

THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, QUEBEC, AND THE REGIONAL HUMAN RIGHTS COMMISSIONS OF MOROCCO

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Regional human rights commissions are an important tool for the promotion and defence of human rights in autonomous regions. The experience of the *Commission des droits de la personne et des droits de la jeunesse* of Quebec, one of the Canada's rights-based commissions, which I am about to depict, has commonalities and divergences with Morocco's recent experience of regional commissions of the National Human Rights Council (NHRC), particularly with regards to the regional commissions established in the Sahara region.

The mandate of the *Commission des droits de la personne et des droits de la jeunesse* (CDPDJ) of Quebec is established in the *Charter of Human Rights and Freedoms* (Chapter C-12), an ordinary law adopted by the National Assembly of Quebec in 1975. At the time of its adoption, the legislature of Quebec chose to differentiate itself and step away from the classic denomination of "human" rights to speak in French of the rights of "persons". In 1995, the *Commission des droits de la personne* (commission for the rights of persons) and the *Commission de protection de la jeunesse* (commission for youth protection) merged to create the CDPDJ, which was then entrusted with the protection of the rights of minors under the authority of the State when their safety is compromised or when they have committed crimes.

Quebec and Canadian courts have granted the Charter quasi-constitutional status and have decided that, due to its nature, the Charter is to be interpreted in a broad and liberal manner¹⁷ and that its provisions are part of all other laws of Quebec.¹⁸ The Charter comes under Canadian constitutional norms, amongst which the *Canadian Charter of Rights and Freedoms*, which is part of the Constitutional Act of 1982 (Part I).

As an institution independent from the Government of Quebec and accountable to the National Assembly, the CDPDJ exercises its jurisdiction in conjunction with the legislative authority of Quebec, one of the 10 federal provinces of the Canadian federal State (article 55 of the Charter). The Charter binds the State of Quebec (article 54) while applying to natural and legal persons.

The Canadian Human Rights Commission is the federal counterpart of the CDPDJ. It comes under federal legislative power. The Canadian Constitution indeed sets out the exclusive (or shared) legislative powers of each level of the Canadian Government (federal/provincial). The way legislative powers are shared determines the way authority is shared between Canada's commissions. Powers are neither shared on a national/regional basis, nor based on the principle of national/regional monitoring authority: each commission (federal, provincial and territorial) is

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¹⁷ *Quebec (CDPDJ) v Montreal (the City of)*, (2000) 1 SCR 665; *Béliveau St. Jacques v Fédération des employés et employés de services publics inc.* (1996) 2 SCR 345.

¹⁸ Under article 52, barring economic and social rights, the Charter takes precedence over any provision of any Act, even subsequent to the Charter, unless the Act expressly states that it applies despite the Charter. Article 53 further specifies that if any doubt arises in the interpretation of a provision of the Act, it shall be resolved in keeping with the intent of the Charter.

autonomous and acts upon instruction by the legislative authorities of Parliament that created it and none of these commissions has authority over the subjects, the natural and legal persons that come under the responsibility of other Parliaments. Therefore, the federal (national) commission does not have power over provincial and territorial commissions. In other words, a resident of Quebec can file a complaint with the (provincial) *Commission québécoise des droits de la personne* about a housing or employment discrimination related issue if he/she is employed by a public or private organisation that comes under Quebec's legislative authority, such as a business entity of the Government of Quebec or a private interprovincial transport company. He/she must however file the complaint with the Canadian (federal) commission for employment rights if he/she is employed by the federal government or a company under its authority, such as an airline, a banking institution, an interprovincial transport company or a public utility company, if he/she is member of an indigenous community, a resident of an Indian reserve and receives services there.

In Canada's federal system, the federal government represents the country internationally and it negotiates Canada's international commitments following consultations with the provinces on issues that fall within their legislative competence. Implementation of these commitments is thus the shared responsibility of federal and provincial entities. Moreover, the Federal Commission is *de facto* the national institution in international fora, even though it does not cover all the legislative competences that exist in Canada.

A Canadian Association of human rights commissions (*Association canadienne des commissions des droits de la personne*, ACCDP) has been created, whose mandate is to foster collaboration between various jurisdictions and to act as national spokesperson on human rights related issues. Though it is not a formal entity as such, this association creates synergies between the various human rights commissions. The CDPDJ is a member of this informal association which brings together all Canadian commissions (federal, provincial and territorial¹⁹). The president of each Commission takes part in this forum for sharing ideas and taking common public positions. It meets twice a year and can establish ad hoc working groups on the rights of people with disabilities, the rights of indigenous populations and discriminatory hate speeches.

