

III. Research Methodology

The concepts of multi-level governance and legal systems outlined in the previous chapter serves as the analytical framework for the empirical investigations of this work. To capture the legal and political domestication of the CPRD and the role of the constitutional organs of the state and interest groups in its implementation at the vertical and horizontal level of governance in SPs with varying legal and political configurations, I apply the method of comparative political analysis. Accordingly, in the following subsections I discuss the research methodology- methods of political comparison, including the case study approach, as well as the techniques of data collection used in this research work, in particular, documentation analysis and expert interviews.

1. The comparative method in political analysis

Very often, the importance of the comparative political method is being underestimated in studies that elaborate on the effects of legal instruments. However, the combination of the method of comparative politics and the method of comparative law are absolutely instrumental in research that has an interdisciplinary character. In view of this, some legal comparativists do not draw a clear line between political science and law, and thus attempt to combine jurisprudence and comparative law with methods of social sciences, or even try to reshape them.³³³

The research objects of comparative political science, such as democracy and its subtypes e.g., liberal democracy, federal and unitary political structures, presidential and parliamentary governing systems, the welfare state, globalization, as well as the influence and importance of interest groups might serve as a key for decoding effects of a particular legal instrument. On the other hand, research aspects such as state compliance, social movements and political culture might not have a direct dogmatic effect on the compared law, but as elements of the respective legal culture, they could play an important role for obtaining background knowledge, as well as ana-

333 Kischel, 2015: 1 – 26.

lysing and understanding the law-making and legal developments within the compared states. In this case, however, the main emphasis of the legal comparative research is set on normative evaluation: e.g., the interpretation and application of legal rules, whereas, the comparative politics bases its research interest on social reality and political theory.

Thus, the comparative political science could be characterized by empirical methods, which mainly concentrate on material questions that aim at making observations through the investigation of the real world rather than using abstract theories or speculation: e.g., why are some states compliant with the human rights norms and others not? This means that scholars of comparative politics would rather indulge in finding out why and how state non-compliance with the human rights norms occur, than investigating the merits of state compliance with the human rights norms. Consequently, comparative politics seeks to develop strong claims about cause and effect, testing various hypotheses, using factual evidence, and developing larger theories about why the political processes, institutions or actors operate the way they do.³³⁴

Actually, the majority of political phenomena are the result of several factors. Explaining a certain outcome, therefore, does not presuppose simply pointing out one or another of these causes. Instead, an attempt should be made to explain by determining not just the necessary conditions to produce an effect, but those that are sufficient to produce it: e.g., the fact that a given Liberal Democracy country has multiple levels of governance, such as federal constitutional system, might be a necessary factor for poor human rights compliance. However, since there are countries with federal systems, such as Austria, Australia, Germany, the USA and Switzerland that are known as well-established democracies, the condition of having multiple levels of governance is clearly not sufficient to cause this outcome by itself, and consequently cannot be presumed to be the main cause of human rights incompliance. For instance, Austria has been known for its quick and timely ratification of all United Nations core human rights conventions, which however, does not guaranty its compliance with these legal norms by default, since the majority of these conventions have been ratified with a constitutional reservation stating that the no international treaty can be directly applied, unless the content is published as a law or

334 Dickovick/Eastwood, 2015: 2 – 12.

enshrined as a legal provision.³³⁵ Similarly, Denmark has ratified a number of the United Nations core human rights conventions that, however, have no direct application, unless they are incorporated in the national law.³³⁶ In this case, the human rights in compliance cannot simply be attributed to the legal system of Austria and Denmark since one is unitary and the other operates as a federal country, meaning that the cause of human rights in compliance lays not in the legal system but in other contextual reasons.

In view of this, the empirical part of the present research inquiry should be based on case studies, including the CPRD-related documentation and expert interviews. In order to be able to assess the validity of influencing factors on the central theoretical presumptions, I employ the combination of congruence and process analysis methods. This should help in providing theoretical illumination of the whole political process covering the CPRD implementation efforts of the observed actors.

1.1 Method of congruence

To enable the most possible theory-oriented analysis of selected cases, the present study follows the congruence method suggested by George & Bennet.³³⁷ "The essential characteristic of the congruence method is that the investigator begins with a theory and then attempts to assess its ability to explain or predict the outcome of a particular case."³³⁸

In applying the congruence method, I based my assessments on two key steps:

Exact specification of the theoretical assumptions into observable indicators: e.g., setting up, explicitly, which outcome under which initial conditions should be expected if a theory is to be confirmed.

On the basis of the empirical case, examine the extent of congruence between theoretical expectations and actual evidence.³³⁹

In addition, George and Bennett refer to the method of congruence as "within-case method of causal interpretation."³⁴⁰ Thus suggesting that the

335 Bundes-Verfassungsgesetz (B-VG), as amended by BGBl. I Nr. 85/2022, Art. 50.

336 CPRD Committee, Concluding observations on the initial report of Denmark (CRPD/C/DNK/CO/1), Para. 3.

337 George/Bennet, 2005: 181–204).

338 Ibid., 181).

339 Blatter/Janning/Wagemann, 2007: 151.

340 George/Bennett 2005: 181).

base of this method is the congruence between diverse descriptive and prognostic elements of a theory and corresponding empirical facts of a case.

However, such a covariance between the dependent and independent variables should not be taken for granted as the theoretically predicted and empirically confirmed covariance might prove to be "superficial". To avoid this problem in the present study, I carry out a critical validity control of the resulting causal conclusion, especially by searching for further evidence within the cases with the help of the systematic process analysis.

1.2 Method of Systematic Process Analysis

In applying the systematic process analysis developed by George and Bennett,³⁴¹ I aim at studying the actors, namely the FPs/Coordination Units, Independent Mechanisms and DPOs and to what extent do they influence the implementation process of the Convention. For this purpose, it is necessary to shed light on the horizontal and vertical interactions and cooperation's of the governmental organs, such as the FP and the Coordination Unit, as well as non-governmental bodies, such as the Independent Mechanisms and DPOs starting from the ratification process of the Convention.

