CJN

Diritto Penale Contemporaneo

RIVISTA TRIMESTRALE

REVISTA TRIMESTRAL DE DERECHO PENAL
A QUARTERLY REVIEW FOR CRIMINAL JUSTICE

3/2025

Editore Associazione "Progetto giustizia penale", c/o Università degli Studi di Milano,
Dipartimento di Scienze Giuridiche "C. Beccaria" - Via Festa del Perdono, 7 - 20122 MILANO - c.f. 97792250157
ANNO 2025 - CODICE ISSN 2240-7618 - Registrazione presso il Tribunale di Milano, al n. 554 del 18 novembre 2011.
Impaginazione a cura di Chiara Pavesi

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Solo investigaciones sólidas permiten rectificar una condena injusta: la experiencia de las Criminal Cases Review Commissions

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Pre-Trial Investigation, Presumption of innocence, Comparative criminal law

Indagini preliminari, Presunzione di innocenza, Diritto penale comparato

Investigaciones preliminares, Presunción de inocencia, Derecho penal comparado

Abstracts

The purpose of this study is to examine the issue of wrongful convictions through the lens of Criminal Cases Review Commissions (CCRCs). Following an overview of the mechanisms adopted by various jurisdictions worldwide to manage post-conviction applications, the first part analyses the original CCRC model established in England at the close of the twentieth century. The second part explores the CCRC frameworks currently operating across multiple jurisdictions, including those within Europe. The final part seeks to assess the advantages associated with the establishment of a CCRC, particularly in relation to its role in facilitating effective investigations as an essential component of the "human right to claim innocence".

Lo studio si propone di esaminare il tema dell'errore giudiziario dal punto di vista delle *Criminal Cases Review Commissions* (CCRCs). Dopo aver fornito una panoramica dei meccanismi adottati in diverse giurisdizioni per affrontare le istanze di revisione post-condanna, la prima parte del lavoro analizza il modello originario istituito in Inghilterra alla fine del XX secolo. La seconda parte esplora, poi, i diversi sistemi di CCRC attualmente operativi in numerose giurisdizioni, comprese quelle europee. L'ultima parte mira a valutare i vantaggi connessi all'istituzione di una CCRC, in particolare in relazione al suo ruolo nel favorire indagini efficaci come elemento fondamentale del "diritto umano a rivendicare la propria innocenza".

El propósito de este estudio es examinar el problema de las condenas erróneas desde la perspectiva de las *Criminal Cases Review Commissions* (CCRCs). Tras ofrecer una panorámica de los mecanismos adoptados por diversas jurisdicciones para abordar las solicitudes de revisión post-condena, la primera sección analiza el modelo original de la CCRC establecido en Inglaterra a finales del siglo XX. La segunda sección explora los distintos marcos de las CCRC actualmente operativos en múltiples jurisdicciones, incluidas las europeas. La sección final pretende evaluar las ventajas asociadas al establecimiento de una CCRC, particularmente en relación con su función en la promoción de investigaciones eficaces como componente esencial del "derecho humano a reivindicar la inocencia".

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1. Introduction: different systems of administering applications for post-conviction procedure.

It is widely acknowledged that miscarriages of justice, as a consequence of wrongful convictions[1], have occurred, continue to occur, and will inevitably occur in every era and across all criminal jurisdictions, regardless of the procedural model adopted, whether inquisitorial, adversarial, or mixed[2]. This phenomenon is readily explained by the simple fact that justice is administered by human beings, who are inherently fallible; no legal system can ever guarantee absolute certainty or the complete truth of the facts established in the judgment[3]. From this perspective, error and epistemic uncertainty are intrinsic to the criminal justice system, as it is fundamentally impossible to reconstruct past events with full certainty *ex post*. Indeed, it would be paradoxical for humans – acknowledged as fallible – to adjudicate as if they were infallible.

From a theoretical standpoint, however, it is quite uncontroversial that each jurisdiction has a duty to establish safeguards and mechanisms designed to minimise – though not, of course, to eliminate entirely – the risk of imprisoning an innocent person[4]. This obligation is rooted in philosophical and social principles, often predating any strictly legal formulation, according to which the Rule of Law embodies a presumption in favour of individual liberty: «it is better that ten guilty persons escape, than that one innocent suffer (innocent person be convicted)»[5]. Within this framework, compliance with fair trial guarantees, the presence of an impartial and independent judge, the requirement of high standards of proof for conviction, and the availability of effective ordinary appellate remedies[6] form part of a complex architecture aimed at preventing wrongful convictions.

Equally challenging, however, is the task of determining which post-conviction review mechanisms and procedures should be implemented to identify, address, and rectify miscarriages of justice. In this regard, legal systems have a duty to establish effective procedures capable of detecting such errors: while it is true that judicial error of this kind can never be entirely prevented, it is essential that citizens can be confident that an innocent person will not be subjected to the ordeal of punishment[7].

At the comparative level, several jurisdictions worldwide have introduced various forms of post-conviction review in their criminal procedure laws, often classified in national legislation as extraordinary remedies[8].

The provision of such mechanism is, as is well recognized, a necessary measure to reconcile two fundamental principles at play in this context: the principle of finality and the principle of truth.

[1] Nobles and Schiff (2000), p. 6.

[2] Arena (1910), p. 16: «*ma inevitabile è sempre l'errore, per quanti mezzi preventivi si possano escogitare, per quanta cura possano mettere i magistrati per la giusta applicazione della legge, come inevitabile fu in tutti i tempi, qualunque sia stato il sistema processuale, qualunque l'ordinamento giudiziario* […] *è la natura stessa umana che rende ineluttabile l'errore, sia dovuto ad incapacità, sia a malvagità, sia all'invincibile fatalità*»; Dalia (2000), p. 225; Leone (1987b), p. 753: «*l'errore giudiziario costituisce, purtroppo, l'ineliminabile ombra che accompagna e contrista l'amministrazione della giustizia in tutti i tempi e presso tutti i popoli*»; Nobles and Schiff (2018), p. 167 ff.

[3] Godsey (2015), p. 13 ff.; Leone (1987b), p. 753-754: «*d'altronde l'errore è connaturato nell'uomo e ne insidia l'intelligenza e l'animo*».

[4] Leone (1987a), p. 75.

[5] Blackstone (1753), p. 395. In other words, traditionally a false conviction is morally far worse than a false acquittal.

[6] I.e. remedies against a non-final decision. See Carnelutti (1961), p. 342: «*la legge considera la condanna ingiusta come un danno sociale più grave dello ingiusto proscioglimento*».

[7] See Mittermaier (1858), p. 609; Carnelutti (1961), p. 337 ff. On the consequences of wrongful conviction on the citizens, cfr. Lucchini (1905), p. 11 ff.

[8] I.e. remedies available after final conviction, when the convicted person has exhausted all ordinary remedies in the national law.

The former – closely linked to the principle of legal certainty[9] – requires that, in order to guarantee the stability of social relations (which is essential for the peaceful coexistence of citizens), the final criminal judgment must be endowed with the authority of "legal certainty," in accordance with the ancient maxim *res judicata pro veritate habetur*. Only a judgment that definitively establishes the facts can legitimately justify the imposition of a penalty; otherwise, it would lose all legitimacy in the eyes of society.

The second one, indeed, is linked to the idea that if there is a conflict between "formal justice" (i.e. facts as stated in the ruling) and "substantive justice", in a democratic system the latter must prevail over the former[10]. After all, the final judgment is not, in itself, the truth (*res iudicata veritas est*), but is merely held to be true (*pro veritate habetur*) and must therefore be regarded as secondary to the pursuit of substantive truth.

In seeking to strike a balance between these competing demands, several (and the majority of) States around the world adopted a system (that we can defined as the "jurisdictional model") where the legislature entrusts a court (typically the Supreme Court or the Court of Appeal) with the task of receiving applications from those who believe they have been the victims of a miscarriage of justice[11]. This model is generally characterized by two main features: a) the revision procedure is entrusted to the courts, which carry out both the preliminary assessment of admissibility and the examination of the merits; b) the investigations necessary to gather new material or evidence in support of the application are essentially dependent on the financial resources of the convicted person who claims his or her innocence. Applicants typically bear the costs of instructing counsel, experts or private investigators. Although in some countries a public body also has standing to initiate revision proceedings[12], in practice this power is rarely exercised.

Empirical studies indicate that this model is currently employed in the majority of European legal systems[13]. Despite considerable differences among these jurisdictions – such as the types of cases eligible for review or whether forms of *in malam partem* review is allowed – those that have adopted this model consistently assign a court the responsibility of receiving and assessing the convicted person's application in the first instance.

As noted above, however, some jurisdictions – including within Europe[14] – have introduced an alternative procedure specifically aimed at correcting wrongful convictions.

The reference here is to a system – developed in recent decades particularly, but not exclusively, in common law States – based on the "Criminal Cases Review Commission" (hereinafter CCRC), also known as "Innocence Commissions". Some Authors have described it as the «administrative model»[15], since the law entrusts an administrative body with the task of reviewing claims of innocence, or, more precisely, administering applications. In a nutshell, it can be defined as a system, conceived in England at the beginning of the 1990s and later exported to other jurisdictions, in which the "fight" against miscarriage of justice is carried out by developing «public commissions appointed to verify the necessity to reopen final decisions»[16].