The CDPDJ is managed from its head office, which the Government decided to establish in Montreal, and this is also where decisions are made by its governing body of ten part-time commissioners, three officers with exclusive functions and one employed on a full-time basis (one president and two vice-presidents, on responsible for Charter-related issues, the other one responsible for youth-related issues). The staff is also managed from the head office though some employees are still based in regional offices. At one point the CDPDJ decentralized its investigation and educational activities to some ten regional offices spread across the entire territory of Quebec.

For the purpose of an investigation, the commission, its members and staff, enjoy the powers of a commission of inquiry (power to compel witnesses and the disclosure of documents, for instance, but they do not have the power to order imprisonment – article 68).

None of the thirteen commissioners, whose appointment has to be approved by two-thirds of the members of the National Assembly of Quebec, represents any region in particular (though some of them come from different regions of Quebec), nor do they represent a specific

¹⁹ Three federal territories under direct federal authority also ensure legislative and governmental power in Canada: Yukon, Northwest Territories and Nunavut.

profession or trade²⁰. They may only be removed under the same procedure, which guarantees their independence vis-à-vis the executive. In practice, the members of the commission are appointed by the National Assembly upon the motion of the Prime Minister, who strives to ensure a balanced representation of men and women, of individuals with whom the members of discriminated groups can identify, as well as regional representation. According to the Charter²¹, five members of the Commission are chosen from among persons capable of making a notable contribution to the examination and resolution of problems relating to human rights and freedoms, and five more from among persons capable of making a notable contribution to the examination and resolution of problems relating to the protection of the rights of young persons. Their term of office may not exceed ten years and once determined it shall not be reduced. This guarantees the Commission's institutional independence. The members of the Commission remain in office until they are replaced, unless they resign.

The members of the Commission have a dual role: they rule on the complaints submitted to them (in an average of fifteen sessions a year) and determine the legal positions adopted by the commission during its (monthly) plenary sessions on matters of principle or draft legislation. In the exercise of their decision-making power over complaints, the members of the Commission are not involved in the procedure to determine admissibility, to examine and investigate the complaints, this being the purview of the permanent employees of the Commission. The president is responsible for the administration and management of the affairs of the commission and he presides over the plenary sessions of the commission. He may, by delegation, exercise certain powers of the commission (article 66). Whereas the president can assess the performance of the commission's staff, he has no power to do so with the commissioners. This is an additional safeguard that protects them from undue influence in the exercise of their decision-making power.

The mandate of the commission with respect to human rights allows it to take affirmative and discretionary actions. The rules that apply regarding its investigating power are exhaustively defined in the Charter whereas it enjoys much leeway in the conduct of its activities in other practice areas:

a) to make a non-adversary investigation, following receipt of a complaint (from the alleged victim or his/her representative) or on its own initiative into cases of: 1) discrimination (individual or systemic), 2) affirmative action programs in public bodies²², and 3) exploitation of elderly people or persons with disabilities (with or without the victim's consent): article 71(1). The commission must foster a settlement of these cases between the victim and the author of the alleged violation, irrespective of responsibility at this stage. It can also decide to close the case for lack of evidence or refer the matter to the Human Rights Tribunal²³, whose judges are chosen from among Quebec Court judges, if it considers that it has sufficient evidence of discrimination or exploitation;

b) to conduct a program of public information and education: article 71(4);

²⁰ The Charter sets out thirteen grounds of discrimination: race, colour, sex, pregnancy, sexual orientation, civil status, age, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap (article 10).

²¹ Article 58.1.

²² Within the meaning of the Charter, the object of an affirmative action program is to remedy the situation of persons belonging to groups discriminated against in employment, or in the sector of education or health services and other services generally available to the public (article 86). Five groups have been identified: women, indigenous people, visible minorities, ethnic minorities, and persons with disabilities.

²³ Assessors appointed by the Government of Quebec to attend Tribunal hearings and help the judge render his decision.

c) to direct and encourage research and publications relating to fundamental rights and freedoms: article 71(5);

d) to point out any provision in the laws of Quebec that may be contrary to the Charter and make the appropriate recommendations to the Government: article 71(6);

e) to receive and examine recommendations and requests, to organize a public hearing when it considers that the interest of the public or of a body of persons so require, and to make the appropriate recommendations to the Government: article 71(7);

f) to cooperate with any organization dedicated to the promotion of human rights and freedoms: article 71(8);

g) to make an investigation into any complaint regarding acts of reprisal or any other act or omission which, in its opinion, constitute an offence under the Charter and report its findings to the Attorney General and to the Director of Criminal and Penal Prosecutions.