It is postulated that the following influencing factors constitute the necessary condition for the successful implementation of the Convention:

Interaction; I assess if the cooperation and consultancy within and between the mentioned actors is being ensured on an equal (or the interaction steps and adjustments are one-sided), regular and accessible basis;

Joined decision-making; I evaluate if the views and opinions of the Independent Mechanism and DPOs are given due consideration during the legislative processes;

Financial resources; I study if the mentioned actors have sufficient financial means to:

- I. Perform their functions stipulated by the Convention;
- II. Have necessary number of employees;
- III. Act independently and successfully.

The systematic process analysis, in concentrating on the question whether it is possible to prove that the result has really been caused by the pre-

341 George/Bennett, 2005.

sumed factors, pursues the most detailed tracing of the causal relationships between one or more independent variables and the dependant variable. Moreover, the systematic process analysis strongly contributes to the better understanding of causal relationships.³⁴² Consequently, it helps not only in determining if X was caused by Y, but also in ascertaining how it happened.

In fact, the systematic process analysis can fulfil various research objectives. It might serve as a theory-testing, theory-generating or case-explanatory analytical tool.³⁴³ In this work, I use the systematic process analysis to test the empirical validity of the theoretical assumptions on the basis of the selected cases.

In an attempt to create a convincing and complete causal chain of evidence between the independent and dependant variables with the help of the systematic process analysis, I embark on quality information, which with respect to governance processes is empirically difficult to access, as it is mainly located in the field of informal politics.³⁴⁴ However, through the analysis of the CPRD reporting materials and expert interviews, the quality of information within the present study is proved to be ensured.

2. Case Study approach

The far-reaching structural innovation, most particularly, the introduction of the Art. 33 of the Convention, certainly requires more in-depth process analysis. This, in its turn, entails complex information collection and the use of research techniques. In view of this, I adopted the case-centred approach of study.

Case studies constitute the fundamental method of analysis in comparative politics. While the case studies may take different forms: e.g., geographical units, such as social rights history of Berlin, before and after unification, geographic area like comparing human rights state in European Union and the African Union, political groups, organizations, specific institutions, historical processes, eras, or even discrete events.³⁴⁵ In the majority of comparative research, however, cases are based on cross-country comparisons, normally with a certain time-limit as it is the case with the present study.

342 Beach/Pedersen, 2013: 1–2; Mahoney, 2012: 571.

343 Beach/Pedersen, 2013: 11–12.

344 Kropp, 2006: 275.

345 Dickovick/Eastwood, 2015: 12 – 13.

In addition, the form of comparative political research might differ according to the quantity of selected cases. Some comparative studies, despite the criticism that it cannot be sufficient for testing all hypotheses, conduct single-case studies.³⁴⁶ Still other studies take the form of large-N comparisons,³⁴⁷ where many cases are analysed with the help of statistical methods that aim at searching for common features. Nevertheless, the most common form of comparative case studies are the small-N comparisons of 2 to more than 20 countries, which are known as the comparative method, the 'comparable cases strategy',³⁴⁸ or "focused comparison".³⁴⁹ This form of comparative method implies the intentional selection of a few countries for comparison. The characterising factors of this comparative method are, on the one hand, the deliberate choice of countries from every possible case.³⁵⁰ On the other hand, for being able to focus on the causal mechanism within a given configuration, it is important to ensure convergence of background variables. In the present study, the similar background variables are liberal democratic regimes, EU membership, Civil Law system and ratification date.³⁵¹

It is argued that the 'focused comparison' might lead to insecure inferences, limited findings, and in some cases, simply incorrect conclusions about a particular topic if rules of inquiry have not been defined.³⁵² Nonetheless, it might reach control through the accurate choice of countries, which are evaluated applying a middle level theoretical abstraction. Due to the fact that this form of comparative studies concentrates more on the detailed characteristics of a given country, this form tends to be more intensive than extensive. The political observations that form the basis of this type of comparison are commonly perceived as 'configurative', meaning that it is the outcome of co-acting multiple causal factors. Therefore, this form of comparative method is often being described as "case-oriented".³⁵³ This is because within this form of comparison the object of analysis, in

346 For the detailed description of the Single-case studies see Landman/Carvalho, 2017: 86–94.

347 For more on large-N comparisons see Dickovick/Eastwood, 2015: 304 – 324; Landman/Carvalho, 2017: 57–69.

348 Lijphart, 1975: 158–177.

349 Hague/Harrop/Breslin, 1992.

350 Mahoney/Goertz, 2004: 653–669.

351 For more see the part on case selection below.

352 Landman/Carvalho, 2017: 33, 72–84.

353 Ragin, 1994: 299–320; Ragin, 2008; Ragin/Amoroso, 2010; Ragin, 2013.

majority of cases, is the country,³⁵⁴ and focus is not put on the evaluation of similarities and differences among countries, but on expectations or evidence resulting from their relationship to one or more theories.³⁵⁵ As a result, the value and the function of case studies are aligned with the set conceptual context.³⁵⁶ The incorporation of this strategy within the present study shall be discussed in the following subsection on the case selection.

2.1 Case Selection

Scholars of federalism generally assume that territorial autonomy allows actors of different tiers of government to better respect and protect human rights. They believe that federalism aids constitutionalism, democracy and good governance and perceive autonomy rights not as an obstacle to the implementation of individual rights and freedoms but as a beneficial factor.³⁵⁷ Nevertheless, Human Rights bodies, including the CPRD Committee, and a number of scholars see federal power-sharing as hindering factor for equal implementation of human rights for citizens of the same state and require uniform approaches.³⁵⁸ However, even in unitary states, regional and municipal governments might influence the timing and content of the central government policy implementation.³⁵⁹

In view of this, I have chosen the federal and unitary political systems with an aim to find the main factors that might influence the outcome of the CPRD implementation at the national level. For this purpose, I, Initially, intended to select two SPs with a federal structure, namely Austria and Germany and two SPs with unitary structures such as Denmark and France. However, the case selection criteria applied and explained below, forced research design change:

EU membership: as it is presumed that EU Member States are based on liberal democratic values and offer equal level human rights protection of DPs and the EU commission may play a role in driving EU Member States

354 Landman/Carvalho, 2017: 72 – 84.

355 Blatter/Janning/Wagemann, 2007: 148 – 149.

356 King/Keohane/Verba, 1994 2004: 187.

357 Kincaid, 2011; Marx et al., 2014.

358 Niederhauser, 2021; Belser, 2021; Belser/ Mazidi, 2018; Wyttenbach, 2017; Bell, 2002. For the CPRD Committee views, see, for example, Concluding observations on the Initial reports of Austria, Belgium and Germany.