Generally speaking, the CCRC constitutes an institutionalised and legally recognised model for managing the review of potential miscarriages of justice, in which the lawmaker assigns a public body – independent from both the courts and the government – the role of "co-manager" of the procedure. In the traditional Anglo-Saxon model, the CCRC is the only independent statutory body to which any individual who believes they have been the victim of a miscarriage of justice may apply. It performs a preliminary filtering function, assessing the admissibility of applications and determining whether they should be referred to the Court of Appeal, which will then decide on the merits of the case. The primary task of the CCRC is to examine cases in which individuals claim to have been wrongly convicted or sentenced[17], in order to determine whether the matter should be referred to the competent judge under

[9] In a legal system, the principle of public order, according to which there is no need to prolong litigation indefinitely, since this would disrupt the proper functioning of the criminal justice system, must be implicitly considered to be in force: Arena (1910), p. 13.
[10] Leone (1987a), p. 63 ff.
[11] Garrett (2017), p. 1212.
[12] Frequently, to the public prosecutor.
[13] Nan, Holvast and Lestrade (2020), p. 102 ff.
[14] For instance, England, Belgium and Netherlands.
[15] Garrett (2017), p. 1212.
[16] Lupária (2015), p. 3.
[17] Duce and Findley (2022), p. 549.

the criminal procedure for review, with a view to establishing whether a miscarriage of justice has occurred.

Against this background, this article focuses on the second model described above, namely the CCRC system.

Its aim is not to provide an exhaustive account of the regulatory frameworks governing each Commission operating worldwide, but rather to identify the core characteristics of CCRCs and, on that basis, to outline one or more theoretical models. In the first part, it is suggested that two main variants may currently be distinguished: a "hard model" and a "weak" or "attenuated" model. After identifying their fundamental features and respective advantages and drawbacks, the analysis turns to the benefits that might be derived from introducing a CCRC in States that traditionally rely on a purely "jurisdictional model" for addressing wrongful convictions

2. The original framework of the "Criminal Cases Review Commission" for England, Wales and Northern Ireland.

From a legal-historical perspective, the first CCRC in the world was established in England in the early 1990s. Specifically, the Criminal Appeal Act 1995 created a CCRC for England, Wales and North Ireland (hereinafter ECCRC)[18].

To appreciate the innovative and transformative nature of the ECCR[19], it is necessary to consider, albeit briefly, the institutional framework that previously governed the detection and correction of miscarriages of justice within the English legal system.

Prior to 1995, section 17 of the Criminal Appeal Act 1968 provided that convicted persons who had exhausted the normal appeal process and wanted to obtain e revision could exclusively apply to the Home Secretary. After receiving the application, the Home Secretary – assisted by officials from the Criminal Cases Unit (C3 Division) – had the discretion to conduct inquiries aimed at assessing the merits of the request.

Following these investigations, two procedural outcomes were possible.

In the event of a refusal, the Home Secretary could dismiss the application without any duty to provide reasons. Consequently, the applicant was left unaware of the grounds upon which the political authority had determined that the case did not warrant reconsideration.

Conversely, where an application was considered well-founded, the Home Secretary could refer the case to the Court of Appeal (Criminal Division), i.e. the judicial authority competent to determine whether a miscarriage of justice had occurred[20]. Alternatively, the Minister could advise the Sovereign to exercise the Royal Prerogative of Mercy in favour of the convicted person.

Within this procedural framework, it is important to highlight the breadth of discretion conferred upon the Home Office in determining whether a case should be referred. As expressly provided by the *littera legis*, the Home Secretary was required to transmit the application to the Court of Appeal only «if he thinks fit». The system established by the Criminal Appeal Act 1968 was characterised by a two-tier structure. In the first stage, a political body exercised a preliminary and wholly discretionary assessment of the admissibility of applications. Only after this initial step could the applicant obtain a determination on the merits from the judicial body.

A decisive turning point occurred in 1993, with the publication of the report of *The Royal Commission on Criminal Justice* (Cmnd 2263, 1993). The Commission, appointed in 1991 by Queen Elizabeth II with the mandate to «examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who are innocent»[21], underscored the urgent need for a radical reform of the procedures governing the review of miscarriages of justice in England.

[18] Available at *www.legislation.gov.uk*. The literature on the subject is endless. See, *ex plurimis*, James, Taylor and Walker (2000), p. 140 ff.; Duff (2001a), p. 341 ff.; Duff (2001b), p. 762 ff.; Ferguson (2001), p. 761 ff.; Nobles and Schiff (2000), p. 39 ff.; Nobles and Schiff (2005a), p. 951 ff.; Nobles and Schiff (2005b), p. 173 ff.; Malleson (1995), p. 929 ff.; Kyle (2004), p. 657 ff.; Horan, (2000), p. 91 ff.; Leigh (2000), p. 365 ff.; Zellick (2005), p. 937 ff.; Kerrigan (2006), p. 124 ff.; Hoyle and Sato (2019).

[19] Cfr. *ccrc.gov.uk*.

[20] Under Criminal Appeal Act 1907, see Article 19; and under Criminal Appeal Act 1968, see Article 17.

[21] The Royal Commission on Criminal Justice (Cmnd 2263, 1993), at *assets.publishing.service.gov.uk*.

This conclusion was supported, first and foremost, by empirical evidence.

Between 1968 and 1993, the Home Secretary referred, on average, only four or five cases per year to the Court of Appeal[22]. Although section 17 of the Criminal Appeal Act 1968 did not impose any statutory limitation on the number of cases that the Home Office could transmit to the judiciary, in practice the Department adopted what commentators described as «self-imposed limits»[23], «self-imposed guidelines»[24] or restrictive approach.

As it is evident, the narrow exercise of the Home Secretary's discretion gave rise to growing public dissatisfaction with the administration of criminal justice in the United Kingdom. The "two-tier review model" established by the 1968 Act was widely perceived as unfair and ineffective, as applications submitted by individuals claiming to be victims of miscarriages of justice were routinely dismissed at the administrative stage, without ever being considered on their substantive merits by the Court of Appeal. The Criminal Cases Unit (C3 Division) was thus frequently criticised for being slow, inefficient, excessively passive, and lacking in independence, as well as for operating in a reactive rather than proactive manner[25]. The underlying causes of this inefficiency were primarily institutional and structural: the Unit suffered from a chronic shortage of human and financial resources, which rendered it incapable of managing the substantial volume of petitions received by the Home Office. In practical terms, the limited number of administrative officers assigned to Division C3 were unable to conduct thorough reviews or undertake comprehensive investigative inquiries in all cases.

In order to remedy this pervasive climate of mistrust, the *Royal Commission* recommended that the British Parliament establish an independent statutory body to assume the functions previously exercised by the Home Office, but endowed with broader and more effective powers, particularly in relation to investigation and evidence-gathering. Upon receiving an application for review, the proposed Criminal Cases Review Commission (CCRC) was to conduct an impartial and autonomous inquiry and, in light of the statutory criteria and parameters set forth by law, make a preliminary assessment as to the admissibility of the application. Where such assessment proved favourable, the Commission would then refer the case to the Court of Appeal for substantive adjudication on the merits.

From this point of view, the institutionalisation of a Commission can be understood as a direct response to the widespread public perception of injustice that had taken root within the English criminal justice system. To restore confidence, the legislature – drawing inspiration from what may be described as a «meta-organisational approach»[26] – sought to create an institution more accessible to citizens, yet capable of interfacing directly with the judiciary. This new model for addressing miscarriages of justice represented a genuine cultural and institutional revolution in the jurisdictions where it was adopted. It marked a deliberate departure from the prior framework, under which the determination of whether a case was "worthy" of referral to the Court of Appeal rested within the discretionary – and arguably arbitrary – authority of a political body, namely, the Home Office.

Independence from political influence and the possession of effective investigative powers were the two principal considerations underpinning the establishment of the ECCR Commission in 1995.

With regard to the first element, section 8, par. 2 of the Criminal Appeal Act 1995 explicitly establishes that «the Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown». This provision was intended to enshrine the institutional autonomy of the Commission and to distinguish it clearly from executive authorities. Nevertheless, the connection between the Commission and the Government was not entirely severed. Firstly, the eleven members of the Commission[27] are appointed by the Queen, acting on the recommendation of the Prime Minister[28]. Secondly, the Commission remains financially dependent on the Ministry of Justice, from which it receives its budgetary allocation, while the terms and conditions of employment of

[22] References in Weeden (2013), p. 1415 ff.; Taylor and Mansfield (1999), p. 231.
[23] The Royal Commission on Criminal Justice, cit., p. 181.
[24] Taylor and Mansfield (1999), p. 233.
[25] Malleson (1995), p. 929.
[26] Schehr (2005), p. 1297.
[27] The members of the Commission are both lay people and legal professionals, such as lawyers or judges with some competence in the field of criminal law.
[28] Article 8, par. 4 of the Criminal Appeal Act 1995.

its members are determined by the Commission itself.

