I. Introduction

1. Introduction to the subject of investigation

Historically, DPs with their sensory, physical and/or mental disabilities have been considered to be deviations, the attitude of 'normal' ones towards them has been special not in the positive sense of the word. Plato, for example, argued that an ideal city governed by reasonableness should actively kill individuals with a disability as diseased bodies are of no use to the State.[2] Aristotle following his teacher regarded certain people with intellectual disabilities as "natural slaves" and not worth of living;[3] Locke[4] uses lunatics and idiots to demarcate the boundaries of freedom; Hume[5] applies creatures 'inferior in mind or body' to set the boundaries of 'equal-

2 Plato, Republic, book III. (trans. Jowett, Benjamin): "and therefore our politic Asclepius may be supposed to have exhibited the power of his art only to persons who, being generally of healthy constitution and habits of life, had a definite ailment; such as these he cured by purges and operations, and bade them live as usual, herein consulting the interests of the State; but bodies which disease had penetrated through and through he would not have attempted to cure by gradual processes of evacuation and infusion: he did not want to lengthen out good-for-nothing lives, or to have weak fathers be getting weaker sons; --if a man was not able to live in the ordinary way he had no business to cure him; for such a cure would have been of no use either to himself, or to the State… this is the sort of law, which you sanction in your State. They will minister to better natures, giving health both of soul and of body; but those who are diseased in their bodies they will leave to die…".

3 Aristotle, Politics, 7, 1335b. 15 (Trans. Jowett, Benjamin): "as to the exposure and rearing of children, let there be a law that no deformed child shall live". See also Merriam, 2010.

4 Locke 1960 [1689]: II, 60: "If through defects that may happen out of the ordinary course of Nature, anyone comes not to such a degree of Reason, wherein he might be supposed incapable to know the Law... he is never capable of being a Free Man, he is never let loose to the disposure of his own Will. And so Lunatics and Idiots are never set free from the Government of their Parents".

5 Hume 2000: 190: "were there a species of creature intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel their resentment; the necessary consequence, I think is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice towards them".

ity'; Rawls[6] uses mentally disordered and physically DPs to define the parameters of the original position; and Dworkin[7] points out disability as his main example of unfortunate outcomes due to nature rather than choice that need to be compensated through insurance scheme.

These concepts shaped not only the societal attitudes and political theories addressing the DPs[8] but also, as a consequence, have been the fundamental elements of national and international laws and policies addressing DPs. For instance, in the UN human Rights System, DPs went through four stages before they were fully recognized as right holders: DPs as invisible citizens (1945–1970); DPs as subjects of rehabilitation (1970–1980); DPs as objects of human rights (1980–2000); and DPs as human rights subjects (since 2000).[9]

The wave of gradually intensifying protests by affected persons led to reconsideration of the negative attitudes towards DPs causing global problem of invisibility. Most particularly, in the last decade of the 20th century, the need for shift from soft-legal instruments to more decisive actions has been acknowledged. Accordingly, many states tried to eradicate the incomparable inequalities between DPs and non-disabled by enforcing non-discrimination laws and implementing protection measures in social and economic policy fields. However, issues outside of these areas remained either unaddressed e.g., accessibility or continued to be based on segregative approaches e.g., education, which hindered the equal and comprehensive participation of DPs at the economic, social, cultural, civil and political areas of life.

Thus, a need for a more sophisticated and globally affirmed legal step, grounded on the social approach of disability, which views DPs as human rights subjects rather than invisible, a rehabilitation subject or an object of human rights became evident.[10] As a result, the UN Convention on the

6 Rawls 2003 [1971]: 234: "since we wish to start from the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be normal and fully cooperating members of society... For our purposes here, I leave aside permanent physical disabilities and mental disorders so severe as to prevent persons from being normal and fully cooperating members of society in the usual sense".

7 Dworkin, 2005: 192: "in my view, people are entitled to receive some form of compensation when they are handicapped or lack marketable talent".

