Lilit Grigoryan

The UN Convention on the Rights of Persons with Disabilities

Multi-Level Comparative Study of Legal and Political Implementation in Germany, Austria and Denmark

Nomos

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Foreword

The Convention of the Rights of Persons with Disabilities (CRPD) is a document which is centred in a process of legal, societal and political change that takes place in nearly all states of the world. While the formal success of now 186 ratifications is measurable, it is quite difficult to measure and analyse the impact of the CRPD on laws, politics and on the living conditions of persons with disabilities in the societies. Law in books is not necessary law in action, and law in action is not necessarily changing things in the way that was intended. Hence, as any big legal project the CRPD is challenging scientific methods and the use that scientists make of them as well as the reception of scientific analysis and results by politics and public. However, an international covenant which is implemented in several states and societies at the same time is a big chance for comparative legal, political and sociological studies.

Lilit Grigoryan was one of the first young researchers who took the chance and the challenge and started comparative work on the CRPD implementation. This book is the result of her hard and thorough work. It highlights and exemplifies how – or how not – the CRPD changed the political process and the conditions of reforms in Austria, Denmark and Germany and combines document-based, empirical and theoretical approaches to get a deeper understanding of the processes. To select a new and ongoing subject which has not been already deeply explored requires courage and commitment. Lilit Grigoryan showed both, even when bureaucratic barriers in the field and in the accommodating of her research conditions were not easy to overcome.

There is hope, that this book is an early milestone in the comparative research on the CRPD implementation and that many will follow. Hopefully, they will correspond which each other and help to understand human rights implementation and disability politics in many countries and all over the world.

I want to thank Lilit Grigoryan for six years of inspiring collaboration and I am looking forward to her future work.

Kassel, May 2023 Prof. Dr. Felix Welti

Acknowledgements

I was born in a society where the fact of having a physical, mental or sensory impairment was synonym to uselessness and considered god's punishment. How bitter it was for me as a child to realize that I belong to this minority. The long chain of 'repair' efforts, societal rejection and structural discrimination were unable to diminish my profound believe in equal rights of Disabled persons (hereinafter referred as DPs). Rather they strengthened my resolution to dissolve historic discrimination through the examination of legal norms, actors and processes of the states that prevent or ensure the implementation, promotion and protection of equal rights of DPs.

The wish of conducting multi-level cross-country study could be realized through the PROMI- Project funded by the Federal Ministry of Labour and Social Affairs, as well as the financial support of the University of Kassel.

For the successful completion of my doctoral dissertation, I am deeply indebted to my supervisor Prof. Dr. iur. Felix Welti, whose unparalleled academic advice, invaluable professional guidance, unwavering support and commitment created an ideal and equal academic environment.

Deep appreciation should be extended also to Prof. Dr. Sabine Ruß-Sattar for her constructive guidance and valuable advice in the field of political science.

Next, I express my sincere gratitude to the head of the institute of Civil Law at the University of Innsbruck, Prof. Dr. Jur Michael Ganner for the opportunity and support in carrying out two-week field study at his institute.

Further thanks go to my interview partners for their time and the insights that were key to the present research work.

I am also extremely grateful to my assistants, whose devoted support during numerous national and international conferences and interviews, as well as their valuable help in making the countless books and articles accessible were instrumental for the successful completion of my doctoral project.

Many thanks also to my colleagues for their helpful questions and advice during the annual colloquia of the Department of Social and Health Care Law, Rehabilitation and Disability Law at the University of Kassel and for the nice atmosphere at the department.

And last but not least, I wish to extend my deepest gratitude to my family for their support and learned ability to be proud of me as I am; to my cousin, Narine, who took care of my son during my business trips; to my son, Menua for his understanding when I could not be with him as much as I would dream of, for his profound belief in my abilities and unconditional love that served as a lighthouse on days when I was in disparity. I dedicate this work to him.

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List of Abbreviations[1]

ABGB	Allgemeines bürgerliches Gesetzbuch (Austrian Civil Code)
AGG	Allgemeines Gleichbehandlungsgesetz (General Anti-Discrimination Law)
BGG	Behindertengleichstellungsgesetz (Federal Law on Equal Opportunities for DPs)
BBG	Bundesbehindertengesetz (Federal Disability Act)
BTHG	Bundesteilhabegesetz (Federal Participation Law)
BAföG	Bundesgesetz über individuelle Förderung der Ausbildung (Federal Law on Individual Promotion of Traineeships)
BayBGG	Bayerisches Behindertengleichstellungsgesetz (Bavarian Disability Equality Act)
BayBO	Bayerische Bauordnung (Bavarian Building Regulations)
BbgBGG	Brandenburgisches Behindertengleichstellungsgesetz (Disability Equality Act of State of Brandenburg)
BGG NRW	Behindertengleichstellungsgesetz Nordrhein- Westfalen (BGG Disability Equality Act of the State of North Rhine-Westphalia)
BauO NRW	Landesbauordnung (State Building Regulations of North Rhine-Westphalia)
BauO Bln	Bauordnung für Berlin (Building Regulation for Berlin)
BGG LSA	Behindertengleichstellungsgesetz Sachsen-Anhalt (Disability Equality Act of Saxony-Anhalt)
BauO LSA	Bauordnung des Landes Sachsen-Anhalt (Building Regulation of Saxony-Anhalt)
BremBGG	Bremisches Behindertengleichstellungsgesetz (Disability Equality Act of Bremen)
BremLBO	Bremische Landesbauordnung (State Building Regulation of Bremen)
BW LBO	Landesbauordnung für Baden-Württemberg (State Building Regulations for Baden-Württemberg)

1 The titles of state laws and a few federal laws have been translated by Author, Lilit Grigoryan, as Official translations were not available.

BEinstG	Behinderteneinstellungsgesetz (Disability Employment Act)
BGStG	Bundes-Behindertengleichstellungsgesetz (Federal Disability Equality Act)
BGBl	Bundesgesetzblatt (Federal Law Gazette)
BMASK	Bundesministerium für Arbeit, Soziales und Konsumentenschutz (Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection)
BMAS	Bundesministerium für Arbeit und Soziales (German Federal Ministry of Labour and Social Affairs)
B-VG	Bundes-Verfassungsgesetz (Federal Constitutional Act)
BT	Bundestag (German Federal Parliament)
BSK	Bundesverband Selbsthilfe Körperbehinderter e.V. (Federal Organization of Physically DPs)
CM	Coordination Mechanism
CMs	Coordination Mechanisms
CS	Civil Society
CSO	Civil Society Organization
CSOs	Civil Society Organizations
CRPD/CPRD	Convention on the Rights of DPs
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
DP	Disabled Person
DPs	Disabled persons
DPO	Organization of DPs
DPOD	Disabled Peoples Organizations – Denmark
DIHR	Danish Institute for Human Rights
DDC	Danish Disability Council
DBSV	Deutscher Blinden- und Sehbehindertenverband e.V. (German Organization of Blind and Partially Sighted Persons)
EU	European Union
ECHR	European Convention on Human Rights
ECTHR	European Court of Human Rights

DGB	Behindertenrat (German Disability Council)
DIHR	Danish Institute for Human Rights
DCC	Danish Disability Council
FP	Focal Point
FPs	Focal Points
FMC	Federal Monitoring Committee
GG	Grundgesetz (German Basic Law)
GIHR	German Institute for Human Rights
GO-BT	Geschäftsordnung des Deutschen Bundestages (Procedural Rules of German Federal Parliament)
HessBGG	Hessisches Gesetz zur Gleichstellung von Menschen mit Behinderungen (Disability Equality Law of Hesse)
HSchG	Hessisches Schulgesetz (School Law of Hesse)
HBO	Hessische Bauordnung (Building Regulation of Hesse)
HGO	Hessische Gemeindeordnung (Hessian Regulation on Munisipalities)
HmbBGG	Hamburgisches Behindertengleichstellungsgesetz (Disability Equality Law of Hamburg)
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISL	Interessenvertretung Selbstbestimmt Leben Deutschland e.V. (German Representative Organization of Independent Living)
LGBl	Landesgesetzblatt (Provincial Law Gazette)
LBO	Landesbauordnung für Baden-Württemberg (Building Regulation for Württemberg)
LBGG	Gesetz zur Gleichstellung von Menschen mit Behinderung in Schleswig-Holstein (Law on Equality for People with Disabilities in Schleswig-Holstein)
LGBG	Landesgleichberechtigungsgesetz-Berlin (LGBG- State Equal Rights Law of Berlin)
LbauO	Landesbauordnung Rheinland-Pfalz (State Building Regulations of Rhineland-Palatinate)

LBauO M-V	Landesbauordnung Mecklenburg-Vorpommern (State Building Regulation of Mecklenburg-Western Pomerania)
LT	Landtag (Parliament of a Federal State)
MF	Monitoring Framework
NHRI	National Human Rights Institution
NAP	Nationaler Aktionsplan (National Action Plan)
NMB	National Monitoring Body
NO./Nr.	Number
NbauO	Niedersächsische Bauordnung (Building Regulations of Lower Saxony)
ÖAR	Österreichische Arbeitsgemeinschaft für Rehabilitation (Austrian Association of Rehabilitation, as of May 11 2017 renamed to Österreichische Behindertenrat- Umbrella Organization of the Austrian Disability Organizations)
SCA	Sub-Committee on Accreditation
SGB	Sozialgesetzbuch (Social Code)
SGB IX	Neuntes Buch Sozialgesetzbuch (Social Code, Book IX)
SächsInklusG	Sächsisches Inklusionsgesetz (Inclusion Law of Saxony)
SächsBO	Sächsische Bauordnung (Building Regulation of Saxony)
SchulG LSA	Schulgesetz des Landes Sachsen-Anhalt (School Law of the State of Saxony-Anhalt)
SP	State Party
TMC-	TyroleanMonitoring Committee
ThürGIG	Thüringer Gesetz zur Gleichstellung und Inklusion von Menschen mit Behinderungen (Thuringian State Law on Equal Opportunities and Inclusion of DPs)
ThürSchulG	Thüringer Schulgesetz (Thuringian School Law)
ThürMitwVo	Thüringer Verordnung über die Mitwirkung der Landesschülersprecher, der Landeselternsprecher und des Landesschulbeirats (Thuringian Ordinance on the Participation of State Student Representatives, State Parents Representatives and State School Advisory Council)
ThürBO	Thüringer Bauordnung (Thuringian Building Regulation)
ThürKO	Thüringer Gemeinde- und Landkreisordnung (Thuringian Municipal and District Regulations)
THG/TTHG	Tiroler Teilhabegesetz (TyroleanParticipation Act)

TADG	Tiroler Antidiskriminierungsgesetz 2005 (Tyrolean Antidiscrimination Act)
ThürVerf	Verfassung des Freistaats Thüringen (Constitution of Free State of Thuringia)
Verf HE	Verfassung des Landes Hessen (Constitutional Law of Hesse)
VCLT	Vienna Convention on the Law of Treaties

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.

II. Development of Analytical Framework

The aim of this chapter is to build up the conceptual framework necessary for examining the actors stipulated by the CPRD and their role in political and legal implementation practices of international instruments such as the CPRD into the multi-level domestic legal systems of the EU Member States with federal and unitary systems of governance. The developed scope of analysis combines the concepts of multi-level governance and legal systems that allows equal interdisciplinary evaluation of governance-focused and normative-based aspects of implementation of the Art. 33 of the CPRD. In particular, it lays down the theoretical frame used to study the structures, financial and human resources of actors stipulated by the Art. 33 CPRD, as well as their individual and collaborative efforts taken to discharge their responsibilities to promote, protect, implement and monitor the human rights of DPs at the horizontal, vertical and diagonal levels of governance.

1. Conceptualisation of Governance

Traditionally, the state has been studied in isolation and been addressed as an independent variable. Today, however, in view of evolving legal and political order, the state shall be studied both in terms of the state's basic structure, institutional architecture, and specific organizational forms and from the viewpoint of its strategic capacities both within its political system more generally and its compliance to international obligations. Therefore, it might be presumed that the analytical scope of the previously[24] applied theories of governance could not cover the implementative dynamics of all involved actors. Consequently, I have chosen an approach that could embrace the legal and political comparison both at the horizontal and vertical levels of governance.

24 See in Bevir, 2010; Levi-Faur, 2012; Ansell/Torfing, 2016.

1.1 Multi-level Governance

Initially, the concept of multi-level governance (hereinafter referred as MLG) has been developed to be able to capture the new developments in the European integration process and the shifting authority that was not only of central states up to Europe, but also down to subnational authorities. Gary Marks applied the MLG to assess developments in EU structural policy consequent to its major reform of 1988.[25] The MLG has been further developed by Marks and a number of other scholars,[26] to evaluate the evolving scale of EU decision-making structure. The progression of the MLG had to allow the examination of both domestic politics and of international politics.

Prior to MLG development, the field of EU studies in political science has mostly been based on theories of neo-functionalism and intergovernmentalism, which claimed to explicate both the emergence of the European Union and its functioning. However, Marks questioned the efficacy of these concepts in capturing the full picture of European decision-making dynamics and its functioning, by pointing out that both theories fail to cover "flesh-and blood" actors.[27] Moreover, he stated that neither Intergovernmentalism nor Neofunctionalism provide the sufficient space for examining the three different analytical dimensions: that of political mobilization (politics), that of policy-making arrangements (policy), and that of state structures (polity) as the conceptual framework of the multi-level governance can offer.

With the growing significance of international organizations e.g., UN and their legal instruments, the concept of MLG has been also used by scholars examining the implementation of specific rights of particular groups.[28] The introduction of three-actor multi-level structural provision of the CPRD,[29] made the application of concept of MLG a necessity as it allows top-down examination of the role of relevant actors in the implementation of the specific human rights of DPs within particular political and legal structures.

25 Marks, 1992.
26 See for example in Enderlein/Wälti/Zürn, 2010; Bache/Flinders, 2015.
27 Marks, 1992.
28 E.g., Schapper, 2017; Marx at al., 2014; Haussman/Sawer/Vickers, 2010; Waylen et al., 2013; Scholten/Penninx, 2016; Gushchina/Kaiser, 2021.
29 CPRD, Arts. 33 and 4.5.

A part from the fact that governance has become (or should be) multi-jurisdictional, Hooghe and Marks suggest two organizational types for multi-level governance- type I and type II.[30] In view of the fact that in the present study I aim at studying the vertical, horizontal and diagonal[31] structures, capacities, interactions and actions of actors stipulated by the Art. 33 CPRD in promoting, protecting, implementing and monitoring the specific human rights of DPs within four general-purpose governmental tiers of unitary state such as Denmark and 6 general-purpose governmental tiers of federal structures e.g., Austria and Germany, I adopted the type I MLG.

1.1.1 TYPE I MLG

Type I multi-level governance allocates the governing power to jurisdictions at a limited number of levels. These are international, national, regional, local levels of general- purpose governance. In other words, they combine multiple functions, ranging from varying policy responsibilities and a court system to representative institutions. Such jurisdictions do not have intersecting membership boundaries. These types of jurisdictions can be maintained both at every level and across levels. In this form of governance, each Citizen is placed in a Russian Doll set of nested jurisdictions that provides for only one pertinent jurisdiction at any specific territorial level. In this case, territorial jurisdictions, in most cases, are perceived as being stable for several decades or more, despite the fact that allocation of policy competencies across levels is fluctuating.

1.1.2 TYPE II MLG

The type II governance distinctly differs from that of the type I. It is presumed to consist of aim-fixed authorities that, for instance, provide a specific local service, address a common pool resource problem, decide a product Standard and monitor human rights. The executional scale of these jurisdictions is significantly different and the number of these are large. Moreover, the nature of their organization is not fixed. In most cases they react flexibly to demands for governance change.

30 Hooghe/Marks, 2003.
31 Torfing et al., 2012.

1.2 Federal and Unitary Systems

In view of the set aim to study the similar and dissimilar political approaches of the federal and unitary systems in implementing the Art. 33 CPRD at the multiple levels of governance, and the case-selection criteria,[32] in subsections below I will discuss the territorial organization systems that are fundamental for the testing of hypotheses formulated in the subsection 3.3 of chapter III through Most Similar systems Design and Most Dissimilar Systems Design.[33]

1.2.1 Federal systems

Federal systems are polities, which are based on two (or more) levels of government. These operate on principal of collaborative partnership and constituent-unit autonomy through common institutions for the governments of the constituent units in an intergovernmental constitutional relationship that is not determined by the central government alone. The decisive factor here is not the level of decentralization, but the level of constitutionally secured self-governing power that the constituent units may exercise.[34]

Furthermore, Elazar identifies eight distinct species of federal systems including (Federations (e.g., Federal Republic of Austria 1920, 1945 and Federal Republic of Germany 1949, 1949), Confederations (e.g., The European Union), Federacies (e.g., the Faroe Islands to Denmark and Greenland to Denmark)).[35]

In view of the fact that the focus of the present study is federal systems, below I provide details only about one type of the above-mentioned species of federal systems, namely: federation since this type directly applies to the examined Federal constitutional countries, namely Austria and Germany.

Federations are amalgamated systems built on powerful constituent units and a strong general government that enjoys powers delegated to it by the people through a supreme constitution. These units have a direct authority in the exercise of their legislative, administrative and taxing powers. All their major institutions are directly elected by the citizens. Federations rep-

32 See chapter III subsection 2.1.
33 See chapter III Sections 3.1 and 3.2.
34 Kincaid/Tarr, 2005; Watts, 2005.
35 Elazar, 1987.

resent a specific type of federal system in which neither the federal nor the constituent units are constitutionally subordinate to the other. Currently, there are about 20 countries that are fully or partially recognised as an established functioning federation, including Federal Republic of Austria (date of original foundation 1920, date of actual constitution 1945) and Federal Republic of Germany (date of original foundation 1949, date of actual constitution 1949).

In addition, for the purpose of the present comparative analysis, three further considerable variations among types of federations are distinguished:

Maturity of federations: In general, depending on the degree of maturity there could be identified four types of federations: e.g., "mature" federations, "emergent" federations, "post-conflict" federations and "failed federations". Unlike the other three, the 'mature' federations are described as systems that have functioned successfully for at least fifty years or more. In this type fall: e.g., Austria (1945) and Germany (1949). Countries within this category are presumed to rule in constant stability and possess all the elements of a federation outlined previously. Besides, they, in the process of their development, have established governments both at the federal and Länder-levels that have legal and fully functioning autonomous powers.

Bases of internal diversity: Many scholars have underlined the fundamental importance of evaluating the basis of varying internal diversity of federations, which has influenced both the creation and subsequent operation of federations.[36] In general terms, one may distinguish between federations where regional diversity is deeply rooted in internal cultural, linguistic, ethnic, religious and even national differences and those, where regional diversity is largely territorial or historical.[37] The latter type of diversity include Austria and Germany. In this case, the historical separation of Germany, for example, might provide fundamental basis for identifying and understanding regional diversity in the CPRD implementation across Germany.

Variations in the form of the distribution of legislative and executive authority: Actually, all federations operate on the basis of constitutional distribution of legislative and executive powers across the governmental levels. However, the separation of powers might take varying forms.[38] In

36 Watts, 2008; Moreno/Colino, 2010.
37 Burgess/ Pinder, 2007.
38 Majeed/Watts/Brown, 2006.

the context of European federal countries with a civil-law tradition, such as Austria and Germany, the legislative power and administrative jurisdiction has, in majority of cases, been accorded to different governmental levels. This way, the federal legislatures have been able to develop uniform legislations and, in consideration of varying regional circumstances, assign the constituent unit governments with the task of implementation. These federations are more centralized in legislative terms and more decentralized in administrative terms. Therefore, this type of federation has to collaborate and coordinate extensively across the governmental levels. Nevertheless, in its extreme form, maintained by Germany, it has formed a virtually interlocking relationship of governments at different levels.[39] This might lead to significant implementation challenges in particular policy fields.

1.2.2 Unitary Systems

In contrast to federal systems, in unitary systems the ultimate authority, constitutionally or in practice, is located within the central government. The constituent units might enjoy administrative, legislative, or financial independence, which, nevertheless, could only be authorised or approved by the central government that has an indivisible sovereignty to overrule constituent units on any matter.

However, in the course of evolution, a number of significant macro-developments with regard to the territorial governance have occurred in the unitary systems, which caused considerable structural changes, the most relevant of which are considered below.[40]

From centralization to decentralization: While the focus in the 1950s to 1960s was mainly put on the consolidation of national unity through a centralization process, there has also been decentralization efforts during this period.[41] However, these have taken the form of administrative deconcentration rather than political decentralization, which allowed the delegation of political decision-making power rather than simply administrative functions to the lower governmental levels. Nevertheless, interest in political decentralization has risen starting from the mid-1970s. As a result, France started a decentralization reform program in 1982 that reshaped the French

39 Watts, 2013, 19–34.
40 For a fuller account see, Loughlin, 2009, 49–66.
41 See, Sharpe, 1979.

politico-administrative framework considerably.[42] Currently, the political decentralization is already perceived as a fundamental precondition for 'good governance' by entities such as the European Union (EU), the Council of Europe, the UN Human Settlements Program (UN-HABITAT), the World Bank and the IMF.

From regionalization to regionalism: The "regionalization" is perceived as a top-down approach to regional issues, which operates under the control of the central state. It was the prevailing approach applied to regional governance and planning during the period of 1950s to late 1970s.

The regionalism, which emerged in 1980s, in turn, is a bottom-up approach that permits key political and other actors from within the regions exercising greater authority over the political, social, cultural and economic affairs of their regions. It might function in collaboration with the central state normally without risking the break-up of the state itself. Regionalism, as a consequence, has been adopted by not only large nation-states such as France, Spain, the UK and Italy but also by smaller states such as Denmark, Sweden and Finland, which either introduced administrative regions, or as in the case of Sweden, set up both administrative regions and elected regional governments. Thus, the tendency towards establishing political and administrative regions has not only been firmly anchored in the governance of the unitary systems[43] but also significantly affects the policy-making and implementation processes.

2. Conceptualisation of Legal Systems

With an aim of controlling and explaining implementation variations, I, in consideration of the case-selection criteria,[44] and design of comparison[45] have chosen legal systems that have a number of common features e.g. Civil Law. Accordingly, below I provide elaboration upon the legal systems.

2.1 Legal Systems

Traditionally, the efficacy assessment of a certain legal measure has solely been based on the examination of political structures, whereas in case

42 See, Ohnet, 1996; Loughlin, 2009: 49–66.
43 Loughlin, 2013: 2–19.
44 See chapter III subsection 2.1.
45 See chapter III Section 3.

of legal measures, the study of the legal system of the examined political structure, such as unitary or federal might be equally important. The study of the relevant legal system, especially in analyzing the implementation of an international legal treaty, such as the CPRD, in its turn, could help to evaluate if the legal systems of federal and unitary political structures follow dissimilar and/or similar strategies of incorporating the International Law in their domestic laws, and if the incorporated International Law has similar/or dissimilar application effect at all legal levels in the legal systems of the federal and unitary structures. In the same vein, the study of legal systems of the chosen countries should assist in identifying similar and/or dissimilar influences of International Law on reshaping legal norms of the specific field, such as the education by the judiciary at all governmental levels.

For the full comprehension of the underlying concept of a legal system one should look into the definition of the law. As Joseph Raz puts it, "the three most general and important features of the law are that it is normative, institutionalized, and coercive. It is normative in that it serves, and is meant to serve, as a guide for human behaviour. It is institutionalized in that its application and modification are to a large extent performed or regulated by institutions. And it is coercive in that obedience to it, and its application are internally guaranteed, ultimately, by the use of force".[46] While law can be described as any standard that is legitimate, valid and enforceable, the divergences in processual and structural enforcement of laws within countries has led to the tradition of clustering the domestic legal systems into certain groups or families based on their commonalities with regard to legal concepts, especially the system of legitimacy, validity, and enforceability.[47] Consequently, the objects of classification find their true and distinct identity through their assignment to a particular class. A national legal system could thus be better understood, and its existence affirmed, through its classification as a Common Law System or a Civil Law System.[48]

In the light of the fact that the modern democratic state exists and functions on the bases of three fundamental powers, namely: legislative, execut-

46 Raz, 1980.
47 David/Brierley, 1985: 7.
48 Glenn, 2008: 421–441.

ive and judicial,[49] and that they grow more and more interdependent,[50] the study of legal systems in isolation would put the validity of present research results in question. Thus, in the following subsection, I shall discuss the legal systems, most particularly the Civil Law System to which all four selected countries belong, with an aim of analysing the effects of the Civil Law in applying International Treaties in the national legal systems with federal and unitary political structures.

2.1.1 Civil Law Legal Systems

Unlike the Common Law[51] legal systems, where the court judgments are not based on the systematised law and academic jurisprudence has no significant value, the Civil Law System, also called continental European or Romano-Germanic legal systems, can be referred as having counterpole and constant characteristics. It is founded on concepts, categories, and rules originating from Roman Law,[52] with some impact of Canon Law, sometimes largely supplemented or modified by local customs or culture.[53] The most prevalent feature of the Civil Law is that its core principles are codified into a referable system that functions as a primary source of law. This, as a rule, refers to a number of private law codifications of the nineteenth century, including the German Civil Code of 1896, and the Austrian General Civil Code of 1811. While the codification was of a significant value from the historical perspective, it would be incorrect, however, to presume that the codification is the main defining characteristic of a Civil Law as opposed to Common Law. Civil Law Systems are, in fact, much more identifiable by their tendency towards systematisation and imbedding the court decisions into law that finally would lead to new codifications.[54]

Actually, in legal systems with Civil Law, the case law is secondary and subordinate to statutory law. Thus, Civil Law is primarily a legislative system, which, however, leaves room for the judiciary to adjust rules to

49 See, Montesquieu, 1949.
50 CCJE opinion no. 18 (2015) on "the position of the judiciary and its relation with the other powers of state in a modern democracy".
51 Today, under the category of Common Law fall, for example, legal systems of the United States, United Kingdom Australia, Canada, New Zealand and Ireland.
52 Plessis, 2015.
53 For more on Historical development of Civil Law, see, Watkin, 2017.
54 Kischel, 2015: 389–529.

social change and new needs, through judicial interpretation and creative jurisprudence.

In view of the great number of Civil Law countries and the great variety of their socio-political traditions as well as their Civil Law System adoption process, it is presumed that Civil Law jurisdictions should be further subdivided into four distinct groups, namely: Roman, German, Scandinavian and socialistic.[55] Nevertheless, the positive effect of additional Civil Law subdivision for comparative research is perceived to be largely obscure.[56] Therefore, in consideration of the research aims of the present study, namely finding out the dissimilarities and/or similarities of federal and unitary systems in implementing the CPRD in their domestic law, I do not apply the additional Civil Law subdivision in my assessment and evaluation process. Instead, I will examine the legal traditions of the chosen SPs with Civil Law systems in giving effect to International Law.

2.2 The Reception and Execution of International Law

2.2.1 The Reception of International Law

The domestication of International Law takes place mainly through monist or dualist approaches. The doctrine of dualism is assumed to be based on Heinrich Triepel's work, "Völkerrecht und Landesrecht" of 1899.[57] It, unlike the monist doctrine,[58] hinges on the presumption that International Law and domestic law are two different legal orders with their distinct legal characteristics. The difference, hereby, is seen in three fundamental factors:

International Law and domestic law have different sources:[59] this means that the sources of domestic law are the nationally/locally made decisions of the lawmakers in a given country, e.g., acts of parliament(s) or executive regulations. The sources of International Law, instead, are customs and Treaties.

55 See, Rheinstein, 1987.
56 Kischel, 2015: 222 – 229.
57 Triepel, 1899; see also Triepel, 1923.
58 See e.g.: Blackstone, 1890: 67; Kelsen, 1920, Paras. 30–51; Kelsen, 1934; Verdross, 1926: 34–42; Lauterpacht, 1950; Krabbe, 1919.
59 Triepel, 1923: 82–83.

International Law and domestic law have different subjects:[60] within this criterion, it is assumed that the subjects of domestic law are individuals in their inter-relations or in their relations with the constitutional organs of the state, whereas the subjects of International Law are states.

In respect, the function or substance of law, International Law and domestic law have different objects:[61] here, it is presumed that the two systems function on different levels and that their material substance or content rarely overlap.[62]

In legal orders based on the approach of dualism, the rules of International Law require what Triepel called "Umguss" transformation into rules of national law for being directly applicable[63] and thus binding.[64] To this end, the SPs should take further legislative measures in addition to international-level ratification for allowing domestic-level implementation of the rules of International Law, including customary law and Treaties and give individuals and legal persons an opportunity to effectively invoke the provisions of the International Law in cases of violation of their human rights in their relations with each other or vis-à-vis the state organs. In taking further legislative steps to implement the ratified treaty, the SPs might, in addition, decide the status of the ratified international treaty in the domestic law. Thus, the ways and means of domestic-level implementation of international laws are left on the constitutional rules and legal traditions of the given SPs since the International Law does not regulate the SPs duties for making Treaties binding on their constitutional organs.[65]

2.2.2 The Execution of International Law at the Domestic Level

In an attempt to legally recognise the normative rights, the SPs pursue varying procedures in embedding Treaties into their legal systems with an aim to make its provisions executable for the state authorities. In states with dualistic legal traditions, such as Austria, Denmark and Germany, the international human rights law does not automatically become a part of the ratifying country.

60 Ibid., 81.
61 See also Fischer/Köck, 2000: 36; Wasilkowski, 1996: 326.
62 Wasilkowski, 1996: 329–330.
63 Verzijl, 1968: 91.
64 Hart, 1994: 100–110.
65 See for example Henkin, 1995: 65.

In fact, there are four key methods for the incorporation of international human rights instruments in domestic law:

Direct incorporation of rights recognised in the international instruments into a bill of rights in the national legal order;

Enactment of different legislative measures in the civil, criminal, social and administrative laws to give effect to the different rights recognised in human rights instruments;

Self-executing operation of international human rights instruments in the national legal order; and Indirect incorporation as aids to interpret other law.[66] Consequently, depending on the legal and political system of a given SP, the execution nature and end effect of the CPRD might not be similar across the ratifying states.

Thus, Campbell argues against the court-centred approach by stating that "human rights diminish when we seek to cure democratic deficiencies by anti-democratic devices' in other words, he finds it dangerous when the strategy of implementation is primarily bestowed on judicial instead of political instruments of state power. Therefore, he presumes that it would be more favourable if the states adopt an approach anchored in the 'democratic Bill of Rights" with a strengthened power of parliamentary committees in conducting compliance assessment of draft legislation, make inquiry and push for the adoption of the proposed reforms. A parliamentary committee might initiate inquiries both by external requests and of its own accord. Normally, it will have the authority to call witnesses and carry out public investigations into non-compliance of ministries and its officials. This would bring, he assumes, to the formation of a comprehensive set of human rights legislation, which would achieve better enforceability and consideration by the courts through improved legal status.[67]

In practice, however, the effectiveness of both court-centred approach and parliamentary approach depend on the existing legislation framework: e.g., if the state has no antidiscrimination legislation enacted that protects DPs against discrimination in the private field then there would be no available legal instrument to litigate against such violations. Therefore, the existence and cooperative work of both might contribute to the effective protection, implementation and compliance of the rights of DPs.

66 The CPRD Resource: Part I. National Frameworks 2/5. Retrieved from: https://www.un.org/esa/socdev/enable/comp101.htm (last accessed on 01.07.2022).

67 Campbell, 2006.

These instruments can, in addition, be complimented by alternative methods of dispute resolution. In such cases, the institutions like disability commissioners and public service ombudspersons might play an important role in providing effective legal remedies by ensuring the right to free and accessible trial for disabled individuals, who face additional barriers in making legal claims simply because most of judicial processes are inaccessible, and/or unavailable to them. For instance, the

European Union Agency for Fundamental Rights stated in its 2011 report on access to justice that in many EU Member States the inaccessible court proceedings and high amount of legal costs, which mainly includes attorney and court fees, often prevent access to justice.[68] This was also confirmed by the UK Lord Justice Jackson's report on the rules and principles governing the costs of civil litigation, where he states that: "in some areas of civil litigation costs are disproportionate and impede access to justice".[69] Undoubtedly this situation has a highly negative effect on the execution of the equal right of access to justice for DPs, stipulated by the Art. 5 para. 1 and 2 and Art. 13 para. 1 CPRD as they are often reported to be living in poverty or below the poverty lines. Correspondingly, the European Court of Human Rights has underlined that court fees that are payable in advance of instituting proceedings should not prove such a financial burden as to prevent or deter applicants from exercising their right to a remedy.[70]

Therefore, the disability commissioners and/or public service ombudspersons may assume supportive roles including complaint investigation, inquiries holding and awareness raising activities. If empowered to launch proceedings alleging disability rights violations and/or to intervene in proceedings initiated by other parties, these statutory institutions can have a positive contribution on the judicial enforcement. Within the parliamentary approach, these institutions can send disputes and issues to parliamentary investigation bodies and give evidence in their inquiries. Moreover, both the CJEU and the ECTHR accept the validity of non-judicial dispute mechanisms so long as the decisions of such bodies may ultimately be supervised by a judicial body and so long as the alternative mechanisms themselves conform to general requirements of fairness. However, the ombudsperson institution plays an important role in Nordic countries and many of the Central and Eastern European countries, but in other coun-

68 European Union Agency for Fundamental Rights, 2011.
69 Jackson, 2009.
70 European Union Agency for Fundamental Rights, 2011.

tries, as in Germany, the institution of the ombudsman plays only a minor role as human rights protection is based exclusively on the judicial system and the Constitutional Court.[71]

3. MLG and CPRD Implementation

This section operationalises the concepts of MLG and legal systems by building up a theoretical frame for evaluating the role of multi-level actors in promoting, protecting, implementing and monitoring the CPRD provisions. Thereby, it should be noted that the literature on the CPRD implementation and monitoring dynamics is very limited. Apart from the Gauthier de Beco and state relevant representatives[72] descriptive contributions on the Art. 33 and its implementation in the six SP to CPRD, Arnardóttir and Quinn's[73] rather normative publication on the description and effect of the CPRD on the European and Scandinavian states, as well as other descriptive contributions,[74] there is no systematic comparative study reflecting the influence of international disability law on multiple governmental levels of states and the role of national structures in these processes. And most importantly, there is no research studying the legal and political system-based dynamics of CPRD implementation and monitoring, which could contribute to the better implementation of and compliance with the CPRD.

Therefore, in the following subsections I conceptualise the role of the CPRD Committee as an international body. I build up the analytical frame for the EU Disability framework and its legal competencies and institutional capacities to ensure the implementation and monitoring of the CPRD within its member states to which belong all chosen SPs.[75] In the last part of the subsections I combine legal norms and governance concepts to create an assessment frame for actors stipulated by the Art. 33 CPRD.

71 Nußberger, 2012.
72 Beco (eds.), 2013.
73 Arnardottir/Quinn, 2009.
74 Quinn, 2009a; Gatjens, 2011; Raley, 2015. For the views of Disability organizations see International Disability Alliance, 2009; Mental Disability Advocacy Centre 2011. See also OHCHR et al., 2007.
75 For more see chapter III.

3.1 CPRD Monitoring at the International Level

The adoption of the CPRD aims at initiating paradigm shift for DPs from medical based to human-rights-based approach of governance not only at the national but also at the international level. Therefore, it provides for an international body, namely the CPRD Committee on the Rights of DPs (hereinafter referred as CPRD Committee), to monitor the implementation of the Convention in states and regional integration organizations that are parties to the Convention.[76] Furthermore, it mandates the committee to base its monitoring work on two key procedures:

SP reporting: Similar to other human rights Treaties, under Art. 35 of the CPRD the SPs shall submit a report on the implementation of the Convention to the consideration of the Committee. The SP report consists of two-part documents; the common core document and a treaty-specific document. The common core document[77] is a 60–80-page report, which provides general and practical information on the implementation of all the human rights Treaties that a state has ratified and it is, therefore, not disability-specific. The common core document includes, among other things, information on the constitutional, political and legal structure of the SPs. The treaty-specific document, in its turn, is an about 60-page report that describes the legal and practical implementation practices of the CPRD provisions in the SPs. It should contain detailed information on the concrete measures applied for the implementation, draw on successful practices and provide, in line with the reporting guidelines, the article-by-article analysis of the Convention.[78]

Thus, the reporting and monitoring process generates a series of dialogues at and between the international and national levels. The key actors in these dialogues are the SPs, Monitoring Bodies, DPOs and organs of

76 CPRD, Art. 34 ()1 that reads: "there shall be established a Committee on the Rights of DPs (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided".

77 Guidelines for the common core document can be found in Compilation of Guidelines on the form and content of reports to be submitted by SPs to the international human rights treaties, HRI/GEN/2/Rev6. Retrieved from: http://www2.ohchr.org/english/bodies/icm-mc/docs/9th/HRI-GE-2-Rev6.doc (Last accessed on 01.07.2022).

78 In October 2009, the CPRD Committee adopted the guidelines on treaty-specific document to be submitted by SPs under article 35, paragraph 1 of the CPRD with an aim to encourage comprehensive and uniform reporting. Retrieved from: https://digitallibrary.un.org/record/672005 (Last accessed on 01.07.2022).

the UN, principally the CPRD Committee provided for by the Art. 34 of the CPRD. Since reporting to the CPRD Committee is a dynamic process, the production of a report envisages, provided the comprehensive characteristic of the CPRD, the participation of a wide range of governmental ministries and departments, e.g., the Ministries of Social Affairs, Health, Education, Justice, Employment, Finance and Defence. All these ministries have to contemplate on the questions: what have we done to ensure the effective implementation of the CPRD? And/or what should we have been doing to better implement the provisions of the CPRD? To coordinate the input from the different ministries the SPs most often establish an inter-departmental working group. These procedures might result in improved cooperation within the multiple levels of governments and contribute to awareness raising within various ministries and departments on different aspects of the implementation of the CPRD through exchange of information and discussions on achievements and unresolved problems.

In addition, the 2009 guidelines on treaty-specific documents to be submitted by the SPs under Art. 35, para. 1 CPRD explicitly requires SPs to encourage and facilitate the involvement of non-governmental organizations, including organizations of DPs in the reporting process. It might include not only involvement of the DPOs in the state report development processes but also submitting shadow reports and list of questions for the SPs, as well as participation in the plenary discussions at the international level. The constructive involvement of these organizations is assumed to be not only a positive contribution to the reporting quality but also promote the enjoyment of all rights stipulated by the Convention. Therefore, the SPs are under the duty to provide information on the tools and methods used to consult with civil society, specifically with representative organizations of DPs in their reports. Furthermore, the state reports should contain explanations on the measures taken to ensure the full accessibility of these processes for the DPOs.

After the submission of the report by the SP, the dialog process between the CPRD committee and national actors starts: the CPRD Committee carries out a preliminary examination of the SP report and compiles a list of issues that intend to complement and revise the information found in the initial reports. Thereby, the SP is under the duty to submit the written response for the list of issues within the set time limit. The CPRD Committee then considers both, the report and the response to the list of issues, at its plenary sessions. In order to answer to the inquiries of the Committee members and to provide additional information upon request

of the Committee, the SPs, including the designated Monitoring Bodies and the DPOs are invited to participate at the plenary session. At the end of the examination process, the CPRD Committee issues concluding observations that aim at acknowledging the effective actions taken to implement the CPRD, pointing out the social, economic, political, legal and administrative barriers impeding its further effective implementation, urges action on main areas of concern and offers constructive suggestions and recommendations for future steps. Subsequent to the issuance of concluding observations, the SP has to report what actions have been taken to remedy the stated issues within a year.

Individual complaint Mechanism: the CPRD Committee, provided that the SP has ratified the Optional Protocol to the CPRD, might receive and examine individual communications against SPs;[79] the Committee may perceive a communication as inadmissible if all available domestic remedies have not been exhausted. However, this could not be the case when the application of the remedies is unreasonably prolonged or unlikely to bring effective relief. Following the receipt of the communication, the Committee, confidentially, communicates the reported matter to the state, which in its turn, within six months, shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken.[80] Upon the end of examination, the Committee shall forward its suggestions and recommendations to both the SP concerned and the petitioner.[81]

In fact, the efficacy of lodging a communication under the OP-CPRD is presumed to be arguable as the CPRD Committee is not a court with judicial powers. Consequently, the views adopted by the Committee are, by no means, legally binding on the SPs since the OP-CPRD provides a quasi-judicial procedure in which the resultant decisions of the CPRD Committee are not legally enforceable such as domestic court judgments, or some other regional judicial mechanisms e.g. the European Court of Human Rights. For instance, the German Constitutional Court- FCC, made it clear that CPRD Committee does not have competence to decide on the extent and

79 Opt-Protocol to the CPRD, Art. 1 (1) that reads: "A SP to the present Protocol recognizes the competence of the Committee on the Rights of DPs ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction, who claim to be victims of a violation by that SP of the provisions of the Convention.".

80 Opt-Protocol to the CPRD, Art. 3.

81 Opt-Protocol to the CPRD, Art. 5.

the context to which the CPRD should be observed in the light of German Constitution.[82] Regardless of this,[83] it calls upon German courts to consider the CPRD reporting documents, General Comments and jurisprudence on individual complaints.[84] In considering the CPRD in its decisions, the FCC comes, in contrast to the CPRD Committee, to the conclusion that not every forced treatment, not every fixation and not every exclusion from voting rights needs to be prohibited. Thereby it builds its argumentation on the wording of the Convention, and partially also on the case law of the ECHR, whereas according to Felix Welti, in studying the passages of its decisions in isolation, the impression could arise that the FCC assesses German law against the standards of the CPRD.[85]

Furthermore, some scholars point out that the views adopted by the Committee are of general characteristics and do not, in most cases, contain the full evaluation of the relevant legal tools and structure of the given SP, which might result in no further action, as it was with the case of Liliane Gröninger v. Germany[86] and other communications concerning examined SPs.[87]

Thus, the potential positive impact of the individual complaint mechanism under the Optional Protocol to the CPRD might be highly dependent on the traditions, processes and structures of the legal system in question: e.g., readiness of the domestic courts to acknowledge and to be abide by the International Law jurisprudence.

82 FCC (BverfGE), 142, 313 <346 Rn. 90; FCC, Judgment of the second senate of 24 July 2018 – 2 BvR 309/15 `u.a. -, juris, Rn. 91; With regard to international court decisions, See also FCC, 111, 307 317 et seq.; 128, 326 366 et seq., 370; stRspr).

83 For disapproving opinion see Payandeh, 2020: 125–128; Schmalenbach, 2019: 567, 569. For approving opinion see Reiling, 2018: 311–338.

84 FCC (BVerfG), B v 26.7.2016, 1 BvL 8/15, BVerfGE 142, 313 Rn 89, 90; FCC, Judgment of 24 July 2018, 2 BvR 309/15, 2 BvR 502/16, BVerfGE 149, 293 Rn 91; FCC, Judgment of 29 July 2018 29 January 2019, 2 BvC 62/14, BVerfGE 151, 1 Rn 64, 65.

85 Welti, 2021: 30.

86 Tolmein, 2015: 185- 192.

87 See Chapter IV.

3.2 EU Disability Framework

The European Union legal framework shapes the legal and political processes of the member states within the scope of its exclusive,[88] shared[89] and supporting[90] competences. Therefore, in laying down an evaluative framework for the national and subnational disability laws of the selected cases, it is important to consider the disability law and policy under the EU primary and secondary legislation, its responsibilities under and competencies concerning the CPRD in the following subsections.

3.2.1 EU Primary Law

The development of the European disability law and policy started with the soft law measures and programmes focused, mainly, on the vocational training and employment[91] with the 1999 adaption of the Treaty of Amsterdam. The EU[92] has been equipped with a responsibility and explicit right to address discrimination, including on the ground of disability, in accordance with the EU Primary Law, namely the Art. 19 of the Treaty on the Functioning of the European Union- TFEU[93] in all policy fields falling under its competencies. The Treaty of Amsterdam, in addition, provided for a statement envisaging that the Commission, in its harmonization measures stipulated by the Art. 114 TFEU[94] concerning health, safety, environmental protection and consumer protection, takes as a base a high level of protection, which was meant to foster the use of internal market legislation to protect and promote the rights of DPs.[95] This, eventually, opened the door to adaption of a number of key secondary legislative instruments, the start of which marked the Directive 2000/78/EC of 27 November 2000 on the

88 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C202/1 (TFEU), Art, 3.
89 TFEU, Art. 4.
90 TFEU, Art. 6.
91 Council Recommendation (EEC) 86/379 on the employment of disabled people in the Community (1986) OJ L225/43. See also Waddington, 2007; O'Mahony/Quinlivan, 2020.
92 At the time of adoption EC.
93 Ex Art. 13 of the Treaty on the European Community-EC.
94 Ex Art. 95 EC.
95 See for example Broderick/Ferri, 2019, chapter 10.

establishment of a general framework for equal treatment in employment and occupation (Directive 2000/78/EC).[96]

At the same time, the EU drafted the Charter of Fundamental Rights (hereinafter referred as The Charter), which was proclamated on 7 December 2000. At that time, however, it did not have binding force, as a result, it has been reproclamated on 12 December 2007.[97] This was an important step taken by the EU towards insuring human and fundamental rights at the EU level, since the objective of The Charter is to set out all the civil, political, economic and social rights to which European citizens and residents are entitled, and The Charter forms an integral part of the Treaty of Lisbon. Thus, making The Charter's provisions binding on all EU institutions and member states except the UK and Poland in their implementation of EU law with the entry into force of the Treaty of Lisbon on 1 December 2009. However, for the correct impact assessment on the laws and policies of the member states, it should be noted that (A) The Charter does, by no means, extend the field of application of Union Law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.[98] (B) The Charter contains not only rights, but also principles. The difference between the two is that 'rights' constitute subjective rights, which may be directly invoked as such by the individuals in courts, whereas "principles" define an objective to be taken into account by the EU legislature and invoked upon their incorporation into the EU Member States' legislations.

While some member states argued that listing "principles" alongside real subjective "rights" would mislead individuals into believing that "principles" gave them true "rights", it is made clear that examples of social rights are e.g., the right to engage in work (Art. 15 Charter), the right to protection in the event of unjustified dismissal (Art. 30 Charter), the right to fair and just working conditions (Art. 31 Charter), and the right of access to placement services (Art. 29 Charter).

The examples of principles, on the other hand, are e.g., the access to social security and social assistance (Art. 34 Charter), enjoyment of health care (Art. 35 Charter), DPs integration in the life of the community (Art. 26 Charter), access to services of general economic interest (Art. 36 Charter).

96 For more see the Sub-sec. on EU secondary legislation.
97 Council of the European Union (2007). Charter of Fundamental Rights of the European Union, OJ C303, 14.12.2007.
98 See the Charter, Art. 51 (2).

In addition, Art. 21 para. 1 of The Charter states that any discrimination based on any ground, including disability shall be prohibited.[99] The scope of this article is broad,[100] it spans from accessibility and employment to the enjoyment of the rights stipulated by The Charter. However, the provision in Art. 21 para. 1 does not create any power to enact antidiscrimination laws in these areas of Member State or private action. In contrast, it only applies to discriminations by the EU institutions and bodies, when exercising powers conferred under the Treaties, and it applies to Member States only insofar as they act within the framework of Union Law.[101] A clear example of this is the EU failure to adopt the Equal Treatment Directive proposed by the Commission in 2008 up to now—a Directive, which would obligate the Member States to prohibit discrimination in areas of EU competence beyond employment and occupation.[102]

Thus, the primary function of the Charter was to increase the visibility of disability rights within the EU legal framework,[103] whereas in the background it played a key role in building a bridge between EU legislation and the Council of Europe's two principal instruments – the European Social Charter (ESC) and European Convention on Human Rights (ECHR). The utmost importance of the latter lays not only in its landmark[104] decisions concerning the rights of DPs and their reflection in the European disability-related jurisprudence, but also in its direct accessibility for the citizens of its SPs. The ECHR will become even more important for the EU and its member states if the resumed negotiation on the EU's accession to the European Convention on Human Rights is successful, as accession will help to ensure that the EU is subjected to the same international oversight on human rights as its 27 member states, meaning that citizens will be

99 the Charter, Art. 21 (1): "any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited".

100 See, Coleman v Attridge Law, Case C 303/06, CJEU 2008; Kaltoft, v Kommunernes Landsforening, Case C-354/13, CJEU 2014.