With regard to its investigative powers, the Commission conducts inquiries using its own financial resources and professional expertise, particularly through the work of its Case Review Managers. Pursuant to sections 17 ff. of the Criminal Appeal Act 1995, it may require the production of documents or other material held by persons within public bodies, where such material may assist in the exercise of its functions. Moreover, with the prior authorisation of the Crown Court[29], the Commission may also obtain documents from private individuals or entities not serving in public offices, and may further request the appointment of investigating officers to assist in the conduct of specific inquiries[30].

From a statistical perspective, the experience of the ECCR may be regarded as largely positive, particularly when contrasted with the earlier system centred on the discretionary powers of the Home Office. According to the recent report, covering the period from 1997 to 2023, the Commission received a total of 29,985 applications and made 813 referrals to the Court of Appeal. Of these referred cases, the Court of Appeal quashed the conviction in 542 instances, a result that attests to the effectiveness and necessity of the institutional reform introduced by the Criminal Appeal Act 1995[31].

3. Post-ECCRC approaches.

Following the example set by the ECCR Commission, several other jurisdictions have established independent and autonomous bodies entrusted with a central role in the post-conviction proceedings of wrongful convictions. Notable examples include Scotland (1997), Norway (2004), North Carolina (2006), the Netherlands (2012), Belgium (2018), and New Zealand (2019).

Although the post-conviction mechanisms introduced in these jurisdictions broadly reflect the institutional model first implemented in England in 1995, it would be inaccurate to speak today of a single, uniform "CCRC model".

Two principal considerations support this view.

First, even in Commonwealth jurisdictions that have adopted a Commission-based structure, the procedures for post-conviction review display distinctive features, particularly as regards the "referral standard", that is, the substantive criterion guiding the Commission's decision whether to refer a case to the Court of Appeal[32]. Under section 13 of the Criminal Appeal Act 1995, a reference of a conviction may be made only where there exists «a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made». By contrast, the Scottish Criminal Cases Review Commission (SCCRC) may refer a case to the appeal court if it is satisfied that: a) a miscarriage of justice may have occurred; and b) it is in the interest of justice that a reference should be made. These formulations embody distinct referral thresholds, which in turn produce material procedural differences between the English and Scottish systems.

Secondly, independent and autonomous Commissions have also been established in jurisdictions outside the traditional common law sphere, where the institutional model has been implemented with significant adaptations. Notable examples include the Netherlands and Belgium[33].

Within this comparative framework, two principal types of CCRC can be identified for analytical purposes: the "hard model" and the "weak" or "attenuated" model

The "hard model" refers to systems more closely aligned with the original English prototype, in which the Commission – generally the authority competent to receive applications for review or reopening – undertakes a preliminary examination of the requests filed by convicted persons. In doing so, it performs a filtering function, determining whether the case satisfies the statutory threshold for referral to the Court of Appeal.

By contrast, the "weak" (or "attenuated") model characterises those jurisdictions in which the independent administrative body, while empowered to conduct investigative inquiries,

[29] Article 18A of the Criminal Appeal Act 1995.
[30] Article 19 of the Criminal Appeal Act 1995.
[31] Cfr. the *CCRC Annual Report and Accounts 2022*.
[32] See *infra*.
[33] See *infra*.

primarily fulfils an advisory role *vis-à-vis* the judicial authority competent to decide on the reopening of proceedings. Under this arrangement, the Commission does not directly receive applications for review; nevertheless, it plays a key role within the post-conviction process, particularly in the collection and assessment of evidentiary elements that may justify a judicial review of the conviction.

3.1. *The "hard model".*

The first jurisdiction to establish a CCRC based on the English model was Scotland, in 1997[34]. As in England, prior to the creation of the Scottish Criminal Cases Review Commission (SCCRC), convicted persons who had exhausted the ordinary appellate process were required to petition the Secretary of State for Scotland in order to seek a reopening of their case.

Following the recommendations of the *Sutherland Committee on Appeals Criteria and Alleged Miscarriages of Justice*[35], the Scottish Government introduced an independent body whose purpose was not to exercise the power to quash convictions directly, but rather to refer cases to the appellate court – namely, the High Court of Justiciary (Appeal Court) – where it appeared that a miscarriage of justice might have occurred.

Under the current regulatory framework, there is no upper limit on the number of applications for review that a convicted person may submit, nor on the number of times the SCCRC may refer a case to the Appeal Court. Moreover, the Commission possesses the authority to initiate a revision *ex officio*. The governing provisions further stipulate that a reference to the SCCRC may also be made in cases involving the «improper calculation of a punishment part».

When determining whether to refer a case to the judicial body, the SCCRC must consider, as previously noted: a) whether a miscarriage of justice may have occurred; and b) whether it is in the interests of justice that a reference should be made. Importantly, the Commission is not confined to the issues raised by the applicant; it may conduct its own independent investigations and supplement or expand upon the contents of the original application.

The exercise of investigative powers has considerable practical significance. Indeed, in several instances, the SCCRC has referred cases to the Appeal Court on the basis of grounds and evidence that were not advanced by the applicant, but instead identified independently by the Commission. This demonstrates that the SCCRC performs a proactive rather than reactive role, positioning itself as an active participant in the detection and rectification of miscarriages of justice[36].

Chronologically, the third CCRC to be established in Europe was the Norwegian Commission, created in 2004[37].

It constitutes an independent administrative body entrusted with the task of considering applications for the reopening of criminal cases. As in England and Scotland, the Norwegian body remits the case for retrial before a court other than the one that originally rendered the conviction or sentence, thereby ensuring a genuinely fresh judicial examination[38]. Norwegian scholarship has described the Norwegian Criminal Cases Review Commission (NCCRC) as a «combination of an Innocence-type project […] and an appeals court, where the responsibility for further investigation and the power to decide on reopening reside within the same administrative body»[39].

The debate concerning the opportunity of establishing a permanent, independent, and State-funded commission to review wrongful convictions has, predictably, also extended to

[34] Crime and Punishment (Scotland) Act 1997. The Commission began its work on 1 April 1999. For an analysis of the establishment of the SCCRC, see Duff (2001a), p. 341 ff.; Chalmers and Leverick (2010), p. 608 ff.

[35] Sutherland Committee, *Criminal Appeals and Alleged Miscarriages of Justice (Cm 3245, 1996)*, chapter five.

[36] For more details regarding the SCCRC procedure, see Griffin (2013), p. 1161-1163.

[37] Act of 15 June 2001 no. 63. The Commission started to operate in January 2004. The commission's website is *www.gjenopptakelse.no*. For a general overview, see Stridbeck and Magnussen (2012), p. 267 ff.; Stridbeck and Magnussen (2013), p. 1372 ff.; Hellqvist (2023), p. 197 ff.; Grøndahl and Stridbeck (2016), p. 212 ff.; Stridbeck and Brenner (2023), p. 65 ff., and especially p. 70 ff.

[38] The Commission has five permanent and voting Commissioners (three from the legal profession and two lay members), and three alternate Commissioners, as well as an administrative staff that includes investigators. The Chair, Vice Chair, one other Commissioner and two of the alternate Commissioners must have a Master of Laws or Master of Jurisprudence degree. The Chair is appointed by the King in Council for a seven-year period and the Commissioners and alternate Commissioners are appointed by the King in Council for a three-year period.

[39] Stridbeck and Magnussen (2013), p. 1381. For statistics, see *forvaltningsdatabasen.sikt.no*.

the United States[40].

At present, however, North Carolina remains the only jurisdiction within the U.S. to have formally adopted such a model. Replacing the earlier North Carolina Actual Innocence Commission (established in 2002 to address systemic wrongful conviction issues), the North Carolina Innocence Inquiry Commission Act of 2006 created an independent statutory body mandated to investigate and determine whether a miscarriage of justice has occurred. As expressly stated in its founding statute, the Commission's mandate is to investigate and determine credible claims of factual innocence[41]. Although the Commission's jurisdiction is confined to claims submitted by or on behalf of living persons convicted of felonies within North Carolina, its establishment represents a significant institutional advancement in the identification and correction of wrongful convictions. Empirical data confirm that its activity has materially improved the detection and review of miscarriages of justice[42].

Turning to more recent developments, New Zealand established its Criminal Cases Review Commission in 2019[43].

Before the Criminal Cases Review Commission Act 2019[44], a person claiming to be the victim of a miscarriage of justice could only apply for the Royal Prerogative of Mercy. Decisions regarding the granting of a pardon were made by the Government, following investigations conducted by the Ministry of Justice[45]. This procedure relied almost exclusively on the examination of documents submitted by applicants, without any in-depth investigation. Consequently, it is unsurprising that the majority of applications were rejected. Notably, the few applications that were successful were typically those in which the applicant had the financial means to retain legal counsel capable of conducting detailed and effective investigations[46].

It was for this reason that one of the key attributes the New Zealand Government sought to confer upon the Commission was the possession of substantial investigative powers, exceeding those ordinarily available to private legal representatives. Indeed, under section 11 of the establishing Act, the Commission's «primary function» is explicitly «to investigate» and review convictions and sentences, and to determine whether the case should be referred to the Court of Appeal.