8 Arneil, 2016, 20 – 42; See also Arneil/Hirschmann, 2016; Ralston/Ho, 2010; Cureton/Wasserman, 2020.

9 Degener, 2009a.

10 Degener, 2017.

Rights of DPs (hereinafter referred as CPRD) and its Optional Protocol (OP- CPRD) were adopted on 13 December 2006[11] and entered into force on 3 May 2008.

The CPRD does not create new human rights for DPs, it just addresses the much-needed specification of existing human rights within the perspective of disability. Most specifically, it aims at ensuring the full and comprehensive enjoyment of human rights for DPs through the implementation of its provisions, such as the right to accessibility, reasonable accommodation, education and access to justice in about 180 states and entities, including the EU and its member states that ratified the Convention.

To ensure the effective implementation of the CPRD provisions and to achieve the paradigm shift in the understanding of disability from approaches that have a medical and charity-based focus to human-rights-based approach of governance, its drafters introduced novel structural provisions. Most particularly, Art. 33 of the CPRD on the "National Implementation and Monitoring" requires the SPs to establish or designate, in accordance with their legal and political structure, Focal Points (FPs), Coordination Mechanisms (CMs), Independent Monitoring Bodies and to ensure the participation of Disabled persons through their organizations thereof.

2. Research questions

The incorporation of national implementation and monitoring structures in a human rights treaty is seen as an unprecedented step towards effective domestication of internationally recognized human rights.[12] However, the SPs are faced with the challenging nature of its implementation. Every state party, therefore, depending on its legal traditions, follows a different path of incorporating, applying and complying with the international norms within its national legal frameworks. In the same vein, the varying political systems of the ratifying states, such as federal or unitary, might considerably affect the administrative success of monitoring, coordination, civil society participation and accountability at the vertical and horizontal governmental levels. The aim of the present research is to examine the different legal and political approaches of the federal and unitary systems in implement-

11 General Assembly A/Res/61/106, 2006.
12 Beco/Hoefmans, 2013.

ing the Art. 33 CPRD. The study, thereby, examines the effects of these types of implementations on the promotion, protection and monitoring the implementation of the direct and indirect policies e.g., right to inclusive access to education (Art. 24 CPRD) through the cross-country comparison of EU Member States with federal and unitary political structures.

For this purpose, the following questions are raised:

How is the CPRD incorporated in the domestic law?

How can this type of incorporation affect the CPRD implementation process?

What are the roles of actors under the Art. 33 CPRD in the implementation process of the Convention at the national and subnational levels?

How is the interplay within and between the actors under the Art. 33 CPRD organized at the vertical and horizontal governmental levels?

How are the actors under the Art. 33 CPRD financed?

3. Research Design

3.1 Research Gaps

The incorporation of the Art. 33 into the CPRD is unquestionably the most important step to ensuring compliance of SPs with the Convention and initiating rapid paradigm shift. Its innovative character, however, indicates a big research gap. Since the adoption of the CPRD there have been a number of normative studies on Art. 33,[13] but there have not been systematic studies evaluating the interplay within and between these actors, as well as their combined role and duties in respect of the CPRD implementation.

In general, there is a considerable number of literature examining the structure and role of public authorities in developing and implementing national policies.[14] The focus on or consideration of policies affecting DPs directly or indirectly, instead, is rare. The few[15] existing contributions address the national disability policies as such, but they miss the reflection on

13 E.G., Gatjens, 2011; Beco (ed.), 2013; Schulze, 2014; Manca, 2017; Quinn, 2009a; Raley, 2016, 2017; UN/OCHR, 2011.

14 E.G., Schmitt (Hrsg.), 1996; Dachs (Hrsg.), 2006; Ismayr, 2008c: Ismayr/Bohnefeld/Fischer, 2009 (Hrsg.); Laufer/Münch, 2013; Rudzio, 2013; Schroeder/Neumann, 2016; Bußjäger, 2018a; Horn, 2019; Christiansen et al. 2020; Bohne/Graham/Raadschelders/Lehrke, 2014; Hildreth/Miller/Lindquist, 2021.

15 E.G., Welti et al., 2014 (evaluates the implementation of the Federal disability law by considering the role of relevant actors at the federal level); Sporke, 2008 (studies

the role of state actors in the light of multi-level governance of international social and cultural norms and with it also the cross-country peculiarities.