359 O'Toole/Montjoy, 1984; Rhodes, 1991.

in implementing international human rights conventions, only EU Member States have been selected. It should be mentioned that after the 2010 elections, the democracy and rule of law in Hungary has been put under question and eventually led to recognition by the European Parliament that it can no longer be considered a democracy, and European values are under systemic threat in the country.³⁶⁰ Accordingly, it could not be considered in this research work.

Similar legal systems: for explaining the variations in implementation outcomes at the national level, the case selection has further been narrowed down by choosing countries that have similar legal systems, namely, countries with Civil Law systems. As a result, Ireland, as the only EU member State with Common Law legal system is excluded from the further consideration.³⁶¹

Ratification date: to study the process of the structural change required by the CPRD at the national level, it was necessary that the chosen countries have ratified the Convention by 2010 at the latest. After applying this selection criteria it remains 15³⁶² out of 27 EU member States.

Completed reporting procedure: for the correct empirical analysis, it was imperative that all chosen countries have gone through all steps of the reporting process, namely: States Parties Reports, Lists of Issues (LOIs), Replies to LOIs and Concluding Observations by the start of the research, namely October 2014. In applying this case selection criteria, the number of remaining 15 SPs reduces to five: Three federal states- Austria, Germany and Belgium. The latter was out of consideration due to language-related barriers. two unitary states- Denmark and Spain, which is perceived more as a devolved³⁶³ than a unitary state.

Thus, the failure of France in submitting its first state report on time,³⁶⁴ made it clear that France could not be further considered since it did not

360 Szelényi, 2022; Motion for the European Parliament Resolution (A9–0217/2022) Last accessed on 28.12.2022 at: https://www.europarl.europa.eu/doceo/document/A-9-2022-0217_EN.html.

361 It also falls out in applying the ratification date criteria.

362 These are: Austria, Belgium, Croatia, Czech Republic, Denmark, Germany, Spain, Sweden, France, Italy, Latvia, Lithuania, Portugal, Slovakia and Slovenia.

363 Costa-Font/Rico, 2007; Agranoff, 1996; Requejo, 2017.

364 In accordance with the Art.35 Para. 1 of the CPRD, each SP shall submit to the Committee a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the Convention for the SP concerned.

go through the full reporting process as of 2021.³⁶⁵ Besides, all attempts to contact relevant actors in France were unsuccessful. Austria, Denmark and Germany, instead, fulfil all above-mentioned criteria and can be considered in this research work. It should be noted that Germany belongs to the most developed Western European welfare states. It and Austria fall in the conservative-corporatist welfare state typology of Esping-Andersen, which is focused on the social insurance system.³⁶⁶ In contrast to this typology, Danish disability laws are based on more inclusive social-democratic Nordic type³⁶⁷, and the liberal Anglo-American type.³⁶⁸

2.2 Choice of Representative Case

In view of the fact that France could not be further examined, in testing the conceptual arguments, I focussed the present study on Germany by selecting it as the representative theoretical case, which serves as an ideal illustration of the theoretical concepts. The cases of Austria and Denmark are used to control the causal-process-observations with the help of Most Similar Systems Design (MSSD) and Most Different Systems Design (MDSD).³⁶⁹

3. MSSD and MDSD

3.1 Most Similar Systems Design

Based on the method of difference developed by J.S. Mill in 1843, the MSSD aims at comparing political systems that have a number of common features in an attempt to control for some differences while underlining others.³⁷⁰ It is based on the presumption that two cases (such as two countries) that are similar in a number of aspects would, most possibly, have very similar political outcomes. Accordingly, the comparative researcher would

365 France has ratified the CPRD together with its opt-protocol on 18.02.2010. The CPRD together with its optional protocol entered into force in France on 20.03.2010. The first state report of France has been submitted on 16.10.2017 and the Concluding Observation has been adopted on 7 September 2021.

366 Palier, 2010.

367 Kautto, 2010.

368 Castles, 2010.

369 Przeworski/Teune, 1970; Faure 1994; see also Seawright/Gerring, 2008.

370 Mill, 2011: 454 – 455.

look for the variations in outcomes that can explain why the countries are dissimilar. This means that if one would like to find out why countries that have many similarities, such as political structure, legal system, political history and cultural inheritance have dissimilar political outcomes, one should look into other dissimilar aspects of compared countries to be able to explain the difference

3.2 Most Different Systems Design

The MDSD is based on the contrary idea of MSSD. Meaning that the comparativists, in this case, select two cases that are different in nearly all aspects yet are similar on a specific outcome: e.g., French revolution of 1789 and Chinese revolution of 1949. Thus, the MDS design puts the emphasis on distinguishing the similarities that might provide analytical leverage. This system is based on Mill's method of agreement, which aims at identifying similar elements among different countries in an attempt to reach for a specific outcome.³⁷¹

3.3 Application within this Research Work

While the MSS and MDS designs form the bases of initial comparisons, they could not be viewed as a comprehensive approach to comparative evaluation. Consequently, one pair of similar or dissimilar cases could, by no means, "be sufficient for proving" a hypothesis to be valid for each and every case. Therefore, many scholars combine³⁷² both approaches to be able to test how generalizable the chosen cases could be, or to what extent these cases could be applicable to a wide number of cases.