3.1.1. *The (unsolvable?) problem of the "referral standard".*

One of the most controversial issues[47] related to the "hard model" of CCRC concerns the identification of the so-called referral standard, i.e. the parameters for the CCRC's decision on whether the case should be referred to the Appeal Court[48].

As noted, each law establishing the CCRC in the various jurisdictions examined above sets out specific criteria against which the Commission must assess whether the applicant's application merits referral to the Court, which will then decide on the merits of the application for review.

Under section 13, par. a) of the Criminal Appeal Act 1995, a reference of a conviction, verdict, finding, or sentence may be made only if the ECCR Commission considers that there exists a «real possibility» that the conviction or sentence would not be upheld were the reference to be made.

The adoption of this standard has generated considerable scholarly debate in England and beyond, particularly regarding the relationship between the CCRC and the Court of Appeal.

[40] See, for an overview, Schehr and Weathered (2004), p. 122 ff.; Walter (2019), p. 145 ff.; Schehr (2012), p. 205 ff.
[41] The Commission is made up of eight members selected by the Chief Justice of the North Carolina Supreme Court and the Chief Judge of the North Carolina Court of Appeals. The members include a Superior Court Judge, a Prosecuting Attorney, a Defence Attorney, a Victim Advocate, a Member of the Public, a Sheriff, and two Discretionary members. On this topic, see Mumma (2004), p. 648.
[42] In the period 2007-2019, the Commission received 3600 requests (*innocencecommission-nc.gov*).
[43] The Commission's website is *www.ccrc.nz*. The path leading to the adoption of a CCRC in 2019 has been slow and bumpy. In 2003 the Ministry of Justice commissioned a report from Mr Neville Trendle entitled *The Royal Prerogative of Mercy: A Review of New Zealand Practice*. The report proposed the creation of an independent board with its own investigative staff and ability to refer cases to the Court of Appeal, along the lines of the English and Scottish Criminal Cases Review Commissions (v. *fyi.org.nz*). Cfr. Mount (2009), p. 445 ff.; White (2023), p. 201 ff.
[44] Criminal Cases Review Commission Act 2019 No. 66.
[45] Art. 406, Crimes Act 1961.
[46] Hoyle (2020), p. 208 ff.
[47] Nobles and Schiff (2001), p. 280 ff.
[48] Kerrigan (2006), p. 124 ff.; Hoyle and Sato (2019), p. 14 ff. and 330 ff.

Crucially, the Act does not define the meaning of the "real possibility test", making it necessary to interpret its content to determine when the Commission is obliged to refer a case.

A literal reading of section 13, par. a) suggests that the Commission is required to make a prognostic assessment, evaluating how the Court of Appeal is likely to assess the case upon referral. As one commentator has observed, «the judgment required by the Commission is a very unusual one, because it inevitably involves a prediction of the view which another body (the Court of Appeal) may take»[49]. Consequently, the CCRC's decision-making process is inherently linked to – and influenced by – the legal test subsequently applied by the Court of Appeal. In determining whether to dismiss or refer a case, the Commission must therefore take account of the jurisprudence developed by the appellate court, effectively aligning its assessment with the standards and reasoning that the judiciary is likely to employ.

This alignment has generated a situation of "deference", which some scholars argue results in a degree of subservience of the CCRC to the Court of Appeal, thereby limiting the effectiveness of the remedy for wrongful convictions and eroding public confidence in the Commission[50]. From this perspective, certain commentators have criticised the CCRC, characterising it as a mere "lapdog" of the criminal appeals system[51]. Accordingly, it has been suggested that the Commission should operate independently of the Court of Appeal's standards, focusing primarily on the assessment of factual innocence rather than legal predictability[52].

Conversely, other scholars contend that the "real possibility test" does not imply subservience to the Court of Appeal[53]. Rather, it has been emphasised that the CCRC and the Court of Appeal must "speak the same language" to ensure an effective referral mechanism. After all, a Commission that referred cases without reference to the legal criteria applied by the ultimate adjudicator would be functionally irrelevant: the vast majority of cases would be rejected by the court, and the Commission would rapidly lose both judicial credibility and public trust[54].

Different referral parameters have been adopted elsewhere.

Section 19C of the Crime and Punishment (Scotland) Act 1997 provides for two criteria: a) that «a miscarriage of justice may have occurred»; and b) that «it is in the interests of justice that a reference should be made».

The latter standard has also been transposed to the newly introduced New Zealand regulation. Under section 17 of the Criminal Cases Review Commission Act 2019 (No. 66), the New Zealand Commission may refer a conviction or sentence to the Court of Appeal if, «after reviewing the conviction or sentence, considers that it is in the interests of justice to do so».

The criterion established by New Zealand legislation is thus broadly comparable to that adopted in Scotland, although it differs formally from the "real possibility test" applied in England. Nevertheless, the "interests of justice test" also raises significant questions regarding the relationship between the Commission and the Court of Appeal. Indeed, section 17, par. 2 of the Criminal Cases Review Commission Act 2019 provides that, in deciding whether to refer a conviction or sentence, the NZCCRC must have regard, inter alia, to «the prospects of the court allowing the appeal». This formulation requires the Commission to undertake a prognostic assessment, taking into account the jurisprudence of the Court of Appeal. As in the English context, the task of the Commission is effectively defined by the usual standards and practices of the Court of Appeal[55].

[49] Nobles and Schiff (2001), p. 284.
[50] Schehr and Weathered (2004), p. 123.
[51] Cfr. *legalresearch.blogs.bris.ac.uk*.
[52] Naughton (2012b), p. 25, for which the ECCRC turns a blind eye to potentially innocent victims who cannot meet the real possibility test; Naughton (2012a) p. 211. This, according to the Author, is demonstrated by the experience of the North Carolina Commission of Inquiry into Innocence, where, as of August 2019, only 14 convictions have been overturned since its inception in 2007. See *innocencecommission-nc.gov*. On this topic, cfr. also Roberts and Weathered (2009), p. 43 ff.
[53] Duff (2009), p. 693.
[54] According to Nobles and Schiff (1995), p. 315, the Commission can help to change the jurisprudence of the Court of Appeal by referring cases that encourage evolving interpretations. Moreover, since the law does not impose any limits on the possibility of referral, the Commission could refer as many cases as it wished and thus put pressure on the Court of Appeal. The same argument is supported by Zellick (2005), p. 939.
[55] Nobles and Schiff (2001), p. 268.

3.2. *The "weak" or "attenuated" model.*

The second model of CCRC that can be identified is the "weak model", in which the Commission plays a mainly advisory function.

The Dutch and Belgian systems provide illustrative examples of this approach at the European level.

Regarding the former[56], it is interesting to note that the NeCCRC originated in response to the "judicial scandal" surrounding the *Schiedammer Park* miscarriage of justice in 2004[57]. In the aftermath, the *Council of Dutch Prosecutors' Offices* established a committee to investigate whether similar failings had occurred in other cases, creating the Committee for the Evaluation of Concluded Criminal Cases (*Commissie Evaluatie Afgesloten Strafzaken* – CEAS). However, this arrangement was temporary and lacked a sufficiently robust regulatory framework to ensure effective oversight or systemic review.

In response, the Dutch legislature in 2012 established a permanent body, the "Advisory Committee for Concluded Criminal Cases" (*Advies Commissie Afgesloten Strafzaken* – ACAS). This independent commission[58] is tasked with advising the Prosecutor General at the Supreme Court on whether further investigation should be undertaken when there exist grounds for review in concluded criminal cases[59].

The explanatory memorandum to the Dutch legislation[60] makes clear that the primary objective of the statutory framework is to lower the threshold for review and to enhance the possibility of correcting convictions subsequently shown to be erroneous, while preserving the exceptional character of post-conviction review as an extraordinary remedy. By achieving a judicious balance between legal protection and legal certainty, the legislature anticipated that public trust in the judicial system would be strengthened.

From a procedural standpoint, the ACAS may be consulted by the public prosecutor, either *ex officio* or at the request of the convicted person, to provide an opinion on whether new investigations should be undertaken that might reveal a *novum*. Notably, the Prosecutor General of the Court of Cassation is obliged to consult the Committee in cases where a prison sentence of six years or more has been imposed.

One of the most important provisions is section 8 of the establishing Act, which sets out the Commission's extensive investigative powers. These include: a) inspecting procedural documents and records; b) hearing certain persons, such as the judicial police who carried out the preliminary investigation, the investigating judge and experts; c) appointing experts to carry out technical investigations; and d) advising the Prosecutor General at the Supreme Court to carry out further investigations.

The system introduced in Belgium in 2018 can likewise be classified within the "attenuated" or "weak" model.

The Act of 11 July 2018, which introduced various provisions in criminal matters[61], amended the revision procedure set out in Articles 443 ff. of the Belgian Code of Criminal Procedure (CCP). One of the main innovations is the establishment of the *Commission de révision en matière pénale*[62]. More specifically, Article 445 CCP provides that, where an application for review – which may be lodged only with the Court of Cassation – is based on one of the grounds enumerated in Article 443, par. 3 CCP (notably, the discovery of a *novum*) and the Court of Cassation does not declare it inadmissible, the Court itself shall examine whether there are sufficient indications that grounds for review exist. If the Court of Cassation determines that such indications are present, it shall order that the application be examined by the Criminal Revision Commission[63].