In reviewing the research on the involvement and participation of the civil society, especially representatives of marginalised groups at the policy formation and development processes, I could find a large number of literature.[16] However, there are only a limited number of studies elaborating on the participation of DPs and their representative organizations at the legislative and or administrative processes.[17] None of these, however, offer a systematic evaluation of the work of organizations of DPs in the multi-level governmental prospective, despite the overwhelming number of states with federal or decentralised policy-making and administration structures. Similarly, the novel role of DPOs enshrined by the CPRD has not yet been the subject of systematic and comparative analysis.[18]

The scholarly works on human rights institutions instead consider the international norms, which is not surprising given their origin.[19] Nevertheless, only a few of them address the role of such institutions in monitoring the implementation of the rights of DPs. The available contributions, normally, have a normative character and/or are limited to the single-case descriptions.[20] Furthermore, there are no studies that elaborate on the performance of the human rights institutions or the independent Monitoring Frameworks (MFs), as the CPRD terms them, in their legal and political contexts.

While the individual role of each and every actor mentioned above is of high importance for the implementation of the CPRD, their mutual cooper-

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the mutual role of federal actors in the development of disability policies); Stoy, 2015 (examines the role of Federal states in implementing selected federal/Länder-level policies, including policies affecting DPs); Maschke, 2008, elaborates on disability politics of selected EU member states in general, but not in the light of multilevel governance).

16 E.G., Willems/Winter (Hrsg.), 2000; Ruß, 2005, 2009; Linden/Thaa (Hrsg), 2009; Winter, 2014; Eigenmann/Geisen/Studer (Hrsg.), 2016; Schroeder/Schulze (Hrsg.), 2019.

17 E.G., Hammerschmidt, 1992; Schulz, 1995; Fleischer/Zames, 2001; Köbsell, 2006; Sporke, 2008; Gritsch et al., 2009; Welti, 2005, 2015a; Heyer, 2015; Degener/von Miquel (Hrsg.), 2019.

18 Lamplmayr/Nachtschatt's (2016) report on the implementation of Art. 33 CPRD offers a comparative outlook of DPO participation, but it misses the political and multi-level prospective.

19 For the list of scholarly works on NHRIs see Jensen, 2018.

20 E.G., Mertus, 2009; Gatjens, 2011; Beco, 2011; Beco/Murray (eds.), 2014; Byrnes, 2014; Lamplmayr/Nachtschatt, 2016.

ation is the cornerstone of the Art. 33 CPRD. Accordingly, in the present study, among the elaboration on the individual structures, capacities and actions of FPs/CM, MFs and organizations of DPs, I evaluate the interplay within and between them at the multiple governmental levels to close the existing research gap.

3.2 Conceptual Framework

The research gaps mentioned above hampered the timely development of theoretical framework that would allow interdisciplinary and comprehensive examination of CPRD implementation. The large number of legal scholarships on the substantial provisions of the CPRD certainly offer a solid theoretical base. The conceptual framework for the newly introduced provisions of governance instead have not been developed although the Art. 33 CPRD explicitly requires inclusion of governance theory. For instance, Gráinne de Búrca maintains that "... the CRPD was deliberately drafted in a novel and more broadly participatory way to include [governance theory] features".[21] These approaches underline not only the role of each and every actor mentioned in the Art. 33 of the CPRD but also require the consideration of interplay within these actors at both vertical and horizontal governmental levels in line with the legal and political structures of SPs, which might be possible only with the help of combined theoretical approaches.

Therefore, I apply the concepts of multi-level governance and legal systems to frame up the theoretical foundation of this work. The concept of Multi-Level-Governance, inclusive of federal and unitary system theories, allow investigation of the legal and political structures of the chosen states and evaluate their divergence and convergence in ratifying and effectively applying the CPRD as an international treaty at the vertical and horizontal governmental levels. They also help in studying the top-down legislative processes and evaluating the actions of selected actors at the international, national and sub-national levels. The disability rights framework at the supranational level, the concept of Civil Law system and the dualistic reception approach of International Law aims, hereby, at stressing the basic legal and political similarities of the SPs and controlling external factors impacting the domestic implementation of the CPRD.