101 OJ C 303/17 – 14.12.2007.

102 Lawson, 2017: 61–76.

103 Ferri, 2021.

104 Grigoryan, 2017; Lewis, 2018; Köppen, 2019; Welti, 2021. For the list of selected disability-related ECTHR Case-law see also the Factsheet – DPs and the ECHR (May 2022) at: https://www.echr.coe.int/Documents/FS_Disabled_eng.pdf (Last accessed on 01.07.2022).

able to challenge the EU's actions before the European Court of Human Rights,[105] which is more of an exception than norm in the case of CJEU.

3.2.2 EU Secondary Law

In addition to disability-related measures envisaged by the EU Primary Law, the EU shapes the disability law and policy of the member states through enacting secondary legislation, which falls into four categories:

Regulations: regulations adopted by the EU are binding legislative acts which must be applied in their entirety across the EU Member States (e.g., Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway, and Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport);

Directives: Directives set out aims to be achieved and impose a requirement on member states to transpose it into national law for implementing those aims. The most important EU Directive is the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, which prohibits discrimination inter alia on the basis of disability in the field of employment and vocational training. This Directive characterizes the principle of equal treatment as meaning that there should be neither direct, indirect discrimination, nor discrimination by association.[106] Moreover, the Art. 5 of the same Directive require that 'reasonable accommodation' be provided to guarantee compliance with the principle of equal treatment with regard to DPs. Thus, employers and providers of vocational training have to take appropriate measures, where needed in a given case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.[107] This burden is not considered as disproportionate when it is sufficiently remedied by existing measures under the disability law of the

105 For more see the Joint statement on behalf of the Council of Europe and the European Commission of 29 September 2020: https://www.coe.int/en/web/portal/-/the-eu-s-accession-to-the-european-convention-on-human-rights (Last accessed on 17.07.2022).

106 Case C-303/06 Coleman, judgment of 17 July 2008, where the Court of Justice ruled that Directive 2000/78/EC protected a mother of a disabled child from harassment and discrimination in employment, when the problems were due to the fact that the mother needed extra time off to take care of her child.

107 See, The Case C-312/11 Commission v. Italy, judgment of 4 July 2013.

member state involved. It addresses both public and private bodies with respect to conditions for access to employment, vocational guidance and training, employment and working conditions. Later, most specifically after the ratification of the CPRD by the EU and adoption of the European Disability Strategy[108] (EDS), the EU adopted two new directives specifically addressing DPs: the first was the

2016 Web Accessibility Directive[109] and the second, the 2019 European Accessibility Act,[110] which covers accessibility only for limited products and services,[111] and thus lags far behind;[112]

Decisions: decisions have a direct application and are binding on member states to which they concern e.g., companies or individuals;

Recommendations and opinions: recommendations and opinions are not binding and serve as a tool for the EU institutions to suggest a line of action and to make non-binding statements without imposing legal obligations on those to whom it is addressed.

3.2.3 European Disability Strategies

Complementary to the EU primary and secondary legal instruments, the EU adopted the European Disability Strategy 2010–2020 (EDS)[113] prior to the CPRD ratification to set out its disability-related policy priorities and its implementation steps at both the EU and member states levels for the next 10 years. It aimed at empowering DPs in a way that they can enjoy their full rights, and benefit fully from participating in society and in the European

108 For more see below.

109 Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies (2016) OJ L327/1.

110 Directive (EU) 2019/882 on the accessibility requirements for products and services (2019) OJ L151/70.

111 Areas such as health services, education, transport, housing and household appliances are not covered by the directive.

112 Ferri, 2021; European Disability Forum, 2019, analysis of the European Accessibility Act. Retrieved from: https://www.edf-feph.org/publications/european-accessibility-act/ (Last accessed on 17.07.2022).

113 European Commission, 'European Disability Strategy 2010–2020: A Renewed Commitment to a Barrier-Free Europe' COM (2010) 636 final. Retrieved from: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM%3A2010%3A0636%3AFIN%3Aen%3APDF (last accessed on 01.07.2022); See also Hosking, 2013; For the progress evaluation see Anglmayer, 2017.

economy. To achieve its objective, the EDS underlined eight priority fields of action: e.g., accessibility, participation, equality, social protection and health.[114]

While the priority field "accessibility" of the EDS was instrumental for adopting directives 2016/2102 and 2019/882/EU, its achievements in all other priority fields were quite modest as it becomes evident from the Commission's 2017 progress report on the EDS.[115]

In March 2021, the European Commission adopted the second strategy for the Rights of DPs 2021 – 2030.[116] It includes action fields similar to the first strategy e.g., accessibility and equal participation in the democratic processes, justice, education, and all health services.

The second EU Disability Strategy, thus, builds on the first Disability Strategy. However, it sets new impulses and therefore it is expected that it will initiate more significant steps towards the comprehensive implementation of the CPRD in the EU.[117]

3.2.4 The CPRD Conclusion by the EU

The CPRD is the first of all UN human rights instruments that has provided for accession by the 'regional integration organizations' in addition to nation states.[118] This unprecedented provision allowed the EU to conclude the CPRD in its capacity as a regional integration organization.[119] Thereby, it declared the extent of its competence with respect to CPRD.[120] The areas in which the EU claims competence, were elaborated in the EU's

114 For the detailed analysis of the European disability Strategy 2010–2020 see Lawson, 2017, 61–76.

115 Commission Staff Working Document – Progress Report on the implementation of the European Disability Strategy (2010 -2020) SWD (2017) 29 final. Last accessed on June 30 2022 at: https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2725.

116 The Strategy might be found at:☹https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes (Last accessed on 17.07.2022).

117 Ferri, 2020.

118 CPRD, Art. 44.

119 Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of DPs [2010] OJ L23/35.

120 Annex II to Council Decision 2010/48/EC of 26 November 2009: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1401271474087&uri=CELEX:32010D0048 (Last accessed on 01.07.2022.

initial implementation report to the CPRD Committee in 2014, according to which the substantive rights of the Convention, where the EU predominantly shares competence with the member states includes combatting discrimination on the ground of disability and the co-ordination of employment and social policies, education, and the collection of European statistics.[121]

In fact, the majority of the international agreements, which the EU concludes, including the Convention, constitute the inclusion of concurrent jurisdictions of both the member states and the EU. Such mixed agreements entail a shared contractual relationship between an international organization and its members and one or more third countries and/or international organizations. Most notably, these kinds of agreements are only applied by the EU and its member states.[122] To this end, the member states are free to act collectively, individually or jointly with the community to fulfil the obligations under an international agreement in cases when the EU does not have exclusive competence to legislate and adopt binding acts.[123] Furthermore, it is important to mention that in accordance with the Art. 2, para 5 of the TFEU, legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to certain areas shall not entail harmonization of member states' laws or regulations.

The CPRD has been binding on the institutions and the 28[124] member states of the Union upon entering into force in January 2011.[125] Moreover, it has been integrated into EU legal framework, and, in hierarchical terms, placed below the Treaties but above secondary EU law.[126] Nevertheless, the

121 Report on the implementation of the UN Convention on the Rights of DPs (CPRD) by the European Union, 2014 (CRPD/C/EU/1), 182.

122 Waddington, 2009: 111–139.

123 CJEU Case, C-316/91: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61991CJ0316 (Last accessed on 01.07.2022).

124 In 2020 the EU member states are 27 as the United Kingdom left the European Union on 31 January 2020.

125 The EU's institutions are the European Parliament (EP), the European Council, the Council of the EU (Council), the Commission, the Court of Justice of the European Union (CJEU), the European Central Bank and the Court of Auditors.
TFEU, Art. 216 (2): "agreements concluded by the Union are binding upon the institutions of the Union and on its Member States ".

126 CJEU, Joined cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v. Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation (C-337/11), EU:C:2013:222, para. 32.

CPRD, despite its higher status over the EU secondary legal instruments, cannot lead to annulment of an EU secondary legal instrument in case of its inconsistency with the CPRD provisions.[127] The CJEU also underlined that the applicability of EU Secondary Law in relation to international instruments can be considered only in case the international provision is directly enforceable.[128] In order to establish whether the international legal instruments have direct applicability, the CJEU assesses if it can be directly enforceable in the domestic legal system of its SPs.[129] Alternatively, the CJEU proves if the provisions of the international instrument in question are based on an "unconditional and sufficiently precise" obligations, meaning that their legal and administrative enforcement should not be subject to the adoption of additional transformation measures.[130]

It should be noted as well that prior to the above-mentioned decisions, the CJEU ruled that where international agreements are concluded by the EU they are binding on its institutions, and accordingly they prevail over acts of the EU[131]. Therefore, The CPRD is recognized to form the integral part of the EU legal order.[132] Furthermore, it stated that in view of the fact that the provisions stipulated by the Employment Equality Directive have close reference to matters falling under the CPRD objectives, it should be interpreted in accordance with the Convention.[133]

Thus, after the CPRD ratification by the EU, the CJEU in defining the concept of disability, cautiously moved to a social model of disability[134] by stating that it should be understood as referring to a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective

127 Waddington, 2018: 131–152.

128 E.g. CJEU, Joined Cases C-120/06 P and C-121/06 P, Fabbrica italiana accumulatori motocarri Montecchio SpA (FIAMM) and others v. Council of the European Union and Commission of the European Communities EU:C:2008:476, para. 108.

129 Ibid.

130 See CJEU Case, C-363/12, Z. v. A Government Department and The Board of management of a community school EU:C:2014:159, para 90; Case C-356/12 Wolfgang Glatzel v Freistaat Bayern EU:C:2014:350, para 69.

131 CJEU, Cases 335/11 and 337/11, HK Danmark, acting on behalf of Jette Ring v. Dansk almennyqttigt Boligselskab DAB and HK Danmark, acting on behalf ofLone Skouboe Werge v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation, judgment of the Court of 11 April 2013 (Grand Chamber), para. 28.

132 Ibid., Para 30.

133 Ibid., Para 32.

134 Betsh, 2013.

participation of the person concerned in professional life on an equal basis with other workers.[135] However, it maintained that, the limitation that the illness causes must be of a long or uncertain duration, in order to be considered as a disability.[136] In addition, the CJEU recognizes that the concept of 'disability' cannot be defined by reference to the origin of the disability in question.[137] However, in considering the Daouidi case,[138] it found that for assessing the duration of a limitation, the key measurement factor should be if it is factual in nature and if it, in practice, entails a medical diagnosis.[139] To this end, Waddington and Broderick assume that by necessitating that an individual experience a limitation related to their impairment, the Court "seems to exclude from the definition of disability individuals who are disabled by socially-created barriers, such as false assumptions and prejudices about an individual's ability, and possibly even barriers in the physical environment."[140]

In view of accommodation measures, the CJEU noted that reasonable accommodation should be understood as referring to the eradication of the various barriers that hinder the full and effective participation of DPs in professional life on an equal basis with other workers.[141] Therefore, a reduction in working hours could be viewed as an accommodation measure in a case in which reduced working hours make it possible for the worker to stay in employment.[142] The CJEU also holds that in these cases the possibility of providing an assistant should also be considered.[143]

135 CJEU, Cases 335/11 and 337/11, HK Danmark, acting on behalf of Jette Ring v. Dansk almennyqttigt Boligselskab DAB and HK Danmark, acting on behalf ofLone Skouboe Werge v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation, judgment of the Court of 11 April 2013 (Grand Chamber). Para. 38; Case C-397/18 DW v Nobel Plastiques Ibérica SA EU:C:2019:703.

136 CJEU Cases 335/11 and 337/11. Para. 39.

137 Ibid. Para. 40.

138 CJEU Case, C395/15 Mohamed Daouidi v Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal (Daouidi v Bootes Plus SL) EU:C:2016:917. see also Ferri, 2019: 69.

139 CJEU Case, C395/15. Para. 55 et seq.

140 Waddington/Broderick, 2018, 58.

141 CJEU, Cases 335/11 and 337/11, HK Danmark, acting on behalf of Jette Ring v. Dansk almennyqttigt Boligselskab DAB and HK Danmark, acting on behalf ofLone Skouboe Werge v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation, judgment of the Court of 11 April 2013 (Grand Chamber). Para. 54.

142 Ibid. Para. 56.

143 Ibid. Para. 63.

While the EU has ratified the CPRD, it has not, yet, ratified the Optional Protocol to the CPRD, despite the 2008 Commission's call for its ratification.[144] In fact, the proposal to conclude the Optional Protocol has been overwhelmingly approved by the European Parliament[145] in the following year. Moreover, The EU Member States and the Commission have been called to report every three years to the Council and to Parliament on the status of implementation of the Optional Protocol in accordance with their respective fields of competence.[146] However, it did not yet come to the EU's accession due to absence of unanimity in the Council.[147] As a result, the door to complaint mechanism provided by the CPRD Committee remains firmly closed for alleged EU non-compliance victims, which was criticised by the CPRD Committee and has been called upon ratification of the Optional Protocol to the Convention by the European Union.[148]

3.3 CPRD Implementation at the National Level

Upon the ratification, the SPs are obligated under the CPRD to fully and comprehensively implement all the provisions enshrined by the CPRD at all governmental levels.[149] Accordingly, they are responsible for acting consistently with the CPRD and insuring that public authorities and institutions act in conformity with the Convention.[150] Moreover, they are

144 The Proposal has been based on Arts. 13, 26, 47(2), 55, 71(1), 80(2), 89, 93, 95 and 285 in conjunction with the second sentence of the first paragraph of Art. 300(2), and the first subparagraph of Art. 300(3) of the EC: Proposal for a Council Decision concerning the conclusion of the Optional Protocol to the UN Convention on the Rights of DPs. COM (2008) 530–2 (core). 2.9.2008.

145 European Parliament legislative resolution of 24 April 2009 on the proposal for a Council decision concerning the conclusion, by the European Community of the Optional Protocol to the United Nations Convention on the Rights of DPs (T6–0313/2009): http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0313 (Last accessed on 01.07.2022).

146 Ibid.

147 Art. 300 (2): "…The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310".

148 CPRD Committee, Concluding observations on the initial report of the European Union (CRPD/C/EU/CO/1), Paras. 6 and 7: ec.europa.eu/social/BlobServlet?docId=14429&langId=en(Last accessed on 01.07.2022).

149 CPRD, Art. 4 (5).

150 CPRD, Art. 4 (1D).

required to take into account the protection and promotion of the human rights of DPs in all policies and programmes.[151] Hereby, CPRD Committee differentiates between direct and indirect policies.[152] Examples of policies directly affecting DPs are social insurance, personal assistance, accessibility requirements and reasonable accommodation. Measures indirectly affecting DPs might include education.[153]

The Convention provides that the SPs adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CPRD, and to take due care in eliminating all forms of discrimination against DPs.[154]

3.3.1 CPRD Implementation at the Sub-National Level

Under the International Law, the state is one single entity, irrespective of its unitary or federal nature and internal administrative division. Accordingly, only the state as a whole is bound by obligations envisaged by the ratified international treaty. This is stipulated by the Art. 27 of the Vienna Convention on the Law of Treaties, according to which a SP "may not invoke the provisions of its internal law as justification for its failure to perform a treaty".[155] More specifically, a state going through CPRD reporting process and/or complaints mechanism cannot defend itself by claiming that the alleged violation was committed by a local authority as in accordance with customary International Law, it is recognized that "the conduct of any State organ shall be considered an act of that State under International Law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a

151 CPRD, Art. 4 (1C).

152 CPRD Committee, General Comment No. 7: Articles 4.3 and 33.3- on the participation of DPs, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, (CRPD/C/GC/7), Para. 18.

153 Ibid., Para. 20.

154 CPRD, Art. 4 (1A and B).

155 United Nations, Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Art. 29; CPRD, Art. 4 (5); See also CPRD Committee, Concluding Observations on Austria (CRPD/C/AUT/CO/1), Para. 10.

territorial unit of the State".[156] For instance, in its General Comment No. 16, the Committee on Economic, Social and Cultural Rights underlined that "Violations of the rights contained in the Covenant can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and local levels".[157] It should be mentioned that the actions of certain institutions exercising public powers is attributed to the state even if those institutions are regarded in internal law as autonomous and independent of the executive government.[158]

Thus, SPs to the CPRD, should assume obligation to bind the regional and Länder-level governments[159] to promote, protect and implement the human rights of DPs, as they are actually those who are to translate national human rights strategies and policies into practical application.

Little has been done to study the role of sub-national governments in implementing the Convention despite their decisive role. Perhaps this is the cause of presumption that human rights protection in general are to be a matter of uniformity across the SP or a matter of constitutional structure of a given state that can only be addressed internally. However, most probably this is the result of underestimation of the role and capacity of sub-national governments with regard to implementation of International Law.

In fact, the need for involving regional, state and municipal governments in the process of negotiation of international obligations has long been recognised to have high significance. Particularly, the Art. 4 para. 6 of the Council of Europe's 1997 Charter of Regional Self-government states that: "Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly". However, there were no significant efforts to study the result and effect of such consultations, in particular for assessing to what extent the perspective of regional governments has been taken into account upon the ratification of international conventions. In

156 UN General Assembly (1966). International Covenant on Civil and Political Rights (ICCPR). United Nations, Treaty Series. (vol. 999). 171, Art, 50- sect. IV.E.1.

157 CESCRCommittee, General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant) (E/C.12/2005/4), 11 August 2005, para. 42.

158 International Law Commission, Commentaries to the draft articles on Responsibility of States for internationally wrongful acts (sect. IV.E.2); 82. Retrieved from: http://www.eydner.org/dokumente/darsiwa_comm_e.pdf (Last accessed 01.07.2022).

159 CPRD, Art. 4 (5): "the provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions".

addition, there have been no further efforts to acknowledge the role of the sub-national governments in implementation of international obligations after they have been assumed by the SPs.
Given the significant share of implementation of the sub-national governments, this way of addressing the effective implementation of international conventions might not be the optimal approach for the equitable application of international obligations across the state. Therefore, on the one hand, it might be presumed that exact implementation guidelines at the national level are one of the fundamental elements for the successful implementation of an international convention. On the other hand, however, flexibility in implementation might prove to be much more effective with regard to regional structures and traditions.

In addition, the involvement of sub-national governments in post-ratification processes is considered to be key to successful implementation, for instance, the Human Rights Council Advisory Committee underlines that representatives of local authorities should be involved in the drafting of human rights policies.[160] The CPRD Committee also expressed concern that subnational governments did not participate in the development of national action plans,[161] which would be ensured through institutionalized cooperation on human rights between the national/federal and local governments. For example, in its General Comment No. 4 (the right to adequate housing), the Committee on Economic, Social and Cultural Rights underlined that SPs should take steps "to ensure coordination between ministries and regional and local authorities in order to reconcile related policies".[162] Nevertheless, according to the final report of the Human Rights Council Advisory Committee on the role of local government in the promotion and protection of human rights, the implementation of human rights often fails due to the lack of adequate coordination between central and local govern-

160 Human Rights Council, Final report of the Human Rights Council Advisory Committee on the Role of local government in the promotion and protection of human rights, thirtieth session, Point 21. Retrieved from: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_49_ENG.docx (Last accessed on 01.07.2022).

161 CPRD Committee, concluding Observations on the Initial Report of Austria (CRPD/C/AUT/CO/1), Para. 10.

162 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, para. 12. Retrieved from http://www.refworld.org/docid/47a7079a1.html (Last accessed on 01.07.2022).

ments. Furthermore, the implementation might fail also in SPs, where laws regarding the competence sharing between central government and local government are not simple, accessible and clear: "a clear-cut division of powers between the different tiers of government is the precondition for the establishment of accountability, and hence the precondition for the implementation of human rights".[163]

3.3.2 Focal Points

While human rights Treaties, such as ICCPR and the ICESCR do not, traditionally, provide for exact structural measures within the SPs, the CPRD requires for particular structural changes. Specifically, under the Art. 33 it provides that the SPs shall establish or designate national structures for the implementation and monitoring of the Convention. Specifically, it obligates the SPs to establish or designate within their governments one, or in case of decentralized systems of governance, more FPs[164], which according to the Handbook for Parliamentarians on the CPRD should be established or designated through legislative, administrative or other legal measures and be permanently appointed.[165]

Art. 33. Para. 1 does not, in fact, specify the location of the FP. However, the national level FP, as the key supervisor and the promoter of the human rights, in consideration of the fact that the Convention endorses and represents a paradigm shift in the understanding of disability, from approaches that have a medical and charity-based focus to approaches that are based on human rights and have a social dimension, should preferably be established with ministries responsible for human rights and justice.[166] Furthermore, the OHCHR Thematic Study states that it would be preferable not to locate the FP in the ministries of health or welfare and labour affairs.[167]

163 Human Rights Council, Final report of the Human Rights Council Advisory Committee on the Role of local government in the promotion and protection of human rights, thirtieth session, Point 33. Retrieved from: https://www.refworld.org/docid/47a7079a1.html (Last accessed on 01.07.2022).

164 CPRD, Art. 4 (5).

165 OHCHR et al., 2007: 94.

166 As an example for the FP designated with the ministry of justice see the case of Australia at: https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/international-participation-in-disability-issues (Last accessed on 01.07.2022).

167 Human Rights Council, 2009, 7.

Nevertheless, tasking the traditionally involved ministry, such as the ministries of social affairs with the CPRD implementation and at the same time working on the change of its governing approach could instead be much more beneficial for the effective implementation of the Convention.[168] To ensure effective shift from medical model to human-rights-based governing approach, the SPs are required to provide trainings about the human rights of DPs for the appropriate civil servants.[169]

In addition, the CPRD Committee underlines that the FP should "be of a sufficiently high institutional rank to effectively carry out its duties as a mechanism for facilitating and coordinating matters relating to the implementation of the Convention at all levels and in all sectors of government".[170]

The designated FPs should, in addition, be equipped with adequate financial and human resources as it is suggested by the Handbook for Parliamentarians on the CPRD and confirmed by the CPRD Committee.[171] The purpose of adequate resources is twofold: on the one hand, it should help in discharging the duties of the FPs under the CPRD, especially in organizing the vertical and horizontal mainstreaming and coordination of the CPRD. On the other hand, it should ensure close, effective and institutionalised consultancy and inclusion of DPOs in the work of the FPs.

The FPs are mandated to ensure multi-sectoral and multi-level implementation and monitoring of the CPRD, promote awareness of the Convention across the SP, prepare state reports in collaboration with all relevant actors, as well as cooperatively develop action plans on the Convention, which would reflect all governmental levels and elaborate on the prioritised political action field and policy initiatives for the given period of time.[172]

168 OHCHR et al., 2007, 94.
169 CPRD, Art. 4 (1I), and Art. 13 (2).
170 CPRD Committee, Concluding observations on the initial report of Argentina (CRPD/C/ARG/CO/1), Para. 51; OHCHR et al., 2007: 94.
171 OHCHR et al., 2007: 94; CPRD Committee, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland (CRPD/C/GBR/CO/1), Para. 68.
172 OHCHR et al., 2007: 94 – 95.

3.3.3 Coordination Mechanisms

Under Art. 33 para. 1 CPRD, the SPs have to provide for coordinating bodies that would insure the compliance with the rights stipulated by the CPRD and facilitate related action in different sectors and at different levels of government.[173] It should consist of a permanent structure with appropriate institutional arrangements to allow coordination among intragovernmental actors.[174] In most cases these CMs maintain staffed secretariat and are placed within the ministries of social affairs. However, DPOs argue that the efficacy of these mechanisms are questionable since they do not have a clear legal mandate, are allocated no or very limited resources for their functioning, and often involve very few DPs or exclude persons with certain types of disabilities.[175]

According to Gauthier de Beco, the designation of a CM helps policymakers in regarding DPs as right-holders and not as people in need of assistance.[176] Nevertheless, the structure and functions of a CM intersect with that of the FPs- they are often mandated with the promotion of dialogue in the disability field and awareness-raising. Accordingly, the SPs might find it difficult to decide on its structural and functional implementation and end up choosing two-in-one option.

3.3.4 National Human Rights Institutions

The idea of establishing national institutions for promoting, protecting and monitoring the human rights (hereinafter referred as NHRI or MF)[177] was in discussion in the aftermath of the World War II, when the United Nations (UN) has been created to "maintain international peace and security (…) to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental

173 CPRD, Art. 33 (1): States Parties, in accordance with their system of organization, shall give due consideration to the establishment or designation of a CM within government to facilitate related action in different sectors and at different levels.

174 Ibid.

175 For more see Human Rights Council, 2009: http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29_en.doc(Last accessed on 01.07.2022).

176 Beco/Hoefmans, 2013.

177 The term "Independent Monitoring Framework (MF)" is used by the CPRD.

freedoms for all without distinction(…)".[178] Nevertheless, it took over three decades till the concept of NHRIs became known and accepted by UN Member States.[179]

In 1991, when the UN had already achieved the adoption of a number of conventions and realised the difficulties connected with their implementation at the domestic level, the establishment of NHRIs seemed the best possible solution for the problem of state non-compliance.[180] Consequently, the UN initiated the development and adoption of the Principles relating to the Status of NHRIs (hereinafter referred as Paris Principles) in 1991,[181] which should, theoretically, ensure the independence of NHRIs.[182] Nevertheless, in contrast to states' relative willingness to ratify human rights Treaties, some SPs operate NHRIs that are not fully compliant even with the Paris Principles (B level) or (C level).[183] The states that have (A level) are considered to be fully compliant with the normative framework for the status, mandate, composition and operational methods of the national institutions.[184]

The Vienna Declaration and Programme of Action adopted at the Vienna World Conference in 1993[185] has also reaffirmed the important and

178 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art. 1.

179 For the history of proposals for national bodies, see: Pohjolainen, 2006: 30–71.

180 For more see, Pohjolainen, 2006; Cardenas, 2014.

181 See the report of the 1991 workshop: UN Doc. E/CN.4/1992/43 of 16 December 1991; later reproduced in the appendix of GA Res. 48/134 of 20 December 1993.

182 United Nations Human Rights Council (OHCHR) (1991). Report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights (E/CN.4/1992/43), 16 December 1991, Paras. 26 – 110; see also, UNICEF, 2012; Brodie, 2015; Meuwissen, 2015; Beco/Murray, 2014.

183 Austria maintains an Austrian Ombudsman Board, which has a B level accreditation status since 2011. The designated MCs under the CPRD, instead, do not even have a C level status. For more see, Schulze, 2013; The accreditation status of National Institutions as of May 18, 2022 can be found at: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf (Last accessed on 01.07.2022).

184 The accreditation of NHRIs is based on three status-levels; NHRI with A status is fully compliant, with B status is partially compliant, and C status is considered non-compliant with Paris Principles. There are States that did not apply for accreditation. Accreditation of more than one institution is not welcomed. For more on the history, process and the role of accreditation, see, Cardenas, 2014: 33 – 54; Meuwissen, 2015.

185 UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, Para. 34.

constructive role of NHRIs in upholding the rule of law, democracy, and human rights awareness at the domestic level and encouraged the member states to establish and to strengthen the NHRIs.[186]

Following the UN resolution and World Conference Declaration, the Council of Europe adopted a Resolution (97) 11 on the cooperation among NHRIs, member states, and the Council of Europe, and issued a recommendation (97) 14 on the establishment of NHRIs. Nevertheless, the European states were not fast in following the recommendations of the Council of Europe. Moreover, in established democracies, NHRIs were adopted almost entirely in response to international regime pressures, leading to inordinately weak institutions, which according to Sonia Cardenas can be explained by the fact that both consolidated democracies and democratising European states have often adopted a post–human rights ideology: "the notion that human rights are already institutionalised within the state and therefore somehow irrelevant for today's national debates. In other cases, the rejection has been based on the assumption that 'human rights' constitute a more appropriate frame of reference for states in other parts of the world—for them, but not us: to invoke Makau Mutua's imagery, the European view stereotypically equates human rights abuses with savage acts of the other rather than its own barbarities or its mundane degradations and marginalised communities".[187]

The role of national institutions has been further developed by the recent human rights Treaties.[188] Most particularly, the Optional Protocols to the Convention Against Torture (OPCAT)[189] and to the CPRD[190] make it clear that the SPs, in accordance with their legal and administrative systems, are required to maintain, strengthen, designate or establish within the SP, a framework, including one or more independent mechanisms, as appropri-

186 Vienna Declaration and Programme of Action. Para. 36.
187 Cardenas, 2014: 256 – 309; See also, Wouters /Meuwissen, 2013.
188 Carver, 2010; Beco, 2011; Byrnes, 2014: 222–239.
189 UN General Assembly, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), (resolution A/RES/57/199) adopted on 18 December 2002.
190 CPRD, Art. 33 (2); Quinn, 2009b; Gatjens/Fernando, 2011; Stein/Lord, 2010; Manca, 2017.

ate, to promote, protect and 'monitor' the implementation of the provisions enshrined in the CPRD.[191]

In view of this, the compliance of an NHRI/independent MF should not only be evaluated on the bases of the General Observations developed by the GANHRI Sub-Committee on Accreditation (SCA) but also consider recommendations of the CPRD Committee.

3.3.4.1 Independence and Legal Status

The relation between the NHRI and the state and non-state partners with regard to its independence has been the central point of discussion in the negotiation process of the Paris Principles.[192] In rapporteur Mr Dominique Turpin's view: "it could not be taken for granted that the State, and in particular the Executive branch, was predisposed to promote and protect human rights, because the principle of authority, which was an inherent characteristic of the State, tended to restrict the principle of freedom, which was the basis of human rights. Nevertheless, fears could be allayed somewhat by the concept that it was the State which was or should be at the service of the individual and not vice versa".[193] Consequently, he concluded that "the higher the status of the instrument establishing the National Institution in a country's legislative hierarchy, the easier it was for the institution to ensure that its independence was respected". Accordingly, the Paris Principles stipulate that the establishment or designation of a National Institution should be based on a constitutional or legislative text, specifying its composition and its sphere of competence. This makes them less likely to be overturned: e.g., the fact that the Office of Russian ombudsman was stipulated by the constitution, saved it from being dissolved due to its confrontation with the state policy on Chechnya.[194] Nevertheless, the same example shows the weakness of this safeguard as the office of the ombudsman managed to survive but the government removed the ombudsman and installed a government-friendly person as an ombudsman.[195] Similarly,

191 CPRD, Art. 33 (2); See, CPRD Committee, Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of DPs (CRPD/C/1/Rev.I, annex), Para. 2.
192 E/CN.4/1992/43, Para. 26 and 111 -167.
193 Ibid. 27.
194 Cardenas, 2014: 264–266.
195 Ibid.

the lack of immunity safeguards made possible the forced resignation of the first executive director of the German Institute of Human Rights, who, unlike others wanting to focus on human rights abroad, pushed too hard to consider domestic human rights violations e.g., discriminative treatment of noncitizens and the unequal state welfare policy between western and eastern citizens.[196]

Besides, the relations of NHRI with non-state partners must be based on continuing and sustained consultation and the principle of complementarity, with due regard for the specific characteristics of each party.[197] This means that the NHRIs "should not act as a substitute for the non-governmental organizations. The national institutions and the non-governmental organisations must preserve their independence and their cooperation must be a source of mutual synergism…".[198] Thus, the value of a NHRI is that its distance, conversely, enables it to act as a bridge or mediate between government and non-government entities – a partner – trusted yet separate from both.[199] To this end, the NHRI should, in addition to legal status, fulfil the criterion of composition (method of appointment of members and discharge), the scope and duration of mandate and method of operation set force in the Paris Principles to have a status of independent or autonomous institution.[200]

3.3.4.2 Composition

The requirements for Paris Principal compliant composition not only ensures the independence of the NHRIs but also is key to securing the confidence of civil society.[201] Therefore, the SPs should pay attention to these three main points in establishing or designating an NHRI:

196 Mertus, 2009: 121 -123.
197 E/CN.4/1992/43, Paras. 111 – 128; See also, Smith, 2006.
198 Ibid. 127.
199 Beco, 2007; Beco/Murray, 2014.
200 E/CN.4/1992/43, Para. 29; See also the statement of the CPRD Committee, CRPD/C/1/Rev.1, annex. Para. 15.
201 Renshaw, 2012.

A. Pluralist representation

The composition of the National Institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of... representatives of non-governmental organizations responsible for human rights... concerned social and professional organizations, including associations of lawyers... and eminent scientists,... Universities and qualified experts, parliament and government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).[202] There are different ways in which pluralism may be achieved through the composition of the National Institution, for example: (a) members of the governing body represent different segments of society as referred to in the Paris Principles; (b) pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates; (c) pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or (d) Pluralism through diverse staff representing the different societal groups within the society.[203] Depending on the particular NHRI model, the options "can – and even should, as far as possible – be combined with each other".[204] In any case, according to OHCHR the "diversity should be reflected across all parts of the organization and all levels of seniority".[205] Besides, the NHRI should include other minority group representatives depending on its mandate. Most particularly, the MF under the CPRD, "should ensure the full involvement and participation of DPs and their representative organizations in all areas of its work".[206] The Involvement and participation of DPOs "should be meaningful and take place at all stages of the monitor-

202 UN General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), (Resolution A/RES/48/134), (Composition).
203 SCA General Observations as adopted on 21.02.2018, 2.1.
204 Beco/Murray, 2014.
205 OHCHR, National Human Rights Institutions, 39.
206 CRPD/C/1/Rev.1, annex, Para. 20.

ing process, and be accessible, respectful of the diversity of persons with disability…".[207]

In addition, the considerable number of European NHRIs often consist of university representatives, who, in some cases, might even be in majority. The tendency might be explained by the fact that European universities have rich human rights research capacity, which is imperative for NHRIs work, or that the NHRI is an institute with a focus on research.[208] The NHRIs also include qualified experts, which might be another way of covering the diversity requirement. However, especially in this category, the NHRI tasked with the CPRD monitoring should ensure the representation of disability rights experts and individuals, who hold UN or supranational posts on human rights thus helping to establish links with human rights Monitoring Mechanisms.[209]

The representatives of parliament are another important group to include in the NHRIs, especially with regard to cooperation and awareness raising. However, this should be balanced against the capacity of the given parliament to exercise independent oversight.[210] There are concerns that parliamentarians might bring their political agenda to the NHRI,[211] leading to a conflict of interests and a perceived lack of independence of the institution. In view of this risk, the SCA provides that "members of parliament, and especially those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making".[212] Besides, the number of secondees should not exceed the 25 percent, they should not be appointed to senior level positions[213] and they should participate in NHRIs structures only in an advisory capacity.[214]

The involvement of government members in the NHRIs proves to be much more problematic: on the one hand, their inclusion might facilitate communication flows between the public administration and the NHRIs as they are seen as both the recipients of recommendations and the providers

207 Ibid.
208 Beco/Murray, 2014.
209 Ibid.
210 Carver, 2000: 14.
211 Murray, 2007.
212 SCA, General Observations 1.9.
213 SCA, General Observations 2.5.
214 SCA, General Observations 1.9.

of information.[215] If the government members are to be included in the structures of the NHRIs, then it should be ensured that they represent diverse ministries and in the case of decentralized political structures, also representatives of Länder /municipalities.

On the other hand, the involvement of governmental representatives in the decision-making processes might impede the independence of the NHRIs "since they hold positions that may at times conflict with an independent NHRI".[216] Therefore, the government representatives, "whose roles and functions are of direct relevance to the mandate and functions" of the NHRI and "whose advice and cooperation may assist the NHRI in fulfilling its mandate" should be allowed to participate, but their number cannot exceed the other members represented in the decision-making body[217] or they should, preferably, be placed in advisory committees.[218] In any case, they should not have voting rights.[219] However, the CPRD Committee is more restrictive in this respect as it states that "article 33 requires States parties to ensure that the MFs are independent from the FPs appointed under article 33 (1) of the Convention".[220] Besides, "the Advisory bodies such as disability councils or committees comprising representatives of departments and units involved in the implementation of the Convention should not be involved or in any manner take part in the activities of the MF".[221] Nevertheless, SPs, in practice, disregard these requirements, especially by establishing or designating Monitoring Bodies under the CPRD, where the government members are represented in equal footing with civil society.[222]

B. Adequate infrastructure

The NHRIs shall have "an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of

215 Beco/Murray, 2014.
216 SCA, General Observations 1.9; See also SCA, General Observations 2.3 that states: "government members should not have decision-making or voting capacity".
217 SCA, General Observation 1.9.
218 SCA, General Observations 1.9.
219 Principles relating to the Status of National Institutions. Composition 1E; See also SCA, General Observations 2.3.
220 CRPD/C/1/Rev.1, annex, Para. 9.
221 Ibid. Para. 22.
222 As it is shown in the chapter V.

this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect its independence".[223] Accordingly, NHRI should have complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities.[224] The funding should be stipulated by a national law and include, at a minimum, the following:

- The allocation of funds for premises which are accessible to the wider community, e.g., DPs also by ensuring as wide a geographical reach as possible;
- Salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the state;
- Remuneration of members of its decision-making body (where appropriate);
- The establishment of well-functioning and accessible communication systems including telephone and internet;
- The allocation of a sufficient amount of resources for performing the mandated activities and ensuring their accessibility to DPs. If the NHRIs are given additional responsibilities e.g., CPRD monitoring, additional financial resources should be allocated to discharge these functions[225] at all governmental levels.[226]
- The funding, which might be provided by the executive and, ideally, approved by the legislature,[227] should be separate budget line over which the NHRI has absolute management and control.[228] However, according to the FRA 2010 report, NHRIs with mainly an advisory role often do not have a separate budget at all.[229] In any case, the NHRIs and their respective members and staff should not face any form of reprisal or intimidation, such as "... unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates,

223 Principles relating to the Status of National Institutions (Composition).
224 SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Para. 15 B – E.
225 SCA General Observations 1.10; See also CRPD/C/1/Rev.1, annex. Para. 11.
226 CRPD/C/1/Rev.1, annex, Paras, 18 and 19.
227 OHCHR, National Human Rights Institutions, 41.
228 SCA, General Observations 1.10; See also CRPD/C/1/Rev.1, annex. Para. 17.
229 European Union Agency for Fundamental Rights, 2010, Para. 4.3.3.

including when taking up individual cases or when reporting on serious or systematic violations in their countries".[230]

C. Method of appointment/dismissal

"In order to ensure a stable mandate for the members of the National Institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate".[231] Accordingly, the CPRD Committee underlines that the members of the MFs should be appointed in a public, democratic, transparent and participatory manner,[232] this should, preferably, be carried out by the Parliament upon the nomination of the civil society.[233] Appointments by the government are regarded as political bias and thus have to be avoided.[234] In any case, elected/appointed members should "serve in their own individual capacity rather than on behalf of the organization they represent".[235] Besides, the members of the NHRIs should include full-time remunerated members to assist in guaranteeing: (a) the independence of the NHRI free from actual or perceived conflict of interests; (b) a stable mandate for the members; (c) regular and appropriate direction for staff; and (d) the ongoing and effective fulfilment of the NHRI's functions.[236]

To ensure the independence of the appointees and thus to raise its public legitimacy,[237] the legislation establishing the NHRIs should also provide

230 CRPD/C/1/Rev.1, annex. Para. 31.
231 Principles relating to the Status of National Institutions (Composition).
232 CRPD/C/1/Rev.1, annex. Para 15a; According to SCA General Observations 1.8, these requirements can be achieved by:
a) Publicizing vacancies broadly;
b) Maximizing the number of potential candidates from a wide range of societal groups;
c) Promoting broad consultation and/or participation in the application, screening, selection and appointment process;
d) Assess applicants on the basis of pre-determined, objective and publicly available criteria….
233 Carver, 2000: 14.
234 Ibid.
235 SCA, General Observations 1.8.
236 SCA, General Observations 2.7 – 2.9.
237 Carver, 2004.

members with immunity from legal action with regard to their activities[238] and "contain an independent and objective dismissal process", with reasons "clearly defined", and not left to the discretion of those appointing the members.[239] To this end, the dismissal should be based only on "serious grounds of misconduct or incompetence" and enacted with "fair procedures".[240] Besides, it is explicitly stated that: "dismissal of members by the Executive ... is incompatible with the independence of the National Institution".[241]

3.3.4.3 Mandate, Competence and Responsibilities

The Paris Principles state that the NHRIs "shall be given as broad a mandate as possible, which shall be set forth in a constitutional or legislative text, specifying... its sphere of competence".[242] According to the CPRD Committee, these should "encompass the promotion, protection and monitoring of all rights enshrined in the Convention".[243]

A. Promotion Competence

The responsibilities falling under this competence shall include raising awareness, building capacity and training; regularly scrutinizing existing national legislation, regulations and practices, as well as draft bills and other proposals, to ensure that they are consistent with Convention requirements; carrying out or facilitating research on the impact of the Convention on national legislation; providing technical advice to public authorities and other entities on the implementation of the Convention; issuing reports at the initiative of the MFs themselves, when requested by a third party or a public authority; encouraging the ratification of international human rights instruments; contributing to the reports that

238 Carver, 2000: 12; OHCHR, National Human Rights Institutions, 42; See also, SCA, General Observations 2.5.
239 SCA, General Observations 2.1.
240 Ibid.
241 SCA, General Observations 2.1.
242 Principles relating to the Status of National Institutions. Competence and Responsibilities 2.
243 CRPD/C/1/Rev.1, annex. Para. 15; The SCA General Observations 1.2 provide for only promotion and protection Competencies, although it enlists 'monitoring' under the protection competence.

states are required to submit to United Nations bodies and committees; and cooperating with international, regional and other NHRIs.[244] While the majority of enlisted responsibilities are clear, three of them require further elaboration:

I. **Human rights training/capacity-building**: The importance of human rights education in proper implementation of conventions has been recognized by a number of international instruments.[245] The CPRD, however, went a step further by requiring that SPs should ensure adequate training in the rights recognized in the CPRD of state officials, civil servants, judges, law enforcement officials, professionals and staff in education system, as well as organizations of DPs (DPOs).[246] The important role of NHRIs in providing human rights education and training has been underlined by the Paris Principles,[247] UN Declaration on Human Rights Education and training[248], Vienna Declaration and Programme of Action[249] and by the CPRD Committee. The latter, in particular, stressed the capacity building of DPOs by the MFs in the state reporting procedures.[250] Besides, it made clear

244 CRPD/C/1/Rev.1, annex. Para. 13.

245 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Preamble; World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, A/Conf.157/23, Part I, para. 36; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Art. 13; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Art. 10; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Art. 7; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, Art. 10; UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Art. 29.

246 CPRD, Art. 4 (1I), Art. 8 (2B and D), Art. 13 (2), Art. 24 (4); CRPD/C/1/Rev.1, annex. Para. 23 E, K, L and N; In 2011, the requirement was also reconfirmed by the UN Declaration on Human Rights Education and Training adopted by the General Assembly on 19 December 2011 (A/RES/66/137).

247 Principles relating to the Status of National Institutions Competence and responsibilities 3 f.

248 UN Human Rights Council, United Nations Declaration on Human Rights Education and Training: resolution, 8 April 2011, A/HRC/RES/16/1, Art. 9.

249 Vienna Declaration and Programme of Action, Para. 36.

250 CRPD/C/1/Rev.1, annex. Para. 23 E, K, L and N.

that the DPOs should be provided capacity-building and training to be able to participate effectively in policy making and monitoring activities at all governmental levels.[251]

II. **Providing technical advice to public authorities and other entities on the implementation of the Convention**: the Provision of advice is one of the most important instruments in NHRIs mandate, which should be possible both at the vertical and horizontal governmental levels. This means that NHRIs should be able to provide advice on any matter concerning the Convention, including civil, political, economic, cultural and social rights at the federal, state, provincial, regional and municipal levels.[252] Advice can be provided in form of opinions, recommendations, proposals and reports in the "creation or amendment of any legislative or administrative provisions, including bills and proposals and any situation of violation of human rights within a State…".[253] The advice by NHRIs might be provided both at the request of the authorities and on their own motion and is not binding on public authorities. However, both the SCA and CPRD Committee require governments to "respond to advice and requests from NHRIs, and to indicate, within a reasonable time, how they have complied with their recommendations".[254]

III. **Contributing to the reports that states are required to submit to United Nations bodies and committees**: SPs that have ratified international human rights Conventions shall submit state reports. In this context, the governments might consult with NHRIs "in the preparation of a state report".[255] However, NHRIs "should neither prepare the country report nor should they report on behalf of the government".[256] The CPRD Committee provides that the contribution of MFs in the process of drafting initial and periodic reports might be done by "disseminating, in a timely manner, information

251 General Comment No. 7. Paras. 60 and 94 j; Actually, the statement of the Committee addresses SPs, but as it was shown and underlined above, the NHRI have an important role to play in this respect, especially in considering its special position.

252 CRPD/C/1/Rev.1, annex. Paras. 15 And 18; Principles relating to the Status of National Institutions Competence and responsibilities 3a; Vienna Declaration and Programme of Action. Para. 36.

253 SCA, General Observations, 1.6.

254 SCA, General Observations, 1.6; CRPD/C/1/Rev.1, annex. Para. 16.

255 SCA, General Observations, 1.4.

256 Ibid.

> in accessible formats among stakeholders at the national level on upcoming reviews by the Committee of States parties' obligations under the Convention; encouraging the departments or units responsible for drafting the reports to ensure participatory and transparent consultation processes; providing written contributions, as appropriate; informing civil society organizations, including organizations of DPs, of the opportunities they have for participating in the official drafting process or of their options for preparing and submitting alternative reports; and supporting civil society organizations and organizations of DPs in drafting those alternative reports".[257]

The MFs under the CPRD might choose to submit parallel or shadow reports to the CPRD Committee independent of the SP and in their own right by providing information related to each of the first 33 articles of the Convention, as well as contribute to the preparation of lists of issues, both for the general and the simplified reporting procedures and answer the list of questions.[258]

B. Protection Competence

The tasks under this competence shall include taking into consideration individual or group complaints alleging breaches of the Convention; conducting inquiries; referring cases to the courts; participating in judicial proceedings; and issuing reports related to complaints received and processed.[259] In fact, these responsibilities might be divided into two categories of actions, proactive and reactive, and require that the MF under the CPRD "must have expeditious and full access to information, databases, records, facilities and premises, both in urban and rural or remote areas; it must have unrestricted access to and interaction with any persons, entities, organizations or governmental bodies with which it requires to be in contact; its requests are addressed properly and in a timely manner by implementing bodies".[260]

257 CRPD/C/1/Rev.1, annex. Para. 23c; See also, Müller/Seidensticker 2007; Kjaerum, 2009a: 17 – 24.
258 CRPD/C/1/Rev.1, annex. Para 23 d, f and g; See also, SCA, General Observations 1.4.
259 CRPD/C/1/Rev.1, annex. Para. 13.
260 CRPD/C/1/Rev.1, annex. Para. 12.

Proactive Action: this type of action concentrates on eliminating problems before they arise thus preventing violation from happening. Here, it might be expected that the MF conducts inquiries and "that all facilities and programmes designed to serve DPs are effectively monitored by 'independent authorities' for preventing the occurrence of all forms of exploitation, violence and abuse". Marianne Schulze argues that the obligation to ensure effective monitoring in this context is not linked to the Independent Mechanism in Art. 33.2 CPRD.[261] However, the requirement of the guidelines cited above in conjunction with the wording ' independent authorities' show that the monitoring function envisaged by the Art. 16.3 CPRD should be carried out by institutions that are designated as MFs under the CPRD.[262] Issuing reports on considered and processed complaints and publishing collected information on violations might be another way of proactive action as it might expose the wrongdoings of the state, which might be costly and political sensitive for them.[263]

Reactive Action: This type of action denotes active steps on already occurred violations. In this case, the MF shall, in the first place, handle individual and group complaints alleging violations of the rights guaranteed under the Convention either by referring the cases to the judiciary, including as part of its ability to follow up on its own recommendations[264] or by acting as a quasi-judicial body. Unlike the CPRD Committee, Paris Principles do not require that an NHRI has the ability to receive complaints or petitions from individuals or groups regarding the alleged violation of their human rights. However, where it is provided with this mandate, it should be provided with a number of functions and powers, including ability to receive complaints against both public and private bodies[265] and to be accessible[266] to all vulnerable groups across the state in order to adequately fulfil this mandate. Some organizations perceive it to be problematic by stating that for "a clear line" between the role of an NHRI and the judiciary,

261 Schulze, 2014: 217 – 218.
262 For more see Danish Parts of chapter V.
263 Kjaerum, 2009b.
264 SCA, General Observations, 1.6.
265 SCA, General Observations, 2.9.
266 Carver, 2000: 83.

the NHRI should not have judicial powers.[267] Scholars, instead, argue that quasi-judicial mandate of an NHRI is key to its public legitimacy.[268]

Reactive action can also include direct and indirect engagement in litigation[269] and submitting third-party interventions before international, supranational or national courts. An NHRI decision to litigate or intervene in a case should be based on the presumption that the case raises an important human rights issue that might not be properly addressed if it does not take action. In case of third-party interventions, however, the NHRI is not a full party to the proceedings and it does not take the side of one party or the other; its role is to point out the human rights dimension of the case. Unlike the litigation, this instrument has been used by the European NHRIs in disability-related cases both at the domestic and supranational courts.[270]

C. Monitoring Competence

The responsibilities assigned to the MFs under this competence includes developing a system to assess the impact of the implementation of legislation and policies; developing indicators and benchmarks; and maintaining databases containing information on practices related to the implementation of the Convention.[271] In fact, the Paris Principles do not explicitly provide NHRIs with a mandate to monitor compliance with human rights Treaties. To this end, the SCA states only that NHRIs might "make recommendations to, and monitor respect for, human rights"[272] within the state and by the public authorities.