The central task of the Belgian Commission is thus to advise the Court of Cassation on

[56] See Holvast, Nan and Lestrade (2020), p. 1 ff.; Knoops and Bell (2015), p. 83 ff.
[57] van Koppen (2008), p. 207 ff.
[58] ACAS members are appointed on the recommendation of the Attorney General by the Minister of Justice and Security.
[59] According to the Article 457 of the Dutch Code of Criminal Procedure, «on application of the procurator general or of the former suspect in regard of whom a judgment or appeal judgment has become irrevocable, the Supreme Court may, for the benefit of the former suspect, review a judgment or appeal judgment of conviction rendered by the court in the Netherlands».
[60] Available at *zoek.officielebekendmakingen.nl*.
[61] Available at *www.ejustice.just.fgov.be*. The new revision procedure entered into force on 1 March 2019.
[62] See *www.ejustice.just.fgov.be*.
[63] It is composed of a judge, a member of the public prosecutor's office, two lawyers and a member that is appointed on the basis of his expertise (Article 445 CCP).

the existence of a *novum*. To fulfil this role, the Commission has been endowed with a broad spectrum of investigative powers, which include, *inter alia*: a) the authority to hear persons involved in the preliminary investigation, such as the convicted person, the civil party, the investigating judge, the public prosecutor, and the judicial police; b) the power to appoint experts with the necessary scientific or technical expertise to examine the application; c) the competence to request further investigative measures from the Court of Cassation.

Upon completion of its investigation, the Commission is required to issue a non-binding written opinion to the Court of Cassation regarding whether the request for review should be granted[64].

In conclusion, the Belgian and Dutch CCRC models, despite their differences, are exemplary of "weak model." In both systems, the Commission does not perform a preliminary filter for the admissibility of review petitions, as occurs under the "hard model", nor is it the sole recipient of the application, since convicted persons may apply directly to the Court (i.e., the Supreme Court). Instead, the defining feature of these Commissions is their advisory function. Although the opinion provided by the Commission does not preclude or impede the initiation or continuation of revision proceedings before the Court, the Commission is vested with substantial investigative powers. In both jurisdictions, this *potestas investigandi* constitutes one of the most significant mechanisms for ensuring that the right to review is meaningful and effective in practice.

4. Possible and future developments of the CCRC.

Several jurisdictions are currently considering the introduction of a CCRC system into their criminal justice frameworks[65].

A notable example is the ongoing debate in Australia[66].

The establishment of an independent commission as part of the post-conviction review process has been under discussion for some time. Although deliberations on the matter date back to the early 2000s[67], the debate intensified in 2010 when a bill was introduced to establish a CCRC in South Australia, despite the government ultimately rejecting the proposal.

The issue resurfaced prominently in June 2023, when the Attorney-General of New South Wales announced that an Australian woman had been pardoned after serving 20 years in prison for the murder of three of her infant children and the manslaughter of a fourth. The investigations carried out after the revision procedure showed that there were «reasonable doubts as to the guilt of the accused»[68]. In this context, Australian legal scholarship has consistently emphasised the necessity of an independent body endowed with robust investigative powers. As one commentator has noted, «investigatory powers are the key to unlocking the hidden information that demonstrates whether or not a wrongful conviction has occurred»[69].

A similar debate has arisen in Canada[70].

As in most common law systems, the revision procedure traditionally assigns a central role to a political authority. Pursuant to sections 691.1 et seq. of the Criminal Code, the Minister of Justice[71] possesses the power, when there exists a reasonable basis to conclude that a miscarriage of justice has occurred, to refer the case to a court of appeal for a new trial. However, empirical evidence demonstrates that, in practice, Canadian Ministers of Justice rarely exercise this power to refer convictions for retrial or reconsideration[72].

For this reason, the question has arisen as to whether it would be desirable to establish an independent and autonomous body with investigative powers. A significant step in this direction was taken on 4 February 2022, when a report was published following public-facing

[64] If the Court decides not to comply with the opinion, it must give reasons for that decision.
[65] See, for instance, Shumba (2017), p. 179 ff.
[66] Support the creation of an Australian CCRC, *ex multis*, Hamer (2014), p. 270 ff.; Hamer (2015), p. 433 ff.; Rego (2021), p. 305 ff.; Weathered (2012), p. 264. See also Hamer (2025), p. 1 ff.; Ruyters and Bartle (2024), p. 288 ff.; McCusker (2025), p. 569 ff.
[67] Victoria was the first State to consider the implementation of a CCRC in 2004. See, for more details, Weathered (2012), p. 260-264.
[68] See *www.sydney.edu.au*; *www.lawyersalliance.com.au*.
[69] Weathered (2012), p. 259.
[70] See Cunliffe and Edmond (2017), p. 473 ff.; Anderson (2015), p. 5 ff.; Roach (2012a), p. 283 ff.; Roach (2012b), p. 1478-1479; Leonetti (2022), p. 97 ff.; Roach and Williams (2023), p. 167 ff.; Walker and Campbell (2012), p. 191 ff.
[71] …and, in particular, the *Criminal Conviction Review Group*, a specific unit of the Department of Justice.
[72] Minister of Justice, *Applications for Ministerial Review Miscarriages of Justice*, 2022, at *www.justice.gc.ca*.

consultations sponsored by the Canadian Minister of Justice and the Attorney General of Canada[73]. The document is particularly noteworthy for providing a detailed analysis, including a comparative review of existing CCRC models, and emphasising the need for a body that is independent of both government and judiciary, empowered to consider applications for review and to investigate their potential merits using effective investigative powers.

At the European level, attention has recently been drawn to Sweden, where certain members of the legal academy have proposed the introduction of a CCRC within the Nordic legal systems[74].

Based on observations that the success of review applications currently relies heavily on the involvement of lawyers and journalists – where lawyers often lack the time and resources for comprehensive investigation, and journalists do not possess the necessary legal expertise – it has been argued that the Swedish system should be reformed to include a dedicated review board tasked with handling applications for exoneration.

As is evident, the models discussed share a common feature.

In the current legal frameworks, the power to pre-screen applications for review remains vested in a political body. As occurred in England in the early 1990s and in other jurisdictions that have subsequently adopted a strong CCRC model, this arrangement tends to generate a general climate of social distrust regarding the State's ability to effectively guarantee the right to review. This explains why, in the systems examined here – the Australian, Canadian, and Swedish contexts – the scholarly literature generally favours the creation of an independent administrative body, separate from the government, to manage the preliminary stage of the review process.

5. Towards a CCRC also in the "jurisdictional models": Why not? The Italian example.

What has been observed above does not imply that the establishment of a CCRC is relevant only to legal systems that previously relied on a government-based post-conviction review. On the contrary, we contend that the creation of a CCRC may also be beneficial in countries characterised by a "jurisdictional model," where post-conviction review is primarily conducted within the judiciary.

To illustrate this point, the Italian criminal procedure system may be taken as a paradigmatic example of a jurisdiction in which the introduction of a CCRC could meaningfully enhance the detection and correction of miscarriages of justice

The post-conviction remedies provided under Italian law to address cases of miscarriage of justice and to give effect to Article 24, par. 4 of the Constitution are varied[75]. Regarding instruments specifically designed to remedy wrongful convictions, the Italian Code of Criminal Procedure (CCP) provides for *revisione*[76], a form of redress that may be considered a broadly conceived remedy for miscarriages of justice[77].

A detailed analysis of this institution falls beyond the scope of the present study[78].

However, it is important to note, from our perspective, that the current regulation under Article 632 of the CCP grants the convicted person[79] the *status* of an entitled applicant to request review before the Court of Appeal and, as the body supervising the proper administration of justice[80], also to the Prosecutor General attached to the Court of Appeal. The attribution of the power to request a revision to the public prosecutor is justified by the public function of this extraordinary legal remedy[81].

Those considerations should already make clear the significant difference between the

[73] See *www.justice.gc.ca*.
[74] Martinsson (2020), p. 87 ff. Cfr. Gräns (2023), p. 87 ff.
[75] Article 24, par. 4 of the Italian Constitution states that «the law shall define the conditions and forms of reparation in case of judicial errors».
[76] Gialuz (2015), p. 121; Della Torre (2024), p. 211 ff.
[77] This term does not include reparation for wrongful detention.
[78] See, *ex multis*, Callari (2010); Casiraghi (2020); Gialuz (2015), p. 117 ff.; Gialuz (2021), p. 567 ff.; Scomparin (1997), p. 319 ff.; Troisi (2011); Turco (2007). More recently, Lupária, Cagossi and Pittiruti (2023), p. 103 ff.
[79] …but also, to the one next of kin or convicted person's guardian and, if convicted person is deceased, his heir or one next of kin.
[80] Sotgiu (1934), p. 154. In the same terms, Dean (1999), p. 77.
[81] Della Torre (2024), p. 228.

procedural model of review provided for in Italy and the "strong model" of the CCRC. In our system, the applicant can refer the case directly to the court (*rectius*, Court of Appeal) that will decide on the merits of the case, without having to pass a prior admissibility examination carried out by a para-administrative body.