21 De Búrca, 2017, 111; the author perceives the 'experimentalist governance' as new governance. See also de Búrca, 2010: 227.

In line with the combined concepts of multi-level governance and legal systems, I, in addition, build up a comprehensive conceptual framework defining structural configuration, infrastructural capacity, scope of actions, responsibilities of and interplay within and between the actors set up by the Art. 33 CPRD. The developed conceptual framework serves as the analytical framework for the empirical investigations of this work.

3.3 Analytical Framework

Initially, human rights research was predominantly subject of legal investigations. It consisted of the normative evaluation and interpretation of human rights standards and setting up new international human rights institutions to monitor and domesticate those standards. In the beginning of 1990s, the human rights came into the focus of social science scholars by laying down a normative foundation for development and societal change research.[22] Evidently, the isolated studies based on single-disciplinary methods has been sufficient for analyses of International Treaties that, normally, had normative nature.

The introduction of the provision of national implementation and monitoring structures into the human rights system made it clear that the human rights research can no longer be subject of only legal investigations but need to be considered from an interdisciplinary perspective.[23]

Accordingly, I apply the method of comparative political analysis to carry out comprehensive analysis of the legal and political domestication of the CPRD and the role of the state-actors, Independent Monitoring Mechanisms and organizations of DPs in its implementation at the various governmental levels of SPs with federal and unitary political systems in line with the concepts of multi-level governance and legal systems mentioned above. The methods of political comparison include the case study approach, as well as the techniques of data collection, in particular, expert interviews and documentation analysis. It is important to mention that the primary literature, including international, supranational and national legal instruments, parliamentary bills, case-law and commentaries can be found in footnotes. Some CPRD-reporting related and other relevant documents are enlisted in the primary literature. The majority of electronic documents and relevant webpages are also linked in footnotes only.

22 Andreassen/Sano/McInerney-Lankford (eds.), 2017.
23 Langford, 2017, 161–191.

4. Structure of the Researchwork

This research work is divided into seven chapters. After the introduction, the chapter II begins with developing the theoretical framework by setting up the concept for multi-level investigation of EU Member states with federal and unitary political structures. In particular, it builds up the conceptual frame used to study the structure, financial and human resources of actors stipulated by the Art. 33 CPRD and their collaborative efforts taken to discharge their responsibilities to promote, protect, implement and monitor the direct and indirect rights, especially the right to inclusive education enshrined by the Convention at the multiple governmental levels. The chapter II also lays down the concept and tradition of Civil Law Systems for examining the varying implementation outcomes of international and supranational legal tools. The chapter III presents the analytical frame using the method of comparative political analysis, including the case study approach, as well as the techniques of data collection used in this research work, in particular the documentation analysis and expert interviews.

The chapter IV is structured into five parts. In the first part I address the state actors including the FPs and CMs under the Art. 33 Para. 1 CPRD. The second and third parts consider the division of legislative and administrative powers and legal traditions of applying International Law. In the fourth part, I analyse the national implementation of the CPRD and the role of state actors therein. The final concluding part offers a comparative outlook on the efficacy of national implementation in the light of the given legal and political system of Germany, Austria and Denmark.

The chapter V presents three case studies on the National Independent Monitoring Mechanisms (Art. 33 Para. 2 CPRD), where I evaluate the composition, resources and mandate of each designated or established Monitoring Mechanism by analyzing their compliance with the Paris Principles and the CPRD guidelines. Finally, I elaborate comparatively on the factors leading to effective performance or aspects responsible for the malfunctioning of the designated MFs.

The chapter VI is divided into three case studies, where I examine the composition, resources, aims and actions of organizations representing DPs at the multiple governmental levels and assess the compliance of the SPs with the Art. 4.3 and 33.3 CPRD in considering the requirements provided by the General Comment No. 7. I conclude the chapter with the comparative evaluation of the factors impacting the efficacy of DPO involvement and

participation within the varying legal and political systems of selected EU Member states.

In the concluding chapter, I summarize the central findings of the study.