it prepare independent report?	Yes	Yes	Yes
Does it offer independent recommendation?	Yes	Yes	Yes
Can it file a case?	No	Yes	Yes
Can it be a party to a case?	Yes	Yes	Yes
Does it have any other duties and powers?	Yes (for example, communication and information)	Yes (for example, commissioning an equality audit and having an equality action plan prepared, preparing Codes of Practice, education and training, consultation)	Yes (Procedure for alignment of Croatian law with the Constitution and international agreements, maintaining databases, information and collaboration)

Based on this table, the following four statements can be made. First, the national institutions in question are mainly comparable in terms of quasi-judicial functions, binding decisions and complaint handling mandate. As a first remark, the Defender of Rights, the Irish Human Rights and Equality Commission and the Ombudsman of Croatia do not perform quasi-judicial functions and cannot take binding decisions. In general, it can be said that less than half of the human rights institutions of Member States have quasi-judicial functions, the decisions of most of them are binding and the decisions of a few are non-binding.²⁵¹ As a second remark, while the Defender of Rights and the Ombudsman of Croatia have the mandate to consider complaints, the Irish Human Rights and Equality Commission does not have such mandate. It should be noted that Ireland has separate entities (the Workplace Relations Commission and the Ombudsman of Ireland) to consider complaints. In general, it appears that the majority of national institutions in Member States –whether or not they have quasi-judicial functions– have the mandate to consider complaints.²⁵² This is an important part of ‘access to justice’.²⁵³ Against this background, *good practice* seems to give the relevant national institution the mandate to consider complaints since as set forth in Recommendation of 2021 of the Council of Europe, addressing alleged

251 See Chopin & Germaine fn. 27, p. 118.

252 See Ibid; European Union Agency for Fundamental Rights, fn. 36, p. 62.

253 See European Union Agency for Fundamental Rights, fn. 36, p. 61.

human rights violations should be part of the mandate of national human rights institutions.²⁵⁴ Thus, the relevant institution will be able to be informed about violations, collect data about complaints and their consequences, and make this available to the public, for example, through annual reports.²⁵⁵ All of these prove the importance of the mandate to consider complaints.

Second, the national institutions in question can be compared in terms of providing assistance to victims, conducting independent investigations and preparing reports and offering independent recommendations. Assistance to victims, in the case of the institutions in question, can be summarised as (i) considering complaints, (ii) providing information to the public in general and (iii) providing practical assistance, including legal assistance, to the relevant persons. Generally speaking, it is observed that almost all national institutions in Member States have the mandate to provide assistance to victims.²⁵⁶ The national institutions in question have the mandate to conduct independent research and prepare reports and to provide independent advice, just like almost all national institutions generally.²⁵⁷ Against this background, as a first observation, *good practice* is to maximise ways to assist victims, such as taking legal action/offering support in applying, as is the case, for example, in Ireland and Croatia, since this can be an important step towards access to justice. As a second observation, another example of *good practice* is, especially in terms of offering independent recommendations²⁵⁸, for example in France, Ireland and Croatia, that the institution in question can mainly, upon request or *ex officio*, make recommendations for the evaluation, revision or correction of the legal rules (or proposals or implementation) in that Member State in line with its jurisdiction, and that these recommendations are duly taken into account. Thus, the issues within the mandate of the relevant national institution in the relevant legal order can be clearly taken into consideration.

Third, the national institutions in question can be mainly compared in terms of filing a case on behalf of the victim or *ex officio*. While the Defender of Rights (France) cannot file a case on behalf of the victim or *ex officio*, but can be a party to a case, the Ombudsman of Croatia and the Irish Human Rights and Equality Commission can both file a case and be a party to a case. In this regard, *another example of good practice* is to give the national institution the mandate to file a case on behalf of the victim or *ex officio*. Thus, on the one hand, the victim will not be left alone, and on the other hand, more systemic problems will be subject to trial.

Fourth, the national institutions in question can be mainly compared in terms of a number of other powers. For example, the Defender of Rights (France) has relatively ordinary subsidiary powers such as communication and information, among others. On the other hand, the Irish Human Rights and Equality Commission has a number of additional powers such as commissioning an audit on equality, preparing an equality action plan or Code of Practice, etc. These additional powers are considered as 'interesting and useful powers' by the report of the European Network of Legal Experts in Gender Equality and Non-discrimination.²⁵⁹ For example, the Ombudsman of Croatia also has a number of additional powers such as initiating the procedure for the alignment of Croatian law with the Constitution and international agreements, etc. This can be considered as an important power that other national institutions do not have. In this regard, *good practice* is generally to ensure that the mandate given to the relevant national institution is 'as broad as possible' as stated in Recommendation of 2021 of the Council of Europe²⁶⁰, and in particular to review various powers of national institutions in many Member States for this purpose²⁶¹. Thus, national institutions will have the appropriate and necessary tools/powers to achieve their goals.

As a result, when the duties and powers of the national institutions of France, Ireland and Croatia are compared, it can be stated that there are relatively many common points (and therefore standardisation) and some differences in details.

254 Article 3 of Recommendation CM/Rec(2021)1 (fn. 9).

255 See and cf. Chopin & Germaine fn. 27, p. 118–119.

256 See *Ibid.*, p. 117.

257 See *Ibid.*

258 See also European Union Agency for Fundamental Rights, fn. 36, p. 53–57.

259 Chopin & Germaine fn. 27, p. 119.

260 Article 3 of Recommendation CM/Rec(2021)1 (fn. 9).

261 For example see Chopin & Germaine fn. 27, p. 119.

Conclusion



This study comparatively examines three Member States (France, Ireland and Croatia) of the EU in the area of 'Institutionalisation of Human Rights' under the 'Technical Assistance for Strengthening Fundamental Rights Sector Coordination Project'. It should be stated that the institutions in question of France, Ireland and Croatia are recognised as 'A' status (in full compliance with the Paris Principles) by the Global Alliance of National Human Rights Institutions (GANHRI).²⁶² On the other hand, each Member State essentially has national bodies with differing scope of mandate, powers, structures, resources and operational functioning.²⁶³ In this regard, it can be stated that the legislation and practices of the three selected States overlap with and differ from each other in some respects while they can set an example for each other (or other Member States) or take an example from each other (or other Member States). Finally, legislation and practice may change over time, including those that need to be implemented as a result of the decisions of the CJEU or national courts.



262 <<https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>>
263 See and cf. *Ibid*, p. 106.

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Technical Assistance for Strengthening Fundamental Rights Sector Coordination