The CPRD, however, introduced the 'monitoring' mandate and defined it as an instrument that shall help independent MFs in measuring the impact of mainstream policies and programmes on DPs, as well as the impact of disability-specific policies.[273] To this end, they shall, in cooperation with relevant actors, including DPOs, FPs, and CMs, continuously develop data

267 Amnesty International, para. 4.D.1.
268 Carver, 2000; Pegram, 2011; Linos/Pegram, 2015; For the general discussion on legitimacy see, Goodman/Pegram, 2012.
269 Welch/Haglund, 2017.
270 For more see chapter V.
271 CRPD/C/1/Rev.1, annex. Para. 13.
272 SCA, General Observations 1.6.
273 CRPD/C/1/Rev.1, annex. Para. 39D.

collection systems[274] to facilitate the identification and bridging the gaps that prevent DPs — as rights holders — from fully enjoying their rights, as well as the gaps that infringe on duty bearers to fully discharge their legal obligations to respect, protect and fulfil the rights of DPs.[275]

3.3.4.4 Methods of Operation

The section of the Paris Principles on operational framework of the NHRI addresses a number of functions that have already been elaborated above. Consequently, this subsection focuses on two points that are fundamental to the sustained, effective and legitimate operation of the NHRIs/MFs.

A. System of multi-level NHRIs/MFs

In consideration of particular needs at the national level,[276] the states are encouraged to establish NHRI that shall, within the framework of its operation,"... set up local or regional sections to assist it in discharging its functions".[277] Accordingly, the SPs to the CPRD with federal or decentralized administrations should ensure that the established or designated federal or national MFs "can properly discharge their functions at the federal, state, provincial, regional and local levels".[278] If the SP maintains a multi-level system of MF, then it "shall ensure that the federal or national MF can properly interact and coordinate its activities with the state, provincial, regional, local or municipal MFs",[279] among other things, also by providing the appropriate support.[280] However, Andrew Wolman states that "no single strategy has emerged to address federalism concerns. Some countries have established unitary but deconcentrated NHRIs, while others have multiple sub-national human rights institutions but no internationally recognized NHRI" as it is in Austria. In any case, the established/designated MF might

274 Ibid. Para. 38.
275 Ibid. Para. 39c.
276 Vienna Declaration and Programme of Action. Para. 36.
277 Principles relating to the Status of National Institutions. Methods of operation E.
278 CRPD/C/1/Rev.1, annex. Para. 18.
279 Ibid.
280 CRPD/C/1/Rev.1, annex. Para. 19.

consist of a single independent mechanism: e.g., NHRI or be composed of a number of entities[281] as it is the case with the CPRD MF of Denmark.[282] All mechanisms are required to be independent from the executive branch and at a minimum, one of them should be Paris Principles- compliant.[283] When the MF consists of two or more mechanisms, the appropriate and close cooperation between all the entities that make up the MF should be ensured.[284]

B. Multi-level cooperation with state and non-state bodies

As an integral part of their work, the NHRIs are required to cooperate and interact with all relevant institutions both at the international, supranational and national levels. The independent MFs established or designated under the CPRD should cooperate with the CPRD Committee by participating in the state reporting procedure, contributing to general discussions and General Comments, as well as support in communication and inquiry procedures under the Optional Protocol.[285]

Their collaboration across wider Europe takes place within the framework of European Network of National Human Rights Institutions (ENNHRI),[286] which is regulated by the Council of Europe resolution (97) 11 on the cooperation among NHRIs, member states, and the Council of Europe.

The cooperation and interaction of the NHRIs with the executive, legislative and judiciary branches shall take place in the framework of their responsibilities discussed above. In addition, the SPs shall ensure that the MFs established/designated under the CPRD can interact, in a regular, meaningful and timely manner, with FPs and Coordinating Mechanisms appointed pursuant to Art. 33.1 CPRD.[287] The formalization of interaction between these bodies whether through legislation, regulations or a duly authorized executive agreement and Directive is highly welcomed.[288] The

281 CRPD/C/1/Rev.1, annex. Para. 14.
282 Ventegodt-Liisberg, 2013.
283 CRPD/C/1/Rev.1, annex. Para. 14.
284 Ibid.
285 CRPD/C/1/Rev.1, annex. Part III.
286 For more See, Beco, 2007, 2008.
287 CRPD/C/1/Rev.1, annex. Para. 21.
288 Ibid.

NHRIs shall also "maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions".[289] This provision is of high importance especially in taking into account that European states often have multiple and even overlapping accountability structures: e.g., Austria, in addition to CPRD MCs, maintains the Austrian Ombudsman Board, whereas Denmark tasked both the parliamentary Ombudsman and the Danish Institute of Human Rights with the disability related issues, and Germany maintains both disability Commissioners and the German Institute for Human Rights. In view of this, Richard Carver argues that generally the model of a single NHRI is likely to lead to greater effectiveness.[290] In taking into account that the considerable amount of the designated independent mechanisms under the CPRD function more as research institutions, meaning that they, unlike the ombudsman/disability commissioners, have tasks to promote but not to protect human rights- except individual complaints or conduct investigations. I argue that a single NHRI cannot be an option unless NHRIs are accorded with the protection mandate and adopted to the political structure of the state.

In view of the fundamental role played by the non-governmental organizations in expanding the work of the NHRIs, Paris Principles require the NHRIs to "develop relations with the non-governmental organizations devoted to promoting and protecting human rights, particularly vulnerable groups (especially children, refugees, physically and mentally DPs...".[291] Besides, it is assumed that the inclusive operation of the NHRIs provides them with legitimacy that might otherwise be seen as a pawn of the state.[292]

Under the CPRD, however, the CSOs and most importantly the organizations of DPs play a central role. In the first place, they have been involved in the drafting of the CPRD, including the negotiations of the Art. 33 CPRD.[293] Second, upon the ratification of the Convention, the SPs are required to "undertake a broad, inclusive consultation process with

289 Principles relating to the Status of National Institutions. Methods of operation F.
290 Carver, 2011.
291 Principles relating to the Status of National Institutions. Methods of operation G.
292 Renshaw, 2012.
293 Trömel, 2009; Woodburn, 2013; Melish, 2014; Schulze, 2014; Raley, 2016.

civil society organizations, in particular with DPs and their representative organizations, in order to designate or establish an independent MF".[294]

And last but not least, the SPs are required to ensure the multi-level and multi-sectional participation of the DPOs not only at all policy-making phases[295] but also ensure their involvement in the MF by making sure that independent MFs allow for, facilitate and ensure the active involvement of organizations of DPs in such frameworks and processes, through formal mechanisms, ensuring that their voices are heard and recognized in its reports and the analysis undertaken.[296] The inclusion of DPOs in the independent MF and the work thereof should be ensured at all working stages and governmental levels and in a manner that is accessible to all groups of DPs,[297] including women, children, migrants and learning/hearing disabled.

3.3.5 Organized Interests

Effective political mobilisation of organized interests constitutes the fundamental element of contemporary politics. Private actors, such as coalitions and clubs as well as associations and social movements acting on behalf of public interest, not only lobby for their interests but have also taken on much bigger roles as experts, administrators and facilitators of public goods and services, as well as private regulators, thus initiating the shift of the debate from 'government' to "governance". Organized interests are therefore located at and have gained access to all levels of governance, spanning from local to international arena.

This, however, has not by any way, diminished the role of the state in governance. In contrary, it is argued that today's world politics is anchored not just in traditional geopolitical concerns but also in a large diversity of economic, social and ecological questions, such as pollution and human rights, which are among an increasing number of transnational policy issues which cut across territorial jurisdictions and existing political

294 CRPD/C/1/Rev.1, annex. Para. 8.
295 CPRD Committee, General Comment No. 7 Part III.
296 CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39E; See also CPRD Committee, General Comment No. 7. Paras. 34 – 39.
297 CRPD/C/1/Rev.1, annex. Para. 20, See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.

alignments, and which require international cooperation for their effective resolution.[298]

Organised interests are the promoters of versatile societal issues. Their type and form of acting may vary according to their resources, the pursued interests, such as economic or social, and field of acting, such as environmental protection or human rights of DPs. Their main and fundamental objective is to promote specific interests of a particular group by influencing the policy making processes. As such, they, most probably, depending on the institutional structure, that is, the type of governance they interact with, will act differently in promoting and protecting their interests.[299]

3.3.5.1 Types of Organized Interests

According to Fritz Scharpf's approach, there could be identified four categories of organized interests:

I. **Clubs**; these are groups of actors with different objectives and joint resources. This type, most presumably represents the industry associations that establish interest groups for effecting the legislative processes of governments.

II. **Associations**; these are groups of actors with shared objectives and resources. This type is maintained by membership dues and aim at reflecting the collective position of the group through comprehensive decision-making measures.

III. **Social movements**; these are groups of actors with shared objectives and separate resources. Every member, in this type, contributes to the construction of a collective purpose without defining a clear-cut organizational structure.

IV. **Coalitions**; these are individual actors, who aim at forming a temporary collaborative action to achieve their particular objectives. This type shares neither purpose nor resources. Most often, it consists of a lobby firm commissioned to pursue the interest of companies.[300]

On the bases of this approach, it might be presumed that the character of organized interests predetermines the type of organizational form and

298 Held/McGrew, 2007.
299 Mahoney, 2007: 366–83.
300 Scharpf, 1997.

decision-making framework. Besides, depending on this structure, tools, methods, and resources for strategic action might very. While coalitions and movements ability to act strongly depends on the large majority member approvals, clubs and associations are free to act without reflecting their members' opinions. Moreover, the decision-making board of associations may well decide upon an action that does not necessarily enjoy the approval of the majority of members, thus, reflecting only the interests of minority.[301] Consequently, clubs and associations, in this case, might be perceived of being more flexible and developed in their strategic actions.

Nevertheless, in comparison to interest groups that have shared resources, collective actors, which have shared objectives but individual resources are less able to act jointly. This, however, can be favourable as it insures more action flexibility. Accordingly, these types can be very useful for responding to policy issue fluctuation since they can easily shift from firm commitments to adoptive form of actions.

While this concept does not offer any distinction between civil society and corporate interests, for the sake of analytical clarity, in this work, only civil society, more specifically organizations of DPs (DPOs) is addressed.

3.3.5.2 DPO Types in the LMG Framework

In general, there are different groups of DPs in the form of associations, welfare rehabilitation service providers and self-help groups. Most often, however, they take the form of social movements. The main aim of these organizations is to promote and protect their interests through voicing their needs and views on priorities, monitoring legislative amendments and policy initiatives, advocating for change and organising public awareness campaigns. To put it more directly, organized interests are collective non-state actors involved in governance processes.

Along the highly important role of external representation and advocacy, disability-specific DPOs have the duty of providing general disability tailored support and care, as well as information, socialisation and guidance through and assistance for the unfamiliar, in some cases non-manageable disability related bureaucracy.

301 Hassel, 2010.

In some countries, such as Germany, the DPOs might have a legal right to act as the legal representatives of their members, thus, facilitating their communication with various government bodies. They might also, as it is in Austria and Germany, ensure access of DPs to justice by means of strategic litigation. Many scholars assume that the latter action might prove to be a successful instrument for the achievement of political goals of marginalized groups.[302] Nonetheless, this instrument remains largely unused by the DPOs allowed to litigate. Some scholars explain this by resource insufficiency.[303] Whereas, according to Lisa Vanhala, who examined the organizational structures and legal actions of the UK and Canadian DPOs, strategic litigation by the DPOs depends on the governance structures of organizations that shape the 'meaning frames': DPOs that are composed and lead by members that have human rights understanding of disability, act in accordance with this notion.[304] Consequently, she argues that only organizations that are composed of DPs and adopt the understanding, that DPs are the subjects of law, will apply the strategic litigation instrument.[305] Still others assume that opportunities of DPOs to take legal actions might be limited due to configuration of states: "the political configuration of the state shapes the opportunities afforded to movements; shifts in that configuration can open or close 'windows' for action".[306] The plausibility of this assumption might find its confirmation especially in states with multi-level legal and political structures, as well as verying political traditions.

Depending on the type and form of the DPO, the space of legal and political action may be limited to local and regional/state representations or even extend beyond the region/state to the national, supranational[307] and international levels. E.g., the organization for visually impaired might operate as a representative organization both at local, state/regional levels and at the national, supranational like European Blind Union and international levels such as the World Blind Union. In addition, organizations of DPs might form alliances at the supranational and international levels. Most often, however, they come together as umbrella organizations in order to

302 Manfredi, 2004; Zemans, 1983: 700; Lempert, 1976; Lawrence, 1990; McCann, 1994; Harlow/Rawlings, 1992; Müller, 2019.
303 Kitschelt, 1986; McCarthy/Zald, 1977: 1212–41.
304 Vanhala, 2011.
305 Ibid.
306 Andersen, 2005.
307 European Disability Forum, for more information, refer to: https://www.edf-feph.org/publications/european-accessibility-act/ (Last accessed on 01.07.2022).

have a solid participation in the development of policy alternatives and legitimate policy positions at the national level.

Nevertheless, it is hypothesised that the rate of participation, efficacy of cooperation and impact of these organizations significantly depend on the financial means and structure of the country where they operate. Moreover, the role of organized interests in gaining access to the policy-making processes might be identified through the types of MLG.[308] Associations and clubs, for example, are more influential in an MLG I form of governance, where they maintain institutionalized and/or centralized access to the policy-making process through their engagement in advisory committees, social and economic councils, as well as at the implementation level of welfare state institutions. In contrast, movements and coalitions are more likely to be successful within the MLG type II governance form due to their policy-specific orientation.

3.3.5.3 DPO Participation within the CPRD Framework

The right of every individual to participate at government of his country, directly or through freely chosen representatives has found its first international recognition with the Art. 21 of the Universal Declaration of Human Rights in 1948. Later, it was reaffirmed by the Art. 25 of the International Covenant on Civil and Political Rights and specified by other human rights instruments.[309]

The involvement and consultation of DPOs has been mentioned in the international non-binding instruments, such as the 1975 Declaration on the Rights of DPs and 1993 UN Standard Rules. The Art. 5 of the 1983 ILO Convention No. 159 concerning Vocational Rehabilitation and Employment was the first binding legal instrument to envisage representative participation rights of DPs in the employment policy-making.

The comprehensive participation rights of DPs, however, has been ensured only with the CPRD that requires the SPs to adopt legislation and policies recognizing the right of DPOs to participation and involvement and enact regulations establishing clear procedures for consultations at all levels of authority and decision-making[310] affecting DPs directly or indir-

308 Hassel, 2010.

309 International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5c; Convention on the Elimination of All Forms of Discrimination against Women, Art. 7; Convention on the Rights of the Child, Arts. 12 and 23 (1).

310 CPRD Committee, General Comment No. 7, Para 94e.

ectly.[311] The CPRD Committee states also that public authorities should give due consideration and priority[312] to DPOs in all stages of decision-making processes[313] across all parts of decentralized states without any limitations or exceptions.[314] DPOs that have been denied access to participation should have a possibility to seek legal redress.[315]

Thereby, the CPRD puts clear distinction[316] between organizations "for" DPs and organizations "of" DPs, in considering that the latter should be rooted in, committed to and fully respect the principles and rights recognized in the Convention and be led, directed and governed by DPs.[317] The different types of organizations of DPs might include self-advocacy organizations representing the interests of one specific group of DPs, including disabled children, learning disabled and cross-disability organizations, which are composed of persons representing all or some of the wide diversity of impairments.[318] Furthermore, the CPRD Committee points out that the SPs might encourage the establishment of umbrella organizations of DPs to facilitate the coordinated and collaborative implementation of Art. 4.3 and 33.3, which should accept all organizations of DPs as members to ensure openness, democratic decision-making and representation of full and wide diversity of DPs.[319] Such organizations should be organized, led and controlled by DPs and speak on behalf of their member organizations and solely on matters that are of mutual interest and collectively decided upon.[320] The umbrella organizations cannot represent individual DPs as they often lack detailed knowledge on disability-specific needs.[321] Normally, there should be only one or two such organizations at each decision-making level.[322] "The existence of umbrella organizations within States parties should not, under any circumstances, hinder individuals or organizations

311 Ibid. Para. 18.
312 Ibid. Para. 23.
313 Ibid. Para. 15.
314 Ibid. Para. 69.
315 Ibid. Paras. 65 and 66.
316 Ibid. Paras. 13 and 14.
317 Ibid. Para. 11.
318 Ibid. Para. 12.
319 Ibid., Para. 12a.
320 Ibid.
321 Ibid.
322 Ibid.

of DPs from participating in consultations or other forms of promoting the interests of DPs".[323]

Moreover, under the Art. 33 para. 3 and in accordance with the General Comment No. 7, the SPs are required to ensure easy access of and liaison with the DPOs by FPs and/or Coordinating Mechanisms through formal procedures of consultation,[324] as well as guaranty that independent MFs allow for, facilitate and take care of the active involvement of DPOs and give due consideration to their views and opinions in their reports and analysis[325] at all governmental levels.[326] This, among other things, includes:

- Consulting the SP in preparing the initial/periodic state report;
- Carrying out monitoring of the CPRD implementation and submitting parallel reports with priority issues and concrete recommendations;
- Suggesting issues for the list of issues and questions the Committee should ask the SP, before the Committee adopts its list of issues;
- Submitting parallel written replies to list of issues and questions;
- Giving an oral presentation during the plenary session in which the constructive dialogue between the CPRD Committee and the SP delegation takes place;
- Advising the Committee members on the priority areas that require immediate action, and suggesting concrete recommendations on the issues that were raised during the constructive dialogue before the adoption of the concluding observations;
- Working with the National Monitoring Mechanism and the government on implementing CPRD Committee's recommendations and follow-up.

In addition, SPs are obligated to provide for the mandatory realization of public hearings prior to the adoption of decisions, and include provisions requiring clear time frames, accessibility of consultations, including an obligation to provide reasonable accommodation[327] and transparency.[328] The CPRD Committee, besides, requires the SPs to ensure "an enabling environment for the functioning of organizations of DPs",[329] including by adopting a policy framework favourable for the sustained operation of the DPOs.

323 Ibid.
324 Ibid. Paras. 35 and 41.
325 Ibid. Para. 38.
326 Ibid. Paras. 15, 31, 32, 49, 65, 74, 83, 94 E, I and S.
327 Ibid. Paras. 22 and 94e.
328 Ibid. Paras. 33 and 43.
329 Ibid. Para. 94b.

This includes "guaranteeing their independence and autonomy from the State, the establishment, implementation of and access to adequate funding mechanisms, including public funding and the provision of support, comprising technical assistance, for empowerment and capacity-building"[330] at all governmental levels.[331] This applies also to effective participation of DPOs in the processes of the independent MFs.[332]

330 Ibid. Para. 94b.
331 Ibid. Para. 94 J.
332 Ibid, Para. 39.

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 incompliance 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 incompliance 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 du 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 Comin 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 15[362] 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 devolved[363] 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 type[367], 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 combine[372] 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 interviews[378] 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 vail 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.fe1.tangora.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 analys-

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 knowledge[391]. 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, 19901995: 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 consideration[394] 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.

IV. State Actors and National Implementation

The present chapter is structured into five parts. In the first part, I study the state actors including the executive bodies stipulated by Art. 33 Para. 1 CPRD. The second and third parts discuss the division of legislative and administrative powers, and legal traditions of domesticating International Law. In the fourth part I elaborate upon the national implimentation of the CPRD and the role of state actors therein. Finally, in the concluding part, I evaluate, comparatively, the efficacy of national implementation in the light of the given legal and political system of Germany, Austria and Denmark.

1. Structure of states and their constitutional organs

1.1 Federal Republic of Germany

The Federal Republic of Germany is a democratic social federal state[396]. It consists of 16 autonomous federal states (Bundesländer)[397] and 10,796 municipalities (Gemeinden).[398] The form and organization of the state, according to which the principle of power separation between legislative, executive and judicial branches is recognized, is based on the German Basic Law (Grundgesetz-GG). The remaining organizational aspects concerning the cooperation and interplay within and between the vertical and horizontal governments regulate the Procedural Rules of ministries and parliaments of federation and federal states, as well as the Federal Council.

396 GG, Arts. 20 and 79 (3); see also Laufer/Münch, 2013. For more on the type of its welfare system see Esping-Andersen, 1990; Palier, 2010; Blank, 2019.

397 These are Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Hesse, North Rhine-Westphalia, Saarland, Schleswig-Holstein, Rhineland-Palatinate, Lower Saxony and former DDR Länder Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, and Thuringia.

398 See GG, Art. 28; see also Rudzio, 2013, 325–348; Bogumil/Holtkamp, 2016; The indicated number of municipalities has been taken from the webpage of Statistisches Bundesamt at: https://de.statista.com/statistik/daten/studie/1254/umfrage/anzahl-der-gemeinden-in-deutschland-nach-gemeindegroessenklassen/ (Last accessed on 01.07.2022).

1.1.1 Federal Level Constitutional Organs

Federal Chancellor and Federal Ministers form the core part of federal executive branch (Bundesregierung).[399] The Federal Ministries with their expert-units (Fachreferate) initiate and develop new draft laws or amend existing laws and prepare strategic concepts for the government, which are sent to the Federal Parliament (Bundestag) after they have been approved by the core of the federal executive branch and Federal Council (Bundesrat).[400] In the case of International Treaties, the initiative and development of Ratification Law is made only by the federal government.[401] Hereby the Federal Ministries involve representatives of municipal associations and other appropriate interest groups and bodies.[402]

The directly elected Federal Parliament is the main federal-level legislative organ.[403] This means that without its approval no legislative initiative including ratification laws of International Treaties developed by the government will be adopted. Nevertheless, the draft Ratification Law is voted for and, normally, passed in two-readings[404] without allowing for amendments.[405] As a result, the Federal Parliament and its standing committees (ständige Ausschüsse) have not been involved in pre-ratification processes of the CPRD and their actions were limited to passing or not passing the Convention. This explains the low participation rate of MPs on the approval day. Nonetheless, the Federal Parliament became the FP of the CPRD implementation after its ratification: MPs and their invited experts both from the ruling parties and opposition have been actively involved not only in the discussions of draft laws concerning DPs at the Committees of the Federal Parliament, but a number of CPRD-relevant inquiries have been made to the core of the executive branch. However, observation gives reasons to presume that the engagement of MPs towards the promotion and protection of the CPRD provisions reduces in policy fields that do not address DPs directly e.g., education. In view of the importance of the parliaments, further studies are necessary for shedding light on actions

399 GG, Art. 62.
400 Ismayr, 2008a.
401 GG, Art. 59 (2).
402 For more see chapter VI sections on Germany.
403 GG, Art. 38 (1).
404 BTGO, §81 (4) and §78.1; Ismayr, 2007a.
405 BTGO, §81 (4; for criticism see Ehrenzeller, 1993: 202.

taken towards assuming their decisive role in promotion of the human rights of DPs.

The Federal Council is composed of the members of state government[406] and is quorum with at least the majority votes of its members.[407] However, It does not form an equivalent second chamber of a uniform legislative body.[408] It is seen more as an executive body of the parliament[409] as it is equipped with the right to initiate legislation[410] and right to object to all federal draft laws, as well as the right to veto the large number of consent laws e.g., International Treaties, which, in fact, does not happen that often. Instead, as a matter of fact, it makes amendment requests.[411] On the other hand, it is also accorded with administrative competencies.[412] Accordingly, after giving its consent to the CPRD ratification, the Federal Council with its unique constitutional functions continued shaping disability politics by securing the influence of federal states. Thereby, it required amendments to the draft laws, for example during the Federal Participation Law, but did not block its adoption although one of its main requirements, namely ensuring federal financing for the new participation instruments e.g., in the field of education,[413] has not been guaranteed.[414] This might be explained, on the one hand, by the consent-oriented decision-making practices between actors of federal government and federal states.[415] On the other hand, the blockade of the Federal Council on the basis of unsecured funding of new participation instruments to which belong also reasonable educational accommodation would raise serious questions with regard to the compatibility of such requirements with the legislative competencies and responsibilities of federal states in the field of primary and secondary education.

406 GG, Art. 51 (1).
407 GG, Art. 52 (3).
408 BVerfGE 37, 363; See also Beyme 2004: 340.
409 Steffani, 1985: 226.
410 Münch, 2011a.
411 Laufer/Münch, 2013.
412 Beyme, 2004: 342.
413 BR-Drs. 428/16 (Beschluss).
414 BR-Drs. 711/16 (Beschluss).
415 Schmedes, 2019.

1.1.1.1 Structure and resources of federal Focal Point

Following the ratification of the CPRD, the Federal Government of Germany designated the Ministry of Labour and Social Affairs as the federal-level FP.[416] The designation was mentioned in the CPRD State Report and National Action Plans on CPRD implementation, but not regulated through a separate legal act. The FP was involved in the development and ratification of the CPRD from the beginning.[417] Therefore, as the BMAS representative stated: "it makes sense that we have been assigned as the responsible body for the implementation".[418]

Nevertheless, the federal FP has a subordinate position in ministerial hierarchy.[419] This is because it is assigned to a unit (Referat),[420] instead of building a superordinate executive department (Stabsstelle) within the ministry.[421] Accordingly, it is not of a sufficiently high institutional rank to effectively carry out its duties as a mechanism for facilitating and coordinating matters relating to the implementation of the Convention at all levels and in all sectors of government.[422] Therefore, it is dependent on the cooperation of the Federal Ministries in carrying out its responsibilities: "with the development of the National Action Plan (2.0), we managed to ensure that each ministry has a contact person for the implementation of the CPRD, which improved our cooperation with the ministries… we meet with them regularly… but that does not mean that this individual person always has ways and means to access the entire breadth of the ministry-individual units".[423]

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416 Initial Report of Germany, Para. 284; Second-Third Periodic Report of Germany, Q. 35.

417 First-level-interview DE/A 2, on 08.08.2018, Q. 6.

418 First-level-interview DE/A 2, on 08.08.2018, Q. 6. The original reads as follows: "Also das macht schon Sinn, dass er bei uns angesiedelt ist tatsächlich. Weil erstens wir haben die Konvention begleitet. Wir haben die ganze Verhandlung gemacht, wir haben die Ratifizierungsgesetz gemacht. Das macht auch Sinn, dass wir diejenigen sind, die für die Umsetzung verantwortlich sind."

419 GGO, §7–9.

420 According to the BMAS Organizational chart ofMay 2, 2022, the task of FP is performed by the Referat V a 4, see: https://www.bmas.de/SharedDocs/Downloads/DE/Ministerium/bmas-organigramm.html (Last accessed on 01.07.2022).

421 GGO, §10.

422 Concluding observations on the initial report of Argentina, Para. 51; OHCHR et al., 2007: 94.

423 First-level-interview DE/A 2, on 08.08.2018, Q. 5. The original reads as follows:

For carrying out its responsibilities the federal-level FP has been allocated around 4.5 million euros yearly.[424] It, as an independent unit, in addition to the head of the unit, had two ministerial officers and two clerks as of August 2018.[425]This, at a first glance, seems to be sufficient.[426] However, in considering the relation between the number of staff and the number of Federal Ministries and their law-making activities, as well as the responsibility to coordinate and cooperate with 16 Länder-level FPs and interest groups, I allow an assumption that the available staff cannot be sufficient in controlling, coordinating and mainstreaming the legislative actions of the federal government.[427]

1.1.1.2 Structure and resources of federal-level Coordination Mechanism

The Office of the Federal Government Commissioner for Matters relating to DPs has been established following the decision of the Federal Chancellor Helmut Schmidt (SPD) in January 1981 on the occasion of the International Year of the Disabled.[428] The Office has first been legally regulated with the adoption of the Federal Disability Equality Act of 2002 (BGBl. I S. 1467, 1468).

The Federal Government Commissioner is appointed by the Federal Cabinet for a legislative term.[429] Since its establishment, the office of the Federal Government Commissioner is located in the Federal Ministry of Labour and Social affairs, except between the period of 2002 to 2005, when it was attached to Federal Ministry of Health and Social Security.[430]

"Also es gibt…es ist schon mal ein Fortschritt mit dem NAP, mit dem Aktionsplan haben wir das geschafft, dass jedes Resort ein Ansprechpartner hat… der sich um die Umsetzung der Konvention… Das gab es vorher nicht. Und so ist es für uns relativ einfach, weil wir uns regelmäßig mit den FP dem Bundesresort … mit dem Treffen wir uns regelmäßig. Austausch zu allen möglichen Sachen, … Also wir haben da schon ganz gute Ansprechpartner bei dem Resort, das funktioniert schon ganz gut. Das heißt aber nicht, dass das diese einzelne Person immer soweit Mittel und Wege hat die ganze Breite des Ministeriums in einzelnen Referaten einzutragen."; See also NAP 2.0, Section 5.2.3 (Rolle der Ressorts).

424 First-level-interview DE/A 2, on 08.08.2018, Q. 8.

425 First-level-interview DE/A 2, on 08.08.2018, Q. 8.

426 OHCHR et al., 2007: 94.

427 Huber/Shipan/Pfahler, 2001; Mills/Selin, 2017; Quirk/Bendix/Bachtiger, 2018.

428 Bericht der 5. Sitzung des 9. Deutschen Bundestages, S.33 C vom 24.11.1980.

429 BGG, § 17.1.

430 Sporke, 2008: 71 – 81.

Subsequent to the CPRD Ratification in 2009, the Federal Government Commissioner has been designated as the CM under Art. 33 Para. 1.[431]

According to Section 21.1 GGO in general, and Section 18.2 of the BGG specifically, the Federal Ministries shall involve the Commissioner in all legislative and other important projects in so far as they address or affect issues relating to the integration of DPs. Furthermore, section 21.1 GGO is concretized through the section 45.2 GGO, where the early involvement of federal government commissioners in drafting bills is made mandatory in case their field of responsibilities are affected. In practice, however, the cross-departmental structure does not function that well: "of course, I talk with appropriate ministers … but I wish we would have a structurally better cooperation… it's not bad in terms of quality, but I would like it to be more binding[432]". Moreover, some interviewees stated even that the Federal Disability Commissioner is not in the position to mainstream the disability-related issues across the ministries[433]. The statement of interviewees confirms the review of existing advisory organs of other Federal Ministries and their composition: e.g., Federal Ministry of Education and Research, which is responsible for vocational and higher education policies, maintains several advisory boards, but the participation of the Commissioner is ensured in none of them[434]. In addition, Section 21.2 of the GGO obliges the Commissioners to inform the appropriate ministry in matters of fundamental political importance. In these processes, however, the Commissioner's voice is seen equal to civil society[435]: "I can get involved, like civil society, for example, but I do not have more weight or voice than civil society based on the fact that I am the CM, which actually would be good"[436]. This is not

431 Initial Report of Germany, Para. 285.

432 First-level-interview DE/A 2, on 18.11.2015. Q. 12. The original reads as follows: "Ja…Also bin ich natürlich auch mit den entsprechenden Minister, mit der Ministerin beispielsweise im Gespräch aber meines Erachtens ist gerade bei…ja…also nein, ich sage mal etwas Positives… da würde ich mir noch eine strukturell bessere Arbeit wünschen vor allem natürlich, also wie gesagt, es ist nicht schlecht von der Qualität her, aber ich würde sie mir verbindlicher wünschen."

433 Third-level-interview DE/A 5, on 04.06.2018, Q. 5; First-level-interview DE/A 2, on 08.08.2018, Q. 9.

434 See for example BAföG § 44; StipG, §12.

435 First-level-interview DE/A 2, on 08.08.2018, Qs. 9 and 12.

436 First-level-interview DE/A 2, on 18.11.2015, Q. 12. The original reads as follows: "… kann ich mich einbringen wie beispielsweise die Zivilgesellschaft auch, aber habe jetzt da nicht aufgrund der Tatsache, dass ich der Koordinierungsmechanismus hier

surprising given the presumption that the office of the Commissioner is a foreign body.[437]

The Federal Commissioner has a staff of 21 members.[438] In order to carry out its responsibilities, the Office of the Commissioner has been allocated about EUR 1,684,040 by the 2018 federal budget (Haushaltsplan).[439] However, the comprehensive coordination of the CPRD implementation with the allocated amount of money is not possible.[440]

1.1.2 Länder-level constitutional organs

The constitutional order of the federal states corresponds to principles of the republican, democratic and social constitutional state.[441] Consequently, constitutions of federal states, normally, contain their own catalogue of basic rights, including Hesse and Thuringia,[442] except commitments under International Law,[443] and recognize the power separation between executive, legislative and judiciary. To this end, their political structure, by and large, corresponds to the structure of the federation.[444] For instance, the political system of both Hesse and Thuringia are structured into directly elected legislative power (Landtage),[445] judicial power exercised through Constitutional Court[446] and administrative, labour and social courts as long as the matter under consideration concerns the state law, as well as executive power, composed of the Minister President and state ministers.[447] The latter are responsible for the policy-development, where they consider

bin, habe ich jetzt nicht mehr Gewicht oder Stimme als Zivilgesellschaft und das wäre natürlich eigentlich gut…".

437 Fuchs, 1985: 133.

438 First-level-interview DE/A 2, on 08.08.2018, Q. 10.

439 Bundestag, Drucksache 19/2270.

440 First-level-interview DE/A 2, on 18.11.2015. Q. 8.

441 GG, Art. 28 (1).

442 Hessische Verfassung, Arts. 1 – 63; ThürVerf, Arts. 1 – 43; see also Jung, 1995; Schmidt, 1996; Würtenberger/Beck, 1996; Sacksofsky, 2016; Huber,2019.

443 Hessische Verfassung, Art. 67; ThürVerf, Art. 1 (2).

444 Hessische Verfassung, Art. 64; ThürVerf, Art. 44 (1) and Art. 45.

445 Hessische Verfassung, Art. 75; TH Verf, Art. 48; See also Linck, 1996; Schiller,2016; Leunig, 2018.

446 Hessische Verfassung, Art. 130; TH Verf, Art. 79; See also Sacksofsky, 2016; Huber, 2019; Leunig, 2018.

447 Hessische Verfassung, Art. 100; ThürVerf, Art. 70; See also Drapatz/Oppelland, 1996; Leunig, 2016, 2018.

views of various non-state[448] and state organizations including municipal governments (Gemeinden) that form the third politico-administrative level of the Federal Republic of Germany.[449]

After the unification, the governments of the federal states normally maintain two-party coalitions[450] or are even composed of three-party constellations as it is the case in Thuringia starting from December 2014.[451] The political agenda of coalition governments laid down in a government agreement shapes the policy fields under the exclusive legislative and executive powers of the federal states.

The cooperation between federation and federal states in policy fields falling under the exclusive legislative powers of federal states e.g., school education, has been first formalized in 1969 and takes place through informal initiatives or formal collaborative instruments e.g., Conference of Ministers of Education (Kultusministerkonferenz).[452] It is composed of Ministers of Education of the federal states and is responsible for ensuring equality of living conditions throughout Germany and representing and promoting the common concerns of federal states vis-à-vis the federal government in the field of education. The cooperation with the federal government in this field has been expanded with the amendment of the Basic Law in 2018.[453]

1.1.2.1 Structure and resources of Länder-level Focal Points

In accordance with the requirement of the CPRD,[454] the 16 federal states also designated FPs, albeit not always on a legal-basis.[455] These, similar to the federal FP, are not of a sufficiently high institutional rank".[456] The

448 See chapter VI part on Germany.
449 Ismayr, 2009a.
450 In the examined Federal states of Hesse and Thuringia, the exception was in the period of 1999 – 2009, when the CDU received the Absolute majority of votes and could govern alone in Thuringia.
451 Oppelland, 2018.
452 Füssel, 2019: 102 – 127.
453 Bundestag, Drucksache 19/3440.
454 CPRD, Art. 4 (5); Concluding Observations on the Initial Report of Germany, Paras. 61 and 62a.
455 Second-Third Periodic Report of Germany, Q. 35.
456 Concluding observations on the initial report of Argentina, Para. 51; OHCHR et al., 2007: 94.

government of Hesse, for example, established an administrative unit based on the cooperative work of the Hessian Ministry of Social Affairs and the Ministry of Culture about 2 years after the entry into force of the CPRD in Germany. It started its work on January 03, 2011.[457] On July 15, 2014 the administrative unit has been converted into a permanent sub-unit by the decision of the Hessian Minister of Social Affairs and Integration[458] and thus merged with the department IV4 of the ministry,[459] despite the explicit recommendation of the NMB to keep its location in the State Chancellery.[460]

Thuringia installed a FP within the referat disability politics of the Ministry of Labour, Social Affairs, Health, Women and Family (TMASGFF).[461] However, it did not grow up to a functioning unit, which means that it "cannot perform whatever else FP is supposed to do".[462]

After the adoption of the Thuringian first Action Plan, an inter-ministerial working group has been established to advance the targeted implementation of the CPRD in Thuringia.[463] However, since its establishment meeting in June 2013, its second meeting took place in January 2016 and the third in August 2016.[464]

None of the Länder-level FPs have sub-bodies in the municipalities.[465] In order to coordinate the CPRD implementation "we set common and quality

457 Hessischer Aktionsplan: 6; See also NAP 2.0, Sektion 4.2.1 (Hessen).

458 First-level-interview DE/B-H 1, on 14.01.2016, Q. 8.

459 See Organisationsplan- Hessisches Ministerium für Soziales und Integration. Retrieved on 05.06.2022 from: https://sozialministerium.baden-wuerttemberg.de/de/ministerium/aufgaben-organigramm/.

460 Monitoring-Stelle, Evaluationsbericht zum Hessischen Aktionsplan zur Umsetzung der UN-Behindertenrechtskonvention, 2013, Sec. 1.3.

461 See TMASGFF- Geschäftsverteilungsplan. Retrieved on 05.06.2022 from: https://www.tmasgff.de/fileadmin/user_upload/Ministerium/Dateien/GVP_TMASGFF_anonym_20200801.pdf.

462 First-level-interview DE/B-T 2, on 23.05.2018, Q. 6. The original reads as follows: "Es gibt Referats und FP der ist instaliert na ja... der ist aber mehr..., der ist jetzt nicht in Personal reingewandert. Der Kollege, der hier sitzt, macht das mit so einer viertel – halben Stelle, um eben diese Arbeitsgruppe, wo sie nachher darauf kommen können mitzubegleiten, die Zivilgesellschaft mit einzubeziehen, Fachkonferenzen zu organisieren so was aber was FP alles noch soll, das kann man nicht leisten".

463 NAP 2.0, Sec. 4.2.1. (Freistaat Thüringen).

464 Monitoring-Stelle-Ergebnisse der Evaluierung des Thüringer Maßnahmenplans zur Umsetzung der UN-BRK, Sec. 3.4.3 (Interministerielle Arbeitsgruppe).

465 First-level-interview DE/B-T 2, on 23.05.2018, Q. 7; First-level-interview DE/B-H 1, on 14.01.2016, Q. 7.

standards but according to the right of supervision between the state and municipalities, the state government cannot say how the municipalities should implement these standards".[466]

The human and financial resources of the Länder-level FPs differ considerably from each other: the Hessian State unit tasked with the responsibilities of the FP, for example, had nine employees in 2015, some of whom were self-affected.[467] The unit received EUR 600,000 yearly to manage the 15 model regions, carry out the disability-related tasks and coordinate the CPRD implementation of the government.[468] Later, its separate funding was stopped as it was merged with a section of the Social Ministry.

The Thuringian State FP had only one part-time employee since its designation. He was, actually, employed for another responsibility field but if needed, took care of CPRD coordination.[469] The so called 'FP' has not been allocated a separate budget from the beginning of its designation[470] despite the fact that it should, among other things, coordinate the implementation of the CPRD across ministries and the Office of the Minister-President.

Thus, it becomes evident that the structural implementation of the CPRD at the state and municipal governmental levels was much weaker than that of the federal-level: the state-level FPs/CMs had neither the competence and adequate financial means nor the needed number of qualified staff to control, coordinate, and mainstream the legislative actions and participative processes of the federal state governments.[471]

1.1.2.2 Structure and resources of Länder-level Coordination Mechanisms

The federal state governments also introduced offices of disability commissioners with the adoption of the state disability equality laws. Similar to the federation, the commissioners of the federal states have been, by and large,

466 First-level-interview DE/B-H 1, on 14.01.2016, Q. 7. The original reads as follows: "... Also es gibt Direktionsrecht, so zwischen Land und Kommunen, nach diesem Direktionsrecht, ... wir setzten gemeinsamen Standards und Qualitätsstandards auf... das Land sagt nichts, was damit sozusagen in die Kommunen umgesetzt wird an dieser Stelle".
467 First-level-interview DE/B-H 1, on 14.01.2016, Q. 8.
468 Ibid.
469 First-level-interview DE/B-T 2, on 23.05.2018, Qs. 6, 8 and 11.
470 Ibid.
471 Huber/Shipan/Pfahler, 2001; Mills/Selin, 2017; Quirk/Bendix/Bachtiger, 2018.

located in the social ministries, as it was in Thuringia[472] or in few cases in other ministries e.g., the Hessian Ministry of the Interior and for Sport.[473] Following the BGG amendment in 2016, the regulations on the structure and appointment of Länder-level commissioners have been reformed: the Thuringian Commissioner, for example is elected by and located in the Thuringian parliament,[474] whereas the Hessian Commissioner is appointed by the Hessian government and located in the Hessian Ministry for Social Affairs and Integration.[475]

In some federal states, appointed commissioners act independently and are not bound by instructions, as it is the case in Hesse.[476] The Thuringian Commissioner acts under the supervision of the President of the State Parliament.[477]

Unlike the federal government, federal states have not seen a need for designating the Länder-level disability commissioners as a CM under the CPRD: "the UN has not clarified what is a CM under the Art. 33. Para. 1, so we would have wished, or it would have been nice, if the United Nations would shed more light on it, especially with regard to responsibilities and their delimitation between the FP and the CM."[478]

The financial resources of the Länder-level disability commissioners are much more modest: the Thuringian Commissioner, for example, has been remunerated and had a staff consisting of five employees. In the period between 2014 to 2018, the office of the Commissioner had been allocated about EUR 100,000 yearly for performing the tasks assigned to Commis-

472 ThürGIG vom 16.12.2005 (GVBl 2005, S. 383), § 16.
473 HessBGG vom 14.12.2009 (GVBl S. 729), § 18.
474 ThürGIG vom 30. Juli 2019 (GVBl. S. 303), § 16 (1) and § 18.
475 HessBGG vom 19.06.2019 (GVBl. S. 161), § 18 (1) and (5).
476 HessBGG, § 18 (1).
477 ThürGIG, § 18 (1).
478 First-level-interview DE/B-H 1, on 14.01.2016, Q. 11. The original reads as follows: "Der Artikel 33, längere Zeit, oder immer wieder fließt, wird an den nicht klarer, was die Vereinten Nationen gemeint haben mit den vielleicht auch unterschiedlichen Aufgaben Stellungen zwischen einer nationalen Anlaufstelle Fokal Point und einem nationalen Koordinationsmechanismus. Wir hätten uns gewünscht, oder es wäre schön gewesen, die Vereinten Nationen hätten an diese Stelle vielleicht bisschen mehr Klarheit darein gebracht. Und auch so Abgrenzung dieser Funktionen und Aufgaben".

sioner.[479] However, this amount could not cover the growing responsibility-fields.[480]

The Hessian Commissioner did not get remuneration till the 2019 amendment to the HessBGG, but she got EUR 1,100 monthly as an expense allowance.[481] By law she was supported by a team and had to be allocated financial means for performing her responsibilities. The office arrangement of the newly appointed commissioner is in process.

1.2 Federal Republic of Austria

Austria is a federal constitutional republic.[482] It is composed of 9 autonomous provinces (Bundesländer)[483] and 2,095 municipalities (Gemeinden)[484] in 94 political districts (Bezirke)[485], which manage the welfare state system.[486] Its international status is largely prescribed by the State Treaty (Staatsvertrag) of 1955. the form, organization and relations of Austria are regulated by the constitutional norms including the Federal Constitution of 1920. It establishes Austria as a two chamber parliamentary system with presidential elements and representative, or indirect, democracy by which the principle of power separation between legislative, executive and

479 Tätigkeitsbericht 2014–2018 des Beauftragten der Thüringer Landesregierung für Menschen mit Behinderungen, S. 87ff. Retrieved from: https://www.tlmb-thueringen.de/fileadmin/user_upload/redaktion_tlmb/publikationen/bmb-tatigkeitsbericht-2014-2018.pdf (Last accessed on 01.07.2022).

480 Ibid.

481 LT-Drucksache 18/5781.

482 B-VG, Articles 1 and 2 (1).

483 B-VG, Art 2 (2). States: "The federal state is formed by the autonomous provinces of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg, and Vienna".

484 See B-VG, Arts. 115 – 120; see also Hämmerle, 2013; The indicated number of municipalities has been taken from the webpage of Statistik Austria, on municipalities (Gemeinden) at: https://www.statistik.at/services/tools/services/publikationen/detail/1144?cHash=2012ab10fa18425dcd6367d4d8aecae1 (Last accessed on 01.07.2022).

485 The level of political districts is below the level of provinces and they have no democratic elements (see *Pelinka*,2009. These are purely administrative units, relevant for monitoring municipal government and for policy areas delegated from federation or provincial governments policy fields e.g., Disability-related benefits, see for example Tyrolean Participation Act (Tiroler Teilhabegesetz), §26.

486 B-VG, Art. 12; see also Esping-Andersen, 1990; Palier, 2010; Österle/Heitzmann, 2019.

judicial branches is recognized.[487] The direct involvement of the population in the decision-making processes is ensured through participation in the election of the Nationalrat,[488] the Federal President,[489] the Provincial Parliaments (Landtage),[490] the municipal Councils, (Gemeinderat)[491] and through other democratic instruments of public participation.[492]

1.2.1 Federal Level Constitutional Organs

At the federal level, the executive power is vested in the Federal Chancellor, the vice-Chancellor, the federal ministers and their state secretaries. The ministries are responsible for the "pre-parliamentary" decision-making and policy formulation processes in their relevant fields. They also decide on the involvement and consideration of the views of various state actors, such as Federal Ministries (especially the Ministry of Finance), and all Länder and municipal governments,[493] as well as non-state actors[494] e.g., social partners.[495] In general, the views of provincial governments are taken into account, especially when the draft law is going to affect the Länder. However, in ratifying the CPRD, the federal government not only failed in considering various sub-national concerns, such as: "... education ... accessibility of buildings with regard to economy and protection of historical monuments... deinstitutionalization... ",[496] "but also states that there were no arguments from any actor against the ratification of the CPRD".[497]

487 Foster, 2013; See also Welan, 1992; Dickinger, 1999; Dachs et al., 2006; Pelinka/Rosenberger, 2007.
488 B-VG, Art. 26 (1).
489 B-VG, Art. 60 (1).
490 B-VG, Art. 95 (1).
491 B-VG, Art. 117 (2).
492 E.g., popular initiatives (Volksbegehren- B-VG, Art. 41 (2)), referenda (Volksabstimmungen- B-VG, Art. 44 (3)) and opinion polls (Volksbefragungen- B-VG, Art. 49b (1)).
493 Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften, as adopted by BGBl. I Nr. 35/1999, Art. 1 (1).
494 For the involvement of the Disability-organizations, see chapter VI.
495 Pelinka, 1997: 488.
496 First-level-interview AT/B-T 1, on 26.10.2015, Q. 2. The original reads as follows: "Ich glaube, dass sie schon von allen Ebenen gekommen sind. Es gab viele Widerstände vor allem aus dem Bereich der Bildung. In Österreich war man der Meinung, dass es Sonderschulen braucht. Die Barrierefreiheit von Gebäuden war auch ein großes Thema vor allem seitens der Wirtschaft und des Denkmalschutzes. Es gibt

The principal parliamentary organs are the National Council (Nationalrat) and the Federal Council (Bundesrat), which make up the "fake two chamber Parliamentary system".[498] Fake as the powers of both chambers are extremely unequal: The federal government is politically responsible to the National Council, but not to the Federal Council.[499] Besides, the National Council is closely connected and with it also involved in the "pre-parliamentary" processes of the executive power through its Standing committees (ständige Ausschüsse), which belong to a relevant ministry.[500] The National Council as the main chamber of the Austrian parliament with its directly elected member's exercises, jointly with the Federal Council, the legislative power.[501] It is also responsible for approving the ratification of International Treaties,[502] but its role therein is very symbolic as the federal government can ask for an abbreviated procedure.[503] In this case, neither the National Council nor its committees have an opportunity to discuss the form and the content of the draft Ratification Law as it was in the case of the CPRD and its opt-protocol.[504] Later, the Nationalrat recognized its role as a human rights promoter[505] and became more active with regard to the implementation of the CPRD.[506] Nevertheless, to understand the efficacy of its actions, further research is needed.