Nevertheless, this does not imply that the Italian system – or other jurisdictions belonging to the "jurisdictional model" – is incompatible with a CCRC. As explained above, in criminal systems aligned with the "attenuated model", the CCRC, while not performing a preliminary filtering function and not being the direct addressee of the review application, assumes a fundamental procedural role, particularly by exercising significant investigative powers.

This feature is of crucial importance, especially in the context of the Italian *revisione* proceedings.

Indeed, the CCP does not regulate specific investigative tools that the parties – whether the defendant or the public prosecutor – may employ to obtain evidence in support of a reopening request. This issue is particularly pertinent to the hypothesis set forth in Article 630, par. 1, lett. c) CCP, which addresses cases in which new evidence is discovered after conviction and, either independently or in conjunction with previously assessed evidence, demonstrates that the convicted person should be acquitted. In such circumstances, the burden of gathering evidence rests on the citizen, who must also bear the associated costs.

It is true that the public prosecutor could, in principle, undertake measures to search for new evidence. Nevertheless, in practice, this occurs very rarely, given the heavy workload of Italian public prosecutor offices. As has been observed, «the Italian Prosecutors are already allowed by the CCP rules to ask for revision, yet this rarely happens in the practice»[82].

From this perspective, the creation of an Italian CCRC could represent a significant opportunity to make *revisione* an effective remedy against wrongful conviction.

A citizen who believes themselves to have been the victim of a miscarriage of justice would be able to contact a body that is autonomous and independent from both the government and the judiciary, which, without assuming the role of the applicant's advocate, could collect and assess evidence to support or refute the merits of the claim. This solution aligns with what has been identified as the «major advantage of the CCRC»: the fact that it has «independent investigatory powers that allow for the gathering of crucial information which enable answers to the questions raised by wrongful conviction applications»[83].

We consider that the Commission should not be treated as a formal "party" to post-conviction review proceedings (Articles 629 ff. CCP). Doing so would distort the "jurisdictional model" on which the Italian review mechanism is founded. Instead, the Commission should function as an independent body that a convicted person (or public prosecutor) may approach before submitting a formal application under Article 633 CCP. The legislation could also authorise the Commission to initiate preliminary inquiries *ex officio* where it considers that there are credible grounds for further investigation. Comparative practice suggests that this body could be granted powers including the review of relevant documents, interviews with the public prosecutor and the investigating officers on the case, the appointment of experts with the requisite scientific or technical expertise, and related functions. A necessary precondition for the effective operation of such a body is that the State provide it with adequate financial and human resources. Absent such provision, the Commission would be incapable of functioning, rendering its establishment futile and devoid of practical effect.

More broadly, Article 633 CCP could be revised to allow a convicted person (or any other individual with standing) to request the Commission's assistance "for the purpose of preparing an application for review", in accordance with the procedures set out in the establishing statute.

With regard to appointments, it would be preferable for the members of the Commission to be appointed by Parliament. As the democratically elected institution representing "the people" (whose interests the justice system must serve) Parliament is best body to ensure legitimacy and accountability. If considered appropriate, Parliament could be required to seek

[82] Lupária Donati and Pittiruti (2020), p. 71. For this reason, those authors propose to create in Italy as well a Conviction Integrity Units, «i.e. divisions of prosecutors' offices whose task is to prevent, identify and remedy wrongful convictions». In the same sense, see Lupária and Greco (2020), p. 120. For a recent overview on the issue, see Blair and Krinsky (2023), p. 227 ff. Even in other jurisdictions that have adopted a traditional model in which the application for reopening can be lodged by the public prosecutor or by the defendant, statics shows that in most cases the applications are filed by the convicted person: see Bachmaier winter and Martínez Santos (2020), p. 59, nt. 29.
[83] Weathered (2012), p. 258.

non-binding advice from professional bodies such as the High Council of the Judiciary or the National Bar Council before making appointments.

Comparative practice shows that different institutional arrangements are possible with regard to composition[84]. In some jurisdictions (such as England and Wales or New Zealand) one third of the commissioners must be qualified lawyers, while the remaining members must have experience in the criminal justice field. In Norway, by contrast, the commission includes experts in psychiatry and psychology.

In our view, a mixed composition would be the most suitable model. The Commission should include legal professionals representing the principal stakeholders in the criminal justice system (judges, prosecutors, defence lawyers, and *law enforcement* officers: provided that they no longer hold active office, so as to ensure independence). It should also include experts from the technical and natural sciences, such as engineers or physicists, who can advise on the types of investigations required when a review application is based on new scientific evidence.

Precisely in this regard, the importance of an independent body endowed with effective investigative powers in the context of post-conviction review is closely linked to the issue of emerging scientific and technological evidence.

It is well established that developments in science and technology have profoundly influenced post-conviction procedures[85]. Today, a significant proportion of applications for revision are founded on the emergence or re-evaluation of scientific data, such as DNA analysis. Accordingly, effective access to the review process is intrinsically connected to the applicant's ability to be assisted by experts and technical consultants, who can conduct scientific and digital investigations to determine whether a miscarriage of justice has occurred.

From a complementary perspective, it is important to clarify that the implementation of a CCRC, as envisaged in this study, is not incompatible with Innocence Projects or Innocence Movements. On the contrary, these organizations may operate in tandem to assist convicted persons seeking to challenge a final conviction.

The two types of structures, however, pursue distinct objectives and possess different institutional functions.

Innocence Projects are bottom-up, non-governmental organizations that provide *pro bono* support to investigate and uncover evidence to exonerate the wrongfully convicted[86]. The CCRC, in contrast, is a statutory body integrated into the official criminal justice system[87]. Both structures can therefore contribute to a post-conviction procedure, albeit at different stages, thereby ensuring the practical effectiveness of the right to claim innocence.

This is the key point.

If, as argued, the effectiveness of the post-conviction remedy is closely linked to the presence of effective investigative powers – since only a thorough investigation can substantiate an application for reopening – it follows that the State must provide citizens with the necessary means to present a well-supported request aimed at overturning a final conviction. Otherwise, both the right to effective access to justice and the right to claim innocence are compromised, rendering the conviction review process inaccessible[88].

In practice, the Innocence Project and the CCRC model can operate in a complementary manner to ensure an effective post-conviction procedure. Initially, the applicant may be assisted by the Innocence Project. Subsequently, the CCRC may assume a crucial role by exercising its investigative powers.

The centrality of investigations in post-conviction proceedings is also reflected in recent reforms in French law.

Prior to the 2014 reform[89], Article 622 of the Code of Criminal Procedure (CCP) established that applications for reopening were to be submitted to the *Commission de Révision*, which theoretically possessed investigative powers. In practice, however, these powers were

[84] Leonetti (2022), p. 108-109.
[85] Gialuz (2015), p. 128 ff.
[86] «A major role of Innocence Project […] is to evaluate claims of wrongful conviction and to attempt to locate and access potentially exonerating evidence»: Roberts and Weathered (2009), p. 46.
[87] For the same conclusion, see Roberts and Weathered (2009), p. 43-58. Some authors argued that the simultaneous presence within the same procedural system of an Innocent project and of a CCRC «risks contaminating evidence and delaying or compromising the appeal process» for addressing miscarriages of justice: for this opinion, see Quirk (2007), p. 772.
[88] With specific focus on the «accessibility of post-conviction remedies», see Savage (2007), p. 195 ff.
[89] Act no 2014-640 of 20 June 2014.

rarely exercised[90].

In 2014, recognizing the importance of conducting investigations to facilitate the granting of review applications[91], the legislature amended Article 626 CCP, providing that, before filing a request for revision, the convicted person may ask the public prosecutor to carry out investigative measures necessary to uncover a new fact or an element previously unknown at the time of the initial proceedings. This provision explicitly aims «to make the revision procedure more accessible on a procedural level»[92]. By entrusting a court with the authority to conduct investigations, the legislature acknowledges that effective investigative activity is a prerequisite for realizing the right to claim innocence. In this manner, convicted persons lacking the resources to retain private legal or investigative assistance may still request that the public prosecutor undertake measures to obtain evidence supporting the application for review.

6. Concluding remarks.

The CCRC represents a compelling model for addressing miscarriages of justice. While the creation of a CCRC is not, and cannot be, a panacea for all deficiencies in criminal justice systems, the delegation of key post-conviction functions to an independent body can substantially enhance the capacity of those systems to detect and correct wrongful convictions

This article has argued that the effectiveness of the right of access to justice and the human right to claim innocence is closely correlated with the effectiveness of investigative activity capable of supporting the reopening of a case. Post-conviction remedies risk being ineffective if the convicted person lacks the means to obtain evidence supporting their innocence. This concern is particularly acute given that most miscarriages of justice disproportionately affect economically disadvantaged individuals, who frequently lack the resources necessary to gather exculpatory evidence[93].

Moreover, the institutionalisation of a CCRC with investigative powers may be seen as a concrete step toward what some scholars have described as a «European right to claim innocence»[94]. Should such a right be formally recognised, we argue that the provision of procedural mechanisms enabling effective investigations should constitute a minimum standard for post-conviction procedures across all European legal systems.