In view of this, I, on the one hand, in consideration of political system similarities, adopt the most similar systems design by comparing two countries with a federal structure, such as Austria and Germany in order to capture the possible different outcomes. On the other hand, I apply the most different systems design, by comparing a SP that has a federal system, namely Germany and a SP that is based on unitary system, such as Denmark. Each analysed SP, if examined in comparison, have political system

371 Mill, 2011: 450 – 479.

372 See e.g., Linz/Stepan, 1996; Rueschemeyer et al., 1992; De Meur/Berg Schlosser, 1994; Lindberg, 2006.

dissimilarity, whereas both cases belong to a Civil Law system and thus could be helpful in identifying similar outcomes. The combination of MSS and MDS designs should allow the testing of the following hypotheses:

1. The CPRD implementation efficacy is not dependent of legal systems of the ratifying countries, but legal traditions and methods of multi-level domestication is decisive for its successful and consistent implementation. To prove the plausibility of this assumption, the following factors of each case are examined:
 - A. Legal and political structures;
 - B. Regulations on division of legislative and executive powers between federal/national, state/provincial and municipal governmental levels;
 - C. Regulations on incorporation of international human rights instruments within the national legal system;
 - D. The use of CPRD in the case law of the national and regional/Länder/provincial courts;
 - E. Process and dynamics of domesticating the CPRD into multi-sectoral and multi-level governance systems;
 - F. Regulations on the resource allocation and acting powers of FPs and CMs at multiple governmental levels;
 - G. Regulations on the establishment, funding and acting powers of National Independent Human Rights Institutions with regard to CPRD across multiple governmental levels of SPs.
 - H. Regulations on the DPO establishment, funding and involvement/participation at the federal/national, state/provincial and municipal governmental levels.
2. The effective implementation of the CPRD is dependent on the mutual, regular, vertical and horizontal cooperation and coordination within and between the governmental bodies and non-governmental actors, such as the Independent Monitoring Mechanisms and DPOs. To assess the plausibility of this supposition, the configuration and actions, as well as the interactions and cooperations between and within of the following bodies/actors shall be elaborated upon:

FP/Coordination Unit: Here, in addition to structural arrangements, financial capacity and responsibility performance, I study the coordination and collaboration between the FP and CMs as well as their interaction with other governmental and non-governmental actors at vertical and horizontal levels of governments.

DPOs: Here I examine the types and forms of DPOs, as well as their interaction with sub-bodies and their collaboration and coordination efforts with other same-level DPOs. I assess also their steps taken in decision-making processes affecting DPs directly or indirectly, as well as actions brought before extrajudicial and/or judicial actors.

Independent Monitoring Mechanisms: With regard to this actor, I analyse, in addition to discharge of mandate and availability of adequate resources, the form and methods of these actors in interacting with multi-sectoral and multi-level constitutional organs of states and in including and consulting DPOs in their work.

A number of scholars attempted to develop a widely applicable analytical framework for NHRIs.³⁷³ However, Stephen Livingstone and Rachel Murray rightly recognized that "given the variety in the character of NHRIs and the different contexts within which they operate it is difficult to develop a single set of criteria which can be applied to all of them to assess their effectiveness".³⁷⁴ To this end, keeping the context consistency in evaluating the status, functionality, mandate and especially cooperative responsibilities of NHRIs/MFs, might be vital for obtaining valid results.³⁷⁵ For instance, if the political system, where the NHRIs/MFs operate, are not based on democratic values of governance, then it is less likely that the cooperation of NHRIs/MFs with other relevant institutions e.g., ombudsman, a parliamentary commission on human rights or similar bodies might be effective. If, however, the NHRIs/MFs operate in SPs based on liberal democratic values of governance, such as politically open public and independent media system as it is in all examined SPs, then they might have equal bases for being successful in discharging their responsibilities, including awareness-raising/public relations.

Furthermore, assessing the compliance and efficacy of NHRIs with particular treaty obligations such as CPRD might be problematic if the analytical framework does not consider the requirements of that particular treaty body. This is the case even with the recently developed analytical frame on NHRI effectiveness, where Katerina Linos and Tom Pegram argue that a large body of literature in administrative law points to the fact that organizations with "formal safeguards are often more effective than agencies

373 Carver, 2005; Livingstone/Murray, 2004; Okafor, 2012; Mertus, 2009, 2012; Goodman/Pegram (eds.), 2012; Cardenas, 2012, 2014.

374 Livingstone/Murray, 2004.

375 Berg-Schlosser/Meur, 2009: 19–32.

that lack them".³⁷⁶ Nevertheless, the analytical frame, which focuses on 18 "formal institutional safeguards" and is structured around 4 main categories, does not capture the responsibilities that are key to an independent MF established or designated under the CPRD. Therefore, I adopted the frame to the present study by integrating 26 "formal institutional safeguards" into the 6 categories that include legal status and inclusive mandate (table 1), inclusive composition (table 2), promotion (table 3), protection (table 4), monitoring (table 5), accessibility and cooperation (table 6).

Table 1: Status and Inclusive Mandate Safeguards

| Legal Status and Inclusive Mandate Safeguards | Rationale |
|--|--|
| Constitutional or Legislative Status | Establishment by constitution or legislation makes Independent MF charter harder to amend, and Independent MF more stable. |
| Broad Rights Mandate | Includes protection, promotion and monitoring the rights of DPs broadly, including social, economic, and cultural. |
| Multi-Level Competence | Ensures mandate to promote, protect and monitor all CPRD provisions at all governmental levels. |

Table 2: Inclusive Composition Safeguards

| Inclusive Composition Safeguards | Rationale |
|---|--|
| CSO and especially DPO Inclusion | CSO/DPO representatives facilitate access to diverse societal groups and ensure inclusive working processes and outcome. |
| Adequate Funding | Ensures independent operation, including by having independent premises, staff and maintaining local accessibility. |
| No overrepresentation of MPs | Representation of more than 25 % MPs and especially of MPs from ruling parties |

376 Linos/Pegram 2017.

| | |
|--|--|
| | with voting rights may compromise Independent MF autonomy and independence. |
| No Government Representation | Government representatives may compromise Independent MF autonomy and independence. |
| No appointment/approval by Executive | Independent MF officials/members appointed by the executive may have limited independence. |
| No Dismissal by the Appointing Body | Objective and clearly defined dismissal procedure not conducted by appointing bodies helps safeguard the independence of Independent MF leaders. |
| Transparent nomination/appointment Procedure | Transparent nomination/appointment practices ensure non-selective representation. |

Table 3: Promotion Safeguards

| Promotion Safeguards | Rationale |
|--|---|
| Advice on Legislation | Helps make domestic legislation consistent with CPRD standards. |
| Human Rights Education/Capacity Building | Promotes human rights among government agencies, educational institutions, and civil society. |
| Thematic/Annual Reports | Helps focus public opinion on situation of DPs. |