The Federal Council, in its turn as the second parliamentary chamber, represents the interests of the Länder.[507] Its members are elected proportionally by the provincial parliaments, but they are not bound by instruc-

Widerstände seitens der Einrichtungen, die der Meinung sind, bei Ihnen am besten aufgehoben zu sein".

497 First-level-interview AT/A 1, on 27.04.2016, Q. 2. The original reads as follows: "Es gab keine Argumente von irgendeiner Stelle gegen die Ratifizierung der Konvention".

498 Pelinka, 2009; see also B-VG, Art. 24.

499 Pelinka, 2009.

500 Ibid.

501 B-VG, Art. 41.

502 B-VG, Art. 50 (1).

503 Geschäftsordnungsgesetz 1975, as amended by BGBl. I Nr. 178/2021, § 28a.

504 Stenographisches Protokoll – 67. Sitzung des Nationalrates der Republik Österreich, 09.07.2008.

505 OHCHR et al., 2007: 43, 105 – 106; Hunt/Hooper/Yowell, 2015.

506 As of June 27, 2022, the research function of the parliament brings 1092 results in connection with the CPRD, out of which 177 are Interpellations (Schriftliche Anfragen) and 139 are commentaries on ministerial draft laws (Stellungnahmen zu Ministerialentwürfen).

507 B-VG, Art. 34.

tions from the provincial parliaments.[508] Instead, they pay more attention to the requirements of their parties,[509] as a result of which the Federal Council approves the position of the National Council in the majority of cases.[510] Accordingly, the approval of the CPRD and its opt-protocol was not an exception to this rule[511]. Moreover, the Federal council is not involved in the pre-parliamentary legislative processes of the executive branch.[512] Except for the cases concerning the provincial competencies, the veto power of the Federal Council is suspensive and can be overridden by the National Council (Beharrungsbeschluss). To this end, in comparison with the National Council, the Federal Council enjoys limited unique legislative competence and rights of participation in the legislative processes.[513]

1.2.1.1 Structure and resources of Austrian federal Focal Point and Coordination Mechanism

The Austrian federal Ministry[514] of Social Affairs, Health, Nursing and Consumer Protection (Hereinafter referred as BMSGFK) has been designated as the FP under the CPRD.[515] Apparently, the decision to appoint the Social Ministry/office was based on the assumption that it had extensive expertise in disability policies. The legal establishment of the federal FP[516] has been first stipulated with the 2017 amendment of the BBG (BGBl. I Nr. 155/2017). Internally, however, the responsibilities of the FP have been assigned to the Social Department of the BMSGFK.[517] This was viewed critical by the DPOs as they assumed that the Social Office of the BMSGFK did not have "a higher hierarchy level than the other ministries…, which means

508 Foster, 2013: 26 f.
509 Gamper, 2000; Erk, 2004.
510 Pelinka, 2008.
511 See below.
512 Weber, 1992.
513 B-VG, Art. 41; see Tsebelis/Money, 1997; Lijphart, 1999; Fallend, 2000; Foster, 2003: 26 f., 2013.
514 At the time of ratification, the name of the ministry was "Federal Ministry of labour, Social Affairs and consumer Protection". Since then, the name of the ministry has been changed with every new government formation.
515 Initial Report of Austria, Para. 357.
516 See the appropriate suggestion in: OHCHR et al., 2007: 94.
517 Austrian National Council of DPs, Alternative Report to the CPRD Committee in connection with the Initial report of Austria: 79.

that it cannot exercise any superordinate influence on their implementation efforts".[518]

In fact, the federal law on the number, scope and establishment of the Federal Ministries makes the cooperation between the Federal Ministries in specific cases possible.[519] There is even a mutual agreement on close co-operation in legislative processes.[520] Evidently, the subordinate department of a federal ministry is not in the position to instruct or interfere with legislative processes of another federal ministry,[521] if it did not explicitly ask for support. Moreover, the BMS in general and its subordinate department specifically does not have the appropriate competencies to coordinate the implementation of the CPRD at the Länder-level outside of the field of social affairs.[522]

According to the structural plan of the BMSGFK, the department of the Section IV, acting as the FP has only one employee.[523] The federal government allocated neither additional resources nor staff to BMSGFK for carrying out its responsibilities under the CPRD.[524] "Hence, we had to align our priorities according to the CPRD and focus on the CPRD – on the National Action Plan".[525]

The CM is also assigned to the BMSGFK,[526] which involves the Federal Disability Advisory Board,[527] where the federal government, Länder and social partners,[528] as well as disability organizations (appointed by the umbrella organization) and the chairperson of the FMC are represented.[529]

518 Ibid.
519 Bundesministeriengesetz 1986, as amended by BGBl. I Nr. 98/2022, §3 (1.1) § 5.
520 See: Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften.
521 Bundesministeriengesetz 1986, §7 (1); For the appropriate requirement, see the statement of the CPRD Committee in: Concluding observations on the initial report of Argentina, Para. 51; See also the appropriate suggestion in: OHCHR et al., 2007: 94.
522 Bundesministeriengesetz 1986, §3 (1.4).
523 From the BMSGFK structural plan it is not visible that Section IV department 1 acts as the FP of the CPRD. Retrieved from: https://www.sozialministerium.at/Ministerium/Organisation.html (Last accessed on 01.07.2022).
524 First-level-interview AT/A 1, on 27.04.2016, Q. 8.
525 First-level-interview AT/A 1, on 27.04.2016, Q. 8.
526 BBG, §13f (2).
527 Initial Report of Austria, Para. 357.
528 First-level-interview AT/A 1, on 27.04.2016, Q. 7; See also BBG, §8 (1) and §9.
529 BBG, §9.

The Advisory Board is chaired by the minister or an officer of the BMSGFK and convenes once or twice a year.[530]

The federal Advisory Board members do not get remunerated but their travel and subsistence expenses for attending the meetings of the Advisory Board and its committees is reimbursed.[531] Disability-related costs e.g., personal assistant or sign/easy-to-read-language interpretation, however, is not envisaged by the law establishing the Advisory Board.

In addition to the Disability Advisory Board, the BMSGFK established a support group (Begleitgruppe) for the National Action Plan 2012–2020, where all the Federal Ministries, provinces and disability-rights organizations meet.[532] The support group convenes two to three times a year.[533]

1.2.2 Länder-level constitutional organs

Similar to the federation, every Austrian province has its own Constitution, Parliament and Government and is led by a provincial Governor (Landeshauptmann). Each province is accorded with its legislative power,[534] the arrangement of which is, by and large, similar to the federal legislative processes. For instance, the provincial governments also accept views of various non-governmental organizations and state organs,[535] including Federal Ministries and local governments that are integrated into the state structure of Austria as the third and with it the lowest administrative level after the federal and provincial governments.[536]

In matters within the indirect federal administration, the Governor is bound by instructions from the federal government and individual federal ministers[537] and for executing the implementation of such instructions, the Governor is obligated to apply the powers available to him in his capacity as a functionary of the province's autonomous sphere of competence.[538]

530 First-level-interview AT/A 1, on 27.04.2016, Q. 7; see also BBG, §9 (2) and §12 (1).
531 BBG, §9 (5) and §11 (2).
532 First-level-interview AT/A 1, on 27.04.2016, Q. 7.
533 Ibid.
534 B-VG, Art. 95; Dachs, 2003.
535 Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften, Art. 1 (2).
536 Pelinka, 1977: 184.
537 Fallend, 2005.
538 B-VG, Art. 103 (1).

Moreover, the federation is, in the case of implementation of state Treaties, entitled to supervision also in such matters as belong to the provinces own sphere of competence.[539] Notwithstanding the narrow scope of action, provinces can, although with informal negotiation instruments e.g., Conference of Heads of Provincial Governments (Landeshauptleutekonferenz) influence the national decision-making processes as it is dominated by the party-politics.[540]

1.2.2.1 Länder-level Focal Points and Coordination Mechanisms

In accordance with the Initial Report of Austria, the nine provincial branches of the federal Social Offices have been appointed as FPs.[541] Nevertheless, the examination of Länder-level FPs could not verify this statement. In particular, it became clear that the subordinate unit of the Office of Social Affairs has been appointed as a CM, but there is no FP for the CPRD as such:[542] "With us, the FP are all the departments that deal with the topic, they network with each other".[543] To this end, after the ratification of the CPRD, Tyrol has only appointed a CM for the CPRD, which is located in the Department of Social Affairs.[544]

The Länder-level FPs/CMs are, similar to federal FP, under-financed. For Instance, the TyroleanDepartment of Social Affairs, which is assigned as a CM for the CPRD gets financial resources for various disability-related activities.[545] At the same time, however, "it does not have enough staff for carrying out its responsibilities".[546]

539 B-VG, Art. 16 (5).
540 Rosner, 2000; Erk, 2004; Bußjäger, 2007.
541 Initial Report of Austria, Para 357.
542 First-level-interview AT/B-T 1, on 26.10.2015, Qs. 4, 7, 8, 9 and 10; third-level-interview AT/B-T 2, on 27.10.2015, Q. 6.
543 Second-level-interview AT/B-T 1, on 30.10.2015, Q. 14: The original reads as follows: "Bei uns sind die Anlaufstellen aller Fachabteilungen, die mit dem Thema zu tun haben, die sind untereinander vernetzt".
544 Geschäftseinteilung des Amtes der Tiroler Landesregierung, as amended by LGBl. Nr. 126/2020, §1 (Gruppe Gesellschaft, Gesundheit und Soziales- Abteilung Soziales).
545 First-level-interview AT/B-T 1, on 26.10.2015, Q. 8.
546 Second-level-interview AT/B-T 1, on 30.10.2015, Q. 14.

With the adoption of the Tyrolean Participation Act (Tiroler Teilhabegesetz),[547] Tyrol also established a Participation Council (Teilhabebeirat).[548] It is composed of a number of state bodies and non-governmental actors, as well as the "users" representatives[549] and is charged with the task of consulting the provincial government in matters concerning DPs, but there is no mentioning about the CPRD.[550]

Members of the Participation Council do not get remunerated, but disability-related assistance costs can be refunded.[551]

Thus, the Austrian FPs/CMs have not been equipped with adequate human and financial resources as it is recommended by the Handbook for Parliamentarians on the CPRD.[552] Besides, they did not get CPRD-related training or consultancy,[553] which would ensure the needed structural revision for overseeing the implementation of the CPRD.[554] This, in considering the number of Federal Ministries, 9 provinces and their executive bodies, as well as municipalities and relevant interest groups, limit the FPs/CMs of Austria in their mandate[555] to coordinate the implementation of the Convention at all levels and in all sectors of governments.[556] A vivid example for limitation caused by inadequate resources is the National Action Plan, which has been developed by the FP, but it has not been allocated financial means to implement the aims stipulated thereof.[557] Tyrol did not even develop an action plan as of June 2022.

547 LGBl. Nr. 32/2018.
548 Ibid. §47 (1).
549 Ibid., §47 (2).
550 Ibid., §47.
551 Tiroler Teilhabegesetz. §47 (9).
552 OHCHR et al., 2007: 94.
553 First-level-interview AT/A 1, on 27.04.2016, Q. 13; To question if the responsible bodies received CPRD Training, the representative of the TyroleanGovernment gave a positive answer (First-level-interview AT/B-T 1, on 26.10.2015, Q. 13), but the interviewee can neither bring an example nor could the entire interview content and examination of CPRD implementation processes be seen as confirmation of this statement.
554 OHCHR et al., 2007, P. 94.
555 Huber/Shipan/Pfahler, 2001; Mills/Selin, 2017; Quirk/Bendix/Bachtiger, 2018.
556 CPRD Committee, Concluding observations on the initial report of the UK, Para. 68.
557 First-level-interview AT/A 1, on 27.04.2016.

1.3 Kingdom of Denmark

Denmark is a unitary parliamentary constitutional Monarchy[558] and maintains an inclusive social-democratic Nordic welfare system.[559] It is based on the principle of tripartition of power, whereby the legislative power is vested in the government and parliament. Nevertheless, the majority of laws are initiated by ministers[560] who are responsible for the conduct of government, including conclusion and implementation of International Treaties,[561] and based on the principle of negative parliamentarism, which means that ministers might be forced to resign by passing the vote of no confidence with a simple majority of MPs.[562] Most often, however, it leads to toleration of the executive branch, which, since early 1980s is composed of minority multi-party governments. For example, right-wing populist Danish People's Party (Dansk Folkeparti), which actually received more votes than the liberals, and tolerated the center-right minority government led by the liberals (Venstre) since the 2015 election. The high price for this was that it always had a significant and very direct influence on the politics of government without having any formal government responsibility.[563]

1.3.1 Structure and resources of Danish Focal Point and Coordination Mechanism

The organization of the Danish government is based on the principle of ministerial governance, with ministries headed by the minister who is accorded with the ultimate formal authority.[564] Similar to Germany and Austria, Danish ministries are structured into departments (departmental) and units as the lowest level of ministries, as well as various agencies (styrelser and institutioner) with different legal status.[565]

As of 2020, Denmark had 19 ministries, including the Ministry of Children and Education, the Ministry of Higher Education and Science, as well as the Ministry of Social Affairs and the Interior. The latter has been

558 Danish Constitution, Sections 2, 3, 69 – 74.
559 Kautto 2010; Greve, 2019.
560 Damgaard, 1994.
561 Harhoff, 1996: 151 – 182.
562 Danish Constitution, Sections 13 and 15. See also Nannestad, 2009: 76.
563 Horn, 2019.
564 Grøn/Salomonsen, 2020.
565 Thiel, 2012: 20.

designated as the FP with coordination functions[566] in accordance with the recommendations of the Handbook for Parliamentarians.[567] With this, the Danish government secured the equal horizontal rank of the FP within the government, but this does not mean that the enforcement power of the FP has been strengthened, since agreements around a policy field within minority and coalition governments,[568] require intense horizontal coordination between the coalition partners within the government as well as coordination between the government and its supporting parties.[569] Moreover, the principle of ministerial governance de jure grants substantial autonomy to the individual ministers of the Danish government, but the close alignment of the Ministry of Finance and the Prime Minister and his office de facto limit the policy autonomy granted formally to ministers individually and as the members of government.[570] Against this background, government committees, especially the Coordination Committee chaired by the Prime Minister and the Economic Committee chaired by the Minister of Finance became the most important policy-coordination tool. Committees under the chairmanship of other ministers, apparently, have lesser weight. For instance, Denmark appointed the Interministerial Committee of civil servants on disability matters chaired by the Minister of Social Affairs and the Interior as the policy coordination mechanism within the central government and between the civil society and the central government.[571] However, in studying the CPRD implementation in Denmark and in reviewing the Second and Third Report of Denmark, it becomes clear that on the one hand, the multi-sectoral recommendations of the CPRD Committee, especially in policy fields of accessibility, primary and secondary education made in the concluding observation on Denmark have been

566 B194 Forslag til Folketingsbeslutning vedrorende Danmarks Ratifikation af FN's Handicapkonvention af 13. december 2006 om Rettigheder for Personer med Handicap; Initial Report of Denmark, Para 380 and 381; Personal Communication with the Ministry of Social Affairs and the Interior on 05.02.2020 (it should be mentioned that the Request for an interview has been refused by the Ministry of Social Affairs and the Interior in December 2015).

567 OHCHR et al., 2007: 94.

568 Christensen, 2006; Hansen, 2020.

569 Howard/Salomonsen, 2020.

570 Rhodes/Salomonsen, 2018: 6.

571 B194 Forslag til Folketingsbeslutning vedrorende Danmarks Ratifikation af FN's Handicapkonvention af 13. december 2006 om Rettigheder for Personer med Handicap; Initial Report of Denmark, Para 381; Personal Communication with the Ministry of Social Affairs and the Interior on 05.02.2020.

addressed either to an unsatisfactory degree or have not been considered at all. On the other hand, the interviews with Danish DPOs revealed that the Interministerial Committee did not assume its responsibility as a mediator between the central government and the civil society.[572]

Besides, the fact that the FP addresses only the central government,[573] weakens its coordination power as the municipalities have a critical importance for the implementation of the CPRD due to their high level of local autonomy,[574] especially in the field of education and fiscal decentralization.[575] Instead, the Ministry of Finance plays a decisive role in coordinating and controlling the municipalities as their spending is regulated through negotiated agreements between the Ministry of Finance and local government of Denmark.[576] To this end, it might be assumed that the Danish FP and its CM are not of a sufficient high institutional rank to effectively carry out their duties as a mechanism for facilitating and coordinating matters relating to the implementation of the Convention at all levels and in all sectors of government as it is required by the CPRD Committee.[577]

The organization chart[578] of the Ministry of Social Affairs makes it clear that there is no separate unit in the ministry in charge of tasks under the CPRD. The explanation to the Ratification Law of the CPRD, where the government stated that the CPRD ratification will have no administrative consequences for the central government confirms this.[579] Accordingly, the

572 See chapter VI.

573 According to explanation to the ratification law of the CPRD, the CPRD ratification will have no administrative consequences for the State, municipalities and regions (B194 Forslag til Folketingsbeslutning vedrorende Danmarks Ratifikation af FN's Handicapkonvention af 13. december 2006 om Rettigheder for Personer med Handicap).

574 Ladner et al. 2016; Initial Report of Denmark, Paras. 9 – 12; Draft Combined second and third periodic reports of Denmark, Paras. 16, 17; Supreme Court case 52/2010 (dom af 18–10–2011).

575 Ivanyna/Shah, 2014; Rodden, 2004.

576 Sorensen, 2014.

577 CPRD Committee, Concluding observations on the initial report of Argentina, Para. 51.

578 The organization chart that is inaccessible, can be found at: https://english.sm.dk/the-ministry (Last accessed on 01.07.2022).

579 B194 Forslag til Folketingsbeslutning vedrorende Danmarks Ratifikation af FN's Handicapkonvention af 13. december 2006 om Rettigheder for Personer med Handicap.

FP has not been given additional human and financial resources,[580] which jeopardized not only its capability to undertake CPRD coordination at the horizontal and vertical levels of government but also led to disregard of its responsibility[581] to oversee the promotion of awareness-raising.[582]

2. Division of Legislative and Executive Competencies

2.1 Federal Republic of Germany

Germany divides its legislative and executive duties between the federation, federal states and municipalities. As a result, the German Constitution distinguishes between two types of division of legislative powers – exclusive legislative (ausschließliche Gesetzgebung) and concurrent legislative (konkurrierende Gesetzgebung) competencies of federation and federal states.

2.1.1 Exclusive legislative competencies

The list of responsibilities that fall under the exclusive legislative powers of federation is not that large: these are, for example, statistics for federal purposes and foreign affairs, including political and economic representation with regard to other countries, in particular the conclusion of International Treaties.[583] In line with Para. 3 of the 1957 Lindau Agreement between the federation and federal states, this applies also in cases where the state treaty falls also under the exclusive legislative powers of federal states. Most particularly, it has been agreed that: "in concluding state Treaties which, in the opinion of the federal states, affect their exclusive competences and are not covered by federal competence, especially in the case of cultural agreements, the procedure is as follows:

580 In the personal communication on February 5, 2020 with the Ministry of Social Affairs and the Interior, the direct question if the FP has been provided with human and financial resources, has been left unanswered.

581 OHCHR et al., 2007, 95.

582 See the answers of the government in the Initial Report of Denmark, Paras. 48 – 52. For the criticism see DIHR, 2014, 19 and DPOD, 2013, Para 8.2; The answers in Combined second and third periodic reports of Denmark put the responsibility of awareness-raising on the Danish Disability Council, which in fact is the part of Monitoring Framework, Paras. 51–54.

583 GG, Arts. 73 and 32 (1; See also Fastenrath, 1986: 120 f.

If state Treaties envisage obligations in areas of the exclusive competences of the Federation or federal states, the consent of the federal states should be obtained. This consent should be given before the obligation becomes binding under International Law. If the federal government submits such a treaty to the Bundesrat in accordance with Art. 59, Para. 2 of the Basic Law, it will at least simultaneously, request the federal states to give their consent.

In the case of the Treaties referred to in paragraph 1 sentence 1, the federal states should be involved in the preparations of the conclusion as early as possible, in any case in good time before the final treaty text has been decided upon".[584] For instance, before ratifying the CPRD, the government of Hesse has been asked and "gave its consent".[585] the representative of the Thuringian government, instead, stated that they "... did not give such a consent".[586] However, in considering the consent of the Federal Council,[587] this statement cannot be perceived as valid. After approval of the treaty by the Bundesrat and its adoption by the Bundestag, the federal states should, based on the principle of federal loyalty, adapt the respective state laws to the requirements of the ratified treaty.[588] Only a number of federal laws are implemented by the federation directly.[589] The implementation of the rest, and with it almost all the disability-related federal laws, including the CPRD are transferred to the federal states, which decide on the establishment of the requisite authorities and regulate their administrative procedures.[590] They might also deviate from the administrative procedures established by a federal law.[591] Nevertheless, in exceptional cases, owing to a special need for uniform federal legislation, the federation may regulate

584 See also GG, Art. 32 (2).

585 First-level-interview DE/B-H 1, on 14.01.2016, Q. 1. The original reads as follows: "Das Hessische Kabinett hat in 2008, also vor in Kraft treten, der Behindertenrechtskonvention in Deutschland, der Behindertenrechtskonvention, als solche zugestimmt. Also im Vorfeld des Bundesgesetzes hat bereits das Hessische Kabinett der UNBRK zugestimmt."

586 First-level-interview DE/B-T 2, on 23.05.2018, Q. 1. The original reads as follows: "Selbst Thüringen hat nicht ratifiziert. Klar, wir sind ja nur ein Bundesland der Bundesrepublik. Wir haben nicht zugestimmt, kein Land, kein Bundesland muss zustimmen, das ist so in Deutschland."

587 Bundesrat Drucksache 760/08 (Beschluss).

588 Kaiser, 1957/58, 526 ff.; Heckt, 1958, 445; Maunz/Dürig, 2014, Art. 32 Rn 70 and Art. 59 Rn 185; Dreher, 1969.

589 GG, Arts. 87 – 90.

590 GG, Arts. 83 – 85.

591 GG, Art. 84 (1) Sentence 2.

the administrative procedure with no possibility of separate federal states legislation.[592] If the federal states implement federal laws on behalf of the federation, the federal state authorities shall be subject to instructions from the competent highest federal authorities and might be required to submit implementation status reports.[593]

The traditional fields of exclusive legislative powers of federal states have been, for example, the school and educational affairs, cultural issues, police and municipal law,[594] as well as matters that have not been expressly bestowed on the federation for legislation and execution[595] e.g., building and construction law. As a result of the Federalism Reform I, the legislative competencies of the federal states have been, explicitly, expanded to e.g., university, care facilities and housing construction legislation.[596]

2.1.2 Concurrent legislative competencies

A large number of legislative fields, including Civil Law, judicial proceedings, public welfare, regulation of training grants and the promotion of scientific research, as well as university admission and university degrees fall under the concurrent legislative competencies, where the federal states have the power to legislate as long as and to the extent that the federal government has not made use of its legislative competences.[597] In fact, the federation has applied its legislative rights extensively by adopting framework laws that had to ensure the "equivalent living conditions" across the state. This, however, has been viewed as critical by the Federal Constitutional Court.[598] Accordingly, the extensive right of the federation to adopt framework laws under Art. 75 GG has been abolished with the introduction of the Federalism Reform I. Instead, the federation was allowed to legislate on the basis of "equivalent living conditions or the preservation of the unity of rights and economy" in selected policy fields, including regulations on training grants and the promotion of scientific research,[599] as well as public

592 GG, Art. 84 (1) Sentence 4; See also BeckOK Grundgesetz/Suerbaum, 41. Ed. 15.5.2019, GG Art. 84 Rn. 1–66.
593 GG, Art. 85 (3 and 4).
594 Kilper/Lhotta, 1996: 102.
595 GG, Arts. 30 and 70 (1).
596 Leunig/Pock, 2010; Huber/Uhle, 2014.
597 GG, Art. 72 (1).
598 E.g., BVerfG 2 BvF 2/02, am 27.07.2004.
599 Huber, 2014a; see also Münch, 2018.

welfare.[600] However, federal states have got a right to enact laws at variance with laws adopted by the federation in these policy fields.[601] In these cases, the federal states adopt implementation laws (Ausführungsgesetz) to federal laws as it is the case, for example, with the Federal Participation Law (BTHG).[602] In enacting deviating laws, the federal states are bound by constitutional, international and European Law provisions as much as the federation.[603]

The structure and field of responsibilities of municipalities are regulated by the municipal constitutions of the federal states,[604] which are of a **statutory character and** adhere to fundamental rights guaranteed by the respective federal state constitution and the Basic Law. They have a two-type function in the political system of Germany. On the one hand, they carry out tasks falling under their own area of responsibilities, which are in principle unlimited.[605] On the other hand, the municipalities, in line with German tradition, administer the tasks delegated by the federal and federal states governments.[606] A large number of their own area of responsibilities,[607] belong, among other areas, schools, social security, health, public facilities, transport, construction and housing, including building schools.[608] In carrying out their responsibilities, the municipalities are under the supervision of their state government[609] and dependent on the financial means provided by the federation and federal states.[610] Therefore,

600 GG, Art. 72 (2).

601 Regardless of the right to adopt deviating regulations given to the federal states under the Art. 72 Para. 3GG, a deviation of the federal states remains excluded for certain parts- non-deviant cores (abweichungsfeste Kerne), see: Explanation to Draft law (Begründung zum Gesetzentwurf), BT-Drs. 16/813; see also Huber, 2014b.

602 See below.

603 Explanation to the draft law (Begründung zum Gesetzentwurf), BT-Drs. 16/813.

604 Hessische Verfassung, Arts. 137 and 138; TH Verf, Arts. 91 – 95; see also Nothacker/D'Antonio 2016; Kraft-Zörcher, 2018; Naßmacher, 2007.

605 According to the Federal Constitutional Court (BVerfGE 79, 127, 146) the municipalities can "take care of all matters of the local community that have not already been assigned to other public administration bodies by law without a special title ("universality" of the municipality's sphere of activity)".

606 E.g., HGO, as amended on 11.12.2020 by GVBl. S. 915, §4; ThürKO, as amended on 17.02.2022 by GVBl. 87, § 3.

607 E.g., ThürKO, §2 (2).

608 See for example the Budget of the capital city of Hess (Haushaltsplan 2020/2021 der Landeshauptstadt Wiesbaden) and the capital city of Thuringia (Haushaltsplan 2019/2020 der Landeshauptstadt Erfurt).

609 Verf HE, Art. 37 (3); ThürVerf, Art. 94; Meyer, 1996; Huber, 1996.

610 GG, Art. 91e (2); Verf HE, Art. 37 (5 and 6); ThürVerf, Art. 93.

it is not surprising that the municipalities took rather a critical stance regarding the feasibility and in particular, financial viability of the full inclusion in the field of education.[611] For instance, according to the Hessian State representative,, even if the federal states adjust school laws to the CPRD by stipulating a general right to school for all children with disabilities in mainstream schools as it is in Hesse and Thuringia, "it does not realize every child's right of being enrolled in mainstream school because at the administrative level, the school commissions apply it in accordance with structural and financial features of the schools…".[612] Accordingly, instead of implementing the individual right of each disabled child to enrolment at the mainstream school, the State government of Hesse, for example, wants to "create enough schools within a reasonable radius so that children with disabilities do not have to travel far and at least not have to attend special schools, but at the moment it cannot guarantee that every disabled child can attend the school of its choice whenever the child wants it. This situation is true for many other federal states, which adapted their school laws and stipulated a general right to school for all children with disabilities in mainstream schools. But the reality, of course, often lags far behind",[613] especially in eastern federal states, such as Thuringia, which

611 E.g., Deutscher Städtetag (2012); Höfling (2012); Thüringer Landkreistag – Landkreisversammlung (2013).

612 First-level-interview DE/B-H 1, on 14.01.2016, Q. 4. The original reads as follows: "Rechtlich, das ist der dritte Fragepunkt. Das Hessische Ministerium hat für das Hessische Schulgesetzt dies bezüglich geändert, dass es ein generelles Recht auf Beschulung aller Kinder mit Behinderung in Regelschulen gibt. Das ist so festgeschrieben. … Im Vollzug ist auch diese Umsetzung der rechtlichen Regelungen führt nicht in dem Fall dazu, dass jedes Kind in Regelschule eingeschult wird, weil diese rechtliche Regelung, dieser generelle Anspruch vorbehaltlich, entsprechend der strukturelle und finanzielle Ausstattungsmerkmalen in den Schulen sich vorzieht. Das heißt in dem Moment, wo eine Beschulung an eine Schule zumindest auf Grund der Schulkommission deswegen nicht möglich ist, weil bestimmte Vorräte noch nicht da sind, werden diese Kinder gegebenenfalls auch nicht alle an alle Regelschulen eingeschult. Ich will das nur in dem Kontrast sagen, ohne dass den Bundesministerium Schaden einzurichten…".

613 First-level-interview DE/B-H 1 on 14.01.2016, Q. 4. The original reads as follows: "Das was wir hier in Hessen haben, haben wir in vielen anderen Bundesländern auch. Viele andere Länder haben ihre Schulgesetze angepasst bei diesen generellen Grundsätzlichen Rechtsanspruch festgeschrieben. Aber die Realität hinten natürlich häufig bleibt deutlich hinterher... Es gibt die eine Fraktion, die sagt: das muss daraus resultieren, dass jedes, und ich sage das jetzt auch in diese Form: Jedes Kind mit Behinderung an jede Schule, zu jeden Zeitpunkt an jeden Ort in Hessen beschult werden kann. Das hieß, aber in der Konsequenz, dass wir in einzelnen Bereichen,

finds that: "the radical abolition of support centers and special schools is not the way..." because the current schools do not have the necessary technical, spatial and personal equipment for being capable of providing simultaneous schooling for children with disabilities i.e., those with severe intellectual disabilities".[614]

2.2 Federal Republic of Austria

Due to the extensive legislative and executive powers of federation and highly limited competences of Länder, Austria is often perceived as a Unitarian federal state or a federal state with centralistic traits[615]. It divides its legislative and executive duties between the federation, Länder and municipalities. According to this division, the Austrian Constitution distinguishes between four types of division of powers:[616] Legislative and executive powers of the Federation[617] including foreign affairs e.g. political and economic representation with regard to other countries, in particular the conclusion of state Treaties, administration of justice, Civil Law, labour-legislation, social and contractual insurance and public health. Legislative power of the Federation, execution power of the Länder.[618] This category includes matters relating to the employment law and the staff

Schulen haben oder hätten. Wo ein Kind mit Hörbehinderung, wo ein Kind mit Sehbehinderung, ein Kind wie auch immer. Also wir reden nicht immer von vielen Kindern, die aufschlagen, dann die Schule, die schulische Institution für dieses Kind für dieses eine Kind in gegebenenfalls alle Vorausgaben erfüllen müsste. Um natürlich eine inklusive Schule zu gewährleisten. Das ist die eine Position. Die andere Position, an der das Landesregierung... aber zu sagen: wir müssen innerhalb eines vertretbaren Umkreises, es schaffen genug Schulen zu schaffen, damit Kindern mit Behinderung nicht irgendwo weit hinreisen müssen, schon gar nicht an Förderschule gehen müssen. Wir können, aber momentan zumindest nicht gewährleisten, dass jedes Kind zu jeder Zeit an jede Schule geschult wird. Das sind beide Positionen. An der zweiten Position wird gearbeitet.

614 First-level-interview DE/B-T 2, on 23.05.2018, Q. 4. The original reads as follows: "Es ist gerade neues Schulgesetz, wo man auch wieder gesagt hat, die radikale Abschaffung von Förderzentren und Förderschulen ist nicht der Weg, weil die jetzigen Schulen gar nicht so ausgestattet sind, dass sie (räumlich und Personal) ansprechend mehrfach Unterricht für Kinder mit Behinderung also mit schwer geistiger Behinderung gerecht werden können...".

615 Dachs, 2002, 32; Erk, 2004; Watts, 1999, 25.

616 Gamper, 2000; Adamovich et al., 2011: 293- 339.

617 Gesetzgebung und Vollziehung des Bundes (Art 10 B-VG).

618 Gesetzgebung des Bundes, Vollziehung der Länder (Art 11 B-VG).

representation law of teachers of public compulsory schools.[619] Basic legislative powers of the Federation, implementing legislative and executive powers of the Länder.[620] Under such a category fall, for example, external organization (structure, forms of organization, establishment, maintenance, discontinuance, number of pupils in classes, and teaching time) of public compulsory schools.[621]The exclusive legislative and executive powers of Länder include kindergarten and after-school care[622] and other type of educational establishments,[623] as well as in matters that have not been expressly bestowed on the federation for legislation or execution.[624] These are, for example, building and construction, personal assistance outside of labour market, independent living and rehabilitation.[625]

In carrying out their responsibilities, the federal government, the Länder and the municipalities are obliged to provide mutual assistance in accordance with the principle of cooperative federalism.[626] However, in reality, the cooperation in implementing international obligations e.g., CPRD can be "highly challenging i.e., the division of responsibilities between the federal and provincial governments and Länder and municipalities.... makes the implementation and control of the CPRD particularly difficult..."[627] especially in considering the fact that: "there is no political consensus regarding the contents of the UN Convention. There are simply different perspectives".[628] Accordingly, "in Austria the federal states and the federal government almost collide with one another because there are disputes over jurisdiction between the different ministries, the federal government

619 Art. 14 Para. 2 BV-G.
620 Grundsatzgesetzgebung des Bundes, Ausführungsgesetzgebung und Vollziehung der Länder (Art 12 B-VG).
621 Art 14 Para. 3a BV-G. See also Bußjäger, 2018c; Adamovich et al., 2011: 305 – 307.
622 Art. 14 Para. 4b B-VG.
623 Art. 14a para. 1 B-VG.
624 Art. 15 Para 1 B-VG.
625 See for example Tiroler Teilhabegesetz, Section 5.1.
626 B-VG, Art. 22; see also Dachs, 1996; Neuhofer, 1994: 32; Bußjäger, 2019.
627 First-level-interview AT/A 1, on 27.04.2016, Q. 16. The original reads as follows: "Eine spezielle Herausforderung in Österreich ist der Föderalismus, also die Teilung der Verantwortlichkeiten zwischen Bund und Ländern und zwischen Ländern und Gemeinden. Dadurch ist die Umsetzung und Kontrolle der UN-BRK besonders schwierig. Das würde ich schon als größte Herausforderung bezeichnen."
628 First-level-interview AT/B-T 1, on 26.10.2015, Q. 16. The original reads as follows: "Es gibt politisch keine Einigkeit darüber, was die Inhalte der UN-Konvention sind. Es gibt einfach nur unterschiedliche Sichtweise".

and the Länder ",[629] "particularly in the field of Art. 19 and education since each province can decide individually"[630] and "when it is about education then the federation thinks that it is the task of Länder but the latter believes that the federation is in charge… they simply do not let take each other's competencies and powers away, which eventually leads to blockade".[631] Nonetheless, despite widely acknowledged weaknesses, attempts to initiate a reform of Austrian federalism[632] remain unsuccessful up-to-date.

2.3 Kingdom of Denmark

Subsequent to the adaption of the so-called "Structural Reform" of 2004,[633] Denmark maintains a three-level governance structure as of 2007:[634] central, regional and municipal. There is no hierarchy between the regions and the municipalities, but the state administration is responsible for the supervision over the local and regional authorities.

The five regions and 98 municipalities do not have legislative powers. However, they decide upon their own structure and organization. The right

629 Third-level-interview AT/A 1, on 23.05.2016, Q. 2. The original reads as folows:
"… in Österreich die Bundesländer, der Bund fast gegnerisch auf einander prallen. Das sind die einzelnen Zuständigkeiten, die einerseits der Bund aufgrund der Verfassung hat, wo der Bund überall zuständig ist und dann haben die Länder Zuständigkeiten. Das ist auch im Verfassungsgesetz festgeschrieben. Die Länder sagen aber: „Wir lassen uns vom Bund in unseren Angelegenheiten nichts sagen. Das ist unser Privileg in diesen Bereichen zu entscheiden." Es gibt also Streitigkeiten über die Zuständigkeit innerhalb der unterschiedlichen Ministerien, dem Bund und den Ländern…".

630 Third-level-interview AT/A 1, on 23.05.2016, Q. 16. The original reads as follows:
"Der Föderalismus ist in jedem Fall ein Problem, weil jedes Land individuell entscheiden kann, vor allem bei der Bildung und Artikel 19".

631 Second/third-level-interview AT/B-T 2, on 27.10.2015, Q. 4. The original reads as follows:
"Aber es ist bei uns so, Schulsystem ist ja kompliziert, weil es gibt bei uns den Bund, und es gibt das Land, und die lassen sich nicht gegenseitig einfach Kompetenzen und Macht wegnehmen. Und deswegen blockiert es sich gegenseitig. Wenn es um die Schule geht, dann Bund meint, dass das Land zuständig ist, und umgekehrt".

632 Bußjäger, 2002, 2006, 2017, 2018c.

633 For more information on the reform see the webpage of the Ministry of Interior and Housing on Structural Reform at: https://english.im.dk/responsibilities-of-the-ministry/economics-of-municipalities-and-regions/structural-reform (Last accessed on 01.07.2022).

634 It also has two special autonomous regions- the Faroe Islands and Greenland.

to self-government of municipalities is even stipulated by Section 82 of the Danish Constitution. To this end, municipalities and the regions are in charge of policy fields of their interest, which are not expressly conferred to the central government. For instance, the state is responsible for police, armed forces, the judicial system, foreign affairs and development aid, higher education and research, as well as social welfare payments and related support in the field of specialised social education.[635] The regions are in charge of the health sector and are financed directly by the state.[636] The municipalities are responsible for all tasks aimed directly at citizens e.g., care for the elderly, social services, assistive devices, day-care centres for children and the 10 years of compulsory school education in Denmark.[637]

The structural reform, in addition, required the municipalities to establish a local Disability Council to ensure dialogue between local authorities and disability organizations.[638] The local disability councils contributed to the adoption of municipal disability policies e.g., 86 out of 99 municipalities adopted a disability policy as of 2010.[639] Thus, the institutional participation of DPOs has been ensured at a central level since 1980 and at a municipal level since 2007.

In carrying out their responsibilities, public authorities should adhere to the principle of sector accountability (Sektoransvarlighedsprincippet), which is a division of public tasks and public responsibilities),[640] and means that each governmental level should cover the costs of sectors that fall under their responsibilities. The principle is of particular importance to citizens with a disability as, on the one hand, there is no national disability authority with responsibility for the entire disability-area and on the other hand, a "public body offering a service or a product to persons without disabilities is responsible for offering and making accessible the service or product to DPs".[641] Nevertheless, the principle of sector accountability is seen critical, especially in the field of school education[642] as there is a risk that the child and the family fall between two chairs because individual

635 Initial report of Denmark, Para. 9; DPOD, 2013: 8 and 9.
636 Ibid.
637 Ibid.
638 Lov om aendring af lov om retssikkerhed og administration pa det sociale omrade og andre love § 37a stk. 2, stk. 3 and stk. 4.
639 Socialstyrelsen, Fra konvention til kommunal handicappolitik, 2012: 4.
640 Ketscher, 2014: 183; See also Initial report of Denmark, Paras. 10 – 12.
641 Initial report of Denmark, Paras. 10 – 12.
642 DPOD) 2013: 38 and 39; DIHR, 2014: 13.

actors relinquish responsibility on the expectation that others assume it, which in fact should be avoided.[643] For example, the 2017 study carried out by the DIHR on the implementation of the right to inclusive education at the municipal schools showed that the principle of sector responsibility in practice is the cause of significant interpretation doubts and inconsistent practices.[644] In several cases, the principle prevents or delays support, while support in other cases is given despite disagreement between sectors.[645] Besides, according to 2017 DIHR report on the legal security in municipalities, citizens with disabilities and with ethnic backgrounds other than Danish experience more difficulties in communicating with the local authorities than others and feel to a lesser degree that they were consulted and treated in a fair manner during their complaint case.[646] Moreover, a social welfare board of a municipality, despite its general obligation to contribute to the fulfillment of the international obligations,[647] refused to consider complainant's references to the ECHR in a decision establishing a payment scheme under the Child Benefit Recovery Act with a statement that it is of the view that a law passed by the Folketing is in accordance with applicable laws and regulations.[648]

3. Incorporation and application of International Law in the domestic legal system

3.1 Federal Republic of Germany

The German legal system with regard to relations between the domestic legal order and international obligations is premised on the conception of "moderate dualism".[649] According to the statement of the Federal Constitutional Court made in the "Görgülü" case, "the Basic Law is clearly based on the classic idea that the relationship of public International Law and

643 Ketscher, 2014: 183.
644 Nielsen, 2017 (for english summery see P. 10).
645 Ibid.
646 Jacobsen et al. 2017, (for english summery see P. 10).
647 Folketingets Ombudsmand, FOB 2005.14 – 1, tilgngelig pä:_https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/05-425/#cp-title_(Last accessed on 01.07.2022); See also Andersen, 2016: 6. udgave, s. 50.
648 Ibid.
649 Papier, 2006: 60).

domestic law is [one] between two different legal spheres [whose nature] can only be determined from the viewpoint of domestic law (…) itself".[650]

According to Art. 59 Para. 2 of the German Basic law (GG), "Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law". Moreover, in line with Art. 25 of the GG, the general rules of International Law shall be an integral part of federal law and shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.[651] However, the term 'general rules of International Law ' applies to custom and general principles, but not Treaties. Therefore, the United Nations Conventions along with the ECHR have the same legal status as a federal act of parliament, meaning that they have a similar status as all other federal acts of parliament.[652] *Consequently*, International Treaties cannot be directly invoked in German courts since they are incorporated into German law as an ordinary statute.

However, the Federal Constitutional Court (FCC), in its decision of October 14, 2004 made clear that International Treaties, which had been adopted by the German parliament, are incorporated into the German domestic law.[653] Accordingly, the International Treaties that have been adopted by the German Parliament and incorporated into the German domestic law should be applied by German courts, like other federal statutes, "in the framework of accepted methods of interpretation".[654] Moreover, the International Treaties aiming at ensuring the fundamental rights and the rule of law, as enshrined in the Basic Law should serve as interpretative tools of German norms of a constitutional nature,[655] and thus be binding in all German state organs, including the courts in line with the rule-of-law principle enshrined in the Basic Law. Additionally, in view of the fact that the International Treaties such as the ECHR serve as a guaranty for fostering the development of human rights protection, the FCC maintained that Art. 1 Para. 2 of the GG, which ensures special protection to some core human rights, in conjunction with Art. 59 Para. 2 of the GG, form

650 BVerfGE 111, 307 (para. 34).
651 Hillgruber in SBHH, Art. 25 Rn. 1; BVerfGE 63, 343, 370; 111, 307, 318.
652 Grabenwarter/Pabel 2021: 15–23; Seidel, 1996; Frowein/Peukert, 2023.
653 Görgülü, BverfGE, Oct. 14, 2004, 2 BvR 1481/04, Para. 31.
654 Ibid.
655 Ibid., Para. 32.

the constitutional basis for the responsibility to abide by the human rights Conventions in the interpretation of German fundamental rights.[656]

3.2 Federal Republic of Austria

In accordance with Art. 9 Para. 1 of the Austrian Constitutional Law (B-VG), generally recognized rules of International Law e.g., some rules of customary International Law and the general principles of law recognized by civilized nations, are regarded as integral parts of federal law. However, Austrian constitutional law takes a middle position on the question of monism or dualism as well as on the question of aplications rank of international law. The relevant provisions i.e., in particular Articles 9, 49, 50, 65, 66 and 140a of the Federal Constitutional Law (B-V-G) show that international law is recognized as a genuine and independent legal order in the sense of a moderate monism, which does not enjoy priority over domestic law, but which norms are to be implemented in a proper manner, i.e., in a manner corresponding to the claim to validity of international law. The position of the B-VG can, therefore, be described as friendly to international law.[657]

The Federal Government has a dominant position in the conclusion of international treaties. It may also regulate matters which fall within the competence of the Länder.[658] However, the Länder have certain rights of co-decision-making in ratifying treaties that affect their competences.[659] The responsibilities for domestic implementation are governed by the rules of the constitutional division of competences.

Certain international treaties do require parliamentary approval. However, its competencies are limited to the option of approving the treaty or rejecting it as a whole. The parliament has no amending power. Since the amendment of the B-VG,[660] the possibility of creating constitutional law through general transformation of international treaty law has been

656 "The German people therefore acknowledge inviolable and inalienable human rights as the bases of every community, of peace and of justice in the world." GG, Art. 1 (2).
657 Adamovich et al., 2011: 199.
658 Art. 10 (1) (2) B-VG.
659 Art. 10 (3), Art 50 (3), Art. 50 para. 2 subpara. 2 B-VG.
660 BGBl I 2008/2 (RdZ 09.019 – 81.

eliminated. If an international treaty requires the enactment or amendment of formal constitutional law, this must be adopted separately.[661]

In ratifying international treaties, the responsible federal decision making organ can resolve to which extent the state treaty in question shall be implemented by the issue of laws.[662] It, for example, approved the ratification of many International Treaties, including the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women and Convention on the Rights of DPs with the statement that the Convention shall be fulfilled by enactment of laws,[663] whereas in some cases e.g., ICERD and CAT, it guaranteed the conscientious observance of the provisions contained in the Conventions.[664] Conventions that have been ratified with the fulfilment reservation,[665] and there have been no or selected legislative efforts in incorporating their provisions into domestic law, have no direct effect on the domestic courts and administrative acts as long as the government did not adopt appropriate implementation laws.[666] Consequently, the effectiveness of an international treaty within the domestic legal order is to a greater extent dependent on the will of the legislative and executive organs of the state.[667]

The Treaties, which alter or amend the Constitution have constitutional status, if they have been passed by the National Council in the presence of at least half of the members and by a majority of two thirds of the votes cast.[668] For instance, the ECHR has been given a constitutional status[669]

661 Adamovich et al., 2011: 200 -203.
662 B-VG, Art. 50 (2.4).
663 CRC- BGBl. Nr. 7/1993, Para. 2; CEDAW- BGBl. Nr. 443/1982, Para. 2; CPRD- BGBl. III Nr. 155/2008, Para. 2; ICESCR- BGBl. III Nr. 80/2020; ICCPR- BGBl 591/1980.
664 BGBl.Nr. 492/1987; BGBl. III Nr. 104/2012; BGBl. Nr. 377/1972.
665 Öhlinger in Korinek/Holoubek (Hg), B-VG (9. Lfg 2009) Art 50 B-VG Rn 84ff.
666 OGH (Supreme Court), Case (3Ob97/13f mwN), 15.05.2013; OGH, 10ObS162/16w; 5Ob183/17y; 10ObS16/18b; 3Ob242/19p, 24.01.2017.; OGH, 10ObS162/16w, 24.01.2017; OGH, 5Ob183/17y, 21.12.2017; OGH, 10ObS16/18b, 20.02.2018; OGH, 3Ob242/19p, 22.01.2020; see also Austrian Constitutional Court (VfSlg) 3950/1961, 27 May 1961; VfSlg 12281/1990, 27 June 1960; VfSlg 7448/1974, 14 December 1974; VfSlg 12.558/1990, with reference to Öhlinger, 1973, 149ff; Walter et al., 2007, Rn 239f; Adamovich et al., 2011, 212; Öhlinger/Eberhard, 2012, Rn 119.
667 Adamovich et al., 2011: 209ff; Adamovich et al., 2015: 8ff.
668 B-VG, Art. 44 (1).
669 BGBl. Nr. 59/1964; see also Thurnherr, 2008a.

thus enlarging the catalog of fundamental rights in Austrian legal system.[670] In contrast, Treaties that alter or amend statutes are perceived to have a legislative status, whereas those that neither alter nor amend the Constitution or statutes are considered to have a status of regulations.[671]

3.3 Kingdom of Denmark

According to Section 19.1 of the Danish Constitution, the King as the head[672] of the executive branch should ratify International Treaties, whereas the government bears the political responsibility for the ratification.[673] Nevertheless, the power of the executive is limited as without "the consent of the Folketing, the King shall not … enter into any obligation which for fulfilment requires the concurrence of the Folketing or which is otherwise of major importance; nor shall the King, except with the consent of the Folketing, terminate any international treaty entered into with the consent of the Folketing".[674] To this end, the international agreements might be concluded through statutory law or parliamentary approval e.g., either as an act of Parliament or as a parliamentary resolution (Folketingsbeslutning). In the case the requirements of the treaty could be met without legal amendments, the treaty might be ratified by the executive without a parliamentary resolution (almindelig folketingsbeslutning).[675] However, in line with the doctrine of dualism[676] and the doctrine of transformation, ratified Treaties and international agreements do not "automatically become a part of domestic law and, as a general rule, cannot be applied directly

670 Adamovich et al., 2015: 7f; Berka/Binder/Kneihs, 2019.

671 See, Adamovich/Funk/Holzinger, 2015; Case-law of the Austrian Constitutional Court, 24 June 1954, VfSlg 2680/1954.

672 Danish Constitution, Sec. 3: "legislative authority shall be vested in the King and the Folketing conjointly. Executive authority shall be vested in the King….".