In this context, the establishment of effective investigative powers, even in jurisdictions aligned with the "strong model," can be achieved through the creation of a CCRC as outlined above: a body that is autonomous and independent of both the government and the judiciary. It is important to emphasise, however, that the objective of the Commission «to assist innocent victims to overturn their wrongful convictions but, rather, that it acts as a gatekeeper»[95].

We concur with those scholars who assert that «it is more efficient to delegate the specialized and difficult work of the investigation and initial adjudication of innocence claims to an expert bureaucratic body»[96]. In "jurisdictional models" of post-conviction review – such as the Italian system – the law often vests the public prosecutor with the authority to conduct investigations in support of reopening requests. In practice, however, this occurs rarely and inconsistently.

For these reasons, the creation of a Commission endowed with effective investigative powers, even in legal systems distant from the common law tradition and falling within the "jurisdictional model," could play a decisive role in identifying, addressing, and remedying miscarriages of justice.

[90] Cormier (2015), p. 144.
[91] See *www.assemblee-nationale.fr*.
[92] Verhesschen and Fijnaut (2020), p. 25.
[93] Hellqvist (2021), p. 325.
[94] Nan and Lestrade (2020), p. 1325 ff.
[95] Naughton (2022), p. 111.
[96] Garrett (2017), p. 1212.

Bibliography

Anderson, Andrea S. (2015): "Wrongful Convictions and the Avenues of Redress: The Post-Conviction Review Process in Canada", *Appeal: Review of Current Law and Law Reform*, pp. 5-26

Arena, Pasquale (1910): *La revisione dei giudicati. Studio di procedura penale* (Turin, Unione Tipografico-Editrice Torinese)

Bachmaier Winter, Lorena and Martínez Santos, Antonio (2020): "Overturning Wrongful Convictions by Way of the Extraordinary Review. The Spanish Experience", *Erasmus Law Review*, pp. 55-62

Blackstone, William (1753): *Commentaries on the Laws of England in Four Books*, II (Philadelphia, J.B. Lippincott Company) (1893)

Blair, Rebecca and Krinsky, Miriam Aroni (2023): "The Prosecutor's Power to Correct and Prevent Unjust Convictions", in *Monatsschrift für Kriminologie und Strafrechtsreform*, pp. 227-239

Callari, Francesco (2010): *La revisione. La giustizia penale tra forma e sostanza* (Turin, Giappichelli)

Carnelutti, Francesco (1961): "Accertamento del reato e *favor rei*", *Rivista di Diritto Processuale*, pp. 337-342

Casiraghi, Roberta (2020): *La revisione* (Milan, Giuffrè)

Chalmers, James and Leverick, Fiona (2010): "The Scottish Criminal Case Review Commission and its Referrals to the Appeal Court: The First 10 Years", *Criminal Law Review*, pp. 608-622

Cormier, Sylvain (2015): "Wrongful Convictions in the French Criminal Justice System: Some Considerations", in Lupária, Luca (ed.): *Understanding wrongful conviction. The protection of the innocent across Europe and America* (Milan, Cedam), pp. 137-148

Cunliffe, Emma and Edmond, Gary (2017): "Reviewing Wrongful Convictions in Canada", *Criminal Law Quarterly*, pp. 473-486

Dalia, Andrea Antonio (2000): "Riflessioni in tema di errore giudiziario", in AA.VV.: *Studi in ricordo di Giandomenico Pisapia* (Milan, Giuffrè), pp. 223-236

Dean, Giovanni (1999): *La revisione* (Padova, CEDAM)

Della Torre, Jacopo (2024): "La revisione", in La Rocca, E. Nadia (ed.): *Esecuzione penale e vicende del giudicato* (Turin, Giappichelli), pp. 211-237

Duce, Mauricio and Findley, Keith A. (2022): "Wrongful Convictions and Prosecutions: Current Status, Causes, Correction and Reparation Mechanisms – Wrongful Convictions and Prosecutions: An Introductory Overview", *Revista Brasileira de Direito Processual Penal*, pp. 523-565

Duff, Peter (2001a): "Criminal Cases Review Commissions and "Deference" to the Court: The Evaluation of Evidence and Evidentiary Rules", *Criminal Law Review*, pp. 341-362

Duff, Peter (2001b): "Peter Duff Replies", *Criminal Law Review*, pp. 762-763

Duff, Peter (2009): "Straddling Two Worlds: Reflections of a Retired Criminal Cases Review Commissioner", *Modern Law Review*, pp. 693-722

Ferguson, P.W. (2001): "Letter to the Editor", *Criminal Law Review*, pp. 761-762

Garrett, Brendon L. (2017): "Towards an International Right to Claim Innocence", *California Law Review*, pp. 1173-1221

Gialuz, Mitja (2015): "Remedies for miscarriage of justice in Italy", in Lupária, Luca (ed.): *Understanding wrongful conviction. The protection of the innocent across Europe and America* (Milan, Cedam), pp. 117-136

Gialuz, Mitja (2021): "Il giudizio di revisione", in Lupária, Luca (ed.): *L'errore giudiziario* (Milan, Giuffrè), pp. 567-644

Godsey, Mark (2015): "The Human Factor in Wrongful Conviction Across National Borders", in Lupária, Luca (ed.): *Understanding wrongful conviction. The protection of the innocent across Europe and America* (Milan, Cedam), pp. 13-32

Gräns, Minna (2023): "Miscarriages of Justice in Sweden", in Robins, Jon (ed.): *Murder, Wrongful Conviction and the Law. An International Comparative Analysis* (London, Routledge), pp. 87-102

Griffin, Lissa (2013): "International Perspective on Correcting Wrongful Convictions: The Scottish Criminal Cases Review Commission", *Pace Law Faculty Publications*, pp. 1153-1213

Grøndahl, Pål and Stridbeck, Ulf (2016): "When Insanity has gone Undiscovered by the Courts: The Practice of the Norwegian Criminal Cases Review Commission in Cases of Doubts About Insanity", *Criminal Behaviour and Mental Health*, pp. 212-224

Hamer, David (2014): "Wrongful Convictions, Appeals, and the Finality Principle: The Need for a Criminal Cases Review Commission", *University of New South Wales Law Journal*, pp. 270-311

Hamer, David (2015): "The Eastman Case: Implications for an Australian Criminal Cases Review Commission", *Flinders Law Journal*, pp. 433-470

Hamer, David (2025): "Wrongful Convictions, Institutional Responsibility, and a National CCRC for Australia", *Current Issues in Criminal Justice*, pp. 1-23

Hellqvist, Sara (2021): "Access to Justice for Wrongful Conviction Claimants in Sweden: The Final Legal Safeguard and Levels of (In)accessibility", *Nordic Journal of Human Rights*, pp. 320-338

Hellqvist, Sara (2023): "Wrongful Convictions and Post-Conviction Review: Barriers to Access-to-Justice in the Nordic Countries", *Monatsschrift für Kriminologie und Strafrechtsreform*, pp. 197-213

Holvast, Nina, Nan, Joost and Lestrade, Sjarai (2020): "Between Legal Certainty and Doubt: The Developments in the Procedure to Overturn Wrongful Convictions in the Netherlands", *Erasmus Law Review*, pp. 1-12

Horan, David (2000): "The Innocence Commission: An Independent Review Board for Wrongful Convictions", *Northern Illinois University Law Review*, pp. 91-189

Hoyle, Carolyne (2020): "The Shifting Landscape of Post-conviction Review in New Zealand: Reflections on the Prospects for the Criminal Cases Review Commission", *Current Issues in Criminal Justice*, pp. 208-223

Hoyle, Carolyne and Sato, Mai (2019): *Reasons to Doubt. Wrongful Convictions and the Criminal Cases Review Commission* (Oxford, Oxford University Press)

James, Annabelle, Taylor, Nick and Walker, Clive (2000): "The Criminal Cases Review Commission: Economy, Effectiveness and Justice", *Criminal Law Review*, pp. 140-153

Kerrigan, Kevin (2006): "Miscarriage of justice in the Magistrate's Court: The Forgotten Power of the Criminal Cases Review Commission", *Criminal Law Review*, pp. 124-139

Knoops, G.G.J. and Bell, E.L.I. (2015): "The Emerging Phenomenon of Wrongful Convictions in the Netherlands: Causes and Solutions", in Lupária, Luca (ed.): *Understanding wrongful conviction. The protection of the innocent across Europe and America* (Milan, Cedam), pp. 83-110

Kyle, David (2004): "Correcting Miscarriages of Justice: The Role of the Criminal Cases Review Commission", *Drake Law Review*, pp. 657-676

Leigh, L.H. (2000): "Correcting Miscarriages of Justice: The Role of Criminal Cases Review Commission", *Alberta Law Review*, pp. 365-377

Leone, Giovanni (1987a): "Il mito del giudicato", in *Scritti giuridici* (Naples, Jovene), pp. 63-93

Leone, Giovanni (1987b): "Considerazioni sull'errore giudiziario (A proposito del caso Gallo)", in *Scritti giuridici* (Naples, Jovene), pp. 753-762