Table 4: Protection Safeguards

| Protection Safeguards | Rationale |
|-----------------------|--|
| Power to Investigate | Ensures access to any person/incumbent, document, and entity both in the private and public sector at all governmental levels. |

| | |
|--|---|
| Power to Intervene | Ensures the communication of human rights standpoint in court proceedings. |
| Can Refer Complaints/Power to Litigate | Facilitates access of vulnerable groups to courts. |
| Individuals' Complaints | Power to hear individual complaints offers individuals direct access to Independent MF. |
| Enforcement Powers | Enforceable remedies help speed up implementation of any Independent MF decisions. |

Table 5: Monitoring Safeguards

| Monitoring Safeguards | Rationale |
|--|---|
| Participation in State Reporting Process | Helps to identify and communicate information on occurred violations and legal inconsistencies to the CPRD Committee. |
| Development of Evaluation System | Helps to assess the CPRD implementation practices and its impact and ensures harmonization of legislation and policies with the CPRD. |
| Access to Programs Serving DPs | Ensures CPRD conform program conception and development. |
| Access to Facilities Serving DPs | Helps to prevent the occurrence of all forms of exploitation, violence and abuse. |

Table 6: Accessibility and Cooperation Safeguards

| Accessibility and Cooperation Safeguards | Rationale |
|---|---|
| Local Accessibility | Facilitates multi-level access of DPs and their organizations to the Independent MFs. |
| Internal Accessibility | Ensures inclusive and smooth working processes and structures both at vertical |

| | |
|-------------------------------|--|
| | and horizontal institutional/governmental levels. |
| External Accessibility | Ensures availability of Independent MFs services, including online and offline information, consultation and interaction with DPs and their organizations. |
| Effective Institutional Links | Helps the Independent MFs to better promote, protect and monitor the CPRD implementation. |

By adopting the described research design, the necessity to analyse each country separately diminishes. Instead, I analyse Germany as the representative case in detail. Following in-depth study of the representative case, in the second step, I carry out two-part comparative analyses of similar systems based on Austria and Germany, and federal system vs unitary system comprising Denmark and Germany. I base the entire comparative analyses of cases on empirical methods, containing relevant political and legal literature, legal documentation and qualitative three-level expert interviews

4. Methods of data Collection and Analysis

The comparative case analysis is based, completely, on empirical methods, including relevant political and legal literature, legal documentation and qualitative three-actor multi-level expert interviews.

4.1 Documentation Analysis

The dominant form of evidence within the method of comparative political evaluation is qualitative, meaning it comes from accounts of historical or contemporary events. In this case, the evaluation data are not numbers and figures inserted into a spreadsheet, but rather the accurate accounts of historical records. Qualitative evidence shall, thus, be obtained from

sources, such as documentation e.g., constitutions and laws, historical or journalistic accounts or reports, and interviews or surveys of people.³⁷⁷

Consequently, with the present study I consider documentation relating and affecting the process of CPRD implementation at various governmental levels in all three cases. Whereby, the scope of evaluation spans only from date of adoption of the CPRD at the international and EU level, ratification/preparation period at the federal/national and state/Länder-levels to post-ratification period, inclusive of second reporting procedures. I should note that initially it was difficult to search and read Danish language documents. However, due to the fact that it belongs to Germanic language family, it became easier to search and understand Danish language documents, especially with the help of web translators. In all three case studies, the evaluated documents include the following five types of documents:

- I. **International level:** These types of documents include CPRD implementation guidelines regarding Arts. 4.3, 33 and 24 of the Convention issued by the CPRD Committee, General Comments published by the CPRD Committee and the adopted views of the CPRD Committee on individual communications submitted against the chosen three countries, as well as the list of issues and concluding observations on selected countries published by the CPRD Committee. The relevant case-law of the ECTHR is also considered.
- II. **EU level:** Within this type, documents such as The Employment Equality Framework Directive 2000/78/EC and reports on member states compliance with its provisions, as well as relevant case-laws are considered.
- III. **National level:** Within this type, documents such as constitutional acts, legal instruments regulating administrative division and legislative and executive powers across the country, states first and second reports to the CPRD Committee, and DPOs/Monitoring Bodies' parallel reports to the CPRD Committee, as well as Procedural Rules of the federal/national ministries, parliaments and actors stipulated by the Art. 33 of the CPRD are reviewed. Parliamentary bills, federal laws concerning DPs directly and indirectly, in this case educational laws and policies, as well as action plans are also reviewed.
- IV. **State/Länder-level:** Within this category, documents such as state/provincial parliamentary bills, laws and action plans of the chosen

377 Dickovick/Eastwood, 2015: 23 – 45.

countries affecting DPs directly or indirectly, such as school laws and action plans (if any), and state/provincial annual reports of the selected states/actors concerning the implementation of the rights of DPs within the given state/province, as well as Procedural Rules of The Länder-level Ministries, parliaments and Actors mentioned under the Art. 33 of the CPRD are examined.

- V. **Local level:** Due to the fact that there were no designated FPs/CMs at the municipal level, the municipalities have been studied only indirectly, meaning that multi-actor expert interviews³⁷⁸ at the federal/national and state/Länder-levels contained questions addressing municipal implementation of the CPRD, but the municipal governments have not been interviewed directly. Accordingly, within this category, regulations concerning the structure and administrative powers of local governments (in the case of Austria and Germany, the municipalities within the examined federal states/province), as well as their action plans (if available) and commentary/opinion papers addressing the implementation of the CPRD is examined as a source of methodological triangulation.³⁷⁹

Meanwhile, all the above mentioned documents are available in their entirety on the internet: e.g., all the official documents of the CPRD are to be found on the webpage of The Office of the United Nations High Commissioner for Human Rights (OHCHR) at the www.ohchr.org, the EU antidiscrimination regulation and reports as well as the ECJ case law relevant for the Convention are located on the EU official website at eur-lex.europa.eu.

The federal and state parliamentary bills, laws and action plans of federal and Länder-level governments of Germany could be accessed in their original languages, sometimes in English language as well, on the websites of pertinent ministries or parliaments at their governmental levels. The case-law of German higher and lower courts is, normally, available on the legal information platform at www.juris.de.

Austrian legal documentation, including parliamentary bills, provincial and municipal laws, as well as case-law of the higher and lower courts might be accessed on the centrally organized legal information system (Rechtsinformationssystem) at www.ris.bka.gv.at.