673 Harhoff, 1996: 151 – 182.

674 Danish Constitution, Sec. 19 (1).

675 Harhoff, 1996: 151 – 182.

676 See for example, Gulmann, 1991, op. cit., p. 247; Kjeldgaard-Pedersen, 2017; Non-implemented international law might, nevertheless, be considered as a source of law, see, Gulmann et al, 1989: 96–7; Spiermann, Ole, 'Højesterets anvendelse af folkeret I det 20 århundrede' (Application of International Law by the Supreme Court in the 20th Century), JUR 2001: 1–29, especially pp. 1–2; See also, Betænkning no. 1407. Inkorporering af menneskerettighedskonventioner i dansk ret (Incorporating the Human Rights Conventions in Danish Law) (2001): 24–8.

by the courts or the executive unless incorporated by the legislature".[677] In fact, Denmark might choose between (1) establishing norm harmony (konstatering af normharmoni), (2) targeted adoption (omskrivning og) and (3) incorporation (inkorporering). in order to comply with its international obligations.[678] For instance, in ratifying the European Human Rights Convention (ECHR) in 1953, the government assumed that Danish law fully complies with the provisions of the ECHR. Accordingly, it was not incorporated and as a consequence the Supreme Court did not find the ECHR, (at that time non-incorporated) directly enforceable: "It [ECHR] is, however, not by a general statute transformed to form a part of the applicable law in this country".[679] However, in several cases, the ECTHR interpreted and applied some of the provisions of the ECHR in a way that Danish law became inconsistent with the Convention.[680] As a result, the Danish government was forced to incorporate the Convention to ensure that it would prevail over conflicting Danish law,[681] unless there is a distinct opposite legislative intention.[682] Thus, it has a status of a general statutory law and does not override the Danish Constitution.[683]

677 Harhoff, 1996: 151 – 182; Björgvinsson, 2015: 55 – 88.

678 Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsomradet, 2010. Kapitel 3 Section 2. Retrieved from: https://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2014/Betaenkning_1546.pdf (Last accessed on 01.07.2022).

679 Judgement UfR. 1986.898 H in UfR. 1987B.50.

680 The first case that rose doubts if the Danish law is consistent with the ECHR was the Case of Young, James and Webster, Series A, Vol. 44 (1981), where Denmark was not a party but took appropriate measures to ensure consistency with ECHR (see, Act No. 285 of 9 June 1982). The case in which Denmark has been found in breach of the Convention was the Hauschildt case (ECHR, Series A, Vol. 154 (1989).

681 See Act No. 285, Apr. 29, 1992; see also the commentary by Hofmann, 1992.

682 Rytter, 2016: 55.

683 Rytter, 2016: 53 and 54; Björgvinsson, 2015: 138–141; see also Den europæiske Menneskerettighedskonvention og dansk ret, Betænkning No. 1220 1991: 149 et seq.

4. CPRD Ratification, Incorporation and Application

4.1 Federal Republic of Germany

4.1.1 Ratification and legal status

The Federal Republic of Germany has signed the CPRD together with its Optional Protocol on 30 March 2007. After the signature, both the federal government and the federal states governments did not carry out a domestic law assessment or norm screening.[684] "There were various reasons for that, but the decision not to conduct norm-screening was deliberate… we were aware of it… but we knew also that the Art. 4 of the CPRD envisages progressive realisation provision, which basically means that it provides implementation time... ".[685] Consequently, "the federal government started the ratification process, during which various actors including, federal states and municipalities, (although the latter do not have a right to speak in such processes), did not have any real arguments against the ratification… there were, of course, arguments in selected fields e.g., there was quite a lot of discussion in the field of education, Equality Law, especially access to justice and whole Guardianship Law, but there was no general objection to the ratification, rather discussions about how it should be interpreted."[686]

684 First-level-interview DE/A 2, on 08.08.2018, Q. 3; First-level-interview DE/B-T 2, on 23.05.2018, Q. 3; First-level-interview DE/B-H 1, on 14.01.2016, Q. 3.

685 First-level-interview DE/A 2, on 08.08.2018, Q. 3. The original reads as follows: "das hatte verschiedene Ursachen, aber das war gewollt, da hat man es auch gesehen. Zumal so zu sagen die Konvention als solches in Art. 4 für die, gerade für die und das ist die entscheidende Rechte, Sowieso eine Umsetzungsperiode lässt. Ja, also ich meine die Finanzielle Resorts. So schrittweise die einzelne Rechte und aus diese kann man ja auch ableiten: okay zu den damaligen Zeiten kann man sagen, ja okay, das hat gepasst. Das heißt aber nicht, dass man sie nicht weiter entwickeln kann".

686 First-level-interview DE/A 2, on 08.08.2018, Q. 2. The original reads as follows: "gegen eine Ratifikation hat man, hatten wir, glaube ich so richtig keine Argumente… da hatten wir gar nicht. Also richtig dagegen war niemand. Also sowohl Kommunen als auch Ländern, als auch der Bund nicht so zu sagen. Also zumal die Kommunen auch kein Sprachrecht diesbezüglich auch haben…Also Argumente gab es natürlich zu sagen, wie ist es das in dem Bereich der Bildung. Da gab es ziemlich große Diskussion. Und beim Thema natürlich, wie ist es das mit der rechtlichen Gleichstellung, also Zugang zum Recht, ganze Betreuungsrecht usw. Auch da gab es Überlegung so zu sagen, ob es alles so passt, ob… Aber das waren die einzelnen Bereiche zu den eine Diskussion gab. Da gab es aber nicht so zu sagen das generelle, das man dann sagen würde: wir waren dagegen das es ratifiziert wird, sondern es gab die Diskussionen, wie ist das auszulegen."

On 24 February 2009, the Bundestag with the approval of the Bundesrat has adopted the Ratification Law proposal of the federal government.[687] In the ratification Memorandum (Denkschrift), the federal government, by stating that German laws fully meet the requirements of the CPRD, made it clear that the ratification of the Convention will not result in any legal amendments.[688] This, according to Felix Welti, gives reason to conclude that at the time of the ratification the legislature assumed that the implementation of the Convention would and should, essentially, be carried out by the administrative organs and jurisdiction.[689] According to federal government representatives, however: "... if they would have stated something else, the CPRD would not be ratified. So easy is the game so to say...."[690]

On 26 March 2009, The CPRD became binding for Germany[691] as a sub-constitutional federal act of parliament.[692] This means that the majority of the CPRD provisions cannot be directly invoked in German courts, since for this, they should have all attributes that a German law provision must have to entitle or obligate an individual. This is the case with the prohibition of discrimination under Art. 5 CPRD, which, due to the equivalent provision of the German constitution, namely, Art. 3 Para. 3 sentence 2 Basic Law, has been recognized as self-executing and, thus, directly applicable,[693] as both provide, principally, the same protection level.[694] Neverthe-

687 Art. 59 para. 2 Sentence 1 GG states: "treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law".

688 Bundestag, Drucksache 16/10808, 45 et seq.

689 Welti, 2016: 640.

690 First-level-interview DE/A 2, on 08.08.2018, Q. 3. The original reads as follows: "... tatsächlich was anderes dürfte gar nicht rauskommen. Wenn da was anderes rausgekommen wäre, wurde es nicht ratifiziert so einfach ist das Spiel so zu sagen. Ja, das muss man einfach so sehen. Dadurch ist das so zu sagen da..."; The same answer also in the First-level-interview DE/A 2, on 18.11.2015. Q. 3.

691 Notice of the entry into force of the UN Convention on the Rights of DPs from 5 June 2009 (BGBl. II S.812).

692 Federal Constitutional Court, (Bundesverfassungsgericht, BverfG), 2 BvR 1481/04, on 14 October 2004: para. 31; BVerfG, 2 BvC 62/14, on 29 January 2019.

693 E.g., BVerfG, B 8 SO 14/13 R, on 23 July 2014: para. 25; BVerfG, B 9 SB 1/15 R, on 16 March 2016: para. 16; For the discussion according to which CRPD rights could be self-executive and applied by the courts without further legislation, see Degener, 2009b,34 ff.

694 BVerfG, B 1 KR 10/11 R, on 06 March 2012: para. 31.

less, it has to be taken into account that the self-executing international treaty provisions concern only the relation to public legal bodies but not the private law subjects.[695] In all other cases, the CPRD provisions are non-self-executing and have to be implemented by a domestic implementation law.[696] Nonetheless, a non-self-executing provision may affect the German law.[697] The statements of committees or comparable treaty institutions, despite their significant importance, are, in contrast, binding neither for international nor for national courts. The same concerns the reports (Art. 39 CPRD), guidelines (Art. 35 CPRD) and recommendations (Art. 36 CPRD) of the CPRD Committee[698] Furthermore, the Committee has no mandate for a mandatory interpretation and competence for the further development of Treaties. Therefore, national courts, as part of an international-law-friendly interpretation, shall take the views of treaty organs into account but they do not have to comply with them.[699]

4.1.2 CPRD incorporation and application in the policy fields under the legislative powers of federation

4.1.2.1 Responsibilities of the federal Focal Point and Coordination Mechanism

The BMAS as the federal FP governs the implementation processes of the CPRD and promotes cross-departmental awareness-raising.[700] It has developed the first and second National Action Plans and is responsible also for the NAP update, as well as the supervision of the NAP committee.[701] It is aimed at the supervision of the NAP implementation and consists of representatives of the DPOs, social and welfare associations, the social partners, academia, Federal Disability Commissioner and the NMB with an advisory status.[702]

695 See Welti/Frankenstein/Hlava, 2018: 28.
696 BSG, B 1 KR 10/11 R, on 06 March 2012: para. 23.
697 BVerfG, 2 BvR 1481/04, on 14 October 2004: para. 31 et seq.; BVerfG, 2 BvC 62/14, on 29 January 2019: para. 63.
698 BVerfG, 1 BvL 8/15, on 26. July 2016, para. 90; BVerfG, 2 BvC 62/14, on 29.01.2019, para. 65.
699 BVerfG, 2 BvC 62/14, on 29.01.2019, para. 65.
700 BMAS, NAP 2.0, Section 5.2.2 (BMAS als FP).
701 Ibid.
702 NAP 2.0, Section 5.4.2 (NAP-Ausschuss).

Since the CPRD ratification, the FP managed also the reporting process: it submitted the first, as well as the second and third combined reports on the CPRD implementation, answered the written questions of the Committee and participated at the live dialogue of the Committee on Germany. In preparing the reports, the BMAS, as the federal FP, was in contact with the state FPs. These had a decisive role in coordinating and sharing the information collected from the Länder-level ministries.[703]

In addition, the FP organizes a two-day meeting with the federal states twice a year, where they discuss various aspects of the CPRD implementation and share best practices.[704] The BMAS together with the KMK also address the implementation of the inclusive education in the federal states.[705]

The scope of responsibilities assigned to the Federal Disability Commissioner by the law, in comparison to the long task list envisaged for the CM,[706] is not that large. The Commissioner ensures that the responsibility of the federation to guaranty equal living conditions for persons with and without disabilities is fulfilled in all areas of social life.[707] In carrying out the function outlined by Section 18.1 of the BGG, the Commissioner, as the National CM, ensures the involvement of the disability organizations, acts as a coordination body between the government and civil society and works towards awareness raising.[708] For this purpose, the former Commissioner, Hubert Hüppe (CDU, 2009 – 2013) established an Inclusion Advisory Council (Inklusionsbeirat) in 2011, which is chaired by the Federal Government Commissioner and, mostly, comprised of persons with various disabilities,[709] as well as a representative of the Conference of state disability commissioners and a representative from the NMB and FP that have observer status. Appointed members from the disability organizations have been recommended by the DBR.[710] In addition to representatives of the disability organizations, the inclusion Advisory Council includes repre-

703 Einstmann, 2020 (Personal Communication).
704 First-level-interview DE/A 2, on 08.08.2018, Q. 7; see also Zweiter und dritter Staatenbericht der BRD, Para. 34; NAP 2.0, Section 4.4 (Gemeinsame Aktivitäten und Maßnahmen).
705 Ibid.
706 OHCHR et al., 2007 : 95.
707 BGG, §18 (1).
708 NAP, 1.0, 2011: 108.
709 Arnade, 2015.
710 The State Coordination Agency Report 2010 – 2013, published on 01.06.2013: 10. Retrieved from: https://www.behindertenbeauftragter.de/DE/Presse-und-Aktuelles/Publikationen/publikationen_node.html.

sentatives of industry, trade unions, churches, cost and service providers, charitable organizations, and scientific and other associations.[711] The representatives of other Federal Ministries e.g., Federal Ministry of Education and Research are not part of the Inclusion Board.

4.1.2.2 Legislative Action

Following the CPRD ratification, the federal government developed the first National Action Plan on the implementation of the CPRD.[712] It was composed of 12 action fields and contained more than 200 individual measures. The CPRD Alliance in its first civil society report on the implementation of the CPRD in Germany stated that the NAP 1.0 lacked binding, verifiable goals that it was supposed to achieve. Moreover, many of the measures listed in the NAP 1.0 did not include specific targets and an implementation schedule, which made measuring or monitoring the implementation of the NAP impossible.[713] The NMB, in its turn, stated that action plans adopted both by the federal government and the federal states, lack a human rights-based approach aligned to the Convention.[714] As a result, the Committee recommended Germany to ensure that "Federal and all local governments establish overarching human rights-based action plans with a clear concept of disability, setting adequate measures to promote, protect and fulfil rights, and with targets and indicators to monitor the implementation of the Convention".[715]

Thus, in 2013, the federal government announced a paradigm shift in all societal fields for DPs. This had to be achieved through further development of the NAP 1.0 and a new Participation Law. Nevertheless, it should have not caused additional expenditure dynamics for the implementing actors.[716]

711 For more on the cooperation with the civil society refer to: https://www.gemeinsam-einfach-machen.de/GEM/DE/AS/NAP/NAP_10/Umsetzung_NAP/Zusammenarbeit_Zivilgesellschaft/zusammenarbeit_zivilgesellschaft_node.html (Last accessed on 01.07.2022).
712 NAP 1.0.
713 CRPD Alliance, 2013:8.
714 National Monitoring Body, 2015:9.
715 CPRD Committee, Concluding Observations on the Initial Report of Germany, Para. 8b.
716 CDU, CSU, & SPD, 2013:67, 77.

In 2015, right after the publication of the sobering Concluding Observations on Germany by the CPRD Committee, the federal government started to develop the second edition of the National Action Plan, which was adopted on 28 June 2016.[717] Moreover, it, despite its initial position that there is no need for legal amendments, started reforming the social and equality rights of DPs that fall under the concurrent legislative competencies and should meet the requirement of ensuring "equivalent living conditions" across the state. Most particularly, it drafted the reform of the Participation Law (Bundesteilhabegesetz) and amendment law to the Equality Law for DPs that was based on the evaluation of the Equal Opportunities for DPs Act (Behindertengleichstellungsgesetz)[718].

On 26 April 2016, the Federal Ministry of Labour and Social Affairs, following intensive consultations with relevant actors,[719] including the federal states and associations of municipalities, published the first draft of the Federal Participation Law (Bundesteilhabegesetz). The draft law addressed a number of concerns raised in the Concluding Observations on Germany. Most specifically, it brought the definition of disability in line with the CPRD disability concept, recognised the right to reasonable accommodation, and foresaw creation and financial support of Independent Consulting Centres (Ergänzende Unabhängige Teilhabeberatung) and strengthening political participation of DPs through their representative organizations at the federal level. Besides, the federal legislator introduced the budget for work as a response to concerns and recommendations expressed by the Committee in the first individual complaint against Germany.[720] However, in view of the DPO's, reforms failed to ensure accessibility in the private sector, exit strategies from the sheltered structures and workplace accessibility.[721]

717 NAP 2.0.
718 See Welti et al., 2014.
719 For the involvement of the DPOs, see chapter VI.
720 Liliane Gröninger at al. vs. Germany (CRPD/C/D/2/2010).
721 Deutscher Behindertenrat et al., 2018:2 et seq.

Subsequent to the adoption of the BTHG by the Bundestag,[722] federal states adopted implementation laws to the BTHG,[723] which, except selected institutional and administrative deviations,[724] had to ensure uniform implementation of social and equality rights of DPs in all 16 federal states. However, on July 7 2020, the FCC declared the parts of the municipal education package in SGB XII introduced with the BTHG to be incompatible with the Basic Law.[725] Most particularly, it found the relevant regulations of the third chapter of the SGB XII constitute an impermissible transfer of tasks by federal law to municipalities and violate their municipal self-government rights. Therefore, the federal government amended the regulations of education and participation with the Participation Strengthening Law (Teilhabestärkungsgesetz).[726]

Legislative amendments concerned also other policy fields e.g. the intensive care and strengthening of Rehabilitation Law (Intensivpflege- und Rehabilitationsstärkungsgesetz- GKV)[727] and newly processed draft on Guardianship Law (Gesetz zur Reform des Vormundschafts- und Betreuungsrechts).[728]

4.1.2.3 Consideration by the Courts

Loyal to the German court and jurisprudence tradition, the CPRD is subjected to the theory of an indirect application via interpretation of existing norms.[729] Accordingly, the provisions of the CPRD have been used to

722 Act on Strengthening the Participation and Self-Determination of DPs [Gesetz zur Stärkung der Teilhabe und Selbstbestimmung von Menschen mit Behinderungen, BTHG] from 23 December 2016, BGBl. I, 3234.

723 For more seeUmsetzungsstand Länder – Umsetzungsbegleitung Bundesteilhabegesetz at: https://umsetzungsbegleitung-bthg.de/gesetz/umsetzung-laender/ (Last accessed on 01.07.2022).

724 See for example the implementation in Hess at: Umsetzungsstand in Hessen and the implementation in Thuringia at Umsetzungsstand in Thüringen (Last accessed on 01.07.2022).

725 FCC- Az. 2 BvR 696/12.

726 BGBl. I 2021 S. 1387; BT-Drucksache 19/27400.

727 BGBl. I 2020 S. 2220; BT-Drucksache 19/19368.

728 For more see the BMJV webpage on Gesetz zur Reform des Vormundschafts- und Betreuungsrechts at: https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/DE/Reform_Betreuungsrecht_Vormundschaft.html (Last accessed on 01.07.2022).

729 Welti, 2016, 635 ff.

substantiate a legal argument based on domestic law[730] or as a clue for indefinite legal norm interpretation[731] but not as the main reference point for interpretation. To this end, in over 11 years of ratification, the CPRD not only reached the German courts but also managed to become a significant source of arguments for case law relating to DPs. The number of citations are quite impressive compared to the consideration rate of other UN Conventions by German lower and higher courts. In contrast to 150 references in 45 years of the Social Pact and Civil Pact, the legal information portal (Juris) brings 456 lower and higher court decisions referring to the CPRD as of June 24, 2022.[732]

The indirect interpretation of the CPRD can, for example, be observed in the Labour Law cases, where it is, normally, used only in combination with the provisions of the European Council Directive 2000/78/EG.[733] This led, for instance, to the recognition of an asymptomatic HIV-Disease as a disability,[734] since the definition of disability in the Directive had to be interpreted in the light of the CPRD.[735]

An example of a successful use of the CPRD in Social Security Law, was the 2014 case, where disabled claimants contested the practice of minimum cash benefits:[736] the disabled adults living in a household with others, normally, were not considered as the person responsible for the household, as a result of which they got a monthly 60 euros less payment than the person who was considered as the head of the household. The federal Social Court ruled that the general assumption that disabled adults were not responsible for the household was indirect discrimination.

The CPRD has been successfully used also in the 2020 judgment recognizing the need for an aid – special therapy tricycle as a preventive measure and its importance for ensuring the basic need for mobility.[737]

Another important case concerning the CPRD was the 2019 case of voting rights for the federal parliament, where a number of persons under full guardianship filed a claim before the Federal Constitutional Court

730 See BSG, B 9 SB 2/09 R, on 29 April 2010: para. 43.
731 See BSG, B 11 AL 5/14 R, on 06 August 2014: para. 21.
732 See also, Aichele, 2018:176.
733 Federal Labour Court (Bundesarbeitsgericht, BAG), 8 AZR 402/14, on 21 April 2016: para. 21 et seq.; BAG, 6 AZR 190/12, on 19 December 2013: para. 52 et seq.
734 BAG, 6 AZR 190/12, on 19 December 2013: para. 56 et seq.
735 European Court of Justice, C-335/11, on 11 April 2013: para. 28 et seq.
736 Federal Social Court, 23.07.2014, B 8 SO 14/13 R, BSGE 116, 210.
737 BSG B 3 KR 7/19 R, Urteil vom 07.05.2020, Rn 29.

after being excluded from the federal elections of 2013. The FCC found the specific linking of voting exclusion to full guardianship to be discriminating and unreasonable and ruled that the regulation was in contradiction to Art. 3 Basic Law. As a result, the Bundestag completely abolished the election exclusion.[738]

In view of this, it might be assumed that the CPRD, unlike other human rights conventions, such as ECHR, quickly became a frequently used instrument for claimants and an important source of judicial interpretation for domestic courts in matters concerning federal laws. However, the efforts of the CPRD Committee to make it a "lively instrument"[739] through General Comments and own jurisprudents failed among domestic courts.[740]

4.1.3 CPRD incorporation and application in the policy fields under the legislative powers of federal states

4.1.3.1 Responsibilities of Focal Points and Coordination Mechanisms

The responsibilities of the Länder-level FPs do not differ that much from the federal FP: they should act as cross-ministerial coordinators, and involve civil society, as well as promote awareness raising and disability-mainstreaming across the ministries.[741] However, their subordinate rank in the government hinders effective discharge of their responsibilities: "we have no competencies at all… to ask any other ministry to do something… we are simply a section in a ministry, which is just one ministry among many…".[742]

738 BVerfG, 29.01.2019, 2 BvC 62/14, BGBl. I 2019, 368; NJW 2019, 1201.

739 Letsas, 2007, S. 65 et seq.; Cremer, 2013, S. 162 et seq. – 183 et seq.

740 BVerfG, 1 BvL 8/15, on 26. July 2016, para. 90; BVerfG, 2 BvC 62/14, on 29.01.2019, para. 65.

741 NAP 2.0, Section 4.2.1.

742 First-level-interview DE/B-T 2, on 23.05.2018, Q. 11. The original reads as follows: „Wir müssen da nichts machen aber wir haben auch gar keine Kompetenzen also irgendein anderes Ressort aufzufordern irgendwas zu machen, also das wir sind … schon mal vorhin erklärt hat, wir sind einfach Referat in einem Ministerium was nur wieder ein Ministerium unter vielen ist, was im Kabinett zusammengefasst wird der Ministerpräsident steht darüber also wir sind als FP, wie gesagt sind wir so koordinierungsstelle vielleicht…".

Their main task, thus, was to develop or as it was in Thuringia, update the process of the Länder-level action plan.[743] Hereby, they created working groups composed of different actors,[744] including the associations of the municipalities. Working Groups were structured into action fields of the plans and were dissolved after completing the development of the action plans. Therefore, the transparent and participative controlling of their implementation was impossible.[745]

Although the scope of responsibilities of Länder-level disability commissioners are similar to the Federal Disability Commissioner, they have not been appointed as a CM under the CPRD. They, on the one hand, serve as contact point for disabled individuals and their organizations, on the other hand, they act as disability consultants for the public authorities.[746] Through their work, they raise awareness on disability and accessibility, and help in ensuring equal opportunities for DPs in all spheres of social life.[747] After the adoption of the CPRD, the Commissioners of Hesse and Thuringia also help in implementing the CPRD at the Länder-level.[748]

In order to carry out their responsibilities, especially in connection with the CPRD, Commissioners of Hess and Thuringia are supported by advisory boards.[749] The inclusion board of the Hessian Commissioner, for example, is composed of at least 16 members from the disability-organizations and 14 other relevant actors, including representatives of municipal commissioners and municipal associations, as well as representatives of Social Ministry.[750] Before the amendment of the Hessian Disability Equality Law (HessBGG), with which the existence and structure of the Board has been legally regulated, the Board met once a year.[751]

743 First-level-interview DE/B-H 1, on 14.01.2016; First-level-interview DE/B-T 2, on 23.05.2018.

744 First-level-interview DE/B-H 1, on 14.01.2016; First-level-interview DE/B-T 2, on 23.05.2018; See also the action plans of Hesse and Thuringia. For the involvement of the Länder-level DPOs, see chapter VI.

745 Monitoring-Stelle, Evaluationsbericht zum Hessischen Aktionsplan zur Umsetzung der UN-Behindertenrechtskonvention, 2013; Monitoring-Stelle, Ergebnisse der Evaluierung des Thüringer Maßnahmenplans zur Umsetzung der UN-BRK, 2016.

746 HessBGG, §18 (2); ThürGIG vom 30.07.2019 (GVBl. S. 303), §20 (1).

747 Ibid.

748 HessBGG, §18 (2.3); ThürGIG, §20 (1.3).

749 HessBGG, §19; ThürGIG, §21.

750 HessBGG, § (2).

751 For more, including the involvement of DPOs and their opinion see chapter VI. The New Commissioner is in office since March 2020.

The Disability Board of Thuringia, in turn, consists of over 12 members with voting rights, including DPOs and 17 members with advisory status, such as representatives of ministries responsible for Social Law, building and construction affairs and education politics, as well as representatives of fractions of the parliament, representatives of municipal associations and commissioners.[752] After the structural changes based on the amendment of the Thuringian BGG, the Board convened first on July 1 2020 under the chairmanship of the Commissioner.[753]

The involvement of state Commissioners in other advisory bodies of the state ministries, instead, is rare. For instance, the Commissioner has not been involved in the state school Advisory Council of Thuringian Ministry of Education, which plays an important role in developing and monitoring the implementation of educational laws.[754] Instead, the Thuringian government decided to establish an Advisory Board on inclusive education. The Board was divided into 6 Working Groups composed of state and non-state actors, including the Disability Commissioner, a few DPO representatives, and a member from the municipal associations, the Social Ministry and fractions of the parliament.[755] It convened in the period of November 2, 2011 (first meeting) and November 16, 2016.[756]

The state school Advisory Council of the Hessian Ministry of Education includes the Hessen State Disability Commissioner as one of its members[757] and there have not been established further advisory boards on inclusive education.

In general, it might be concluded that Länder-level commissioners play an important role in raising awareness about disability-related issues. However, their restrained competencies and resources hinder the productive performance of their actions taken with or across various ministries concerning the implementation of the CPRD, in particular the right to inclusive education.

752 ThürGIG, §21 (2).
753 Link: see: https://www.tlmb-thueringen.de/aktuelles/presse-und-medien/presse-archiv/ (Last accessed on 01.07.2022).
754 See TH ThürSchulG, §39; ThürMitwVo, §7.
755 For the list of members see the beirat_inklusion_geschaftsordnung at: https://bildung.thueringen.de/fileadmin/schule/inklusion/beirat_inklusion_geschaftsordnung.pdf (last accessed on 01.07.2022).
756 Minutes of further meetings are not available online.
757 HSchG, §99a.

4.1.3.2 Legislative action and concideration by the courts in the field of cultural rights

With the ratification of the CPRD, the right to inclusive education became one of the central and most controversial aspects of the legal and political implementation of the CPRD in Germany. The claims landed at the courts of the federal states. However, the results did not justify the expectation of claimants: the Hessian Administrative Court, for example, maintained in its decision of November 2009 that: "the treaty provisions in Art. 24 of CPRD- currently have no domestic validity insofar as they concern the area of public schools".[758] Other courts, including the Federal Administrative Court, came to similar conclusions.[759]

In fact, the aim of the Art. 24 CPRD is twofold: on the one hand, it aims at elimination of discrimination on the grounds of disability in educational settings. On the other hand, it requires establishment of inclusive education at all levels.[760] To achieve this, the SPs are obligated to adopt legal measures that would ensure equal access of disabled children to regular education, reasonable accommodation and physical and structural accessibility of schools. Hereby, CPRD distinguishes between progressive implementation-systemic change towards inclusive education, especially in strongly segregated educational systems[761] and immediately applicable rights-reasonable accommodation, non-discrimination in accessing regular

758 VGH Hessen, Beschluss vom 12. November 2009- 7 B 2763/09 – 1. Leitsatz, NVwZ-RR 2010, 602. "Die Vertragsbestimmungen in Art. 24 des Übereinkommens über die Rechte von Menschen mit Behinderungen – BRK – besitzen derzeit keine innerstaatliche Geltung, soweit sie den Bereich des öffentlichen Schulwesens betreffen"; Similar conclusion in, Hessischer Verwaltungsgerichtshof 7 A 1138/11.Z, Beschluss vom 14.05.2012.

759 BVerwG 6 B 52.09, Beschluss vom 18. Januar 2010, Rn 4; VGH Baden- Württemberg 9 S 1833/12, Beschluss vom 21. November 2012, Rn 56, VB1BW 2013, 386, 389 f.; OVG Lüneburg 2 ME 278/10, Beschluss vom 16. September 2010; OVG Nordrhein-Westfalen 19 E 533/10, Beschluss vom 3. November 2010; SG Augsburg S 15 SO 110/11 ER, Beschluss vom 27. September 2011, Rn 73; VG Düsseldorf 18 K 5702/10, Urteil vom 16. Dezember 2010, Rn 9 ff; VG Arnsberg 10 L 397/10, Beschluss vom 17. August 2010, Rn 12.

760 CPRD, communication No. 41/2017, Rubén Calleja Loma and Alejandro Calleja Lucas v Spain (CRPD/C/23/D/41/2017), adopted on August 28, 2020.

761 CPRD Committee, General Comment No. 4, (CRPD/C/GC/4), adopted 26 August 2016, Paras. 39 and 40.

schools and realization of educational aims enshrined by the Art. 24. Para. 1 CPRD.[762]

The right to education in Germany is stipulated by the Basic law[763] and regulated by the 16 federal states.[764] The general right of all disabled children to schooling has been secured through the non-discrimination provision of the Basic Law as of 1994.[765] Their attendance to special schools, however, has been preferred and promoted both through socio-political structures and legal norms.[766]

On October 20 2011, the KMK took further steps encouraging harmonised access to regular schools for disabled children by adopting the recommendation on inclusive education. Following this, federal states started reforming their school laws.[767] In Hesse the reform process started in 2011 and the amendment law which aimed at adopting the Hessian School Law to the CPRD has been passed in 2017.[768] Thuringia started the reform process after the School Law was evaluated by the NMB, although it did not take into account its recommendations.[769] Nevertheless, regardless of the principle of federal loyalty,[770] the reformed school laws, except reforms of Bremen and Hamburg, have not been adapted to the requirements of the CPRD: Thuringian School Law, for example, does not provide entitlement to inclusive schooling, instead, parents should choose the type and form of the school.[771] Hessian School Law stipulates the primacy of regular school but does not provide entitlement to attendance of regular school.[772] Some federal states e.g., Saxony-Anhalt even stipulate that disabled children are obligated to attend special school if other school forms cannot cover the required special needs.[773] The majority of federal states, including Hesse[774] stipulate a resource reservation for the schooling of children with special

762 Ibid., Para. 40.
763 GG, Art. 7 (1).
764 E.g., HessVerf, Art. 56 (1); ThürVerf, Art. 23 (2).
765 Welti, 2005: 682.
766 Welti, 2005: 681–694; Gercke et al., 2017.
767 Mißling/Ückert, 2014.
768 LT Hessen, Drucksache 19/3846.
769 First-level-interview DE/B-T 2, on 23.05.2018, Qs. 3 and 4.
770 Kaiser, 1957/58: 526 ff; Heckt, 1958: 445; Maunz/Dürig, 2014, Art. 32 Rn 70 and Art. 59 Rn 185; Dreher, 1969.
771 TH ThürSchulG, §3 (1).
772 HSchG, §51.
773 SchulG LSA, as amended on 8.07.2022 by GVBl. LSA S. 149)2, §39 (1).
774 HSchG, §51 (2.2).

educational needs in regular schools,[775] whereas the assignment to a regular school cannot be subject to resource and organization reservations as these are inconsistent with the provisions of the CPRD and ECHR.[776]

Some years after the CPRD ratification, federal states, including Hesse and Thuringia passed action plans on the implementation of the CPRD. A few of them have been updated after the NMB evaluation.[777] The action plans aimed at laying down the future steps of the federal state governments in implementing CPRD provisions fall mainly under the exclusive legislative powers of the federal states e.g., school education and accessibility. The steps laid down in the action plans were on the one hand subjected to financial reservations. For instance, the Hessian Plan stated: "based on connectivity principle (Konnexitätsprinzip) in Art. 137 of the Hessian Constitution, the implementation of measures in municipalities should be carried out within the framework of municipal services of general interest and in accordance with public budget availability".[778] On the other hand, the Action Plans failed in setting up CPRD conform objectives,[779] especially in the field of education. The government programs of federal states have confirmed this line of action.[780] However, it is assumed that they had an important role in Länder-level incorporation of the CPRD: "we brought out an action plan in 2012 ... this is our transformation at the political level. We have transformed what the federal laws, federal side does, into the Hessian administration, into the Hessian parliament and into the Hessian politics".[781] Further efforts of the state parliaments in promoting and monit-

775 See Lange, 2017. For the implementation of the right to inclusive schooling in individual federal states see, Dörschner, 2014; Schippmann, 2016; Bernhard, 2016; Kroworsch, 2019.

776 E.g., CPRD Committee, Communication No. 41/2017 of August 28, 2020; ECTHR disision of September 20, 2020, G.L. v. Italy (no. 59751/15); see also Mißling/ Ückert, 2014: 43.

777 Thuringia adopted the updated action plan on March 29 2019.

778 Hessischer Aktionsplan zur Umsetzung der UN-Behindertenrechtskonvention, 2012, §1.2.

779 CPRD Committee, Concluding Observations on the Initial Report of Germany, Para. 5.

780 E.g., CDU und BÜNDNIS 90/DIE GRÜNEN, Koalitionsvertrag 2014 – 2019; die Linke, SPD und Bündnis 90/die Grünen, Koalitionsvertrag 2014 – 2020.

781 First-level-interview DE/B-H 1, on 14.01.2016, Q. 1. The original reads as follows: "Wir haben in 2012 einen Aktionsplan herausgebracht … Also das ist so gesehen unsere Transformation auf politische Ebene. Wir haben das was die Bundesgesetze, Bundesseite macht in die hessische Verwaltung, ins Hessische Parlament und in die hessische Politik transformiert".

oring the implementation outside of legislative processes is insignificant; there are very few parliamentary discussions regarding inclusive education and, at least in the examined federal states, there have been no inquiries of MPs regarding accessibility of schools.

To this end, it becomes clear that the possibility of disabled children to receive equal and inclusive education, especially for disabled children wishing to make Abitur varies from federal state to federal state.[782] For instance, the number of children with special needs in regular schools from 2009 to 2018 rose only by 22.54 %, which means that years after the ratification more than the half of children with special needs attend segregated schools: in 2009 from 483.267[783] children with special needs only 95.475 (about 19.76 %)[784] attended regular schools and in 2018 from 556.317[785] children with special needs only 235.325 (about 42.30 %)[786] attended regular schools. The rate of inclusion varies from federal state to federal state and depending on the type of schools.[787] For instance, Hauptschule have the highest rate of inclusion, which is to be seen as critical as after graduation from this type of school, the chances of DPs to access the general labour market is significantly low. Gymnasiums show the lowest rate of inclusion, whereas they ensure direct access to universities. This might be explained not only by social factors but also and primarily by fragmented and therefore highly unequal access to reasonable accommodation and non-existence of universally accessible mainstream schools as the subsections below show.

4.1.3.2.1 Reasonable educational accommodations

The CPRD defines reasonable accommodations as necessary and appropriate modification and adjustments not disposing a disproportionate or undue burden, where needed in a particular case, to ensure to DPs the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.[788] Reasonable accommodation is a key to the non-discrimination concept of Art. 5 CPRD. In the context of Art. 24

782 Aichele et al, 2019: 30 – 36.
783 KMK, 2020: 3.
784 KMK, 2020: 6.
785 KMK, 2020: 3.
786 KMK, 2020: 6.
787 KMK, 2020.
788 CPRD, Art. 2.

CPRD, reasonable accommodation is an instrument for ensuring the equal right of each disabled child to inclusive schooling at all educational levels. The concept is also promoted by the ECTHR,[789] according to which the provision of reasonable accommodation cannot be denied on the basis of financeability of services.[790] It is also a part of EU Law.[791]

In Germany, the explicit entitlement to reasonable accommodation and recognition of its denial as discrimination by the Federal Disability Equality Law has been introduced as a reaction to the recommendation of the CPRD Committee.[792] Some federal states followed the example of the federation,[793] whereas others did not, even after amending their disability equality laws.[794] Accordingly, these federal states did not secure the right of DPs to reasonable accommodation in policy fields under their exclusive legislative competencies and within their public authorities.

In general, reasonable educational accommodation is divided into a social support system or core school area. As a result, medical rehabilitation, technical e.g., Braille displays and computers, and accompaniment of disabled children to schools are regulated through federal laws. However, federal states lay out the administrative scope through their framework laws. This leads to diverging practises due to varying decision-making logics of cost bearing authorities of federal states.[795] Nonetheless, according to the Federal Social Court, the provision of reasonable accommodation should be interpreted uniformly across Germany.[796] Reasonable educational accommodations concerning core areas of schools e.g., school helpers, communication assistants and organizational adjustment of schools, in-

789 Grigoryan, 2017; Waddington/ Broderick, 2017.
790 Case of G.L. v. Italy (application no. 59751/15).
791 Lawson, 2017; Ferri, 2018.
792 CPRD Committee, Concluding observations on the initial report of Germany, Paras. 13 and 14.
793 E.g., HessBGG, §4; ThürGIG, §4 (4); BremBGG, §7 (2) and (3); HmbBGG, §6 (2); SächsInklusG, §4 (3); BGG LSA, as amended on 6.05.2019 by GVBl. LSA S. 85, §4; BGG NRW, as amended on 11. April 2019 by GV. NRW. S. 207, §**3**.
794 E.g., LGBG; BbgBGG, as amended on 18.12.2018 by GVBl. I/18, (Nr. 38) S. 16; BayBGG.
795 Welti, 2017.
796 BSG, Urt. v. 22.03.2012, Az. B 8 SO 30/10 R, BSGE 110, 3013, Rn. 21; BSG, Urt. v. 15.11.2012, Az. B 8 SO 10/11 R, BSGE 112, 196, Rn. 15; SG Leipzig, B. v. 16.11.2015, Az. S 5 SO 66/15 ER, juris Rn. 32f.

stead have to be ensured through school laws of federal states.[797] This, normally,[798] leads not only to the refusal of reasonable educational accommodation,[799] but also creates responsibility conflicts between the cost bearing authorities.[800]

Thus, as a matter of fact, disabled children wishing to attend regular schools face serious obstacles in obtaining reasonable accommodations necessary not only for their equal access to regular schools but also for achieving equal opportunity of getting quality education, that would ensure development of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential. Accordingly, for accessing their right to reasonable educational accommodation, disabled children are often forced to go through long-lasting court procedures, which is not an option for many disabled children and their families, or they should give up their wish of attending regular schools.

4.1.3.2.2 Accessible schools

One of the fundamental requirements of the CPRD is stipulated by the Art. 9. It requires the SPs to take legislative and administrative measures to ensure to DPs access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. In line with the CPRD Committee's General Comment on Art. 9 of the CPRD, the duty to provide accessibility is an ex ante duty, meaning that SPs have the obligation of providing accessibility before

797 LSG Schleswig-Holstein, B. v. 15.04.2014, Az. L 9 SO 36/14 B ER, SchlHA 2014, 50; LSG Schleswig-Holstein, B. v. 17.02.2014, Az. L 9 SO 222/13 B ER, SchlHA 2014, 112; SG Rostock, B. v. 28.10.2013, Az. S 8 SO 80/13 ER, RdLH 2014,30.

798 Exception: OVG Sachsen, 3 A 975/19, 23.09.2020.

799 VG Berlin, 3 L 120.18, 19.03.2018; VGH Bayern, B. v. 04.09.2015, Az. 7 CE 15.1791, BayVBl 2016, 129; OVG Rheinland-Pfalz, Urt. v. 27.10.2011, Az. 7 A 10405/11, ZFSH/SGB 2012, 284; VGH Hessen, B. v. 10.11.2004, Az. 7 TG 1413/04, NVwZ-RR 2005, 189; OVG Berlin, B. v. 22.02.2002, Az. 8 SN 164.01, NVwZ-RR 2002, 577; OVG NRW, Urt. v. 15.06.2000, Az. 16 A 3108/99, Behindertenrecht 2000, 239; VG Frankfurt, B. v. 15.11.1995, Az. 7 G 2569/95 (2), RdLH 1996, 30.

800 Welti, 2017.

receiving an individual request to enter or use a place or service.[801] In the field of education, the provision obligates the SPs to ensure inclusive school systems at all educational levels.

In Germany, the requirements of Art. 9 CPRD are not new: disability equality laws of the federation and federal states foresaw provisions addressing accessibility of public authorities long before the ratification of the CPRD.[802] Nevertheless, some federal states including Hesse continue the strategy of weakening the duty to ensure accessibility in administrative fields falling under the own responsibility area of municipalities,[803] to which belong also schools. Even in the federal states where there were no such limitations, finding at least one fully accessible school in a municipality is not an easy task, which often excludes the option of attending regular school.

The accessibility of generally used buildings, including schools, has been addressed also in the building and construction laws of the federal states.[804] However, 12 federal states, with the exception of Brandenburg, Hamburg, Saarland and Thuringia, limited the application of accessibility provisions to cases that do not concern old buildings, to which the majority of schools belong and/or do not cause disproportional burden.[805] The number of schools that have been made accessible or have been built/renovated in line with accessibility standards of state building and construction laws as well as the disability laws is not known.[806]

Similarly, there is no data on the resources available to ensure adequate staff, supervision and training to guarantee support for disabled pupils and students in mainstream schools.[807] In fact, the main step taken in this respect was the recommendation jointly adopted by the KMK and the HRK

801 CPRD Committee, General Comment No 2, Para. 25; see also, CRPD/C/14/D/21/2014,; Grigoryan, 2017.
802 Welti 2012, 2015b.
803 HessBGG, §10 (5); SächsInklusG, §1 (3).
804 E.g., HBO, as amended on 3.06.2020 by GVBl. S. 378, §54 (2); ThürBO, as amended on 23.11.2020 by GVBl. S. 561, §50 (2).
805 E.g., HBO, §54 (3); SächsBO, as amended on 1.06.2022 SächsGVBl. S. 366, §50 (3); BauO LSA, as amended on 18.11.2020 by GVBl. LSA S. 660, §49 (3); BauO Bln, as amended on 12.10.2020 by GVBl. S. 807, §50 (5).
806 Second and Third Periodic Report of Germany, Q and A on education (Art. 24) Section D (German version).
807 Ibid. Q. 24b.

Educating Teachers to Embrace Diversity,[808] which, as the teacher training programs Curriculum of the universities show, did not result in tangible changes.

In addressing Art. 24 CPRD, governmental programs, action plans and courts, thus, point out the "progressive realisation" clause, thereby disregarding not only the fact that it contains immediately applicable provisions, but in over 12 years of the CPRD ratification, also fails to recognize that the "progressive realisation" clause requires concrete, expeditious, equal, and coordinated legislative and administrative actions[809] leading to the full realisation of inclusive education across the SP.[810]

4.2 Federal Republic of Austria

4.2.1 Ratification, legal status and consideration by the courts

On July 9 2008, the Austrian National Council (Nationalrat) had approved the ratification of the CPRD and its Optional Protocol in accordance with Art. 50, Para. 1 no. 1 B-VG with a statement that "in line with the Art. 50 Abs 2 Z 3 B-VG the application of the CPRD is to be fulfilled through the adoption of relevant domestic legal measures".[811] On July 25, 2008, the Federal Council (Bundesrat) had approved the decision of the National Council unanimously.[812] Consequently, the CPRD together with its Optional Protocol (OP-CPRD) entered into force in Austria on 26 October 2008.[813] To this end, the government (federal level), the Länder (regional level) and local authorities (local level) are, according to the first state report of Austria, under equal obligation to implement the Convention in Austria.

Nevertheless, the courts, in pointing out the declaration made by the government in the CPRD ratification decision, find that "it is necessary to adopt transformation norms that would assist in insuring effective applica-

808 Decision of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder of 12 March 2015 and decision of the German Rectors' Conference of 18 March 2015 (Lehrerbildung für eine Schule der Vielfalt – Gemeinsame Empfehlung von Hochschulrektorenkonferenz und Kultusministerkonferenz).

809 CPRD Committee, General Comment No 4, Para. 39; CRC, General Comment no 5, Paras. 6 and 9.

810 CPRD communication No. 41/2017.

811 BGBl. III Nr. 155/2008.

812 Ibid.

813 Federal Law Gazette, BGBl. III No. 155/2008.

tion of the Convention within the framework of the domestic law".[814] "Such norms, nevertheless, have not yet been adopted".[815] In view of this, "the UN CRPD as an international treaty does not (actually) have legal effect within the domestic law; it is not directly applicable, does not create any subjective right and cannot serve as a legality measurement for another legal act".[816]

Prior to the ratification, Austria did not evaluate if the domestic laws were consistent with the CPRD provisions as it was underestimated: "in Austria we thought that the CPRD would not affect us that much and that we therefore would not need to amend many laws. It was only later that we saw what a high standards the CPRD sets, which actually made it clear that we have to amend many laws".[817] The Austrian civil society representatives, in their turn, noted that the Austrian legal framework, especially with regard to coordination of responsibilities between the governmental levels, does not meet the standards of the Convention.[818] As a result, the CPRD committee noted that there is an apparent fragmentation in the different definitions of disability, different accessibility standards, and different protections against discrimination across the various Länder and that according to Art. 4, Para. 5 of the Convention, the "administrative difficulties of a federal structure" do not allow a state to avoid its obligations under the Convention.[819] Henceforth, the CPRD Committee recommended Austria to ensure that federal and regional governments consider an overarching legislative framework and policy on disability in conformity with the provisions of the Convention.[820]

814 See, the OGH (Supreme Court), Case (3Ob97/13f mwN), 15.05.2013.
815 See, the OGH (Supreme Court), Cases (7Ob135/14z iFamZ 2015/26, 34 [Ganner]; (7Ob134/14b, SZ 2014/101).
816 See, the OGH (Supreme Court), Cases (3Ob65/11x SZ 2011/106); (4Ob223/08k; Mayer/Muzak, Bundes-Verfassungsrecht Art. 50 B-VG AnmII.3 mwH).
817 First-level-interview AT/A 1, on 27.04.2016, Q. 3. The Original reads as follows: "Meine Einschätzung ist die, dass wir vor der Ratifizierung die UN-BRK sehr unterschätzt haben. Wir haben uns in Österreich gedacht, dass die UN BRK uns nicht sehr betreffen würde und dass wir deswegen nicht viele Gesetze ändern müssen. Wir haben erst später gesehen welche hohen Standards die UN BRK ansetzt und dass es wirklich bedeutet, dass wir viele Gesetze ändern müssen."; See also Austrian written replies to list of issues in relation to the initial report of Austria, Para. 32.
818 Austrian Civil Society Representatives 2013, Paras. 1 – 5.
819 CPRD Committee, Concluding observations on the initial report of Austria, Para. 10.
820 Ibid., Para. 11.