A Complaints Committee adjudicates complaints through delegated authority provided for by the Charter and identified in the regulation on the processing of complaints in respect of discrimination and exploitation. The vice-president responsible for the Charter presides over the Complaints Committee, which consists of two commissioners. Those alternately attend the Committee's sessions. The vice-president in charge of youth-related cases presides over the Inquiry commission, which also consists of two commissioners and decides on those cases. The cases subject to a decision of the Complaints committee are added to the committee's agenda, either for an interim emergency decision to be made or for final decision. Commissioners are appointed to serve for one session depending on their availability and on the calendar of meetings established by the CDPDJ (one or two a month). The fact that they are advised by the legal advisors of the commission does not prejudice their independence since legal advisors only express themselves on the legal aspects of cases and not on facts or conclusions. The Complaints Committee is not bound by the advice of the legal advisors.

In the exercise of these quasi-judicial functions, the Commission is bound to respect the rules of natural justice and ensure procedural fairness, impartiality and independence vis-à-vis the parties that appear before it. The quality and coherence of the decisions made by the Complaints Committee and the Inquiry Commission obey the same rules. The latter's deliberations on a given case are confidential and may not be discussed outside the sessions by the commissioners, nor can they be further discussed once a decision has been made.

The Government of Quebec adopted a *Regulation respecting the handling of complaints* to define these powers. It provides, among others, for:

a) the duty to assist the complainant(s) in the preparation and drafting of his/her(their) complaint, which has to be presented in writing. It must be signed by the complainant or his/her representative, except in the case of exploitation of elderly people or persons with disabilities (article 74);

b) the right to be heard: before refusing or ceasing to act on behalf of a victim, the Commission must notify the victim or the complainant, indicating the reasons that justify this decision and invite those persons to send their comments (article 6 of the Regulation);

c) the obligation to send a statement of the relevant facts revealed by the investigation and to invite the parties to send their comments before the complaint is put to the Complaints Committee for decision (article 7 of the Regulation);

d) the obligation to inform the parties to the complaint that they may at any time settle the dispute amicably, that the Commission's mediation services are at their disposal to assist, and that they may also submit their dispute to arbitration by an external arbitrator (article 9 of the Regulation).

The Commission answers to the National Assembly of Quebec to which it must submit an annual activity and management report. From an administrative point of view, the budget allotted to it by Parliament goes through the Ministry of Justice of Quebec²⁴, which neither compromises the independence of the commissioners, nor influences the decision-making process in the handling of complaints. Finally, parliamentary committees often call upon the Commission to present opinions and comments on the compliance or non-compliance of bills with the Charter.

In Morocco, the mandate of the National Human Rights Council (CNDH) is also defined in an Act dated 20 April 1990. This is also the case in Quebec. The mandate of the CNDH was indeed widened in scope in 2011 so as to enable it to better prepare itself to consolidate civil and political rights, while giving economic, social and cultural rights the weight they deserve, for they are essential to human dignity. The reorganization of the CNDH in 2011 made it possible to expand its duties and to provide it with regional commissions entrusted with the follow-up and control of human rights, especially in the Sahara region.

Moreover, Morocco's CNDH became a constitutional institution in 2011. Article 161 of the Moroccan Constitution provides that "the National Council of the rights of man is a pluralist and independent national institution, charged with taking cognizance of the questions relative to the defence and to the protection of Human Rights and freedoms, to the guarantee of their full exercise and of their promotion, as well as the preservation of the dignity, of the individual and collective freedoms of the citizens (feminine) and the citizens (masculine), and this with strict respect for the national and universal referents in the matter."

The fact that the mandate of the CNDH has been enshrined in the supreme law of the country therefore guarantees its irreversibility as well as that of Morocco's commitment toward the protection of citizens' rights and freedoms and to the respect for the international commitments made by the Kingdom in the fields of human rights protection and promotion. Aside from the fact that it comes as a logical step in the framework of Morocco's advanced regionalization policy, the CNDH was established in keeping with the Paris Principles that govern national human rights institutions (article 8 of the text establishing the CNDH).

The CNDH thus enjoys wider powers and competences, both at the national and regional level, which ensure greater independence in and impact on human rights protection and defence. The CNDH is competent for all general or specific matters relating to the protection of human rights (article 3 of the text establishing the CNDH). With regards to the protection and defense of human rights and freedoms, the CNDH:

- monitors human rights violations and may conduct the necessary investigations and inquiries (article 4);

²⁴ Article 73.