Leonetti, Carrie (2022): "Conviction Integrity: The Canadian Miscarriages of Justice Commission", *Wrongful Conviction Law Review*, pp. 97-127

Lucchini, Luigi (1905): *Elementi di procedura penale* (Florence, Barbera)

Lupária Donati, Luca and Pittiruti, Marco (2020): "Post-Conviction Remedies in the Italian Criminal Justice System", *Erasmus Law Review*, pp. 63-72

Lupária, Luca (2015): "Rethinking the approach to wrongful convictions in Europe: some preliminary remarks", in Lupária, Luca (ed.): *Understanding wrongful conviction. The protection of the innocent across Europe and America* (Milan, Cedam), pp. 1-12

Lupária, Luca and Greco, Chiara (2020): "Unveiling Wrongful Convictions Between the U.S. and Italy: Cross-Learning From Each Other's Mistakes", *Wrongful Conviction Law Review*, pp. 101-123

Lupária, Luca, Cagossi, Martina and Pittiruti, Marco (2023): "Miscarriages of justice in Italy", in Robins, Jon (ed.): *Murder, Wrongful Conviction and the Law. An International Comparative Analysis* (London, Routledge), pp. 103-121

Malleson, Kate (1995): "The Criminal Cases Review Commission: How Will It Work?", *Criminal Law Review*, pp. 929-937

Martinsson, Dennis (2020): "Exoneration in Sweden. Is It Not about Time to Reform the Swedish Model?", *Erasmus Law Review*, pp. 87-101

McCusker, Malcolm (2025): "Justice for the Wrongfully Convicted Should Not Depend on Chance: The Need for a Criminal Cases Review Commission in Australia", *Criminal Law Journal*, pp. 569-576

Mittermaier, Karl (1858): *Teoria della prova nel processo penale* (Milan, Sanvito)

Mount, Simon (2009): "A Criminal Cases Review Commission for New Zealand", *New Zealand Law Review*, pp. 455-480

Mumma, Christine C. (2004): "The North Carolina Actual Innocence Commission: Uncommon Perspective Joined by a Common Cause", *Drake Law Review*, pp. 647-656

Nan, Joost and Lestrade, Sjarai (2020): "Towards a European Right to Claim Innocence?", *European Papers*, pp. 1325-1340

Nan, Joost, Holvast, Nina and Lestrade, Sjarai (2020): "A European Approach to Revision in Criminal Matters?", *Erasmus Law Review*, pp. 102-106

Naughton, Michael (2012a): "The Criminal Cases Review Commission: Innocence versus Safety and the Integrity of the Criminal Justice System", *Criminal Law Quarterly*, pp. 207-211

Naughton, Michael (2012b): "The Importance of Innocence for the Criminal Justice System", in Naughton, Michael (ed.): *The Criminal Cases Review Commission: Hope for the Innocent?* (Basingstoke, Palgrave Macmillan), pp. 17-40

Naughton, Michael (2022): "Theorising Miscarriages of Justice", *Islamic Perspective*, pp. 93-118

Nobles, Richard and Schiff, David (1995): "Miscarriages of Justice: A Systems Approach", *Modern Law Review*, pp. 299-315

Nobles, Richard and Schiff, David (2000): *Understanding Miscarriages of Justice* (New York, Oxford University Press)

Nobles, Richard and Schiff, David (2001): "The Criminal Cases Review Commission: Reporting Success?", *Modern Law Review*, pp. 280-299

Nobles, Richard and Schiff, David (2005a): "A reply to Graham Zellick", *Criminal Law Review*, pp. 951-954

Nobles, Richard and Schiff, David (2005b): "The Criminal Cases Review Commission: Establishing a Workable Relationship with the Court of Appeal", *Criminal Law Review*, pp. 173-189

Nobles, Richard and Schiff, David (2018): "Trials and Miscarriages: An Evolutionary Socio-historical Analysis", *Criminal Law Forum*, pp. 167-225

Quirk, Hannah (2007): "Identifying Miscarriages of Justice: Why Innocence in the UK is Not the Answer", *Modern Law Review*, pp. 759-777

Rego, Rhanee (2021): "A Critical Analysis of Post-Conviction Review in New South Wales, Australia", *Wrongful Conviction Law Review*, pp. 305-347

Roach, Kent (2012a): "An Independent Commission to Review Claims of Wrongful Convictions: Lessons from North Carolina?", *Criminal Law Quarterly*, pp. 283-302

Roach, Kent (2012b): "Wrongful Convictions in Canada", *University of Cincinnati Law Review*, pp. 1465-1526

Roach, Kent and Williams, Felicity (2023): "Miscarriages of Justice in Canada", in Robins, Jon (ed.): *Murder, Wrongful Conviction and the Law. An International Comparative Analysis* (London, Routledge), pp. 167-184

Roberts, Stephanie and Weathered, Lynne (2009): "Assisting the Factually Innocent: The Contradictions and Compatibility of Innocence Projects and the Criminal Cases Review Commission", *Oxford Journal of Legal Studies*, pp. 43-58

Ruyters, Michele and Bartle, Jarryd (2024): "The Problem of Post-Conviction Review in Australia", *Alternative Law Journal*, pp. 288-295

Savage, Steve (2007): "Restoring Justice: Campaigns against Miscarriages of Justice and the Restorative Justice Process", *European Journal of Criminology*, pp. 195-216

Schehr, Robert (2005): "The Criminal Cases Review Commission as State Strategic Selection Mechanism", *American Criminal Law Review*, pp. 1289-1302

Schehr, Robert (2012): "A View from the United States", in Naughton, Michael (ed.): *The Criminal Cases Review Commission: Hope for the Innocent?* (Basingstoke, Palgrave Macmillan), pp. 205-220

Schehr, Robert and Weathered, L. (2004): "Should the United States establish a Criminal Cases Review Commission?, *American Judicature*, pp. 122-125

Scomparin, Laura (1997): voce "Errore giudiziario (riparazione dell')", *Digesto discipline penalistiche*, pp. 319-327

Shumba, Tapiwa (2017): "Litigating Innocence: The Problem of Wrongful Convictions and Absence of Effective Postconviction Remedies in South Africa", *South African Journal of Criminal Justice*, pp. 179-197

Sotgiu, Giuseppe (1934): *La revisione dei giudicati penali* (Rome, Istituto Edizioni Moderne)

Stridbeck, Ulf and Brenner, Tim (2023): "Miscarriages of Justice in Norway", in Robins, Jon (ed.): *Murder, Wrongful Conviction and the Law. An International Comparative Analysis* (London, Routledge), pp. 65-86

Stridbeck, Ulf and Magnussen, Svein (2012): "Opening Potentially Wrongful Convictions: Look to Norway", *Criminal Law Quarterly*, pp. 267-283

Stridbeck, Ulf and Magnussen, Svein (2013): "Prevention of Wrongful Convictions: Norwegian Legal Safeguards and the Criminal Case Review", *University of Cincinnati Law Review*, pp. 1372-1390

Taylor, Nicholas and Mansfield, Michael (1999): "Post-conviction Procedures", in Walker, Clive and Starmer, Keir (eds.): *Miscarriages of Justice. A Review of Justice in Error* (London, Blackstone Press Limited), pp. 229-246

Troisi, Paolo (2011): *L'errore giudiziario tra garanzie costituzionali e sistema processuale* (Padova, CEDAM)

Turco, Elga (2007): *L'equa riparazione tra errore giudiziario e ingiusta detenzione* (Milan, Giuffrè)

van Koppen, Peter J. (2008): "Blundering Justice: The Schiedam Park Murder", in Kocsis, Richard N. (ed.): *Serial Murder and the Psychology of Violent Crimes* (New York, Humana Press), pp. 207-228

Verhesschen, Katrien and Fijnaut, Cyrille (2020): "Correcting Wrongful Convictions in France: Has the Act of 2014 Opened the Door to Revision?", *Erasmus Law Review*, pp. 22-32

Walker, Clive and Campbell, Kathryn (2012): "The CCRC as an Option for Canada: Forwards or Backwards?", in Naughton, Michael (ed.): *The Criminal Cases Review Commission: Hope for the Innocent?* (Basingstoke, Palgrave Macmillan), pp. 191-204

Walter, Brittany L. (2019): "American Criminal Justice Reform: Human Factor Analysis in Wrongful Convictions and the Need for an Independent Commission", *University of San Francisco Law Review*, pp. 145-164

Weathered, Lynne (2012): "The Criminal Cases Review Commission: Considerations for Australia", *Criminal Law Quarterly*, pp. 245-266

Weeden, John (2013): "The Criminal Cases Review Commission (CCRC) of England, Wales, and Northern Ireland", *University of Cincinnati Law Review*, pp. 1415-1425

White, Mike (2023): "Miscarriages of Justice in New Zealand", in Robins, Jon (ed.): *Murder, Wrongful Conviction and the Law. An International Comparative Analysis* (London, Routledge), pp. 201-214

Zellick, Graham (2005), "The Criminal Cases Review Commission and the Court of Appeal: The Commission's Perspective", *Criminal Law Review*, pp. 937-950

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