In its Second and Third Periodic Reports, the Austrian government reiterates that:

> "the Federal, provincial and municipal governments have been equally obliged to implement the CPRD since its entry into force. In addition to administration, both the federal and provincial legislative bodies and case-law are required to ensure the conformity of measures with the CPRD or make decisions in accordance with the CPRD".

Nonetheless, the federal government took selective steps towards adaption of transformation norms that would assist in ensuring the effective application of the Convention within the framework of the domestic law.[821] Consequently, courts continue stating in their decisions that the CPRD cannot be considered in the domestic law as there is no appropriate transformation laws in the considered cases.[822]ArtsExceptions to these are the cases concerning Guardianship Law (Erwachsenenschutz-Gesetz).[823]

As of June 2022, there have been four individual complaints launched against Austria to the CPRD Committee; two of which have already been decided and two are pending.[824] The first communication has been launched in February 2014 by an Austrian national, who claimed that failure of the Austrian authorities to promote the accessibility of a person with disabilities in the context of a private dispute between neighbours constitutes a violation of his rights under Arts. 3, 9, 14, 19, 25, 26 and 28 of the CPRD.[825] The Committee came to the conclusion that "the SP has failed to fulfil its obligations under article 9, read alone and in conjunction with article 3 of the Convention and recommended the SP to provide the complainant with an effective remedy, in particular by facilitating a solution to the conflict related to the use of the path, which was the only means of gaining access to the complainant's family home, taking into account the special needs of Complainant as a disabled person; … reimbursing the complainant for the legal costs reasonably incurred in domestic pro-

821 See below.

822 OGH, 10ObS162/16w; 5Ob183/17y; 10ObS16/18b; 3Ob242/19p, 24.01.2017.; OGH, 10ObS162/16w, 24.01.2017; OGH, 5Ob183/17y, 21.12.2017; OGH, 10ObS16/18b, 20.02.2018; OGH, 3Ob242/19p, 22.01.2020.

823 OGH, 3Ob87/19v, 29.08.2019; OGH, 9Ob53/19p, 30.10.2019.

824 For the full list of pending cases see: https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/Tablependingcases.pdf (Last accessed on 17.07.2022).

825 CPRD Committee, communication No. 26/2014, on 16.02.2018.

ceedings and in the processing of the communication".[826] The Committee was also of a view that the SP is under an obligation to take measures to prevent similar violations in the future through ensuring continuous capacity-building of the local authorities and courts responsible for monitoring implementation of accessibility standards; developing an effective MF and set up efficient Monitoring Bodies with adequate capacity and appropriate mandates to make sure that accessibility plans, strategies and standardization are implemented and enforced...".[827] A follow-up progress report on this individual communication is not yet available but media contributions write that Austria, most specifically TyroleanGovernment, does not have any intention to solve this issue even after the decision of the CPRD Committee.[828]

The second communication has been submitted in March 2014 by a blind Austrian citizen, who claimed that his rights under the Convention: namely Arts. 2, 5 (2), 9, 19 and 20 had been violated by the refusal to provide accessible live information in public transport for a blind person on an equal basis with others.[829] The CPRD Committee found that the "SP has failed to fulfil its obligations under articles 5 (2); 9 (1) and (2) (f) and (h) of the Convention".[830] To this end, the Committee recommended the SP to remedy the lack of accessibility to the information visually available for all lines of the tram network and provide adequate compensation to the author for the legal costs incurred during domestic proceedings and the costs incurred in filing the present communication; to take measures to prevent similar violations in the future, including by creating a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment necessary to enable the access by persons with visual impairment to the information that is visually available. The SP should also ensure that all newly procured tram lines and other public transport networks are fully accessible for DPs; ... ensuring that disability rights laws concerned with non-discriminatory access in areas such as transport and procurement include access to information and communications technology and the many

826 Ibid. Para. 10A.
827 Ibid. Para. 10B.
828 derStandard.at, "Behinderter Tiroler kämpft seit 17 Jahren erfolglos um sein Recht ", 25. Okt. 2018; Hannah Marlene Wahl, "UN rügen Österreich: Rechte von Menschen mit Behinderung ernstnehmen", Unsere Zeitung, 01.07.2018.
829 CPRD Committee, Communication No. 21/2014, on 21.08.2015.
830 Ibid. Para. 9.

goods and services central to modern society that are offered through such technology. Legislation should incorporate and be based on the principle of universal design and should provide for the mandatory application of accessibility standards and for sanctions for those who fail to apply them".[831] Nevertheless, the follow-up progress report on individual communications shows that the SP neither took any significant steps to ensure prohibition of similar violations by amending or adopting necessary legal measures nor it provided compensation for the legal costs incurred during the domestic proceedings and for filing the communication.[832] The inactivity of the SP has been also confirmed by the 2018 parallel report of the FMC.[833]

4.2.2 Responsibilities of Focal Point/Coordination Mechanisms and legislative actions

As the federal FP and the CM under Art. 33.1 CPRD, the BMSGFK promotes the dissemination of knowledge of the rights guaranteed by the Disability Rights Convention and the possibilities for their implementation through appropriate measures.[834] In issues concerning social affairs it coordinates its actions with other relevant Federal Ministries and provinces through the Federal Disability Advisory Board.[835] However, "in Austria, contrary to the CPRD, there is no FP that can involve other actors in a binding manner:[836] there is, of course, the FP of the Social Ministry, which continuously calls for action, but it is unpredictable if these calls for action will be followed. One can see what a tough process it is; one actor shifts it's responsibilities on another and no actor feels really responsible".[837] To this end, the coordination in all other matters are managed by the relevant

831 Ibid.
832 CPRD Committee, Follow-up progress report on individual communications, (CRPD/C/14/3), adopted 17 August-4 September 2015.
833 Federal Monitoring Committee, 2018, Art. 9.
834 BBG, §13f.
835 First-level-interview AT/A 1, on 27.04.2016, Qs. 7 – 10.
836 See also section 1.3 of part II in this chapter.
837 Third-level-interview AT/A 1, on 23.05.2016, Q. 2. The original reads as follows: "… Es gibt in Österreich, entgegen der UN-Konvention keinen FP, der die anderen Akteure verbindlich mitinvolviert. Es gibt zwar den FP Sozialministerium, der auch immer wieder einfordert, aber ob dieser Forderung nachgegangen wird ist nicht abzusehen. Man sieht daran, was das für ein zäher Prozess ist. Es schiebt der eine dem anderen etwas zu, was er machen sollte, aber keiner fühlt sich wirklich verantwortlich".

federal ministry as it is stipulated by the act on the Federal Ministries:[838] For example the Federal Ministry of Education established its own working groups on inclusion strategy with provinces, and the Federal Ministry of Justice, in turn, set up a working group with provinces on supported decision making.[839] Nevertheless, efforts to conclude an agreement[840] between the federation and provinces concerning the cooperation in accessibility, personal assistance, de-institutionalization and employment was unsuccessful.

In the same vein, the federal government in drafting the National Disability Action Plan (NAP- 2012 – 2020) failed not only in laying down the exact responsibility fields of individual ministries but also the provinces have not been involved in this process despite the fact that "very crucial areas of responsibilities are part of their jurisdiction".[841] The participation of other relevant actors, including disability organizations has been limited, mainly, to submitting commentaries on the final draft of the NAP, which has not been considered with the explanation that "the date for submission to the Council of Ministers had already been set".[842] The NAP was then adopted by the Council of Ministers but has not been sent to the National Council.

The National Action Plan 2022 – 2030 also contains a number of measures formulated through a participative policy-formulation process. However, it again does not have secured financing, which makes its implementation questionable.[843]

In response to criticism of the CPRD Committee,[844] the Federal Ministry of Justice (BMJ) started a 5-year reform process of the Guardianship Act in late 2013. To manage the participation process, which in fact was the first as such, the BMJ set up two working groups; a big and a small group. The small group was aimed at collecting ideas and discussing possible alternatives to existing provisions and included experts from judges, notaries, attorneys, representatives of guardianship organizations, service providing

838 Bundesministeriengesetz 1986, §3 (1).
839 First-level-interview AT/A 1, on 27.04.2016, Qs. 7 – 10; see also BMASK (2017). Bericht über die Lage der Menschen mit Behinderungen in Österreich: 19 – 20.
840 Link. 2015.
841 Federal Monitoring Committee, 2018: 3.
842 Federal Monitoring Committee, 2013: 7.
843 BIZEPS2022.
844 CPRD Committee, Concluding Observations on the Initial Report of Austria, Paras. 27 and 28.

organizations and Guardianship Law professors.[845] The purpose of the big working group was to receive feedback from a more diversified group of people on the progress and results of the small working group.[846] Later, the BMJ organized three special working group sessions primarily for persons under guardianship.[847] Depending on the issue discussed, representatives of other Federal Ministries e.g., BMASK and national social security agencies also took part at the sessions of the working groups.[848] Nevertheless, participants from the provinces were underrepresented and the representatives of the provincial governments were missing.[849] In March 2017, the Adult Protection Act (2. Erwachsenenschutzgesetz) had been adopted by the National Council[850] and entered into force in July 2018. However, provinces did not yet adopt provisions that would expand support measures and provide adequate alternatives ensuring supported decision-making.[851]

Another participative process has been initiated by the Federal Ministry of Europe, Integration and Foreign Affairs (BMEIA), which established a working group composed of academics, civil society and DPO representatives, as well as members of the FMC and some Federal Ministries e.g., BMASGK to implement the recommendation of the CPRD Committee regarding the correct translation of the Convention into German language.[852] The new version of the CPRD translation had been published in 2016 (BGBl. II Nr. 105/2016) and became binding in Austria, but other German language states, including Germany did not adopt it.

The next legislative initiative of the federal government was the 2017 reform of three federal disability acts (Inklusionspaket- BGBl. I 2017/155). It had been developed in consultations with the relevant actors and contained a number of improvements in the protection from discrimination, financing of employment-related projects and strengthening the position of the FMC. However, similar steps have not been taken at the Länder-level.

845 Lamplmayr/Nachtschatt, 2016: 71 – 73.
846 Ibid.
847 Ibid.
848 Lamplmayr/Nachtschatt, 2016: 75 – 77.
849 Ibid.
850 BGBl. I Nr. 59/2017.
851 Federal Monitoring Committee, 2018, Art. 12; Österreichische Behindertenrat, 2018, Art. 12.
852 Federal Monitoring Committee, 2018, Articles 1 – 4; Zweiter und dritter Staatenbericht Österreichs, 2019, Q. 5.

The rest and with it the majority of the CPRD Committee recommendations concerning e.g., accessible building and construction, inclusive education, and de-institutionalization remains either unaddressed by the federal and provincial governments, or amendments have even led to *deterioration* of the situation.[853]

The actions of the Länder-level FPs/CMs with regard to the CPRD implementation were more symbolic than factual: for example, in 2018, the Tyrolean government, with the involvement of all the governmental and non-governmental actors,[854] drafted and adopted the above mentioned Participation Act,[855] which amended the disability definition to implement the recommendation of the CPRD Committee. However, "this has hardly changed anything with regard to the services for DPs ".[856] For instance, the so-called 'Participation Act' not only reinforced special schools,[857] sheltered workshops[858] and living in special institutions[859] but also continues requiring DPs or their family/relatives/partners to co-finance their disability-related services.[860]

Except for the adoption of the Participation Act, there have been no significant initiatives of evaluating or aligning the provincial laws with the CPRD provisions. Even the announced[861] Disability Action Plan has not been adopted. Accordingly, the Tyrolean MC stated in March 2018 that instead of tangible improvements, the situation of DPs even worsened, especially with regard to inclusive education, independent living and accessibility.[862]

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853 Federal Monitoring Committee, 2018, e.g., Arts. 9, 19, 24, 33 (2); Österreichische Behindertenrat, 2018, e.g., Arts, 9, 19, 24, 33.

854 Parliamentary documents, including commentaries can be found at: https://portal.tirol.gv.at/LteWeb/public/ggs/ggsDetails.xhtml?id=14904& (Last accessed on 01.07.2022).

855 LGBl. Nr. 32/2018.

856 Federal Monitoring Committee, 2018, Art. 4.

857 Tiroler Teilhabegesetz, §9 (2b), §10 (1b and c).

858 Tiroler Teilhabegesetz, §11 (2a – f).

859 Tiroler Teilhabegesetz. §12.

860 Tiroler Teilhabegesetz. §23, §24.

861 , 2019.

862 See the Commentary of the Tyrolean Monitoring Committee on the formation of new provincial government at: https://www.tirol.gv.at/fileadmin/themen/gesellschaft-soziales/UN-Konventionen/tiroler-monitoring-ausschuss/dokumente/stellungnahmen/Wichtige_Anregungen_aus_dem_Staatenbericht_an_die_Tiroler_Politik.pdf (Last accessed on 01.07.2022).

The federal government justifies the inconsistent and insufficient steps taken to domesticate the CPRD into the provincial laws by the federal structure of Austria, where each provincial government is responsible for implementing the CPRD within its own area of legislative power.[863] However, the extensive legislative powers of federal government,[864] and the fact that provinces are obliged to take measures that are necessary in their independent sphere of influence for the implementation of state Treaties,[865] allow assumptions that the legislative responsivity in these policy fields lays, both nationally and internationally[866] by the federal government.

Against this background, it should be mentioned that although the Austrian provinces have budgetary authority, their revenues come, largely, from financial equalization and they cannot raise their own taxes.[867] Accordingly, provinces decided to demand a "disability fund" that would ensure the funding of measures for the assistance of DPs concerning the implementation of the CPRD from the federal government at the 2014 meeting of social officers of provinces (Konferenz der Landessozialreferenten). The demand had been repeated at the 2018 meeting,[868] but only in May 2022 an agreement had been achieved in this respect.[869] However, the provincial governments still have a lot of leeway. This seriously endangers equal consideration of CPRD Committee's recommendation "to ensure that federal and regional governments consider adopting an inclusive legislative framework and policy on disability in Austria, in conformity with the Convention".[870]

863 Initial Report of Austria, 1 – 3; First-level-interview AT/A 1, on 27.04.2016, Qs. 6 and 16.
864 B-VG, Arts. 10 and 14 (1), Art. 14a (2); Thorlakson, 2003.
865 "If a province does not fulfill this obligation in a timely manner, the responsibility for such measures, in particular for the enactment of the necessary laws goes to federation" B-VG, Art. 16 (4).
866 VCLT, Arts. 26 and 27; CPRD, Art 4 (5).
867 Bußjäger, 2018c.
868 VOL.AT, Länder begrüßen neuen Anlauf zur Harmonisierung der Mindestsicherung, 13.04.2018; kaernten.ORF.at, Einheitliche Mindestsicherung gefordert, 14.04.2018; see also Parlamentskorrespondenz Nr. 1421 vom 15.12.2016.
869 Parlamentskorrespondenz Nr. 495 vom 12.05.2022 (Last accessed on 01.07.2022).
870 CPRD Committee, Concluding observations on the initial report of Austria, Para. 11.

4.3 Kingdom of Denmark

4.3.1 Ratification, legal status and concideration by the courts

The proposal of the Danish government to ratify the CPRD had been approved by the parliament on May 28, 2009.[871] Accordingly, it was ratified by the executive without reservations on 13 July 2009 and came into force on 23 August 2009.[872] To this end, it, according to the Danish government, "must … be observed by all authorities applying its legislative provisions, including state, regions and municipalities".[873] This means that administrative authorities should exercise their discretionary powers in such a way that administrative acts conform to International Law, which is known as the rule of instruction, but their actions should be guided by and based exclusively on domestic law[874]. The best example for this delivers the Supreme Court case of 2011,[875] where the appellant, who due to her disability (Epidermolysis Bullosa- EB) had recurring expenses for dental treatment, maintained that the costs of dental treatment should be covered by the municipality as these costs are caused by her disability and that there was no other legislation that would cover the additional cost for dental care. Therefore, the interpretation of section 100 of the Services Act should not be restrictive and should consider the disability concept of CPRD and the right to equal treatment.[876] The Supreme Court has stated, inter alia, that it does not follow from the wording of section 100 of the Services Act that a municipality must cover medical and dental costs, and that this is not stated in the guidelines to this law. It must be assumed that it is a settled administrative practice that expenses for medical and dental treatment are not covered by this provision, which has always been stated in the guidelines of

871 B 194 – 2008–09 (Forslag til folketingsbeslutning om Danmarks ratifikation af FN's konvention af 13. december 2006 om rettigheder for personer med handicap).

872 Bekendtgørelse nr. 35 af 15. september 2009 af FN-konvention om rettigheder for personer med handicap; See also, the Draft Combined second and third periodic report of Denmark, Para 5. The ratification date mentioned in the First report deviates from the combined second and third periodic report of Denmark (see, CRPD/C/DNK/1, Para. 1).

873 CRPD/C/DNK/1, Paras. 36 and 37; Draft Combined second and third periodic reports of Denmark, Para. 7.

874 Harhoff, 1996: 151 – 182.

875 Supreme Court case 52/2010 (dom af 18–10–2011).

876 Supreme Court case 52/2010 (dom af 18–10–2011), Para 3.

the Ministry of Social Affairs.[877] Therefore, the Court had ruled that "this was in accordance with the principle of sector responsibility and neither the UN Disability Convention, which has been ratified by Denmark, nor the principle of equal treatment of DPs can lead to a different result".[878]

Thus, the CPRD is "a relevant source of law and can be and is mentioned before and considered by courts although it is not incorporated into Danish law".[879] Nevertheless, in over 12 years of ratification, the CPRD can be found in only four disability-relevant cases of the Supreme Court.[880] In all four cases the CPRD has been invoked by complainants and led to statements that the CPRD provisions have not been violated. The most recent case,[881] for example, where it was assessed whether the state administration's decisions on the forced release of disabled parent's child for adoption and subsequent granting of adoption was valid, the Supreme Court stated that "the decision of adoption without consent was not based on parent's disability"[882] but on the fact that "the child's affiliation with the foster family had assumed such a character that it would be detrimental for the child to break that affiliation, especially in taking into account the continuity and stability of the child's upbringing. Hence the court held that the conditions for adoption without consent under the Adoption Act were met"[883] and "thus it is not in breach of CPRD".[884]

In fact, prior to CPRD ratification, the Danish government established a working group[885] that had to assess the consistency of domestic laws with the CPRD, especially Arts. 5, 9 and 24 CPRD.[886] It suggested to amend the Parliamentary Election Act[887] and, despite explicit inconsistencies, especially with regard to Arts. 5, 9, 24 and 29 CPRD,[888] it came to the conclu-

877 Ibid. Para. 6.
878 Ibid. Para. 7.
879 Draft Combined second and third periodic reports of Denmark, Para. 6.
880 Supreme Court case 52/2010 (dom af 18–10–2011); Supreme Court case 16/2016 (dom af 22–12–2016); Supreme Court case 159/2017 (dom af 18–01–2018); Supreme Court case 106/2018 (dom af 18–02–2019).
881 Supreme Court case 106/2018 (dom af 18–02–2019).
882 Ibid. Para. 6.
883 Ibid. Para. 6.
884 Ibid. Para. 7.
885 A Member of the Working Group was appointed by Danish umbrella organization (DPOD).
886 CRPD/C/DNK/1, Paras. 32 and 33.
887 Ibid.
888 Ventegodt Liisberg, 2013.

sion that there was "no need for further changes to Danish legislation"[889] as Denmark has been assessed to fulfil its obligations under the CPRD, including the civil and political rights.[890] With this statement, the Danish government avoided the need for CPRD incorporation into the domestic law. This means that the CPRD implementation has been left to the will of highly unstable and internally fragmented Danish minority governments, which, sets up compliance policy and undertakes appropriate measures for fulfilling its obligations under the CPRD.[891]

Nevertheless, the CPRD Committee stated that "it is concerned that the SP lacks comprehensive antidiscrimination legislation that would provide protection from discrimination on the basis of disability beyond the labour market".[892] The Committee also noted with concern "the absence of comprehensive measures to ensure to DPs access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open to or provided to the public, both in urban and rural areas".[893] It expressed concern by the "lack of clarity regarding the extent to which pupils with disabilities can receive adequate support and accommodation to facilitate their

education, and regarding the discrepancies in accomplishment rates between pupils with and without disabilities in elementary, secondary and higher education",[894] as well as that "the Legal Incapacity and Guardianship Act continues to allow for substituted decision-making, thereby restricting the individual's exercise of rights such as the right to vote, access to justice, and consent to medical treatment".[895] In response, the government developed a general Antidiscrimination Law for DPs,[896] which was adopted by the parliament in May 2018. Later it was amended to include an

889 CRPD/C/DNK/1, Para. 33.
890 B194 Forslag til Folketingsbeslutning vedrorende Danmarks Ratifikation af FN's Handicapkonvention af 13. december 2006 om Rettigheder for Personer med Handicap.
891 Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsomradet, Kobenhavn 201. Kapitel 3.
892 CPRD Committee, Concluding observations on the initial report of Denmark. Paras. 14 and 15.
893 Ibid. Para. 26.
894 Ibid. Para. 52.
895 Ibid. Para. 32.
896 Denmark, Act no. 688 of 8 June 2018 on the Prohibition of Discrimination on the Grounds of Disability (Lov nr. 688 af 8. Juni 2018 om forbud mod forskelsbehandling på grund af handicap).

obligation to provide reasonable accommodation in schools[897] but it does not provide for an obligation to comply with existing accessibility standards.[898] Consequently, under Danish law there is still no comprehensive legal protection against discrimination on the grounds of disability with regard to denial of reasonable accommodation or lack of accessibility.[899] All other concerns of the CPRD Committee have either been reported to be in the process of amendment or have been partially solved, as it is the case with school education and the rights of persons under guardianship[900] or remained unresolved, as it is the case with accessibility.[901]

In 2013, the Danish government set up a Commission[902] that had to examine whether the CPRD and other UN conventions should be incorporated into Danish law.[903] The Commission, in admitting that the incorporation would strengthen citizens legal status in the areas governed by the Convention to the extent that the provisions of the Convention would be suitable for enforcement by the courts and other law enforcement authorities, and it would give the courts and other law enforcement authorities a statutory basis for the application of the Convention, which is important in the event of a conflict between a provision of the Convention and a provision of another Danish law, came, nevertheless, to the conclusion that there is no need for incorporation of the CPRD.[904] The main argument against incorporation was that a number of the CPRD provisions were

897 Lov om ændring af lov om forbud mod forskelsbehandling på grund af handicap (LOV nr 2218 af 29.12).2020.

898 Denmark, Act no. 688 of 8 June 2018 on the Prohibition of Discrimination on the Grounds of Disability (Lov nr. 688 af 8. Juni 2018 om forbud mod forskelsbehandling på grund af handicap, section 3).

899 DIHR Report to the CPRD Committee Prior to Adaption of list of Issues on Denmark 2019: 11.

900 See, for example, the government's reply in draft Combined second and third periodic reports of Denmark, Paras. 20, 185, 10, 90, 190 – 194; see also the DIHR Report to the CPRD Committee Prior to Adaption of list of Issues on Denmark 2019.

901 Ibid. E.g., Paras. 6, 14, 16, 227 – 228; see also the DIHR Report to the CPRD Committee Prior to Adaption of list of Issues on Denmark 2019.

902 One of the Committee members has been nominated by the Danish umbrella Disability organization (DPOD). Overall, it was composed of legal practitioners e.g., the president of the Supreme Court and academics. It had also considerable representatives of the Government.

903 Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsområdet, 2010.

904 Ibid., chapter 8, especially Section 8.3.

vague and generally worded,[905] which might entail a risk that it would be left to the courts and other law enforcement authorities to make judgments on cases that in accordance with Danish legal tradition, should be decided on by the legislative authority e.g., distribution policy (fordelingspolitiske) issues.[906] Accordingly, the CPRD implementation in Denmark is based on the method of establishing norm harmony (konstatering af normharmoni), which means that the government is in charge of setting compliance policy and taking appropriate measures for fulfilling its obligations under the CPRD[907] and the courts in their judgments should adhere to the framework of guidance policy set by the government[908] in relation to a particular law. This is visible both in the case mentioned above (Case Nr. 52/2010) and in the case on the right of individuals under guardianship to vote, where the appellants maintained that the disenfranchisement was in contravention of Section 29 of the Danish Constitution, the

ECHR, and CPRD and they claimed compensation.[909] The Supreme Court ruled that in line with Section 29 of the Constitution, individuals, who have been declared incapable of conducting their own affairs do not have the right to vote for parliament and that individuals, who have been deprived of their legal capacity under Section 6 of the Guardianship Act. had to be regarded as having been declared incapable of conducting their own affairs within the meaning of the Constitution and were thus not entitled to vote for parliament. Furthermore, it stated that section 1 of the Danish Act on parliamentary elections reflects this. Accordingly, regardless of what followed from Denmark's international obligations, the applicants claim, that they were entitled to vote for the 2015 parliamentary election, was not upheld. The Supreme Court also did not find any basis for concluding that the provision in Section 29 of the Constitution was in breach of Art. 3 of Protocol No. 1 to the ECHR or of Art. 14 read in conjunction with Art. 3 of Protocol No. 1 or of the CPRD.

905 E.g., Arts. 6 (2), 9 (2), 25 (1), 27 and 28.
906 Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsomradet, 2010.
907 Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsomradet, 2010. Kapitel 3.
908 See Supreme Court case 52/2010 (dom af 18–10–2011); Supreme Court case 159/2017 (dom af 18–01–2018); see also Harhoff, 1996: 151–182; Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsomradet, 2010. Kapitel 3, Sections 4 and 5.
909 Case Nr. 159/2017, 18.01.2018. ECTHR case, Strobye v. Denmark and Rosenlind v. Denmark.

After several years of struggle, on 13 May 2014 the Danish parliament with the Resolution No B 58 also approved the bill of the government allowing accession to the Optional Protocol. It states, however, that: "It should be noted that the Committee's opinions are not legally binding and that the Committee has no judicial character. The government will therefore decide on a case-by-case basis whether it will follow the committee's guidance. In order to provide the necessary clarity for the law enforcement authorities, the government's decisions on this will be published on the Ministry for Children, Gender Equality, Integration and Social affairs website. This procedure will include both individual appeals against Denmark and appeals against other States Parties if the Committee has issued an opinion which is of general significance for the interpretation of the Convention". This is not surprising given the fact that "Denmark together with other Nordic states is considered to be frontrunner in human rights, handing over peace prizes, signing up to international courts and conventions, but display an enormous hesitance when it comes to the domestication of the values they themselves stand for".[910]

The Opt-CPRD is in force in Denmark since September 2014[911] and there has been one individual complaint against Denmark concerning family reunification already on 6 January 2017.[912] Nevertheless, there is no follow-up information regarding the implementation of the Committees' views adopted in August 2018.

4.3.2 Responsibilities of Danish Focal Point/Coordination Mechanism and legislative actions

The main activities of the Ministry of Social Affairs and the Intra-Ministerial Committee in connection with CPRD Ratification were the writing the initial and combined Second and Third Periodic Reports of Denmark to the CPRD Committee, preparing the National Disability Action Plan and initiating a few legal amendments: Two years after the CPRD Ratification the Ministry drafted and submitted the Initial Report to the CPRD Committee in 2011. Civil society, including DPOs and the MF under the CPRD were not directly involved in the development of the Initial Report with

910 Wind, 2017.
911 Draft Second and Third periodic reports of Denmark, Para. 5.
912 CPRD Committee, Communication No. 39/2017, Iuliia Domina and Max Bendtsen vs. Denmark.

the exception of the participation in one open meeting organised by the Ministry of Social Affairs.[913] Moreover, the report has been criticised by the Danish Disability Council and the Danish Institute for Human Rights "for being a list of initiatives and measures for the promotion of equal treatment of DPs rather than being a base-line study of the human rights situation of DPs in Denmark".[914]

In 2013 the Ministry of Social Affairs in cooperation with the Ministry of Foreign Affairs coordinated the development of the National Disability Plan, which not only failed in ensuring multi-level sectoral coherence[915] but also did not "consistently provide concrete and measurable targets for Danish disability policy".[916] The involvement of DPOs and the CPRD MF in the development process of the action plan has also been limited.[917] Nevertheless, the government, even after the recommendation made by the CPRD Committee in its Concluding Observations,[918] declared that "a revision of the 2013 National Disability Action Plan has not been undertaken and there are currently no plans to prepare and adopt a new action plan".[919]

The legislative actions taken by other ministries in connection with the recommendations made by the CPRD Committee in its concluding observations on the Initial Report of Denmark were insignificant and the overall human rights situation of DPs in Denmark worsened according to the Disability Index developed by the DIHR.[920]

In 2020, the Ministry of Social Affairs prepared the Second and Third Periodic Reports on the CPRD implementation in Denmark. According to personal communications with the Ministry of Social Affairs and the Interior, on February 5 2020, "Civil society organisations were involved in the UN reporting process through the Danish Institute for Human Rights (DIHR) and through public hearing on the official web-site for the

913 Ventegodt Liisberg, 2013.
914 Ventegodt Liisberg, 2013.
915 DPOD, 2013, Para. 13.
916 DIHR, 2014: 7.
917 For more see chapter VI.
918 CPRD Committee, Concluding Observation on the Initial Report of Denmark, Paras. 8 and 9.
919 Draft Combined second and third periodic reports, Para. 14.
920 For more see the DIHR Report to the CPRD Committee Prior to Adaption of list of Issues on Denmark 2019.

Ministry of Social Affairs and the Interior".[921] The comment submitted by the DIHR on the draft Second and Third Periodic Reports of Denmark point out that governments replies are misleading, incomplete and evasive: it is suggested that the government provides explanations regarding the statement that there is no plan of reviewing the Disability Action Plan; It is underlined that the answer of the government does not reveal that law on cross-sectoral prohibition of discrimination of DPs does not include comprehensive reasonable accommodation and does not protect against non-compliance with accessibility requirements; it is stated that the remarks mentioned in the draft report do not give a true picture of the protection against discrimination on the grounds of disability in relation to insurance law, especially for persons with a mental or psychosocial disability; and that various accessibility measures mentioned lack information on objectives, timeline, budgets and enforcement mechanisms, including sanctions, in line with the Committee's questions; the Government also fails in answering the questions concerning actions taken to promote supported decision-making, which, as such, does not exist in Danish law; and it was requested that the government include information on the developments caused by the 2015 amendments to the forced adoption in case of disabled parents.[922] The DPOD, which in addition to a written comment had an opportunity to participate at the public hearing on the draft state report, addressed and confirmed all the concerns mentioned by the DIHR and added further points of concerns: e.g., it called on the government to inform about future plans for the involvement of DPs in the political processes, including persons under guardianship; provide information about plans to ensure that school budgets will not limit inclusion of disabled pupils due to the fact that the responsibility of ensuring school inclusion has been transferred to the school principals; provide information on initiatives to promote the quality of rehabilitation and reduction of geographical and social inequalities.[923]

921 Personal communication with the Ministry of Social Affairs and the Interior, on February 5 2020; The draft of Denmark's combined second and third periodic report for public hearing.

922 The comment of the DIHR on the draft report is available in Danish at: https://menneskeret.dk/hoeringssvar/udkast-danmarks-2-3-kombinerede-periodiske-rapport-fns-handicapkomite (Last accessed on 01.07.2022).

923 The comment of the DPOD on the draft report is available in Danish at: https://handicap.dk/arbejder-vi-for/vidensbank/hoeringssvar-om-udkast-til-regeringsrapport-med-svar-paa-spoergsmaal-fra; See also the comment of the LAP –

5. Comparative evaluation

At the time of drafting the CPRD, it was already clear that the international monitoring instruments alone[924] cannot ensure compliance of the SPs.[925] Accordingly, the hybrid model of implementation and monitoring at the domestic level has been considered the best way out of the non-enforcement crisis.[926]

The innovative character of the national implementation structure raised hopes of effective implementation of the CPRD. The main stress thereby has been put on the FP and the CM without, however, clearly defining their responsibilities. As a result, the arrangements put in place to fulfil the obligations under the Art. 33. Para. 1, by and large, varied from SP to SP.

Accordingly, in the present section I seek to evaluate, comparatively, the effects of these arrangements on the implementation of the CPRD at multiple governmental levels through the application of, albeit with some adjustments, the dimensions common in research on institutional reform policies: effective restructuring, adequate resources, horizontal and vertical coordination, democratic accountability, and cross-regional/municipal equity of implementation.[927]

5.1 Effective restructuring

FPs and CMs are seen as agents of paradigm shift. For them to be effective in attaining this aim, it is preferable not to locate them in the ministries of health or welfare and labor affairs.[928] If, however, governments decide not to restructure the responsible bodies and designate already existing sections of social ministries as the FP, they would need to be revised to oversee

Landsforeningen Af nuværende og tidligere Psykiatribrugere, available in Danish at: https://www.lap.dk/vedroerende-udkast-til-danmarks-2-og-3-kombinerede-periodiske-rapport-til-fns-handicapkomite-crpd/ (Last accessed on 01.07.2022).

924 Arbour, 2006; UN Enable, Daily summary of discussions of the sessions of the Ad Hoc Committee.

925 Quinn/Degener, 2002; Kumar, 2003; Lord/Stein, 2008.

926 Quinn, 2009a; Gatjens, 2011; Beco, 2013; Raley, 2015. For the views of Disability organizations see International Disability Alliance, 2009; Mental Disability Advocacy Center, 2011; see also OHCHR et al., 2007; OHCHR, 2009; Beco, 2011; Schulze/Kabir, 2013.

927 See Pollitt/Bouckaert, 2004; Kuhlmann/Wollmann, 2011: 490–1.

928 Human Rights Council, 2009: 7.

the implementation of the CPRD.[929] For this, they would need to undergo human-rights-based training and maintain CPRD-related cooperations.

Interestingly, a vivid similarity in arranging CPRD structures I could observe in all the examined SPs was in the location of these mechanisms; all FPs/CMs have been located in the social ministries. This decision has been based on the view that social ministries are experts of disability-related policies and they are the most competent bodies to oversee the implementation of the CPRD. I might agree with this standpoint if not for the observation that the designated FPs/CMs, especially at the Länder-level, have not received enough training to be able to act within the framework of the paradigm shift envisaged by the CPRD: the representatives of the Danish FP actively participate at the international processes of the CPRD, but there has been no effort to raise awareness about the CPRD at the domestic level. Federal FPs in Austria and Germany acquired know-how through written and live communications with the CPRD Committee. The knowledge of the Hessian State has been primarily based on collaborations with the federation, whereas the FP of Thuringia appeared to have difficulties in accepting the disability concept of the CPRD. The FP of Tyrol also did not get CPRD-related training.

Thus, it might be assumed that the majority of EU Member States maintain a convergent arrangement, where the federal/national FPs have acquired the necessary expertise for promoting CPRD-conform laws, whereas sub-bodies, by and large, remain devoted to pre-CPRD concepts of disabilities, which proves to be a serious obstacle for the effective administrative and legislative implementation of the human rights concept of the CPRD.

5.2 Adequate resources

The CPRD Committee and the Handbook for Parliamentarians on the CPRD underline the importance of providing the FPs at multiple levels of government with necessary financial resources.[930] In fact, the provision of adequate financial and human resources is vital for the functionality of the decision-making bodies in controlling and coordinating legislative

929 OHCHR et al., 2007: 94.

930 OHCHR et al., 2007: 94; Concluding observations on the initial report of the UK, Para. 68; Concluding observations on the initial report of Argentina, Para. 51; Concluding observations on the initial report of Germany, Para. 62b.

actions,[931] especially at the vertical and horizontal levels of governments, as well as organizing institutional deliberative processes.[932]

Present studies show, however, that there are tangible differences in this respect not only between the examined SPs but also within a SP: since its designation, the Austrian federal FP did not receive financial and human resources for discharging its functions. The same is true for Austrian province Tyrol. Denmark also follows this strategy. The federal FP of Germany, instead, has been equipped with financial and human resources. While the financial resources were sufficient for awareness-raising activities, the vertical and horizontal level coordination definitely requires more human resources. The Federal State of Hesse invested in the establishment of the FP in the beginning, but CPRD-related funding has been reduced with the merge of the FP with the disability-focused department of Social Ministry. The Thuringian FP has not been provided with any CPRD-related additional resources.

This confirms, on the one hand, the assumption that the establishment of new or modified administrative structures require immediate and somewhat far-reaching cost increases, which is a burden that tends to overstretch the capacities of local governments.[933] On the other hand, examples of Austrian and Danish non-resourced FPs, it becomes clear that explanation should not be seen solely in the limited or missing financial capacity of governments but also in absence of political will to ensure multi-sectoral and multi-level implementation of their international obligations.

5.3 Horizontal and vertical coordination

Decentralized structures are expected to ensure a highly integrated and synchronized system of coordination that covers the entire territorial area and transcends a single-policy orientation.[934] This assumption has been evidently shared also by the CPRD drafters in opting for multi-level national structures.[935]

931 Huber/Shipan/Pfahler, 2001; Mills/Selin, 2017.
932 Quirk/Bendix/Bachtiger, 2018.
933 Kuhlmann/Grohs/Bogumil, 2014.
934 For an overview, see Treisman, 2007: 1–14.
935 OHCHR et al., 2007: 95 – 110; IDA, 2009; MDAC, 2011; Gatjens, 2011; Beco, 2013.

Based on my observations I argue, however, that harmonized and effective implementation cannot be achieved solely by the designation of FPs/CM but heavily depends on their competencies and the level in the organizational hierarchy of the government:[936] Most particularly they should be located at the highest governmental organ (e.g., offices of chancellors and minister presidents) or be equipped with multi-sectoral competencies.

As the present study showed, none of examined FPs of SPs has the required organizational rank and competence to successfully discharge its functions both at the vertical and horizontal levels of the government. For instance, Denmark, which is among the most decentralized countries in the world,[937] designated the Social Ministry as a FP. It might influence the decision-making processes within the central government if the power of minority government allows, but municipalities that administer almost all disability-related policies are under the supervision of the Ministry of Finance. The federal FP of the Austrian federal government has the lowest organizational rank at the horizontal level and has collaboration and coordination competences only in the field of social affairs. Similarly, the provincial government of Tyrol appointed only a CM again at the lowest organizational level of the government. Federal government of Germany established an independent section in the BMAS as a FP, which, as interviews revealed, cannot directly influence policy-making processes in other Federal Ministries, and performs Länder-level coordination through FPs of federal states. These, however, are located at the lowest organizational level of the government and do not have competencies to interfere with the legislative processes of other federal state ministries. Moreover, Austrian and German FPs collaborate with the municipalities in the framework of legislative processes but cooperation at the administrative level does not take place despite the fact that the municipalities implement the majority of laws as their autonomous sphere of action.

Thus, it becomes clear that the designated FPs/CMs do not have the necessary power. Accordingly, in contrast to presumptions that these state bodies will lead to mainstreamed and equal implementation of the CPRD, their opportunities to supervise and coordinate decision-making processes are limited, especially in considering the division of legislative and executive powers of SPs. Accordingly, the administration of CPRD-related social

936 OHCHR et al., 2007: 94; CPRD Committee, Concluding observations on the initial report of Argentina, Para. 51.

937 Ivanyna/Shah, 2014; Rodden, 2004; Ladner et al., 2016.

policies remain non-harmonized. Similarly, legislative and administrative implementation of the right to inclusive education allow not only unequal access to and achievement in regular schools but even sustain segregative educational structures.

5.4 Democratic control and accountability

Transparency of decision making, inclusive participation in drafting and implementing laws and programs leads to input legitimacy. This is also the cornerstone of the CPRD, which requires the SPs to establish inclusive, transparent, accessible and accountable decision-making structures, where the participation and involvement of DPOs and Monitoring Bodies could be ensured at all governmental levels.[938] While the main examination on DPOs and Monitoring Mechanism is covered in following chapters, in this sub-section I discuss the results of their involvement in the work of the FPs, according to which the steps of SPs to ensure democratic control and accountability differ considerably.

In examining the DPO[939] involvement in the work of Austrian, Danish and German FPs, I could observe divergences between SPs and within the governmental levels: While Danish DPOs, albeit mainly through their umbrella organizations, could participate in the final decision-making processes concerning domestic laws, their institutionalised and regular cooperation with the designated FP and the CM located in the central government has not been ensured. At the municipal level they have a participation structure, but CPRD plays no role thereof. This situation, as the examination of the legal and political structure, as well as three-actor interviews showed, might be explained primarily by the legal status of the CPRD: the CPRD is not binding on the public authorities as it is not incorporated, which gives reasons to DPOs to perceive it as unfit for domestic use.

Involvement and institutional collaboration of the Austrian federal FP takes place mainly through the Federal Disability Advisory Board, which supports the coordination of the CPRD implementation in Austria.[940] A similar advisory organ has been established also at the provincial level e.g., Tyrol, but its involvement in CPRD implementation has not been

938 CPRD Committee, General Comment No. 7.
939 For the full examination see chapter VI.
940 BBG, §8 (2.4).

stipulated by law.[941] Interviews with TyroleanDPOs showed that they have irregular contact to executive organs, but they could neither identify the existence of a FP nor their contact with the executive bodies was related to CPRD implementation.[942]

Close cooperation and liaison of the German federal FP with the federal level DPOs started even before the ratification of the CPRD. In the ratification process, the collaboration has been weakened but with the development of the National Action Plan, close consultations and involvement of federal level DPOs has become more institutionalised and intensive. Unlike Denmark and Austria, the Federal Government of Germany designated the Federal Disability Commissioner as the CM. Nevertheless, the office of the Federal Commissioner serves more as a coordinating instrument between the government and the federal level DPOs than as a mainstreaming mechanism within the federal government, in contrast to envisaged CPRD structures. Accordingly, DPOs closely collaborate with the Commissioner, but evaluate the ability of the Commissioner to influence multi-sectoral decision-making processes of the federal executive bodies as too limited.[943] Federal states also have disability commissioners, but they have not been designated as CM, the involvement of the DPOs in the work of the examined Länder-level FPs started only about 4 years after the ratification within the framework of the state Action Plan development. However, it did not grow into a regular and institutionalised collaboration, which in view of the administrative federalist structure of Germany could be key for ensuring effective and legitimate application in the legislative processes at both vertical and horizontal levels of governments, as well as ensure successful monitoring at the administrative levels across 16 federal states and their municipalities.

Multi-level and multi actor interviews, in addition, made it clear that the designated FPs, especially at the Länder-level did not ensure transparency and accessibility-hearing impaired and learning-DPs have been often left out and otherwise disabled did not receive the necessary technical and personal support that would ensure their effective participation in the work of FPs.[944]

941 TTHG, §47.
942 For detailed examination see chapter VI.
943 For more see chapter VI.
944 For detailed elaboration refer to chapter VI.

The second instrument within the CPRD accountability structure is the Independent Monitoring Mechanism, which should be involved in and have access to decision-making processes and structures, including the FPs.[945] The examination showed that all national/federal level FPs maintained formal and regular cooperation with the designated Monitoring Bodies, albeit the independence of the Austrian FMC from the federal FP can be put under serious doubt. At the state/municipal level, however, the designated Monitoring Bodies either have no access to decision-making processes and structures, as it is in Denmark, German and Austrian municipalities, their access is limited to some states and/or punctual collaborations, as it is in the German federal states of Hesse and Thuringia or, they exist and participate officially but in fact do not have the necessary independence to act as an effective accountability instrument, as it is in Tyrol.

Against this background, it might be concluded that the degree of inclusive participation and accountability may vary depending on the strength of the existing CPRD-related institutional structures and SP commitment to international obligations both at the vertical and horizontal levels of governments. Evidently, the capacity of national/federal FPs to ensure the transparent, accessible and effective participation of DPOs and Monitoring Bodies in their work is greater than the capacity of state/Länder-level FPs/CM. The FPs at this governmental level maintain only irregular participation processes with the DPOs and Monitoring Mechanisms despite their legislative and administrative competencies. In the same vein, it became evident that some groups of DPs were completely left out from such processes or their effective participation has been seriously hampered due to inaccessible participation conditions at all governmental levels of SPs. Similarly, the designation of the national/federal level FPs did not lead to comprehensive, regular and effective inclusion of DPOs and Monitoring Bodies in multi-sectoral decision-making processes and structures, especially at the Länder-level.

Finally, despite the fact that all 3 SPs maintain highly decentralized and independent administrative structures, the designated FPs do not have municipal control and supervision mechanisms and there are no FPs at the municipal level. Accordingly, human rights oriented democratic control, accountability and monitoring through DPOs and Monitoring Bodies does

945 CRPD/C/1/Rev.1, annex, Para. 21.

not take place at the administrative level, which, apparently, constitutes a serious obstacle for the effective and equal implementation of the CPRD.

5.5 Multi-level equity of implementation

Usually it is assumed that policy implementation in multi-level structures leads to equal treatment of citizens. In the supranational context this would require at least policy convergence within member states. Before the EU enlargement, however, scholars questioned whether convergence of disability policies has been achieved between Western EU Member States.[946] The review of the CPRD reporting documents of former and present 27 Member States shows at least convergence in adopting non-discrimination measures to the Equal Treatment Directive 2000/78.[947] Accordingly, reasonable accommodation has been recognized as an employer's duty[948] and has been followed by EU Member States.[949] Nevertheless, the provision of reasonable accommodation, the denial of which often leads to discrimination, has not found explicit mentioning in domestic laws of EU Member States. This is not surprising given the fact that reasonable accommodation falls under the field of social policy, where EU Member States have exclusive competence to legislate.[950] Accordingly, the execution of this provision diverges not only between the Member States but also within the Member States.

With the adoption of the CPRD, the traditional concept underlying disability policies has been challenged: on the one hand, the SPs have been required to envisage reasonable accommodation for all spheres of life and recognise its denial as discrimination, on the other hand, they became obligated to ensure ex ante accessibility, meaning that SPs have the duty of providing accessibility before receiving an individual request to enter or use a place or service.[951] The concept has been recognized also by the Council of Europe.[952] The EU as the SP to the CPRD, adopted the Web Accessibility Directive (2016/2102) and the European Accessibility Act (Directive

946 Aarts et al. 1998; Prinz, 2003; van Oorschot/Hvinden, 2000, 2001; Hvinden, 2003.
947 See for example CPRD reporting documents of Austria, Denmark and Germany.
948 Art. 5 Directive 2000/78.
949 Lawson, 2017; Ferri 2018; Rabe-Rosendahl 2017.
950 Machado/de Lorenzo, 1997.
951 CPRD Committee, General Comment No 2, Para. 25; see also, CRPD/C/14/D/21/2014, (adopted 21 August 2015).
952 Grigoryan, 2017.

2019/882), which covers accessibility for limited products and services,[953] but fails in regulating building and construction, and environment and transportation sector.[954] To this end, the important policy areas e.g., indoor and outdoor accessibility of workplaces, including schools and universities, as well as accessible infrastructure for employees, has been left to the good will of Member States. Therefore, their enforcement might differ depending on various legal factors.

In comparing 3 SPs with similar legal systems, namely Civil law systems, I could not observe convergence in domesticating and giving effect to the CPRD. Subsequent to signing the CPRD and its Opt-Protocol, the Federal government of Germany obtained the approval of federal states through provisions established by the Lindau Agreement and the Basic Law. Accordingly, it has been incorporated into the German domestic law[955] and became binding on state organs, including courts, like other federal statutes, "in the framework of accepted methods of interpretation". In accordance with the principle of federal loyalty,[956] federal states first passed action plans and then amended selected, in particular school and disability laws throughout their parliaments to enact the provisions of the CPRD under their exclusive legislative powers. Nonetheless, amended laws, especially in the field of education, either have not been aligned to the requirements of the CPRD or provide no "Unconditional legal claim to disabled children for accessing a regular school with joint teaching and inclusive education". Consequently, the courts have not recognise the direct effect of the CPRD, and have pointed out the provision of progressive implementation of Art. 24 CPRD.[957]

953 Areas such as health services, education, transport, housing and household appliances are not covered by the directive.