378 For more see below.

379 Denzin, 1973: 301; Carvalho/White, 1997.

The Danish legal documents are also available centrally at www.retsinformation.dk. The case-law of the Supreme Court can be found on its case-database.³⁸⁰

The case-law of the ECtHR is also available online on its webpage at hudoc.echr.coe.int

The documents are evaluated with an aim of finding out the similarities and dissimilarities of political processes in implementing the CPRD within different legal systems. An efficient analysis of the policy-making process however, could only be possible in combination with other empirical methods such as qualitative interviews.

4.2 Expert Interviews

Due to the challenges in decoding the political processes, I also use expert interviews in the present study as a complementary method to document analysis that shall help in shedding light on the political processes that often remain behind the veil of analysed scholarly works or documents. The integration of expert interviews within the social research projects is a long-established tradition. Whereby, their genuine role in individual research design, their form and the methods applied to assess, evaluate and compare the results are proved to be highly dependent of the aim and type of the conducted research project. Nevertheless, their broad-scale methods and tangible use make them attractive for social scientists. One of their significant features according to Alexander Bogner, Beate Littig and Wolfgang Menz is based on their effectiveness in gathering data in the exploratory phase of a project, which is recognised to be a more efficient and concentrated method of gathering data than, for example, participatory observation or systematic quantitative surveys. Furthermore, they might be an effective tool in gathering large-scale data within a short period of time, especially when the expert interviewees are viewed as "crystallization points" for the researcher and are seen as representatives of a wider group of actors. Besides, expert interviews could also be critical in situations where it proves challenging or impossible to obtain information on a

380 The database of the Danish Supreme Court can be found at: <https://domstol.fel.tanngora.com/S%C3%B8geside---H%C3%B8jesteretten.31488.aspx> (Last accessed on 01.07.2022).

specific social area and/or outcome (e.g., the effects of political and legal measures on a particular marginalised population).³⁸¹

The next valuable factor of integrating the method of expert interviews into the research projects could be explained by its unparalleled usefulness in gaining access to an extended circle of experts through the interviewed expert holding a key position in an organization.

Whereas there are a number of beneficial reasons for using the method of expert interviews, there is no common definition among social scientists as what constitutes an expert and how it could be significant for the political decisions. In this respect, Collins and Evans assume that the sociology of expertise is based on three-phase development.³⁸² The first phase that originates from the golden age of the expert defines the expert as agent of truth and authority confronting a political system, which applies its power to enforce expertise ("truth speaks to power"). The second phase is classified by social constructivism in its peak, underlining the importance of science clarification: knowledge is decoded as a social activity and the efficacy of expert knowledge is perceived as a construction process. Finally, Collins and Evans propose a "realist approach" as the third phase, which is based on the view that "expertise is the real and substantive possession of groups of experts and that individuals acquire real and substantive expertise through their membership of those groups".³⁸³

In view of the raising number of transdisciplinary research projects, Meuser and Nagel extended their defined circle of experts to members of the professional functional elite to include people, who actively contribute to the building of public affairs. Under this definition might, for instance, fall NGO representatives, who, most possibly, acquired their expert and analytical knowledge on problem solving through professional activities or outside their professional role: e.g., during the voluntary engagements. Consequently, the status of the experts refers to a person, who presumably has the required expertise and information on the studied subject. The expert, thus, is a "relational status" and is dependent on the pursued research question.³⁸⁴ Normally, experts are characterized either by having their own

381 Bogner/Littig/Menz, 2009: 2–16.

382 Collins/Evans, 2002: 235–96.

383 Collins/Evans, 2007.

384 Schmid, 1990/1995: 310.

share in the relevant decision-making process or by having privileged access to information significant for the research topic.³⁸⁵

According to Alexander Bogner and Wolfgang Menz typology, there are three varying forms of expert interviews, each of which, in its turn, constitutes a separate method of analyzing different-purpose expert interviews:

- A. **The exploratory expert interview:** This type, in terms of its subject matter, mainly serves as an approach for sounding out the subject under investigation. These types of interviews should have flexible format. At the same time, however, structuring the key points of the planned conversation with consideration of the research aims is advisable.
- B. **The systematizing expert interview:** This type is aimed at the systematic and complete retrieval of information by concentrating on knowledge of action and experience, which has been derived from practice, is reflexively accessible, and can be spontaneously communicated. This type of interviews is less flexible and is based on elaborate points of research objectives.
- C. **The theory-generating expert interview:** The aim of this type is the communicative opening up and analytic reconstruction of the subjective dimension of expert knowledge, where subjective action orientations and implicit decision-making maxims of experts from a particular specialist field are the starting-point of the formulation of theory. The theory-generating interview type is based on qualitative social research and allows reconstruction of social interpretative patterns and subjective action orientation criteria.³⁸⁶

The analysis of expert interviews, depending on the field of investigation, research interest and theoretical framework, takes various forms, ranging from quantitative measures through using experts as a source of information;³⁸⁷ and the theoretically demanding, resolutely qualitative approach taken by Michael Meuser and Ulrike Nagel.³⁸⁸ It should be mentioned, however, that in view of its different analytical methods (quantitative and qualitative), research context and form, many scholars argue that the expert interviews could not be considered as an independent method of analysis.

385 Meuser/Nagel, 2002: 73.

386 Bogner/Menz, 2009: 43 – 80.

387 See Schmid, 1990/1995.

388 Meuser/Nagel, 1991: 441–471.

is, meaning that it shall always be combined with other social research methods. In general, proposals for the design and evaluation of expert interviews ultimately do not go beyond the framework of qualitative interviews. "From this perspective, it remains questionable, what is there special about the expert interviews".³⁸⁹ In this respect, it might largely be assumed that the expert interviews should be conducted using the general method of qualitative interviews. The use of quantitative method as a collection of a methodologically "neutral" survey instrument within scholarly works applying case-study research design instead, has been rejected.³⁹⁰

In view of the fact that there are no general "research guidance" for structuring expert interviews, in present study, I developed a context-specific and case-oriented approach, using the systematizing expert interview form.