- draws up reports on its monitoring and investigations and submits them to the relevant authorities along with its recommendations to address those violations (article 4);

- may, within the framework of its mandate and in coordination with the relevant authorities, intervene proactively and on an urgent basis whenever there is a source of tension that might lead to a breach of individual or collective human rights (article 9);

- contribute to enforcing the mechanisms provided for in the international treaties to which Morocco has acceded (article 10);

- visits places of detention and penitentiary institutions, child protection centres, rehabilitation centres, mental health and psychological treatment centres, and detention centres for illegal foreigners, draws up reports on its visits and submits them to the competent authorities (article 11);

- examines the compatibility of laws and regulations in force with the provisions of international human rights conventions and international humanitarian law and proposes any recommendation it deems appropriate to the relevant government authorities (article 13);

- contributes to preparing reports that the Government submits to treaty bodies (article 14);

- provides the Parliament and the Government, at the request of any of them, with assistance and advice regarding the harmonization of draft laws with international human rights conventions (article 16);

- encourages the ratification of or accession to international and regional human rights conventions and international humanitarian law (article 17).

In terms of human rights promotion, the CNDH:

- contributes, through all appropriate means, to promoting and disseminating the culture of human rights and the principle of citizenship (article 22);

- submits annual and thematic reports to His Majesty the King on the state of human rights (article 24);

- presents a summary of the report before each House of Parliament. The annual report on the situation of human rights and on the prospects of the CNDH is published in the Official Gazette (article 24).

In terms of regional powers, the CNDH has thirteen regional human rights commissions, among which two of them are in Dakhla and Laayoune, Sahara. These regional commissions have a dual mission: they ensure follow-up and monitoring of the human rights situation at the regional level; they receive and examine the complaints and violations filed with them and draw up special or periodic reports on the action taken to handle regional or local cases and complaints.

COMPARING REGIONAL HUMAN RIGHTS COMMISSIONS IN ITALY AND MOROCCO

Carola Carazzone²⁵

1. Introduction

This paper was prepared to contribute to the Moroccan initiative of comparing practices followed by some states with regard to the relationship between National Human Rights Councils (or Commissions) and Regional Commissions acting in their autonomous or decentralized territories. The paper is aimed to offer an overview on the evolution and current features of the National and Sub-national Human Rights Institutions in the European Union (EU) Member States, with a particular focus on the Italian case.

The present paper is based on the experience, research and documentation produced by the *Comitato per la Promozione e Protezione dei Diritti Umani* – hereafter *Comitato* - a network of today 88 Italian non-governmental organizations working in the field of human rights promotion and protection, established in January 2002, through the initiative of *Fondazione Basso-Sezione Internazionale*, to promote and sustain the legislative process for the establishment in Italy of a “national independent commission for human rights”, in line with the standards endorsed by the General Assembly of the United Nations (UN) in the Paris Principles (Resolution no. 48/134 of 20 December 1993). Since 2003, the *Comitato* has participated in: the International NGO Coalition for the approval of the “Optional Protocol” to the International Covenant on Economic, Social and Cultural Rights; the 2007 Annual Forum of the North-South Centre in co-operation with the Venice Commission and the Office of the Commissioner for Human Rights of the Council of Europe on the role and functions of national human rights institutions (NHRIs); the Fundamental Rights Agency (FRA) of the EU Fundamental Rights Civil Society Platform. Since 2004, the *Comitato* has also contributed to the reporting on human rights to all United Nations Treaty bodies and Special Procedures which have considered Italy. In 2010 the *Comitato* took part to the first cycle of the Universal Periodic Review (UPR) of Italy with a submission of information and an oral contribution under item 6 of the agenda of the plenary of the UN Human Rights Council. In 2011, 2012 and 2013 the *Comitato* elaborated monitoring reports of the follow-up of recommendations received by Italy as State under Review (SuR). The author has served as Spokesperson of the *Comitato* from 2006 to February 2014.

2. Italy in the Context of the European Union

2.1 Establishment of National Human Rights Institutions in the European Union

Even if there is no single model of NHRI and the existing NHRIs in EU Member States have varying organizational structures, as there is neither a universally accepted ideal “model” of an NHRI nor a recognized standard structure, NHRIs can be defined²⁶ as bodies established by

²⁵ Secretary General, Italian Association of Grant-making Foundations.

²⁶ The United Nations Paris Principles set forth the role and function, and list the requirements for independence and the broad mandate of NHRIs. They were formulated at a 1991 conference devoted to the subject of NHRIs convened by the UN Commission on Human Rights, the precursor to the UN Human Rights Council. The UN General Assembly adopted the principles in 1993 and they are internationally recognized standards.