954 EDF, 2019.

955 Görgülü, BverfGE, Oct. 14, 2004, 2 BvR 1481/04, Para. 31.

956 Kaiser, 1957/58, 526 ff.; Heckt, 1958, 445; Maunz/Dürig, 2014, Art. 32 Rn 70 and Art. 59 Rn 185; Dreher, 1969.

957 VGH Hessen, Beschluss vom 12. November 2009- 7 B 2763/09 – 1. Leitsatz, NVwZ-RR 2010, 602; Hessischer Verwaltungsgerichtshof 7 A 1138/11.Z, Beschluss vom 14.05.2012; BVerwG 6 B 52.09, Beschluss vom 18. Januar 2010, Rn 4; VGH Baden-Württemberg 9 S 1833/12, Beschluss vom 21. November 2012, Rn 56, VB1BW 2013, 386, 389 f.; OVG Lüneburg 2 ME 278/10, Beschluss vom 16. September 2010; OVG Nordrhein-Westfalen 19 E 533/10, Beschluss vom 3. November 2010; SG Augsburg S 15 SO 110/11 ER, Beschluss vom 27. September 2011, Rn 73; VG Düsseldorf 18 K 5702/10, Urteil vom 16. Dezember 2010, Rn 9 ff; VG Arnsberg 10 L 397/10, Beschluss vom 17. August 2010, Rn 12; Bayerischer Verwaltungsgerichtshof7 ZE 15.1791, Beschluss vom 04.09.2015, Rn 25.

Austria, which is also a federal state with a Civil Law system, signed the CPRD with its Opt-Protocol and without significant involvement of provinces, pushed it through federal and national councils, which approved the ratification with the statement that the Convention shall be fulfilled by the enactment of laws.[958] Accordingly, unless there have been legislative efforts in incorporating the provisions of the CPRD into domestic law, it has no direct effect on the domestic courts and administrative acts as long as the government did not adopt appropriate implementation laws.[959]This reservation does not affect laws falling under the EU competences.[960]

Denmark as a unitary state maintaining a Civil Law system with Common Law elements, signed the CPRD and after a superficial assessment of domestic laws, the central government obtained the consent of the parliament to ratify the Convention. As the government assumed that the domestic laws fully meet CPRD requirements, the CPRD as the majority of human rights conventions has not been incorporated into domestic law. Consequently, the implementation of the CPRD has been left to the will of the central government, which based on the method of establishing norm harmony, sets up the guidelines of compliance measures.[961] In accordance with the Danish legal tradition, courts, normally, do not challenge these guidelines.[962] To this end, central government, regions, municipalities and courts shall observe the CPRD as an international obligation,[963] but their actions shall be guided by and based, solely, on domestic law[964] as the CPRD cannot be applied directly by the courts or the executive unless

958 BGBl. III Nr. 155/2008, Para. 2.

959 OGH (Supreme Court), Case (3Ob97/13f mwN), 15.05.2013; OGH, 10ObS162/16w; 5Ob183/17y; 10ObS16/18b; 3Ob242/19p, 24.01.2017.; OGH, 10ObS162/16w, 24.01.2017; OGH, 5Ob183/17y, 21.12.2017; OGH, 10ObS16/18b, 20.02.2018; OGH, 3Ob242/19p, 22.01.2020; see also VfSlg 12.558/1990, with reference to Öhlinger, Der völkerrechtliche Vertrag im staatlichen Recht, 1973, 149ff; Walter et al., 2007, Rn 239f; Adamovich et al., 2011, 212; Öhlinger/Eberhard, 2012, Rn 119.

960 Schroeder et al, 2014.

961 Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsomradet, 2010. Kapitel 3.

962 See Supreme Court case 52/2010 (dom af 18–10–2011); Supreme Court case 159/2017 (dom af 18–01–2018); See also Christensen, 2020; Harhoff, 1996, pp. 151–182; Betænkning (nr. 1546) om inkorporering mv. inden for menneskeretsomradet, Kobenhavn 201. Kapitel 3, Sections 4 and 5.4.

963 CRPD/C/DNK/1, Paras. 36 and 37; Draft Combined second and third periodic reports of Denmark, Para. 7.

964 Harhoff, 1996: 151 – 182.

incorporated by the legislature.[965] This strategy has been reconfirmed also in ratifying the Optional Protocol to the CPRD.[966]

Thus, despite the similarities in the legal systems of Austria, Denmark and Germany, I could observe considerable divergence in domesticating the provisions of the CPRD. In fact, all the examined states have ratified the Vienna Convention on the Law of Treaties, which means that they as a SP to the CPRD, are obligated to implement it in good faith.[967] Nevertheless, the domestication method chosen by Denmark, for example, made the effective application of the CPRD within the domestic law and its consideration by the administrative actors impossible. Internal reservation of Austria allowed only targeted implementation, whereas the CPRD has been incorporated within the domestic law of Germany upon its ratification and led to active consideration by the courts and significant legislative reforms by the federal government.

In contrast to dissimilarities in domesticating the CPRD, the SPs, in particularly German courts and the Danish government, equally refused the efforts of the CPRD Committee of making the CPRD a "lively instrument"[968] through General Comments and own jurisprudents.[969] This allows an assumption that sovereign states, in general, are not open to uncontrolled international influence on their domestic laws.

At the same time, the hesitance of state/provincial governments in applying and complying with the CPRD in accordance with the SPs obligations,[970] is not only vivid, but also leads to inconsistent legislative implementation within the SPs.

In studying the selected states from the perspective of their modes of government, I could discern divergences in applying the CPRD within the federal/national laws and convergences in the CPRD implementation at the state/provincial/municipal level.

Germany, which maintains a high-level administrative and legislative federal constitutional structure, took considerable steps for implementing the CPRD. At the federal level, it amended the federal law, regulating

965 Ibid.; Björgvinsson, 2015: 55 – 88; see also the judgement UfR. 1986.898 H in UfR. 1987B before the incorporation of the ECHR.
966 Resolution No B 58.
967 VCLT, Art. 26.
968 Letsas, 2007, S. 65 et seq.; Cremer, 2013, S. 162 et seq. – 183 et seq.
969 BVerfG, 1 BvL 8/15, on 26. July 2016, para. 90; BVerfG, 2 BvC 62/14, on 29.01.2019, para. 65; Resolution No B 58.
970 VCLT, Art. 29; CPRD, Art. 4 (5).

support systems for DPs (SGB IX and the Federal Disability Equality Law to guarantee, among other things, the sub-constitutional entitlement to reasonable accommodation and recognition of its denial as discrimination within the federal laws and public authorities. Federal states, as the administrators of this law, enacted implementation laws to federal laws by using their right of administrative deviation. As a result, there is one federal law but there are 16 implementation laws affecting the equal implementation of human rights of DPs.

Austria, which, similar to Germany, maintains a federal constitutional structure, took serious steps in aligning federal laws to CPRD only in targeted policy fields e.g., guardianship and federal disability laws, whereas progress regarding other policy fields, especially inclusive education falling under shared responsibilities of federation and Länder, remains stagnant,[971] despite the concern expressed by the CPRD Committee.[972]The main cause of this should be seen in intertwined legislative and/or administrative responsibilities between the federation and provinces.

The only tangible step of Denmark to react to the multiple concerns and recommendations of the CPRD Committee made in its Concluding Observations on the Initial Report of Denmark, was the law on cross-sectoral prohibition of discrimination of DPs. Nevertheless, even this legislative step failed in ensuring the right of DPs to comprehensive reasonable accommodation and recognition of its denial as a discrimination. As a result, the disparities in equal and human-rights-based treatment of DPs persists at the administrative level, where 98 autonomously governed municipalities manage, among other disability-related policy fields, the elementary and secondary education,[973] oversee the general provision of reasonable accommodation and the school principals decide on the technical and personal support of disabled children.[974]

971 Austrian Federal Monitoring Committee, 2018, Art. 24; Österreichische Behindertenrat, 2018: 19 – 22. see also Weber et al., 2016; Feyerer/Altrichter, 2018; Feyerer, 2019; the report of the TyroleanMonitoring Committee on Inclusive Education. Retrieved from: https://www.tirol.gv.at/fileadmin/themen/gesellschaft-soziales/UN-Konventionen/tiroler-monitoring-ausschuss/dokumente/stellungnahmen/Stellungnahme_Inklusive_Bildung_Tirol_Letztversion_schwer_9.10.15.pdf (Last accessed on 01.07.2022).

972 CPRD Committee, Concluding observations on the initial report of Austria, Paras. 40 – 42.

973 Wiborg, 2020.

974 DPOD, 2013: 38 – 43; DIHR, 2014: 13; DIHR, 2019: 11 and 18; Nielsen, 2017 (for english summery see P. 10).

Convergence could be identified, instead, in incorporating the CPRD within the state/provincial laws: some years after the ratification, federal states of Germany started legal reform processes in policy field's falling under their exclusive legislative powers, namely education, building and construction. Nonetheless, amended laws neither ensured consistency with the CPRD nor at least secured equal access to and development of disabled children's personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential within mainstream schools across the federal states. In particular, federal state legislators failed in ensuring the provision of reasonable accommodation in the core area of educational work, as well as, structural and physical accessibility of schools and educational processes thereof.

Austrian Provinces as the exclusive legislators of the social support system, amended the disability definition in their rehabilitation laws, but despite the concerns expressed by the CPRD Committee, kept unchanged their medical approach based fragmented service provision and administration, which seriously hampers the execution of the equal right of disabled children to inclusive education.

In carrying out cross-country and multi-level examination, I noticed dissimilarities in understanding and applying the human rights concept of disability, which I link to particular legal and socio-cultural traditions of the given society and SPs. To prove the validity of this observation, however, further studies are needed.

In some, as is typical of states with legislative and administrative federal structures, the implementation of the CPRD has been slowed down or even avoided through symbolic amendments at the state/provincial governmental levels. Accordingly, the comparative evaluation made it clear that legal harmonization of SPs linked to the CPRD adoption,[975] is rather an ambitious expectation than a realistic happening, especially in taking into account the differences of its legal status between the SPs. The endeavor of consistency cannot be achieved solely by national structures but should be combined with enforceable legal mechanisms, which as the case of ECHR shows, might lead to "streamlining", and help to "build the Tower of Babel".[976]

975 Priestley, 2010: 411.
976 Nußberger, 2012, 2014, 2020.

V. National Monitoring Mechanisms

In line with the Art. 33 Para. 2. of the CPRD, SPs shall, in accordance with their legal and administrative systems, designate or establish a framework, including one or more Independent Mechanisms to promote, protect and monitor the implementation of the CPRD. Designated or established mechanisms should be in line with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights. Consequently, in the present chapter, I elaborate on the composition, resources and mandate of each designated or newly established Monitoring Mechanism by analysing their compliance with the Paris Principles and the CPRD Committee Guidelines on independent MFs and their participation in the work of the Committee on the Rights of DPs. Furthermore, I, in the final part of this chapter, carry out a comparative evaluation of their efficacy in considering the given legal and political system of Germany, Austria and Denmark.

1. Structure of National Monitoring Mechanisms

1.1 German National Monitoring Body

1.1.1 Legal status and system

The initiative of establishing a National Human Rights Institute in Germany was started by the civil society and a decade ago found support of MPs of the German Parliament,[977] which approved its establishment in 2000.[978] As a result, the GIHR was accredited with A(R)-status in 2001.[979] In 2008, the federal cabinet decided to designate the GIHR as the Monitoring Body under the CPRD, which established a separate Unit, named National Monitoring Body for the CPRD (NMB). It started its work in May of the following year.[980]

977 Mertus, 2009: 106 – 128.
978 Bt-Drucksache 14/4801.
979 A(R) means A-status with reservation; SCA, Report, April 2001.
980 Aichele, 2015.

As the reaccreditation report of 2008 shows, the SCA had reservations regarding the legal status, composition and mandate of the GIHR.[981] Most particularly, it expressed concerns that the GIHR is founded by a Motion of the German parliament[982] and stressed the "importance for the GIHR to further broaden its mandate to include complaint handling functions".[983] Evidently, these reservations made the SCA to defer the 2013 reaccreditation request of the GIHR.[984] As a result, the German Federal Parliament adapted the Law on the Legal Status and the Mandate of the German Institute for Human Rights (DIMR-Act) in 2015,[985] with which it acquired its reaccreditation with A-status.[986] Nevertheless, concerns regarding the limited scope of its mandate and local accessibility and multi-level functionality for discharging its duties remained.[987]

In fact, The GIHR has been designated as the "National" Independent Monitoring Mechanism under the CPRD,[988] but since its establishment, it did not have a system that could be fully considerate of particular political set-up of the SP.[989] Even after the designation of the GIHR as the NMB it did not "set up local or regional sections to assist it in discharging its functions" as it is suggested by the Paris Principles.[990] To this end, the interpretation that the mandate of the GIHR includes the promotion, protection and monitoring of all provisions of the CPRD at all governmental levels[991] might be put under question as it is not in the position to discharge its functions properly at the federal, state and local levels.[992] The absence of the NMB at the Länder-level might be viewed as problematic especially in considering the federal administrative structure of Germany[993] and the

981 SCA, Report, November 2008, 4.3.
982 Ibid.; BT-Drucksache 14/4801.
983 SCA, Report, November 2008, 4.3.
984 SCA, Report, November 2013, 3.3.
985 Federal Law Gazette 2015 I p. 1194.
986 SCA, Report, November 2015, 3.1.
987 Ibid.
988 Law on the Legal Status and Mandate of the German Institute for Human Rights (Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte, DIMRG), Bundesgesetzblatt Teil I (Federal Gazette Part I) 2015, p. 1194). §2.4.
989 Vienna Declaration and Programme of Action. Para. 36.
990 Principles relating to the Status of National Institutions. Methods of operation E.
991 Aichele, 2015: 85 – 90.
992 For details see sections below; for the requirement see, CRPD/C/1/Rev.1, annex. Para. 18.
993 See chapter IV part on Germany.

fact that there are a number of essential policy field's e.g., primary and secondary education that fall under the exclusive legislative and executive powers of federal states.

1.1.2 Pluralist representation and the method of appointment/dismissal

The governing structure of the GIHR is based on three main organs[994]- general assembly, Board of Trustees and the Board of Directors. The latter achieves plural representation by means of election.[995]

The general assembly and Board of Trustees, unlike the staff of the GIHR,[996] include diverse federal level CSOs and DPOs representation, as it is required by the Paris Principles and CPRD Committee.[997] The interests of DPs in the general assembly are represented by Prof. Dr. Theresia Degener, Interessenvertretung Selbstbestimmt Leben in Deutschland e. V., Netzwerk Artikel 3 – Verein für Menschenrechte und Gleichstellung Behinderter e.V., as well as by non-self-help organizations such as Bundesverband evangelische Behindertenhilfe e. V. and Caritas Behindertenhilfe und Psychiatry e.V.[998]

The Board of Trustees is composed of 18 members with voting rights and 9 members without.[999] Members with voting rights include 3 members of the Human Rights Forum, 2 members of the federal parliament's Committee on Human Rights and Humanitarian Aid, 3 representatives of scientific institutions with a connection to human rights and 3 civil society representatives nominated by the parties of the parliament, as well as a representative of the German Disability Council and 6 members of the

994 Satzung des Vereins Deutsches Institut für Menschenrechte (revidierte Fassung vom 29.10.2020), §7.

995 Ibid., §12; For varying types of ensuring pluralism of governing organs, see SCA, General Observations, 2.1.

996 Second-level-interview DE/A 1, on 31.01.2016, Q. 9; see also statement of the SCA on GIHR in its November 2008 report, 4.3; for the requirements see SCA, General Observations, 4.1; for the actual list of NMB employees refer to GIHRwebpage on its Team | Deutsches Institut für Menschenrechte at: https://www.institut-fuer-menschenrechte.de/das-institut/team (Last accessed on 01.07.2022).

997 Principles relating to the Status of National Institutions (Composition); CPRD Committee, General Comment No. 7, Paras. 37 and 38; CRPD/C/1/Rev.1, annex, Paras. 2 and 20.

998 For the full list of members see: https://www.institut-fuer-menschenrechte.de/das-institut/gremien/mitglieder-des-vereins (Last accessed on 01.07.2022).

999 Satzung des Vereins Deutsches Institut für Menschenrechte, §24.

general assembly. To this end, 8 out of 18 members with voting rights of the main deciding organ, namely the Board of Trustees come from or are appointed by the federal parliament, whereas it is quorate if at least half of its members with voting rights are present.[1000] While it might be argued that the Federal Parliament is the most legitimate organ to nominate the members, the number of representation definitely goes over the allowed limit of representation from the state organs,[1001] especially if we take into account that the Board also includes 8 representatives of federal government without voting rights.[1002] Already in November 2008, the SCA in its report pointed out that Art. 24(1) of GIHR's statute indicates that two of the GIHR's Trustees must be members of the German federal parliament's Committee on Human Rights and Humanitarian Aid. The statute does not exclude these representatives from voting on decisions made by the Board of Trustees,[1003] whereas "government representatives and members of parliament should not be members of, nor participate in, the decision-making of organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on both the real and perceived independence of the NHRI".[1004] Therefore, the CPRD Committee is critical about the participation of executive actors in the MFs.[1005] However, their involvement in advisory bodies might be beneficial for building a bridge between the NMB and the executive organs of the government.[1006]

Notwithstanding the fact that the GIHR as the 'NHRI' should discharge its functions at all governmental levels, both the list of members to its governing organs and Länder-level DPO[1007] representatives revealed that despite the requirement to ensure the full involvement and meaningful participation of DPs and their representative organizations in all areas of the MF work and in all stages of the monitoring processes,[1008] neither the

1000 Ibid., §27.2.
1001 SCA, General Observations, 1.9 and 2.5.
1002 For the full list of Kuratorium members see: https://www.institut-fuer-menschenrechte.de/das-institut/gremien/kuratorium (Last accessed on 01.07.2022).
1003 SCA, Report, November 2008, 4.3.
1004 SCA, General Observations, 1.9; See also Murray, 2007.
1005 CRPD/C/1/Rev.1, annex. Paras. 9 and 22.
1006 Beco/Murray, 2014.
1007 For more see chapter VI.
1008 CRPD/C/1/Rev.1, annex. Para. 20; See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.

General Assembly[1009] nor the Board of Trustees[1010] include Länder-level DPO representatives, whereas a member of the Federal Council is represented (without voting rights in the Board of Trustees).[1011] As a result, the Länder-level DPOs remain out of MF as their involvement is not ensured even through their umbrella organizations,[1012] whereas the Länder-level DPOs inclusion and participation is indispensable, especially in view of exclusive legislative powers of federal states and the federal administrative structure of Germany.[1013]

The appointment of the members to the main governing organs of the GIHR takes place through a democratic process.[1014] Detailed rules of their dismissal, instead, can be found neither in the bylaws of the GIHR[1015] nor in the Law on the Legal Status and the Mandate of the German Institute for Human Rights,[1016] which might make possible the forced resignation of its uncomfortable leaders.[1017]

While the appointment of the GIHR governing members is clearly regulated, the appointment procedure of the NMB department head is not even mentioned in the GIHR regulations, whereas the CPRD Committee underlines that the members of the MFs should be appointed in a public, democratic, transparent and participatory manner,[1018] which should, preferably, be approved by the parliament upon the nomination of the civil

1009 For the full list of members see the GIHR webpage on members at: https://www.institut-fuer-menschenrechte.de/das-institut/gremien/mitglieder-des-vereins (last accessed on 01.07.2022).
1010 Satzung des Vereins Deutsches Institut für Menschenrechte. §24.
1011 Ibid., §24 (2).
1012 See Chapter VI Part on Germany.
1013 For more see Chapter IV Part on Germany.
1014 Satzung- DIMR, §12 and §23 (1b); For the requirements see the Principles relating to the Status of National Institutions (Composition).
1015 See for example Satzung- DIMR, §24 (4).
1016 For the requirements see the SCA, General Observations, 2.1.
1017 Mertus, 2009: 121–123.
1018 CRPD/C/1/Rev.1, annex. Para 15a; According to SCA, General Observations, 1.8, these requirements can be achieved by:
a) Publicizing vacancies broadly;
b) Maximizing the number of potential candidates from a wide range of societal groups;
c) Promoting broad consultation and/or participation in the application, screening, selection and appointment process;
d) Assess applicants on the basis of pre-determined, objective and publicly available criteria.

society.[1019] As a result, the DPOs get informed about the appointment or resignation of NMB heads only after the decisions have been made,[1020] which might affect its public legitimacy.[1021]

1.2 Austrian Monitoring Framework

1.1.1 Legal status and system

In order to comply with the requirement of the Art. 33 Para 2 of the Convention, the Federal Disability Act (BBG) has been amended to provide for a Federal Monitoring Mechanism.[1022] As a result, the independent MC for the promotion, protection and monitoring of the implementation of the Convention has been established. The legal anchorage of FMC ensured the required legal status of the committee.[1023] However, composition, set scope of mandate and methods of operation of the FMC was insufficient[1024] for getting any status accreditation of the Paris Principles. Most particularly, it was assigned to the Federal Disability Council (Bundesbehindertenbeirat) and located in the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK). This has been persistently criticized both by the FMC members[1025] and the CPRD Committee.[1026]

In 2017, the federal government reamended the Federal Disability Act to allow the establishment of a private non-profit legal entity to manage the organization of the MC (Verein zur Unterstützung des Unabhängigen Monitoringausschusses).[1027] However, the MC continues to be assigned to the BMASK despite the explicit recommendation of the CPRD Committee

1019 Carver, 2000: 14.
1020 Miles-Paul, 2020a; Miles-Paul, 2020b.
1021 Carver, 2005.
1022 BGBl. I No. 109/2008.
1023 SCA, General Observations, 1.1; see also chapter II the part on National Human Rights Institutions.
1024 See below; for the requirements see SCA, General Observations, 1.2, 1.7 – 1.10.
1025 See the minutes of the Monitoring Committee meeting in the period of 2008 to 2016. Available at: https://www.monitoringausschuss.at/protokolle/. (Last accessed on 01.07.2022).
1026 CRPD Committee, Concluding observations on the initial report of Austria, Para. 52 and 53.
1027 The Federal Disability Act (BBG)-BGBl. I Nr. 155/2017, §13l (1).

to ensure the full independence of the MC in accordance with the Paris Principles.[1028]

Some years after the CPRD ratification, almost all provincial governments amended their disability laws to establish MCs.[1029] In 2012, for example, the Tyrolean Anti-Discrimination Act (Tiroler Antidiskriminierungsgesetz 2005) has been amended to task the office of the Anti-discrimination Commissioner with the responsibility of monitoring of the CPRD.[1030] As a result, a new MC has been built. With the 2017 amendment of BBG, the establishment of MCs in the policy fields falling under the legislative power of the federation, became obligatory for the provinces.[1031] With this, Austria intended to implement the requirements of both the CPRD Committee and the Paris Principles of establishing Monitoring Mechanisms, according to which, within the framework of its operation, "(…) local or regional sections should be set up to assist it in discharging its functions".[1032] Nonetheless, the provincial governments in designating MCs did not only opt for varying structural arrangements,[1033] but also did not consider the recommendations of the CPRD Committee.[1034] As a result, the established MCs have legal status, but their composition, infrastructure, set scope of mandate and methods of operation is not sufficient for acting as an independent or autonomous institution.[1035]

1028 BBG, §13g (1); concluding observations on the initial report of Austria, Para. 52 and 53.

1029 Federal Monitoring Committee, CPRD Report, 2018: Article 33 (2); see also Schulze, 2013.

1030 LGBl. Nr. 150/2012.

1031 BGBl. I Nr. 155/2017.

1032 Principles relating to the Status of National Institutions. Methods of operation E; Guidelines on independent MFs and their participation in the work of the Committee on the Rights of DPs, Para. 18.

1033 FMC, 2018, Article 33.

1034 CPRD Committee, Concluding Observations on the Initial Report of Austria, Paras. 53 and 54.

1035 For details see sections below; E/CN.4/1992/43, 16 December 1991. Para. 29; See also the statement of the CPRD Committee, CRPD/C/1/Rev.1, annex. Para. 15.

1.2.2 Pluralist representation and the method of appointment/dismissal

1.2.2.1 Federal Monitoring Committee

Since its establishment, the FMC was composed in consideration of the rules of plural representation.[1036] It has eight members with voting rights.[1037] These include two representatives from different CSOs, a representative from an academic institution and four representatives from DPOs. The representatives of DPOs are proposed by the organization of the Austrian society of Rehabilitation.[1038] The privileged disabled members of the Committee are proud of this arrangement.[1039] However, there are no set rules for the selection and nomination of the Committee members by the Austrian Society of Rehabilitation. This makes the plurality of the FMC questionable,[1040] especially in considering that the required respect for the diversity of DPs and their accessibility needs,[1041] proves not to be sufficiently ensured: an interviewee stated that the membership of deaf persons to the Committee fails due to missing readiness to cover the high costs for sign language translation.[1042] The membership of learning disabled, albeit as a stand-in member, became possible only with the fourth election period of the FMC.[1043] The representation of non-Austrian/EEA Citizens has been banned by the 2017 BBG amendment.[1044] In fact, the CPRD made it clear that the rights of disabled non-citizens shall not only be considered within the domestic law,[1045] but their participation in monitoring and decision-making processes has to be ensured.[1046] This becomes even more

1036 Principles relating to the Status of National Institutions (Composition); CRPD/C/1/Rev.1, annex. Para. 20.
1037 BBG, §13g (1).
1038 BBG, §13j (1).
1039 Third-level-interview AT/A 3, on 25.05.2016, Q. 6; Third-level-interview AT/A 1, on 23.05.2016, Qs. 6 and 12.
1040 Schulze, 2013 (Membership and Composition).
1041 CRPD/C/1/Rev.1, annex. Paras. 20, 23c; CPRD Committee, General Comment No. 7, Paras. 36 – 39.
1042 Third-level-interview AT/A 2, on 23.05.2016, Q. 13.
1043 The Committee first convened on 10 December 2008.
1044 BBG, §13j (3).
1045 CPRD Committee, Concluding observations on the combined second and third periodic reports of Australia, Para. 35; CPRD Committee, Concluding Observations on the Initial Report of Germany, Paras. 15, 17c and 39.
1046 CPRD Committee, General Comment No. 7, Para. 50; see also SCA, General Observations, 1.5.

important if we consider the large number of disabled and traumatised person's immigration to western EU Member States.

Besides, The FMC includes representatives from appropriate Federal Ministries with advisory rights.[1047] This could be seen as a positive co-operation opportunity,[1048] if not the additional appointment and dismissal powers of the Minister of Labour, Social Affairs and Consumer Protection[1049] that impedes the independence of the MCs.[1050] To this end, The FMC cannot be seen as a distant body that acts as a bridge or mediate between government and non-government entities – a partner – trusted yet separate from both.[1051]

1.2.2.2 Provincial Monitoring Committeess

The structural inconsistency of provincial MCs is more visible:[1052] The TyroleanMonitoring Committee (TMC), for example, took considerable efforts to ensure the diverse representation of DPs.[1053] However, it, in addition to infrastructural subordination, is chaired by the Anti-discrimination Commissioner, who is appointed by the Tyrolean provincial Government.[1054] She nominates other members of the MC that are approved by the state government.[1055] The latter can also dismiss the members of the MC.[1056] These include an academic expert, a human rights expert and five DPs.[1057] Hereby the self-representation should be thought.[1058] This means that they should not represent a DPO, but the criteria of the selection are not transparent. Accordingly, the access of more vulnerable groups of DPs to the MC

1047 BBG, §13g (1).
1048 Beco/Murray, 2014.
1049 BBG, §13j (1 and 8).
1050 SCA, General Observations, 1.9; See also SCA, General Observations, 2.3 that states: "government members should not have decision-making (…) capacity"; CRPD/C/1/Rev.1, annex). Paras. 9 and 22.
1051 E/CN.4/1992/43, 16 December 1991. Paras. 111 – 128; See also, Smith, 2006; SCA, General Observations, 1.9; Beco, 2007; Beco/Murray, 2014.
1052 Federal Monitoring Committee, CPRD Report, 2018: Article 33 (2).
1053 Second-level-interview AT/B-T 1, on 30.10.2015, Q. 9.
1054 Tiroler Antidiskriminierungsgesetz 2005, §15.(1).
1055 Ibid., §16a (3).
1056 Ibid., §16a (7c).
1057 Ibid., §16 A (2).
1058 Ibid., §16a (3).

might be denied, which would hinder the broad and diverse participation of DPs.[1059]

1.3 Danish Monitoring Framework

1.3.1 Legal status and System

Denmark was long among the states that were against the establishment of an internationally recognised Human Rights Institution. Its main argument was that there is no reason for establishing local human rights committees in Denmark since such committees cannot be expected to have any practical significance alongside the judicial system, the parliament, the mechanisms under the European Human Rights Convention, the free press,[1060] and constitutionally stipulated Parliamentary Ombudsman.[1061] Later, however, it followed the international trend of establishing NHRIs by setting up the Danish Centre for Human Rights in 1987,[1062] which was renamed the Danish Human Rights Institution (DIHR) in 2002.[1063]

Following the CPRD ratification, Denmark designated a national MF composed of DIHR, Danish Parliamentary Ombudsman and the DDC.[1064] Accordingly, all three bodies have been established by a legal act as it is required by the SCA General Observations[1065] and existed before the ratification of the CPRD.[1066] However, the Danish Parliamentary Ombudsman and the DDC as state bodies should exercise their discretionary powers in such a way that their actions conform to International Law, which is known as the rule of instruction, but they are guided by and based exclusively on

1059 CRPD/C/1/Rev.1, annex, para. 20.
1060 Pohjolainen, 2006; 34 – 39.
1061 The office of the Danish Parliamentary Ombudsman was established in 1955 by incorporating it in the amended Danish Constitution of 1953 see Gøtze, 2009; Mørup, 2017.
1062 Parliamentary Act of 5 May 1987.
1063 Lov nr 411 af 06/06/2002 om etablering af Dansk Center for Internationale Studier og Menneskerettighede.
1064 Parliamentary Decision B15 of 17 December 2010.
1065 SCA, General Observations, 1.1.
1066 Ventegodt Liisberg, 2013.

domestic law[1067] and in case of conflict of norms the domestic law prevails over the provisions of non-incorporated treaty such as the CPRD.[1068]

The DIHR is also a state institution, but after a long and thorny path, it has been recognized as an independent institution: In 2001, it had only B-status[1069] and due to domestic existential challenges connected with the government policy of non-tolerance against minorities,[1070] was first reaccredited with A-Status in 2007.[1071] Nevertheless, the SCA noted the financial issues, inadequate composition, including appointment/dismissal discrepancies, and lack of legal mandate ensuring parliamentary accountability.[1072] As a result, the parliament amended the law establishing the DIHR, with which the status of the DIHR has been improved,[1073] but the majority of concerns raised by the SCA have not been addressed. Accordingly, its 2017 reaccreditation was deferred to the second SCA session of 2018,[1074] where the DIHR was again reaccredited with an A-status with a note that it still has issues concerning its protection and monitoring mandate, as well as the appointment and dismissal regulations.[1075]

The narrow scope of protection and monitoring mandate of the MF becomes visible especially in assessing its structural configuration across the state: all designated actors of the MF operate at the national level. The DDC cooperates with 98 municipal disability councils,[1076] which are neither a part of the MF nor have the adequate composition, mandate and infrastructure to act as Monitoring Bodies in their jurisdiction. The capacity of the Danish Parliamentary Ombudsman to address issues falling under the responsibility of the municipalities should be in line of the

1067 Harhoff, 1996: 151 – 182; Supreme Court case 52/2010 (dom af 18–10–2011). See also chapter IV part on Denmark.

1068 See for example 'Henvisning af autistisk bam til specialskole ffem for enkeltintegrering i friskole', Ombudsmandens afgorelse af 24. September 2009, j.nr. 2009–1787–710; see also Björgvinsson, 2015: 89 – 103.

1069 SCA, Report, April 2001.

1070 Mertus, 2009: 14 – 37.

1071 SCA, Report, October 2007, 3.3.

1072 Ibid.

1073 Act on the Danish Institute for Human Rights, Act no. 553 of 18 June 2012. It should be noted that from January 2003 until January 2013, the DIHR was part of the Danish Centre for International Studies and Human Rights. This act reestablished the DIHR as a separate institution.

1074 SCA, Report, November 2017, 3.2.

1075 SCA, Report, October 2018, 3.1; For more see below.

1076 BEK nr 897 af 12/05/2021, Sec. 31 PCS 2 and Sec.35 PCS 2.

special conditions under which these authorities' function,[1077] whereas the DIHR as the only Paris Principle compliant institution has not even a possibility to promote, protect and monitor the implementation of the CPRD at the municipal level.[1078] Unfortunately, this has been neither thematised during the state reporting process nor found consideration by the CPRD Committee in its Concluding Observations on the Initial Report of Denmark. This might be caused by the assumption that Denmark has a central government system and there is no need of explicit mentioning of municipal-level competencies of the designated MF, whereas the high level of local autonomy,[1079] especially in the field of education and fiscal decentralization,[1080] and the unwillingness of the Danish municipalities to adhere to the norms of the International Law regulations,[1081] seriously jeopardise the ability of the MF to discharge its duties under the CPRD, which, in turn, leads to poor or even non-implementation of the CPRD at the municipal-level.[1082]

In addition, only DIHR has been assigned as the NHRI of the self-governing Greenland,[1083] whereas there is no such an institution in Faroe Islands.[1084]

1077 Act No. 473 of 12 June 1996 concerning the Ombudsman as amended by Consolidated Act No. 556 of 24 June 2005, Consolidated Act No. 502 of 12 June 2009, Consolidated Act No. 568 of 18 June 2012 and Consolidated Act No. 349 of 22 March 2013, Sec. 8.

1078 See the Act no. 553 of 18 June 2012 on the Danish Institute for Human Rights – Denmark's National Human Rights Institution, as amended by Act no. 656 of 12 June 2013; Bylaws of the DIHR (Objectives and responsibilities) as amended on 25 May 2018; Second-level-interview DK/A 2, on 01.12.2016, Q. 5: "No. so it has not but we as an institute have not been very good at promoting human rights at no local levels because we are a state institution and we find it very difficult really to work with all the municipalities. There are 98 and it's really difficult for us (…) we think, work with individual Municipalities but (…) So basically the answer to this question is that we are not monitoring the implementation at the local level, but we are trying to do it better".

1079 Ladner et al. 2016.

1080 Ivanyna and Shah, 2014; Rodden, 2004.

1081 See for example Folketingets Ombudsmand, FOB 2005.14 – 1, tilgngelig pä:: https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/05-425/#cp-title (Last accessed on 01.07.2022); See also Andersen, 2016, 6. udgave, S. 50.

1082 See chapter IV part on Denmark.

1083 Act no. 656/2013; Royal decree no. 393/2014.

1084 Danish Institute for Human Rights, 2014: 4.

1.3.2 Pluralist representation and method of appointment/dismissal

1.3.2.1 Danish Institute of Human Rights

The day-to-day management of the DIHR is in the hand of its director, whose acting capacities are framed by the main decision-making organ of the DIHR, is being selected through a process of public advertisement and appointed by the Board.[1085] This means that its pluralist representation has been ensured through the appointment procedures.[1086] The dismissal of the director and further members of the DIHR, however, have not been legally regulated. This, in view of the past problems of the DIHR,[1087] might be seen as problematic.

The main decision-making body of the DIHR is the Board.[1088] Its chairperson is elected from within its members.[1089] Overall, it includes a representative of the Human Rights Council of Greenland, a representative of employees of the DIHR and 6 representatives of Danish universities.[1090] In this case, however, the bylaw of the DIHR does not require consideration of its special mandates, which means that there is no requirement that at least one member of the university appointees should be disability rights experts holding UN or supranational posts on human rights of DPs, whereas the involvement of such an expert is imperative for ensuring not only CPRD-based work and research orientation of the DIHR but also for helping to establish links with human rights Monitoring Mechanisms.[1091]

The representation of civil society is ensured through 6 representatives of the Human Rights Council of the DIHR.[1092] As of 2012, one of the nominated representatives of the Human Rights Council should also be a member suggested by the Danish Disability Organization.[1093] However, the number of members of the Board might be reduced, which would

1085 Bylaws of the DIHR, Sec. 22.
1086 SCA, General Observations, 1.7.
1087 Mertus, 2009: 14 – 37.
1088 Bylaws of the DIHR, Sec.6.
1089 Ibid., Sec.6 and Sec.11.
1090 Ibid., Sec.8.
1091 Beco/Murray, 2014.
1092 Bylaws of the DIHR, Sec. 8.1 (1).
1093 Ibid., Sec. 8.3; Ventegodt Liisberg, 2013.

lead to ceasing of the DPO representation,[1094] thus affecting the positive cooperation between the DIHR and the DPOD.[1095]

According to the bylaws of the DIHR, the appointing parties should ensure that the nomination follows the Paris Principles requirements for openness and transparency with a view to maximising the number and diversity of candidates.[1096] However, the SCA noted that appointing parties do not have unified selection criteria, which may hinder the Paris Principles compliant selection and nomination process.[1097] For instance, the DPOD might nominate a representative to the DIHR Board, but it is not clear how it selects and nominates its representative to the DIHR Board. In any case, it will not represent a non-member, which inhibits other DPOs from being included in the work of the DIHR, whereas the CPRD Committee requires a broad involvement of DPOs in all the processes of the DIHR regardless of the participation of the umbrella organization.[1098]

The sufficient acting period of the Board members has been ensured[1099], but if there are justified doubts about a member's independence and integrity, the Board might initiate his/her resignation.[1100] Nevertheless, there is no further clarification on set criteria for independence and integrity, whereas in the interests of clarity and consistency, the DIHR is encouraged to provide greater precision in its bylaws or in another binding administrative guideline on the scope of this ground.[1101]

Much more pluralistic representation of civil society and public authorities (with no voting rights) is ensured through the advisory organ of the DIHR- the Council for Human Rights.[1102] It is composed of representatives of civil society, including a few disability-related organizations and the DPOD, research institutions, political parties and human rights advocates and institutions, as well as the Danish Parliamentary Ombudsman, the DDC and representatives of the ministries and municipalities.[1103] The

1094 Ventegodt Liisberg, 2013; Second-level-interview DK/A 2, on 01.12.2016Q. 6.
1095 Third-level-interview DK/A 1, on 02.12.2016Q. 15.
1096 Bylaws of the DIHR, Sec.10.3.
1097 SCA, Report, November 2017, 3.2 Point 1.
1098 CRPD/C/1/Rev.1, annex, Para. 20; CPRD Committee, General Comment No. 7, Para. 12a.
1099 Bylaws of the DIHR, Sec.8.2.
1100 Ibid., Sec.9.
1101 SCA, Report, October 2018, 2.1 point 3.
1102 Bylaws of the DIHR, Sec.14.
1103 Ibid., Sec.15(1).

representatives of public authorities participating in the meetings of the Council do not have a right to vote.[1104] Nevertheless, even here the required broad diversity of DPs has not been ensured.[1105]

1.3.2.2 Danish Parliamentary Ombudsman

The ombudsman is elected by the Danish parliament for a legislative period.[1106] This might be seen as ensuring the pluralist representation,[1107] if not the missing guaranties for the inclusivity of its staff.[1108]

The ombudsman might be dismissed by the Folketing if he ceases to enjoy its confidence.[1109] Hereby the Ombudsman's Act does not lay down the concrete actions and circumstances that might lead to dismissal despite the requirement of the Paris Principles to ensure an independent and objective dismissal process, with reasons clearly defined, and not left to the discretion of those appointing the members.[1110] This makes the dismissal of uncomfortable ombudsmen visibly easier.

1.3.2.3 Danish Disability Council

The Danish Disability Council (DDC) has been established in 1980.[1111] It is structured into two organs, the secretariat and the Advisory Board.[1112] The head of the secretariat is appointed and might be dismissed by the Minister of Social Affairs and Interior.[1113]

1104 Ibid., Sec.19.
1105 For the list of the members, see the web page of the DIHR at: https://menneskeret.dk/om-os/raadet-menneskerettigheder (Last accessed on 01.07.2022).
1106 Act No. 473 of 12 June 1996 concerning the Ombudsman as amended by the Consolidated Act No. 349 of 22 March 2013. Sec.1.
1107 SCA, General Observations, 1.7.
1108 Act No. 473 of 12 June 1996 concerning the Ombudsman, Sec.26; The Danish Parliamentary Ombudsman, Annual Report 2018, publisht in 2019: 130 – 133; CRPD/C/1/Rev.1, annex). Para. 20.
1109 Act No. 473 of 12 June 1996, Sec.2 (3).
1110 SCA, General Observations, 2.1.
1111 Ventegodt Liisberg, 2013.
1112 Bekendtgørelse om retssikkerhed og administration på det sociale område- BEK nr 897 af 12/05/2021, Sec. 38 and Sec.40.
1113 Ibid., Sec.40.

The Board is composed of 17 members.[1114] These include the chairperson, 2 representatives of the government,[1115] representatives of various social forces, municipalities, regions, disability-related researchers and five DPOD nominated representatives. As of December 2015, the DDC had representative members from the organization of persons with autism, organizations of persons with visual impairment, cerebral palsy, brain injury and ADHD.[1116] Non-DPOD members, as it was in the case of the DIHR, cannot be appointed to the Advisory Board of the DDC. As a result, the door to promotion activities under the CPRD remains firmly closed for other disability organizations.

All members including the chairperson are appointed by the Minister of Social Affairs and Interior.[1117] This gives serious reasons to doubt its independence.[1118]

As of 2007, the municipal governments also had to establish disability councils.[1119] Municipal level councils are partly composed of civil servants and politicians and partly of the representatives of the disability organizations.[1120] However, they are neither the part of the National MF,[1121] nor have the necessary independence and financial capacity to promote, protect and monitor the rights of DPs.[1122]

2. Resources of National Monitoring Mechanisms

2.1 German National Monitoring Body

The GIHR, as it is required by the principles relating to the status of national institutions,[1123] has been provided with resources for performing the tasks assigned to it at the federal level since its establishment. The per-

1114 Ibid., Sec.38.
1115 Ibid., Sec.38 PCS. 3; Second-level-interview DK/A 1, on 01.12.2016, Q. 14.
1116 Second-level-interview DK/A 1, on 01.12.2016, Q. 9.
1117 BEK nr 897 af 12/05/2021, Sec.38 (1).
1118 SCA, General Observations, 2.1.
1119 BEK nr 897 af 12/05/2021, capitel 8; Ventegodt Liisberg, 2013.
1120 BEK nr 897 af 12/05/2021, Sec. 29; Second-level-interview DK/A 1, on 01.12.2016, Q. 15.
1121 Second-level-interview DK/A 1, on 01.12. 2016Q.s 8 and 10.
1122 Second-level-interview DK/A 1, on 01.12.2016, Q. 15; Second-level-interview DK/A2, on 01.12.2016, Q. 5.
1123 Paris Principle B.2; SCA, General Observations, 1.10.

manent funding of the GIHR has been ensured by the DIMR-Act of 2015. However, the SCA noted in its 2015 reaccreditation report that "the GIHR has been entrusted with several new responsibilities", but "no increase in funding has been provided for the (…) newly-mandated tasks".

In fact, after the designation of the GIHR as the NMB under the CPRD in 2009, it got temporary separate annual funding from Federal Ministry of Labour and Social Affairs amounting to EUR 453.000 till December 31 2015.[1124] This covered also the human resources, the number of which grew gradually from 1 to 12:[1125] unlike the members of the GIHR Board of Trustees,[1126] its directors, department's heads and their stuff get remuneration, which helps in avoiding conflict of interests, ensuring stable mandate for the members, regular and appropriate direction for staff and the ongoing and effective fulfilment of the NMB functions.[1127]

With the DIMR-Act of 2015 the operation of the CPRD unit of the GIHR has been ensured on a permanent basis through the general institutional funds allocated to the GIHR by the federal government.[1128] This caused tangible doubts and insecurity: "we are no longer safe in this form of financing (…) now there is only one general budget[1129] (…) and it is an internal question (…) if the extent of our resources will be the same as before".[1130] To this end, the NMB does not have a separate budget line over which it has absolute management and control.[1131] To this end, it might be assumed,

1124 Second-level-interview DE/A 1, on 31.01.2016, Q. 7.

1125 Two out of 12 employees are responsible for Länder-level projects. For more see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention (Last accessed on 01.07.2022).

1126 Satzung-DIMR, §24 (6).

1127 For the requirements see SCA, General Observations, 2.7 – 2.9.

1128 In 2019 the General budget amounted to a total of EUR 2.657 million. See the second and third combined periodic report of Germany (zweiter und dritter Staatenbericht der BRD zum UN-BRK) Para. 36.

1129 As of 2019, the total annual fund allocated to the GIHR amounted to EUR 2.657 million, See Deutscher Bundestag, Drucksache 19/11745, on 18.07.2019. Q. 36.

1130 Second-level-interview DE/A 1, on 31.01.2016, Q. 7. The original reads as follows: "Wir sind jetzt in dieser Finanzierungsform nicht mehr sicher. Wir sagen, wir wollen nicht schlechter gestellt werden als vorher, innerhalb der Gesamtorganisation, aber es gibt jetzt eben nur noch einen Gesamthaushalt. Es gibt nur noch den Haushalt für das Institut für Menschenrechte. Und das ist eine interne Frage, die zu beantworten ist, ob wir nach wie vor, in diesem Umfang, auf die Mittel zurückgreifen können, wie früher".

1131 For the requirements see: SCA, General Observations, 1.10; See also CRPD/C/1/Rev.1, annex. Para. 17.

overall, that the NMB has adequate resources to discharge its federal-level functions in policy fields directly affecting DPs, but it is, evidently, inactive in indirect policy fields e.g., cultural rights.[1132]

In addition, the DIMR-Act of 2015 does not provide regulations regarding funding of the NMB to carry out its responsibilities at the Länder-level in all 16 federal states, whereas in view of exclusive legislative and executive powers of these in a number of policy fields e.g., education, accessibility of administration and infrastructure,[1133] they might be viewed as the primary actors for ensuring operational functionality of NMB at the state and municipal levels as it is required by the CPRD Committee[1134] and the SCA.[1135] Nevertheless, the efforts of the NMB to increase its capacity to monitor the Länder-level CPRD implementation[1136] has not been successful.[1137] This means that, it, except 2 permanent[1138] and 1 temporary[1139] monitoring Länder-level agreements, as well as a few action-plan evaluation orders of some federal states, including hesse and Thuringia[1140], does not receive constant funding[1141] for carrying out the tasks assigned to it at the Länder-level despite the explicit concern[1142] and call of the CPRD Commit-

1132 For more see sections below.

1133 Welti, 2019.

1134 CRPD/C/1/Rev.1, annex. Para. 18; Concluding observations on the initial report of Germany. Para. 62c.

1135 SCA, Report, November 2015, 3.1.

1136 Second-level-interview DE/A 1, on 31.01.2016Q. 11.

1137 See the answer of the federal government in the zweiter und dritter Staatenbericht der Bundesrepublik Deutschland zum UN-BRK. Para. 36.

1138 Federal states of Nordrhein-Westfalen and Saarland. For more see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation (Last accessed on 10.07.2022).

1139 In Berlin as of 2012. For more see:https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation (last accessed on 10.07.2022).

1140 For the full list of Action Plans for the federal government and the federal states see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/bund-und-laender-im-vergleich (last accessed on 10.07.2022).

1141 See the response of the SP in the Combined second and third periodic reports (Deutscher Bundestag, Drucksache 19/11745), on 18.07.2019. Q. 36.

1142 CRPD Committee, Concluding observations on the initial report of Germany. Para. 61:
"The Committee is concerned … that the SP does not provide the adequate resources on a permanent basis to support the independent monitoring mechanism's work in accordance with Article 33 (2)".

tee to ensure the availability of resources for more comprehensive and effective monitoring at the Land and municipal levels:[1143] "There are many possibilities of counseling, intervention and providing commentaries on legislative projects or writing concepts for example in the field of education, where there is a big movement and extensive developments, but we cannot be everywhere simultaneously as we have not enough human and financial resources".[1144]

Actually, Germany introduced a similar institution at the federal level with the General Equality Law in 2006.[1145] In 2011, the federal Antidiscrimination Body launched the Antidiscrimination Coalition, which is a nationwide offensive for a non-discriminatory society. As of spring 2021, 11 federal states, including Hesse and Thuringia joined the Coalition and financed the establishment and operation of antidiscrimination bodies in their federal states.[1146] This arrangement corresponds to the Art. 84 Sentence 1 GG, which means that "where the Länder execute federal laws in their own right, they shall provide for the establishment of the requisite authorities and regulate their administrative procedures". The provision allowing the federation to regulate the administrative procedure with no possibility of separate Land legislation in exceptional cases, does not apply to the establishment of Länder-level institutions.[1147]

1143 CRPD Committee, Concluding observations on the initial report of Germany. Para. 62 C; See also CRPD/C/1/Rev.1, annex, Para. 18.