4.2.1 Application of systematizing expert interviews

In this form of expert interviews, the expert is treated primarily as a guide who possesses certain valid pieces of knowledge and information that could be instrumental in reconstructing procedures, effects of legal norms and social situations, as someone with a specific kind of specialized knowledge that is not available to the researcher. The systematizing expert interview form lays its focus on knowledge of action and experience that has been acquired through practice, and is reflexively accessible, and can be spontaneously communicated. Accordingly, the researcher using this form of expert interviews should, normally, adopt an elaborate topic guide, in order to gain access to the desired knowledge³⁹¹. Similarly, the careful selection of interview partners on the basis of theoretical considerations and field-knowledge is another crucially important aspect to consider while framing the expert interview structure that aims at obtaining accurate and valuable results for the selected cases.³⁹² Besides, the information obtained from the interviewed experts should serve, in the first place, as a tool for proofing the statements of experts with different roles and governmental jurisdictions. Secondly, they should help in evaluating otherwise available information e.g., legal documents and case-law.

389 Kassner/Wassermann, 200295: 95.

390 Deeke, 1995: 7–22; Kassner/Wassermann, 2002: 95.

391 Ibid.

392 Schmid, 1990/1995: 312.

Thus, based on the present research inquiry, I divided the expert interviews into three actors. The question catalogue for all three actors, in addition, contained a few similar questions. The purpose of this was threefold: first it was important to know the standpoint of each actor on the posed questions. Second, to understand their actions/experiences in the given context. And finally, to carry out cross-evaluation of statements of varying actors in order to shed more light on the legal documents and political decisions, as well as capture the full picture of the CPRD implementation. These questions were as follows:

Were there political or/and legal (if applicable) arguments against the decision of the state to ratify the Convention by all levels (local, municipal and regional/Länder) of the government? If yes, please describe the sphere and nature of arguments; did the state carry out compliance assessment of national laws at all applicable governmental levels with the CPRD before its ratification and what were the results; what steps, structural and legal changes with regard to education (Art. 24 of the CPRD) followed the ratification of the CPRD and how were they reflected and coordinated with all levels of government; were the Disabled People's Organizations (DPOs) consulted and involved in the processes of the Convention at local, municipal and regional/Länder levels before, during and after the ratification? If yes, please describe how; were there discussions on the three-level implementation of the Art. 33 of the CPRD before its ratification? If yes, why has the particular way of implementation been chosen?

- A. **State Actors:** Within this category the interview requests have been sent to state departments at the federal/national and state/Länder-levels that are designated as the CPRD FPs and CMs or relevant politicians. The aim was to obtain interview at least with a representative of a designated body at each relevant governmental level. The interview questions in this category have been structured into 7 main fields, including:
- I. **Initial ratification steps and processes:** Here, in addition to above-mentioned general questions, it was asked what brought the state to ratify the Convention.
 - II. **Organizational structure and internal cooperation:** Questions within this greed inquire if the designated FP and/or CM operate sub-FPs at local, municipal and regional/Länder levels? If yes, which tools of communication have been chosen as a

method of cooperation, especially with regard to Art. 24 of the CPRD (education).

- III. **Financial and human capacity:** What are the financial and human resources of the FP(s)/CM(s) and do these suffice in discharging their functions at local, national and regional/Länder levels.
 - IV. **Acting powers:** What are the responsibilities and obligations of FPs(s) and/or CM(s); how do they manage the coherence and adherence of legislative and policy standards within the local, municipal and national governments with the CPRD; how does the FP coordinate its political, legal and administrative actions with the Coordination Unit.
 - V. **Human-Rights-Education and advice:** Questions within this greed inquire if the staff of the FPs and/or CM have had CPRD-related training; and if there are CPRD-related advisory bodies that assist the government to draft human-rights compliant laws.
 - VI. **External cooperation:** In this greed, questions aim at revealing which governmental or non-governmental bodies are represented in CMs(s) and in which capacity; the way and methods of FP(s) in involving and consulting DPOs in the framework of legislative processes; and how accessible are these arranged.
 - VII. **Difficulties connected with the political structure of the SP:** Do the FP and CM face special challenges in CPRD monitoring and implementation, especially with regard to education (Art. 24 of the CPRD) linked to political and legal structures of the state; what additional structural, legal and administrative amendments could be required to enhance the implementation of the Art. 24 of the CPRD (Education) at all levels of government.
- B. **Independent monitoring actors:** within this level, I sent interview requests to the designated Independent Monitoring Bodies at all available governmental levels that are responsible for the monitoring of the Convention: The aim was to obtain an interview with the designated monitoring mechanism at each relevant governmental level. the interview questions at this level have also been structured into 7 categories:
- I. **Initial ratification steps and processes:** In this category, in addition to general questions, it was asked if the Independent Mechanism participated in the initial discussion of the CPRD ratification; to what extent did the Independent Mechanism (if

available) participate in the initial implementation stage of the CPRD ratification.

- II. **Organizational structure and internal cooperation:** Here I asked if there is an Independent Monitoring Body. Has the presence of Independent Mechanism been insured at local, municipal and regional/Länder levels? If yes, how the cooperation between the Independent Mechanism and sub-independent mechanisms is managed.
- III. **Financial and human capacity:** In this category I asked: what are the financial, human and knowledge resources of the independent mechanism(s) for insuring coherent and quality monitoring of the CPRD across the country?
- IV. **Acting powers:** Here I asked if the appointees to the board of Independent Mechanism are able to equally address and represent the interests of all groups of DPs; Is the Independent Mechanism empowered with undertaking general inquiries on all the rights covered by the CPRD at the local, municipal and regional/Länder levels? In which capacity does the Independent Mechanism participate in the state reporting process; what are the focus points of the independent mechanism(s).
- V. **Human rights education and advice:** Here the questions included: what activities and strategies have been applied by the Independent Mechanism to inform and educate the governmental bodies, general public and the civil society about the rights enshrined in and protected by the CPRD at the local, municipal and regional/Länder levels; what are the main and recent achievements of the independent mechanism(s) with regard to education (Art. 24 of the CPRD).
- VI. **External cooperation:** Questions here included: how does the Independent Mechanism coordinate its actions with the civil society, FP and CM?
- VII. **Difficulties connected with the political structure of the SP:** Questions here included: what are the weaknesses and strength of Independent Mechanism in promoting, protecting and monitoring the implementation of the CPRD, especially with regard to education (Art. 24 of the CPRD) at the local, municipal and regional/Länder levels; does the independent mechanism(s) face special challenges in monitoring the implementation of the Art. 24 of the CPRD (education) linked to political and

legal structure of the state; what additional structural, legal and administrative amendments could be required to enhance the monitoring and implementation of the Art. 24 of the CPRD (Education).

- C. **DPO Actors:** Within this level, I sent the interview requests to leaders or legal officers of organizations of DPs at the federal/national and chosen state/Länder-levels. Interviewees, thus, have taken part in legislative processes in their jurisdiction. The aim was to obtain at least three different points of view at each governmental level. Interview questions at this level have again been structured into 7 categories:
- I. **Initial ratification steps and processes:** In this category, in addition to general questions, it was asked about the contribution of disability organization(s) (DPOs) in the ratification process of the CPRD.
 - II. **Organizational structure and internal cooperation:** Here I inquired if there is an umbrella organization for DPs at the municipal, regional/Länder and national levels; how is the involvement and consultation of sub-organizations and coordination with same-level DPOs takes place; which DPOs are represented in the umbrella DPO.
 - III. **Financial and human capacity:** Questions in this category included: what are the financial, and human resources of the DPO(s) at multiple governmental levels; do the DPOs submit a shadow report and if yes, are the resources sufficient to ensure DPOs participation at all governmental levels.³⁹³
 - IV. **Acting powers:** Here I asked what are the responsibilities, obligations, priorities of the DPOs; are the DPOs able to act independent of state bodies and the independent mechanism; did the ratification of the CPRD contribute to the empowerment of DPOs.
 - V. **Human rights education and advice:** Here I inquired if the DPOs were consulted and thereby have been trained about the CPRD by the Independent Monitoring Mechanism and if they inform and educate the governmental bodies, general public and

393 Financial means, in this case, need to suffice for organizing coordinating meetings and communication at the vertical and governmental levels, cover the reasonable accommodation needs of participants and translation costs (as German and Danish languages are not official languages of the UN, the communication with the CPRD Committee should be translated into English language).

the Independent Mechanism about the rights enshrined in and protected by the CPRD at various governmental levels.

- VI. **External cooperation:** Questions here included: what other channels and means are available to DPO(s) to insure CPRD quality monitoring at the different governmental levels; are the arrangements made to include and consult DPOs by the independent mechanism(s) and the state bodies accessible enough to involve DPOs in the CPRD monitoring and implementation processes? Does the Independent Mechanism consult and give due consideration³⁹⁴ to the suggestions made by the organizations of DPs on a regular basis; what are the means and methods of the FP and the CM to involving and consulting the civil society in monitoring and policy-making processes.
- VII. **Difficulties connected with the political structure of the SP:** Here the questions inquired if the DPO(s) face special challenges in CPRD monitoring linked to political and legal structures of the state; what additional structural, legal and administrative amendments could be required to enhance the monitoring and implementation of the CPRD, especially with regard to education (Art. 24 of the CPRD).

In addition to a catalog of questions, almost all interviewees in this actor category have been asked questions concerning strategic litigation/legal representation of DPs through DPOs.

4.2.2 Technical Details

All three-level interviews have been composed of 20 questions each. However, there were a number of interim questions. The questions structured into 7 categories aimed at shedding more light on the following four points:

- I. Ability of all involved actors to apply and push forward the provisions of the Convention in disability-related and multi-sectoral policy-making processes. For this purpose, the field of education has been chosen.

394 According to CPRD Committee General Comment No. 7 Para. 23, this means that the opinions and standpoints of the DPOs should be prioritised over other CSOs and relevant actors should not only ensure the formal participation of DPOs, but they are obliged also to take the views and commentaries of the DPOs into account.

- II. Capacity to carry out careful and independent monitoring of the Convention at all governmental levels.
- III. Efficacy of cooperation between involved actors and institutions at all governmental levels.
- IV. Assessment of faced challenges with regard to legal system and political structures.

The majority of interviews have been conducted in person during the field studies. Only a small number of interviews have been carried out on the phone because of time incompatibilities.

Obtaining interview consent was difficult in some states and actor-groups. Only three out of many requests sent to Danish DPOs were positive. Main cause of this should be seen in the language barriers of this actor-group as interviews had to be conducted in English language. However, interviews with a Danish umbrella organization and two other disability-specific organizations help to assess and compare standpoints of this actor-group. Comparative evaluation was possible also in case of Danish MF as two out of three actors agreed to be interviewed. The request for in person interview with the Danish government had been turned down in December 2015. However, the following government agreed to be interviewed, but in written form.

Getting interviews with Austrian federal and Länder-level Disability organizations took extraordinary efforts. As interviews had to be conducted in German language, the cause of this cannot be seen in language barriers. Nonetheless, the interview with the Austrian umbrella Organization of DPs, to federal level DPOs and three disability-specific and disability-related organizations help to see comparative and multi-level picture of DPO actions, relations and positions. The interview request to the Austrian FMC had been turned down, but several interviewees from other actor groups were members of it. Besides, state-level monitoring commission and FPs at both governmental levels could be interviewed. This assisted in puzzling out the real situation between and within multi-level actors.

German DPOs were, overall, positive about being interviewed. Only it was hard to get interviews with this actor-group in Thuringia (federal state of eastern Germany). However, after insisting efforts I got interviews with several Thuringian DPOs. I met similar difficulties also with FPs and CMs, but efforts were eventually successful. The Interview with Disability Commissioner of the Hessian state had been carried out in person, but she

refused to answer the envisaged questions as they concerned the CPRD. Instead she was speaking about her own actions.³⁹⁵

Interview request to and consent of German NMB was uncomplicated. All in all, I could conduct enough interviews in all actor-groups- at each governmental level to capture the situation on the ground.

Due to the exact and comprehensive guiding questions, the majority of interviews have taken 30 to 60 minutes. All three-level interviews have been originally formulated in English language and been translated into German language for German and Austrian interviewees.

395 The interview took place in the cafe, where it was very loud. It could be recorded only for over a minute as the recording has been stopped by the author accidentally. Further requests for at least written answers remained unanswered.