1144 Second-level-interview DE/A 1, on 31.01.2016Q. 10. The original reads as follows: "Die Schwäche ist ein Mal, dass wir eben nicht überall gleichzeitig sein können und die Entwicklungen im Bereich Bildung sind sehr weitreichend. Da ist schon Bewegung drin und das ist sehr groß, ne? Das ist die größte Schwäche, dass wir nicht hinreichend viele Leute haben, um die Sachen zu überblicken. und es gibt viele Prozesse und Möglichkeiten der Beratung und der Intervention oder Einladung zu Vorträgen. Oder auch die Möglichkeit Gesetzgebungsvorhaben zu kommentieren oder Konzepte zu schreiben, die wir nicht wahrnehmen können, weil wir keine Kapazitäten haben"; Second-level-interview DE/A 1, on 31.01.2016Q. 4.

1145 AGG, as amended on 23.05.2022 by BGBl. I S. 768, §25.

1146 The scope of their mandate varies from Federal State to Federal State. For more see the Federal States' declarations of Intend (Absichtserklerungen der Bundesländer) at: https://www.antidiskriminierungsstelle.de/DE/was-wir-machen/projekte/koalition-gegen-diskriminierung/koalition-gegen-diskriminierung-node.html;jsessionid=6057E1E642F7FEBE0D8A8283E6322F6A.intranet222 (Last accessed on 10.07.2022).

1147 BeckOK Grundgesetz/Suerbaum, 41. Ed. 15.5.2019, GG Art. 84 Rn. 1–66.

2.2 Austrian Monitoring Framework

The Austrian FMC started its work without its own budget.[1148] The BMSK announced however, that it, in acting as the bureau of the Committee, would assume the prior agreed costs associated with the work of the Committee. The members of the MC, including the chairperson, had to serve pro bono.[1149] With the 2010 amendment of the Federal Disability Act (BGBLA_2010_I_81), the chairperson began to receive an expense allowance, including travel costs. According to the 2012 report of the Committee, its scarce resources also affected the accessibility of the Committee meetings. Most specifically, the comprehensive communicative accessibility, especially for persons with learning disabilities could not be guaranteed.[1150]

It took a couple of years before the federal government addressed the requirement of ensuring permanent funding of the FMC.[1151] The 2017 amendment of the Federal Disability Law allowed setting up a private non-profit legal entity that is jointly governed by the BMASK and the members of the MC.[1152] As of 2018, the entity is being allocated EUR 300.000 yearly for salary and office costs. Accordingly, it formed its first paid staff, including an employee of press and public relations, a lawyer and a secretary.[1153] Moreover, it moved to its own accessible office in November 2018. The amendment also provided for a reimbursement provision of travel and subsistence expenses for the members of the MC.[1154] However, the fact that the funding of the MC is under the sole control of the appropriate ministry and that the federal government is founding member of the non-profit legal

1148 See the minutes of the Monitoring Committee meeting on 10.12.2008. retrieved from: https://www.monitoringausschuss.at/protokolle/. (Last accessed on 01.07.2022).

1149 Ibid.

1150 Unabhängiger Monitoring Ausschuss, Bericht an den Bundesbehindertenbeirat, 10. Dezember 2012. Retrieved from: https://www.monitoringausschuss.at/dokumente/berichte/ (Last accessed on 01.07.2022).

1151 For the requirement see CRPD/C/1/Rev.1, annex, Para. 15; SCA, General Observations, 1.10.

1152 The Federal Disability Act (BBG), §13l (1).

1153 See Monitoring Ausschuss, Rückblick auf unsere Tätigkeiten seit 2018. Retrieved from: https://www.monitoringausschuss.at/rueckblick-auf-die-taetigkeiten-des-monitoring-ausschusses-seit-2018/ (Last accessed on 01.07.2022).

1154 The Federal Disability Act (BBG), §13j (6).

entity,[1155] gives serious reason to doubt its ability to act independent of the federal government.[1156]

The situation at the Länder-level is even more inadequate:[1157] The TMC, for instance, had no legally stipulated funding until 2017. Its operation was enabled through the financial means of the office of the Antidiscrimination Commissioner.[1158] This was satisfactory for the functioning of the MC, but not enough for big projects.[1159] The 2018 amendment of Tiroler Antidiskriminierungsgesetz- TADG[1160] did not make tangible changes in this respect; it just added a provision, according to which the functioning of the TMC should continue being attached to, and located in the office of the Anti-discrimination Commissioner and be supported by the Tyroleangovernment.[1161] The members of the MC, except the Commissioner, would continue working pro bono. This gives tangible reasons to conclude that the Länder-level MCs do not have the necessary infrastructure[1162] to discharge their monitoring responsibilities.

2.3 Danish Monitoring Framework

All actors of the Danish MF have legally regulated funding. The DDC has governmental funding, covering its activities and employees of the secretariat, as well as reasonable accommodation of unremunerated members of the council.[1163] The annual funding amounts to DKK five point nine million- about EUR 8.000000.[1164] The work and staff of the Danish Parliamentary Ombudsman is financed through the parliamentary budget.[1165]

1155 Federal Disability Act (BBG), §13l (1).
1156 Principles relating to the Status of National Institutions (Composition); SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Paras. 15B – E and 17; OHCHR, National Human Rights Institutions, 41.
1157 Federal Monitoring Committee, 2018: Art. 33 (2).
1158 Second-level-interview AT/B-T 1, on 30.10.2015Q. 7.
1159 Second/third-level-interview AT/B-T 2, on 27.10.2015Q. 8.
1160 LGBl. Nr. 144/2018.
1161 Tiroler Antidiskriminierungsgesetz, §16 (5).
1162 Principles relating to the Status of National Institutions (Composition); SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Para. 15 B – E.
1163 BEK nr 897 af 12/05/2021, Sec. 42 PCS. 2.
1164 Second-level-interview DK/A 1, on 01.12.2016, Q. 7.
1165 Act No. 473 of 12 June 1996 concerning the Ombudsman as amended by the Consolidated Act No. 349 of 22 March 2013. Chapter 1.

The 2018 appropriation, for example, amounted to DKK 84,700.000.[1166] However, the financial means provided to these actors are under control of the executive/legislator, which aggravates their independence.[1167]

The DIHR also has permanent governmental funding. This allows the DIHR to have its own employees, premises and not be subject to strict financial control that may affect its independence. To this end, the supervision of the DIHR assigned to the Ministry of Foreign Affairs is carried out in consideration of the independence of the DIHR and its self-governing nature.[1168] However, the governmental funding covering the domestic activities amounted to only 9 percent in 2007, which was criticised by the SCA.[1169] Nevertheless, this tendency continued until 2017 and slightly improved in 2020, when the governmental allocation amounted to about 28.8 percent of its overall budget.[1170] This was one of the reasons for deferring the DIHR reaccreditation in 2017.[1171] Besides, the DIHR does not have additional funding for its mandate under the CPRD, whereas the SCA states that "if the NHRIs are given with additional responsibilities e.g., CPRD, it should be allocated additional financial resources to discharge these functions.[1172] Accordingly, the CPRD related actions should be financed through the general funds, which might eventually lead to prioritization of other tasks over the responsibilities under the CPRD. In addition, the limited domestic funds, evidently, hinder the DIHR as the only human-rights-based and Paris Principle compliant body to carry out capacity building activities for the diverse groups of DPs and their organizations, as a result of which the DPOs did not develop a human rights-oriented action policy.[1173]

1166 The Danish Parliamentary Ombudsman, Annual Report 2018: 124 -129.
1167 Principles relating to the Status of National Institutions (Composition); SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Paras. 15B – E and 17; OHCHR, 2009, 41.
1168 Bylaws of the DIHR, Sec.34.
1169 SCA, Report, October 2007, 3.3.
1170 DIHR, 2020 Annual report to the Danish parliament, 37.
1171 SCA, Report, November 2017, 3.2- Point 6.
1172 `SCA, General Observations, 1.10; See also CRPD/C/1/Rev.1, annex. Para. 11.
1173 For more see chapter VI part on Denmark.

3. Mandate of National Monitoring Mechanisms

3.1 German National Monitoring Body

Since its establishment, the sphere of competence[1174] of the GIHR did not include protection responsibilities.[1175] The adoption of the DIMR-Act of 2015, with which the GIHR has been designated as the NMB of Germany[1176] both at the federal and Länder-levels,[1177] did not expand the mandate of the GIHR although the CPRD Committee underlines that the mandate of the MFs should "encompass the promotion, protection and monitoring of all rights enshrined in the Convention".[1178]

3.1.1 Promotion

In accordance with Section 2 of the DIMR-Act, the NMB provides information to various actors at the horizontal and vertical governmental levels,[1179] carries out applied research,[1180] and provides human rights trainings. These, however, proved to be not as comprehensive as it has been required by the CPRD.[1181] This affects and is visible especially in indirect policy fields e.g., education at the Länder-level.[1182]

1174 Principles relating to the Status of National Institutions. Competence and responsibilities 2.
1175 SCA, Report, November 2008, 4.3.
1176 DIMRG, §1.
1177 Aichele, 2015, 85–95.
1178 CRPD/C/1/Rev.1, annex. Para. 15; the SCA, General Observation 1.2 provide for only promotion and protection Competencies, although it enlists 'monitoring' under the protection competence.
1179 Second-level-interview DE/A 1, on 31.01.2016Q. 19.
1180 Aichele, 2015; For the full research List, see: Publikationen | Deutsches Institut für Menschenrechte at: https://www.institut-fuer-menschenrechte.de/publikationen (Last accessed on 01.07.2022).
1181 See the appropriate requirements in CPRD. Art. 4.1I, Art. 8.2 B and D, Art. 13.2, Art. 24.4; CRPD/C/1/Rev.1, annex. Para. 23 K and L; in 2011, the requirement was also reconfirmed by the UN Declaration on Human Rights Education and Training *adopted by the General Assembly on 19 December 2011 (A/RES/66/137);* Principles relating to the Status of National Institutions Competence and responsibilities 3 f; Vienna Declaration and Programme of Action. Para. 36.
1182 For more see chapter IV part on Germany.

Although there is no formal regulation on responding or complying to advice and requests, the NMB,[1183] provided advice and comment on federal-level draft laws concerning DPs directly.[1184] The actions of the NMB in indirect policy fields, instead, are not visible: for instance, the policy-making processes of the Federal Ministry of Education and Research, which oversees the field of vocational and higher education, contain no written commentaries of the NMB.[1185] Similarly, the involvement of the NMB in the public hearings of the Bundestag in direct policy fields is ensured,[1186] whereas in Committees that do not concern DPs directly but have essential importance for their development e.g., vocational and higher education, its participation has not been ensured.[1187]

Neither the DIMRG[1188] nor the statutes of the GIHR contain provisions regulating the scope, form and extent of the "National" Monitoring Body in carrying out its tasks in the federal states. Accordingly, only a few out of 16 federal states adopted laws allowing permanent or temporary NMB monitoring at the Länder-level.[1189] Other federal states, including Hesse and Thuringia, have had only a punctual cooperation with the NMB.[1190] This means that in these federal states there is no Independent Mechanism that could conduct effective promotion, protection and monitoring of the implementation of the CPRD.[1191] Accordingly, the measures taken by the federal states to develop and implement CPRD-conform policies differ

1183 SCA, General Observations, 1.6; CRPD/C/1/Rev.1, annex. Para. 16.

1184 For more refer to BMAS website on laws (Gesetze und Gesetzesvorhaben) at: https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/gesetze-und-gesetzesvorhaben.html (Last accessed on 01.07.2022).

1185 For more see the webpage of the Federal Ministry of education and research containing documents on the developed laws Gesetze – BMBF at: https://www.bmbf.de/bmbf/de/service/gesetze/gesetze_node.html (Last accessed on 01.07.2022).

1186 E.g., Bundesteilhabegesetz: Ausschussdrucksache 18(11)801; Barrierefreiheitsstärkungsgesetz: Ausschussdrucksache 19(11)1137; Entwurf für ein Gesetz zur Umsetzung der Richtlinie (EU) 2019/882 des Europäischen Parlaments und des Rates über die Barrierefreiheitsanforderungen für Produkte und Dienstleistungen und zur Änderung des Jugendarbeitsschutzgesetzes: Ausschussdrucksache 19(11)113.

1187 BT-Drucksache 19/8749; BT-Drucksache 19/14431; BT-Drucksache 19/15273.

1188 BGBl I 2015, 1194.

1189 For more see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/berlin (Last accessed on 01.07.2022).

1190 Ibid.

1191 First-level-interview DE/B-H 1, on 14.01.2016, Q. 6; First-level-interview DE/B-T 2, on 23.05.2018, Qs. 3, 4 and 6.

from federal state to federal state. For instance, the State of Hesse did not assess if the state laws comply with the CPRD provisions neither before nor after the ratification, but it commissioned the Max Planck Foundation for International Peace and the Rule of Law, to develop a check-list, which had to help in identifying the discrepancies of the Hessian Laws with the CPRD.[1192] The Thuringian government, in its turn, commissioned the NMB to evaluate the compliance of selected laws falling under its exclusive legislative and executive powers, including School Law.[1193] However, in amending the School Law, the recommendations of the NMB have not been taken into account as they have been considered to be very radical.[1194] Besides, both federal states by setting the framework of assessment commissioned the NMB to evaluate the Action Plans on the implementation of the CPRD.[1195] The evaluations, during which the NMB conducted expert interviews with 5/6 ministerial representatives and 5/6 representatives of the civil society and reviewed relevant documents of the federal states, showed that Action Plans were built up on already existing measures, did not provide exact information on actors responsible for execution, budgetary issues and the timeline of the target actions and contained measures that were not based on human rights norms stipulated by the CPRD e.g., inclusive education.[1196] In response to the evaluation report on the Action Plan, the Hessian State government announced the development of the concretized Action Plan 2.0, which has not been developed as of summer 2022. The Thuringian State government, instead, by following the advice of the NMB, adopted the second Action Plan in 2018 containing a number of improvements but failed in enlisting measures aimed at ensuring inclusive schooling. The presence of the NMB in the parliamentary processes of two examined federal states has not been ensured either.

1192 First-level-interview DE/B-H 1, on 14.01.2016, Q. 3.

1193 First-level-interview DE/B-T 2, on 23.05.2018, Q. 3; For the list of evaluated laws see: Thüringer Ministerium für Arbeit, Soziales, Gesundheit, Frauen und Familie (TMASGFF) 2. Thüringer Maßnahmenplan zur Umsetzung der UN-Behindertenrechtskonvention, Erfurt: 2018. S. 20.

1194 First-level-interview DE/B-T 2, on 23.05.2018, Q. 4.

1195 Monitoring-Stelle UN-Behindertenrechtskonvention (2013): Evaluationsbericht der Monitoring-Stelle zur UN-Behindertenrechtskonvention zum Hessischen Aktionsplan zur Umsetzung der UN-Behindertenrechtskonvention,2016: Evaluationsbericht der Monitoring-Stelle zur UN-Behindertenrechtskonvention zum Thüringer Maßnahmenplan zur Umsetzung der UN-Behindertenrechtskonvention.

1196 Ibid.

To this end, it becomes evident that the actions taken by the NMB to promote the rights of DPs through advisory procedures, addressed mainly the direct policy fields of the federal executive and legislative organs, whereas efforts taken to promote the provisions of the CPRD, including civil, political, economic, cultural and social rights at the state and municipal levels[1197] were not sufficient enough to induce the desired paradigm shift.

3.1.2 Monitoring

The GIHR as a NHRIs did not have an explicit[1198] mandate to monitor compliance with human rights Treaties. However, with its designation as the Independent Monitoring Body under the Art. 33 of the CPRD, it, most precisely, its NMB department, developed a system to assess the conformance of domestic legislation and policies with the CPRD, laid down indicators and benchmarks, and maintains website containing information on practices related to the implementation of the Convention.[1199] It was also able to measure the impact of disability-specific policies through thematic studies and annual reports, as well as disability action plans of some federal states and federation. However, its impact assessment of indirect policies and programmes on DPs as it is required by the CPRD Committee[1200] included selected essential policy fields e.g., education but failed in evaluating these in the light of structural configuration of the SP. For the successful performance of this, the NMB would have to maintain permanent collaboration with all relevant Länder-level actors,[1201] including administrative organs and the DPOs, which has not been ensured since its establishment. Accordingly, the requirement to ensure the identification and bridging the gaps that prevent DPs — as rights holders — from fully enjoying their rights, as well as the gaps that infringe on duty bearers to fully discharge their legal obligations to respect, protect and fulfil the rights of DPs[1202] in

1197 CRPD/C/1/Rev.1, annex. Paras. 15 And 18; Principles relating to the Status of National Institutions Competence and responsibilities 3a; Vienna Declaration and Programme of Action. Para. 36.
1198 SCA, General Observations, 1.6.
1199 See the CPRD Committee requirement in CRPD/C/1/Rev.1, annex. Para. 13.
1200 CRPD/C/1/Rev.1, annex. Para. 39D.
1201 CRPD/C/1/Rev.1, annex. Para. 38.
1202 CRPD/C/1/Rev.1, annex. Para. 39c.

all policy fields and at all governmental levels with the direct involvement of DPOs[1203] could not been sufficiently fulfilled.

In addition, the NMB as the Independent Monitoring Mechanism under the CPRD submits parallel reports to the CPRD Committee independent of the SP by providing a human-rights-oriented and research-based standpoint on the implementation of the CPRD provisions. It also contributes to the preparation of lists of issues, both for the general and the simplified reporting procedures and answers the list of questions as it is required by the CPRD Committee.[1204]

3.1.3 Protection

In fact, the GIHR has been established to serve as a research institution[1205] and up-to-day it preserves its research profile despite the critique of the SCA[1206] and explicit requirement of the CPRD Committee to empower the NMB with the proactive and reactive protection competencies.[1207] Most particularly, the capacity of the GIHR to conduct ex-officio investigations, despite its proven importance for the protection of human rights,[1208] has neither been explicitly stated in the DIMR-Act nor regulated by any other legal document as it is for example the case with the federal and Länder-level disability commissioners, who, in carrying out their responsibilities, are empowered with requesting all authorities and other public bodies to provide the necessary information and to grant access to the relevant documents.[1209] Accordingly, the GIHR in general and NMB in particular, cannot protect proactively the rights of DPs as it does not have "expeditious and full access to information, databases, records, facilities and premises, such as care homes, psychiatric institutions and sheltered workshops, as well as

1203 CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39[E]; See also CPRD Committee, General Comment No. 7. Paras. 34 – 39.

1204 CRPD/C/1/Rev.1, annex. Para 23 d, f and g; See also, SCA, General Observations, 1.4.

1205 Rudolf, 2011.

1206 SCA, Report, November 2008, 4.3.

1207 CRPD/C/1/Rev.1, annex. Para. 13.

1208 See for example: Brodie, 2015, 1223.

1209 See for example: BGG, §18 (3): "Alle Bundesbehörden und sonstigen öffentlichen Stellen im Bereich des Bundes sind verpflichtet, die beauftragte Person bei der Erfüllung der Aufgabe zu unterstützen, insbesondere die erforderlichen Auskünfte zu erteilen und Akteneinsicht zu gewähren."

regular and special schools both in urban and rural or remote areas".[1210] This means that the NMB cannot collect information on violations and issue/publish reports on considered and processed complaints which could be another proactive way of preventing violations as it might expose the wrongdoings of the state and thus serve as a costly naming and schaming strategy.[1211]

Furthermore, the GIHR, including NMB does not have a mandate to handle individual complaints as it is suggested by the Paris Principles[1212] and required by the CPRD Committee.[1213] The resistance to empower the NMB with complaint handling competence might be explained by the perception that "for a clear line" between the role of an NHRI and the judiciary, the NHRI should not have judicial powers[1214] or by the argument that human rights protection is based exclusively on the judicial system and the Constitutional Court[1215]. While these assumptions might be valid, the quasi-judicial mandate of NMB is seen as key to its public legitimacy[1216] since it could serve as an accessible[1217] and independent instrument for protecting the rights of DPs across the state. In fact, the need for such an instrument has been recognized[1218] and as a consequence introduced and assigned to the Federal Disability Commissioner with the Federal Participation Law of 2016, but its scope is limited to only violations concerning federal-level public authorities.[1219] Accordingly, in case of violations within the realm of the exclusive legislative powers of federal states e.g., accessibility and reasonable accommodation in the schools, DPs and their families do not have easily accessible and uncomplicated access to justice.[1220]

The NMB department of the GIHR, as a registered non-governmental human rights organization, could, in fact, use legal representation options

1210 CRPD/C/1/Rev.1, annex. Para. 12.
1211 For more on naming and shaming strategy see Franklin, 2015.
1212 SCA, General Observations, 1.6 and 2.9.
1213 CRPD/C/1/Rev.1, annex. Para. 13.
1214 Amnesty International, para. 4.D.1.
1215 Nußberger, 2012.
1216 Carver, 2000; Pegram, 2011; Linos/Pegram, 2015; for the general discussion on legitimacy see, Goodman and Pegram, 2012.
1217 Carver, 2000: 83.
1218 Welti et al., 2014.
1219 BGG, Para. 16; Behindertengleichstellungsschlichtungsverordnung.
1220 Welti et al, 2014: 294; Schroeder, et al., 2014; See also European Union Agency for Fundamental Rights, 2011.

provided by domestic law[1221] to initiate direct strategic litigation[1222] concerning important human rights violations of DPs. Instead, the NMB, in over 11 years of its establishment, contented with a few domestic[1223] and international[1224] initiatives of third-party interventions, where it was not a full party to the proceedings.

3.1.4 Multi-level Cooperation with state and non-state bodies

The GIHR in general, and the NMB in particular, is obligated to collaborate with all the actors responsible for the promotion, protection, implementation and monitoring of human rights of DPs.[1225] To fulfil its international-level responsibilities,[1226] the NMB interacts with the Committee in the framework of the state reporting procedure by submitting parallel reports and participating in the dialogue between the Committee and the delegation of the SP.[1227]

At the EU level, the NMB is a member of the European NHRIs. Accordingly, it actively participates in all disability-related activities, including third-party interventions before the ECJ and ECTHR.

1221 VwGO, §67 (2.2.6); SGG, §73 (2.8); BGG, §14, §15 and §16 (3. The Labour courts (ArbGG, as amended on 5.10.2021 by BGBl. I S. 4607, §11) Federal Constitutional Court (Section 22 BverfGG, as amended on 20.11.2019 by BGBl. I S. 1724) and constitutional courts of federal states (E.G. Section 20 StGHG, as amended on 1.04.2022 by GVBl. S. 184, 204; Section 17 ThürVerfGHG, as amended on 8.08.2014 by GVBl. S. 469) do not envisage such an opportunity.

1222 Welch/Haglund, 2017.

1223 E.g., Amicus-Curiae-Stellungnahme: Wahlrechtsausschlüsse nach dem Bundeswahlgesetz (BWahlG) im Wahlprüfbeschwerdeverfahren (Bundesverfassungsgericht, 2 BvC 62/14); Amicus-Curiae-Stellungnahme: Diskriminierung durch Kündigung wegen HIV (Bundesarbeitsgericht, 6 AZR 190/12); Bedeutung der UN-Behindertenrechtskonvention/Zugang zur Regelschule (Verwaltungsgerichtshof Hessen).

1224 E.g., Stellungnahme: Sterilisierung ohne Einwilligung (Europäischer Gerichtshof für Menschenrechte).

1225 SCA, General Observations, 1.4 and 1.5; CRPD/C/1/Rev.1, annex; CPRD Committee, General Comment No. 7 Paras. 36 – 38.

1226 CRPD/C/1/Rev.1, annex. Part IIIa.

1227 CRPD/C/1/Rev.1, annex. Part IIIa.

At the national level, the NMB collaborates with the executive organ designated as the FP.[1228] In the framework of its cooperation, it also prepares state reports on behalf of the SP,[1229] which is seen critical by the SCA.[1230]

The NMB maintains regular contact also with the Federal Disability Commissioner, who is appointed as the CM under the Art. 33 Para. 1 of the CPRD and is an advisory member of the GIHR Board of Trustees. It is also an advisory member of the NAP Committee governed by the federal FP,[1231] but in general the interaction does not take place in formalized manner, e.g., through legislation regulations or a duly authorized executive agreement and directive.[1232] Cooperation with the similar bodies at the Länder-level either takes place in a limited extent e.g., in the framework of Länder-level action plans evaluations or does not take place at all. In reviewing the legislative processes both at the vertical and horizontal governmental levels, as well as in evaluating the multi-level and multi-actor interviews I could not identify constant and formalised cooperation of the NMB with public authorities responsible for development and administration of policies addressing DPs indirectly.

The collaboration with the civil society takes place, in addition to their inclusion in the governing bodies of the GIHR, through regular SC consultations on various CPRD-related subjects in Berlin. It takes part three times a year and in principle, is open to any civil society organization that has an interest in working resolutely for the implementation of the CPRD and the desire to exchange experiences concerning the rights of DPs with other relevant actors.[1233] Although the consultations are open in format, participation is by invitation only and no organization can be represented by more than one person. There are over 60 organizations which are regularly invited to participate in the consultations. These include organizations representing the interests of service providers and family members and federal level self-help umbrella organizations, which were,

1228 Second-level-interview DE/A 1, on 31.01.2016Q. 14.

1229 Second-level-interview DE/A 1, on 31.01.2016, Q. 13; Third-level-interview DE/A 4, on 04.06.2018, Q. 12.

1230 SCA, General Observations, 1.4.

1231 NAP 2.0, §5.4.2 (NAP-Ausschuss).

1232 See the statement of the CPRD Committee, CRPD/C/1/Rev.1, annex. Para. 21.

1233 For more on the Civil Society Consultations, refer to: Verbändekonsultation | Deutsches Institut für Menschenrechte at: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation (Last accessed on 01.07.2022).

overall, satisfied with the structural implementation of and cooperation with the NMB.[1234] Länder-level DPOs, thus, do not have direct access to the civil society consultations of the NMB.[1235] Consequently, the views of the Länder-level DPOs on the Länder-level-specific issues with regard to the implementation and monitoring of the Convention are being considered only in the framework of the evaluation reports of the NMB, where the participation of the Länder-level DPOs is very limited and perceived to be not only ineffective but also inaccessible for some groups of disabilities: e.g., hearing impaired.[1236] This, in view of the federal structure of Germany, might put its efficacy under question as cooperation with the DPOs is not only obligatory under the CPRD,[1237] but also seen as one of the fundamental elements for its successful functioning and public legitimation.[1238]

Besides, the NMB, despite its explicit obligation to ensure accessibility in all the stages of its work,[1239] appeared to be inaccessible for DPOs. Most particularly, it was underlined that the DPO consultation venue was not accessible for wheelchair users, materials of the NMB were not readable for the blind, and learning disabled did not have easy-to-understand language translators to participate meaningfully.[1240] The inaccessibility is also visible on some pages of its website and in its thematic and state-related studies.

The NMB also coordinates efforts of DPOs involvement in the preparation of state reports as it is suggested by the CPRD Committee.[1241] However, it is not clear to what extent the NMB contributes to the encouragement of the departments or units responsible for drafting the reports to ensure participatory and transparent consultation processes and informing and

1234 Third-level-interview DE/A 4, on 04.06.2018Q. 4; for more see the chapter VI part on Germany.

1235 Third-level-interview DE/B-H 1, on 05.07.2016Q. 6; Third-level-interview DE/B-H 2, on 30.05.18Q.15; Third-level-interview DE/B-H 3, on 14.06.2018 Qs. 6 and 15.

1236 Ibid.

1237 CPRD, Art. 33 (3); Principles relating to the Status of National Institutions. Methods of operation G.

1238 Renshaw, 2012.

1239 CRPD/C/1/Rev.1, annex. Paras. 20, 23c; CPRD Committee, General Comment No. 7 Paras. 36 – 39.

1240 Third-level-interview DE/A 4, on 04.06.2018, Q. 12; Third-level-interview DE/A 5, on 04.06.2018, Q. 12. With regard to getting easy-to-read/understand training material there was also positive experience, Third-level-interview DE/A 1, on 15.05.2018, Q. 12.

1241 CRPD/C/1/Rev.1, annex. Para. 23c; See also, Müller/Seidensticker 2007.

supporting the civil society in developing an alternative report.[1242] In any case, it is an indisputable fact that the local-level DPOs have been completely left out of reporting procedures.[1243]

3.2 Austrian Monitoring Framework

Since the establishment of the FMC in December 2008,[1244] its mandate has been limited to the matters falling under the jurisdiction of the federation. To this end, in fulfilling the obligation of protecting and monitoring the CPRD in matters falling within the core legislative competences of the federation, the provinces (Länder) have to establish or designate bodies that meet the requirements of an Independent Mechanism under the Art. 33 of the CPRD.[1245] This applies also to matters, where the federation has the legislative competence and the provinces (Länder) are entitled with the implementation competences.[1246] As a result, the provincial governments, after long hesitation tasked the antidiscrimination commissioners with competences under the Art. 33.3 CPRD.[1247] For instance, The Tyrolean-government designated the Antidiscrimination Commissioner with CPRD monitoring responsibilities, but its mandate has not been regulated by the law.[1248] After the amendment of the Tyrolean Anti-Discrimination Act in 2017,[1249] the mandate of the MC has been legally stipulated. Nevertheless, as the sections below show, the legal framework of Austrian MF is not as broad as it is required.[1250]

1242 CRPD/C/1/Rev.1, annex. Para. 23c; See also, Müller/Seidensticker 2007; Kjaerum, 2009a: 17 – 24.
1243 For more see chapter VI part on Germany.
1244 Schulze, 2013.
1245 The Federal Disability Act (BBG), §13h.
1246 Ibid., §13i.
1247 Federal Monitoring Committee, 2018: Article 33 (2).
1248 Second-level-interview AT/B-T 1, on 30.10.2015Q. 7.
1249 TADG LGBL. Nr. 127/2017.
1250 Principles relating to the Status of National Institutions. Competence and responsibilities 2; CRPD/C/1/Rev.1, annex. Para. 15; SCA General Observation 1.2.

3.2.1 Promotion

In order to promote awareness about the rights of DPs, Austrian FMC, unlike the TMC, submits reports on its activities and concerns to the federal Minister of Social Affairs. The report is being published, which might have awareness raising effects for a few relevant actors, but it cannot, definitely, substitute the effect caused by the tabling in parliament.[1251] The Austrian MCs also publish thematic reports covering the specific rights of the CPRD and organize public debates, which can encourage broader discussions and thus contribute to the awareness raising among public. However, due to their inadequate and dependent position, the MCs are unable to take on their important role of providing human rights education and training[1252] to the state officials, civil servants, judges, law enforcement officials, professionals and staff in the education system, as well as DPOs.[1253] The lack of human rights education and capacity building is visible especially in the disability organizations that are not represented in the MCs, which results in their incapacity of voicing their views in state reporting procedures[1254] on an equal footing with the disability organizations represented in the MCs. Accordingly, the shadow report submitted by the disability organizations is almost identical to that of the FMC's report.

In promoting the federal-level implementation of the CPRD, the FMC submits opinions on the legal and administrative rules in force as well as corresponding practice and issue recommendations (Stellungnahmen) for amendments in all matters that fall under the legislative and administrative competence of the federation or administrative competence of provinces.[1255] Within this legal framework, the FMC also submits commentaries (Begutachtungen) on draft laws concerning direct and indir-

1251 Brodie, 2015: 1242–1243.

1252 Principles relating to the Status of National Institutions Competence and responsibilities 3 f; UN Declaration on Human Rights Education and Training, Art. 9; Vienna Declaration and Programme of Action. Para.36; CRPD/C/1/Rev.1, annex. Para. 23 E, K, L and N.

1253 CPRD, Art. 4 (1I), Art. 8 (2 B and D), Art. 13 (2), Art. 24 (4); CRPD/C/1/Rev.1, annex. Para.23 E, K, L and N; In 2011, the requirement was also reconfirmed by the UN Declaration on Human Rights Education and Training *adopted by the General Assembly on 19 December 2011 (A/RES/66/137).*

1254 See the CPRD Committee requirement in the CRPD/C/1/Rev.1, annex. Para.23 E, K, L and N.

1255 BBG, §13g (2.1).

ect e.g., education policy fields both at the federal and Länder-levels.[1256] The TMC also has similar competencies.[1257] Nevertheless, it avoids expressing explicit criticism against Tyroleangovernment:[1258] e.g., in case of the amendment of the Tyrolean Anti-Discrimination Act, it remained silent, whereas the FMC Committee submitted a commentary on the draft law of the Tyrolean Anti-Discrimination Act by criticising provisions regulating the composition, member selection process, mandate and financial control of the TMC.[1259] The act was adopted without taking into account any of the recommendations of the FMC.[1260]

Besides, the multi-actor interviews and analysis of legislative processes allow the assumption that, due to their subordinate position, composition and research incapacity, the advice and commentaries of the Austrian MCs are addressed more as the voice of civil society than as of independent human rights institution.[1261]

3.2.2 Monitoring

The legal acts regulating the Austrian multi-level MF do not provide a collaborative possibility[1262] of developing a data collection system[1263] that could help in measuring the impact of direct and indirect policies and programmes on DPs,[1264] and facilitate the identification of gaps that infringe

1256 BBG, §13g (2.2). For the list of opinions and commentaries (available only in German language), refer to: https://www.monitoringausschuss.at/dokumente/berichte/ (Last accessed on 01.07.2022).

1257 Tiroler Antidiskriminierungsgesetz 2005, §16b (1); For the list of opinions and commentaries (available only in German language), refer to: https://www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung/tiroler-monitoringausschuss/stellungnahmen/ (Last accessed on 01.07.2022).

1258 Second/third-level-interview AT/B-T 2, on 27.10.2015, Q.12.

1259 Unabhängiger Monitoring Ausschuss zur Umsetzung der UN-BRK, "Stellungnahme zum Entwurf der Novelle zum Tiroler Antidiskriminierungsgesetz und zum Entwurf der Novelle zum Gesetz über den Tiroler Volksanwalt", 9.08.2017.

1260 To follow the 2017 legislative process of the Tyrolean Anti-Discrimination Act, refer to legal information system (Rechtsinformationssystem-RIS), which provides information on federal and state law and EU law, as well as case law, selected legal norms of municipalities and Federal Ministries.

1261 First-level-interview AT/A 1, on 27.04.2016, Qs. 14 and 17; Second-level-interview AT/B-T 1, on 30.10.2015, Q. 10.

1262 BBG, §13g (2); Tiroler Antidiskriminierungsgesetz, §16b).

1263 CRPD/C/1/Rev.1, annex. Para.38.

1264 CRPD/C/1/Rev.1, annex. Para. 39D.

on duty bearers to fully discharge their legal obligations to respect, protect and fulfil the rights of DPs.[1265] Neither do the Austrian MCs have the necessary qualified staff and appropriate financial resources[1266] to develop needed data collection system independently. As a result, the focused studies and parallel reports submitted by Austrian MF are more experienced reports than scientifically analysed bassline studies.

3.2.3 Protection

The limited mandate[1267] of Austrian MCs becomes visible especially in reviewing their protection competences: the FMC, for example, can obtain statements of the public authorities concerning the CPRD and thereby access all the necessary information and documentation.[1268] This could, in fact, serve as an effective proactive protection instrument if not for the subordinate structure of the Committee, the partiality of which might rightly be called into question. The TMC does not even have such a possibility.[1269]

The Austrian MF also does not have the needed[1270] capacity to handle complaints or petitions from individuals or groups regarding the alleged violation of their human rights[1271] despite the proven benefit of this instrument for public legitimacy.[1272] The MCs also do not take efforts to engage in direct litigation[1273] and submitting third-party interventions before international, supranational or national courts. This gives reasons to assume that the composition, infrastructure and mandate of the Austrian multi-level MF do not allow sufficient protection of DPs from violations.

3.2.4 Multi-Level Cooperation

The FMC cooperates with the CPRD Committee in the framework of the state reporting procedure as a fundamental element of its responsibilit-

1265 Ibid. Para. 39c.
1266 See section 2.2. of this chapter.
1267 BBG, §13g (2); Tiroler Antidiskriminierungsgesetz 2005, §16b (1).
1268 BBG, §13g (2.1) und (4).
1269 Tiroler Antidiskriminierungsgesetz 2005, §16b (1).
1270 CRPD/C/1/Rev.1, annex, Para.13.
1271 BBG, §13g (2); Tiroler Antidiskriminierungsgesetz, §16b.
1272 Carver, 2000; Pegram, 2011; Linos/Pegram, 2015; For the general discussion on legitimacy see, Goodman and Pegram, 2012.
1273 Welch/Haglund, 2017.

ies.[1274] Due to its non-Paris Principles compliant status, the Austrian MF does not have access to the European Network of National Human Rights Institutions[1275] and its disability-related activities.

After the designation of Länder-level MCs, the FMC started cooperating with them as it is required by the CPRD Committee.[1276] For instance, the TMC organized a public meeting in 2018 with the FMC.[1277] Nevertheless, it, despite being asked for cooperation, did not participate in the first parallel reporting as "the initial state report was already submitted and there was not much to do",[1278] but it took part at the second parallel reporting process.[1279]

The formalised cooperation and interaction of the MF with the FP and CM[1280] is regulated by the law and takes place, mainly, through the mutual participation in the MC and the Federal Disability Advisory Board.[1281] Tyrol does not have a FP. Instead, it has designated a CM,[1282] which cooperates with the designated MC through the Antidiscrimination Commissioner and within the legislative processes.[1283] To this end, it might be assumed that the ability of the MCs to cooperate on an equal footing with the FP/CM is highly jeopardised due to their structural dependency, non-neutrality of the Committee members and controlled funding.

1274 CRPD/C/1/Rev.1, annex. Part III.
1275 For more see the Members of ENNHRI at: https://ennhri.org/our-members/. (Last accessed on 01.07.2022).
1276 CRPD/C/1/Rev.1, annex, Para. 14.
1277 For more info refer to the webpage of the Tyrolean Monitoring Committee on Public Meetings at:: https://www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung/tiroler-monitoringausschuss/oeffentliche-sitzungen/ (Last accessed on 01.07.2022).
1278 Second-level-interview AT/B-T 1, on 30.10.2015Q. 13. The original reads as follows: "Wir sind eingerichtet worden, da war der Staatenbericht schon abgeschlossen, deswegen war dann nicht sehr viel. (…) Und also zur Stellungnahme wurden wir aufgefordert damals als Antidiskriminierungsbeauftragte auch.".
1279 The 2018 commentary on formation of a New Government (Stellungnahme zur Regierungsbildung). Retrieved from the webpage of the Tyrolean Monitoring Committee on commentaries at: https://www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung/tiroler-monitoringausschuss/stellungnahmen/ (Last accessed on 01.07.2022).
1280 CRPD/C/1/Rev.1, annex. Para. 21.
1281 See BBG, §9 (1).
1282 For more see chapter IV.
1283 Second-level-interview AT/B-T 1, on 30.10.2015, Q. 14.

The MF shall also consult and cooperate with other bodies responsible for the promotion and protection of human rights.[1284] In particular, it should collaborate with the ombudsmen office. This becomes much more important especially in taking into account that Austria, instead of maintaining a single human rights institution, has multiple accountability structures, whereas Richard Carver argues that generally the model of a single NHRI is likely to lead to greater effectiveness.[1285] For instance, Austria instead of designating the B-status ombudsmen Board as the CPRD MF and strengthening its independence, it established a new FMC that does not even have a B-status. As a result, it maintains multiple disability-related protection bodies with overlapping functions.[1286] In view of this, the mutual cooperation of these bodies became unavoidable and legally regulated,[1287] which does not necessarily lead to its effective functioning as none of them has the required A-status.[1288]

As it was mentioned above, since its establishment, the Austrian multi-level MF has been composed of representatives of selected disability organizations, many of whom are members of the Committee from the first nomination turn. This of course leads to close cooperation between the FMC and the represented DPOs.[1289] However, it should be considered that due to non-changing members, other disability groups and their organizations do not have an opportunity to work with the FMC, except for a few public meetings[1290] that were not accessible to all groups of DPs due to the absence of necessary funding.[1291]The cooperation is even more irregular and loose at the provincial level: for instance, the TMC does not have a legal mandate to collaborate and include DPOs. It tries to ensure dialogue with various affected groups by organizing public discussions at least twice annually.[1292]

1284 Principles relating to the Status of National Institutions. Methods of operation F.
1285 Carver, 2011.
1286 Schulze, 2013, B. Independent Mechanism (Article 33 2) CRPD).
1287 The cooperation takes place through the Federal Disability Board and Both the chairperson of the FMC and the federal disability ombudsmen are its members (BBG, §9 (1 Ns. 8 and 10); See also BBG, §13c (4).
1288 CRPD/C/1/Rev.1, annex. Para.14.
1289 Principles relating to the Status of National Institutions. Methods of operation G; CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39[E]; See also CPRD Committee, General Comment No. 7. Paras. 34 – 39.
1290 For the full list of public meetings see: https://www.monitoringausschuss.at/sitzungen/ (Last accessed on 01.07.2022).
1291 Schulze, 2013.
1292 Second-level-interview AT/B-T 1, on 30.10. 2015, Q.s 9 and 14.

However, it avoids direct collaboration with Länder-level DPOs based on the presumption that "they perceive their own interests, which has nothing to do with the CPRD".[1293]

Thus, it becomes evident that the entangled position, controled inclusion and underfinanced mandate hinder the Austrian multi-level MF in ensuring broad participation of DPOs. This weakens their legitimacy and allows an assumption that they are a pawn of the state.[1294]

3.3 Danish Monitoring Framework

The parliamentary Decision B15 of 17 December 2010, establishing the Danish MF accorded varying, and in some responsibility fields also overlapping competencies to the designated actors.[1295] However, as the sections below show, the mandates of the DIHR, Danish Disability Council (DDC) and Danish Parliamentary Ombudsman is de facto not as broad as it is required.[1296]

3.3.1 Promotion

The responsibility of promoting the Convention is mainly assigned to the DDC and DIHR. The task of the DDC is to advise the central public administration, ministries and the parliament in matters concerning DPs.[1297] Since the recommendations of the Council shall reflect the interests of all its members, they undergo a difficult coordination process.[1298] Therefore, the effect of the recommendations on the decisions of the government

1293 Second/third-level-interview AT/B-T 2, on 27.10.2015Q. 15. The original reads as follows:
"Ich habe nicht das Gefühl, dass die Behindertenorganisationen selber den Kriterien entsprechen, die die BRK vorsieht (…) Menschen mit Behinderungen – ja, aber nicht die Organisation. Organisationen haben oft eigene Ziele bei uns in Österreich, eigene Interessen. Die Lebenshilfe beispielsweise (…)".

1294 Renshaw, 2012.

1295 Ventegodt Liisberg, 2013.

1296 Principles relating to the Status of National Institutions. Competence and responsibilities 2; CRPD/C/1/Rev.1, annex. Para. 15; The SCA General Observation 1.2 provide for only promotion and protection Competencies, although it enlists 'monitoring' under the protection competence.

1297 BEK nr 897 af 12/05/2021. Secs.34, 35 and 37.

1298 Second-level-interview DK/A 1, on 01.12.2016, Q. 12.

and/or the parliament is hard to discern.[1299] The Council should also ensure dialogue and evaluate the disability-related processes within the society in light of the CPRD, promote inclusion and carry out awareness raising activities to eradicate discriminatory attitudes toward DPs.[1300] Nevertheless, as of December 2015, the Council did not make campaigns on the rights of DPs under the Convention and it has not taken the resources to inform about the Convention as such.[1301]

The promotion competence of the DIHR comprises, primarily, providing information and advice on human rights of DPs to all the relevant actors through its thematic studies and press releases.[1302] It also informs the general public about the rights of DPs by submitting focused reports to the media and papers in academic journals[1303] and through its own website.

As its task to promote the rights stipulated by the CPRD, the DIHR counsels the parliament and the government by advising and commenting on draft laws that might be important for ensuring and implementing the human rights of DPs in both disability-specific and indirect policy fields.[1304] However, the government's practice of accepting and applying the provided advice is "quite depressing".[1305] For instance, the DIHR pointed out the unacceptability of the use of force in psychiatry,[1306] and managed to persuade the government to amend the guidelines on support for disabled parents to underline that disabled parents have a right to support, to be parents.[1307] Moreover, the DIHR criticized the fact that there is no ban on discrimination on the grounds of disability outside of the labour market, as a result of which, in 2018, the government adopted a new law prohibiting discrimination on the grounds of disability that made it possible to file a complaint on the basis of disability discrimination outside of the labor market to the Danish Board of Equal Treatment.[1308] Nevertheless, the DIHR was not successful in convincing the government to include a requirement

1299 Ibid.
1300 BEK nr 897 af 12/05/2021, Section 35.
1301 Second-level-interview DK/A 1, on 01.12.2016, Q. 19.
1302 Bylaws of the DIHR, Sec. 2; see also Ventegodt Liisberg, 2013.
1303 Second-level-interview DK/A 2, on 01.12.2016, Q. 7.
1304 Bylaws of the DIHR. Sec, 5 (1.3).
1305 Second-level-interview DK/A 2, on 01.12.2016, Q. 19.
1306 Second-level-interview DK/A 2, on 01.12.2016, Q. 7.
1307 Second-level-interview DK/A 2, on 01.12.2016, Q. 17.
1308 Danish Institute for Human Rights, annual report to the Danish Parliament. 2019.

for reasonable accommodation[1309] that falls under the administrative powers of municipalities.[1310] In indirect policy fields e.g., school education also falling under the administrative powers of municipalities, the DIHR did not achieve much success.[1311]

While at the national level there is at least an opportunity and legally stipulated mandate to advise the government, the required functionality in general and advisory capacity in particular of the DIHR at the municipal level has not been ensured:[1312] "we as an institute have not been very good at promoting human rights at any local level because we are a national institution and we find it very difficult really to work with all the 98 municipalities (…) so basically (…) we are not carrying out our responsibilities under the CPRD at the local level".[1313] Accordingly, the promotion of the rights of DPs does not take place at the administrative level, which in view of the governmental structure of Denmark,[1314] might be seen as a serious inhibition of the effective implementation of the CPRD at the administrative level.

3.3.2 Monitoring

The MFs under this competence should develop a system for assessing the impact of the implementation of direct and indirect legislation and policies; develop indicators and benchmarks; and maintain databases containing information on practices related to the implementation of the Convention.[1315] This means that they shall, in cooperation with relevant actors, including

1309 Ibid.
1310 DPOD, 2013: 8 – 9.
1311 Second-level-interview DK/A 2, on 01.12.2016, Q. 15.
1312 Second-level-interview DK/A 1, on 01.12.2016, Q. 10; Second-level-interview DK/A2, on 01.12.2016, Qs. 5 and 7.
1313 Second-level-interview DK/A 2, on 01.12.2016, Q. 5. The original reads as follows: "No, so it has not but we as an institute have not been very good at promoting human rights at no local levels because we are a state institution and we find it very difficult really to work with all the municipalities. There are 98 and it's really difficult for us… we think, work with individual Municipalities but we try to work with the disability councils at the local level". "So basically, the answer to this question is that we are not monitoring the implementation at the local level, but we are trying to do it better. And become more active with these disability councils at the local level".
1314 See chapter IV part on Denmark.
1315 CRPD/C/1/Rev.1, annex. Paras.13 and 39d.

DPOs, FPs and CMs, continuously develop a data collection system[1316] to facilitate the identification and bridging the gaps that prevent DPs — as rights holders — from fully enjoying their rights, as well as the gaps that infringe on duty bearers to fully discharge their legal obligations to respect, protect and fulfil the rights of DPs.[1317]

The duty to monitor the implementation of the Convention in Denmark has been primarily assigned to the DIHR.[1318] Accordingly, it collaborated with the Danish social research institute to develop the gold indicators.[1319] This helps in measuring the developments in 10 thematic areas.[1320] It also publishes annual status reports that are based on surveys and statistics provided by DIHR as well as other organizations or institutions, including ministries, other government agencies, universities and civil society organizations.[1321] For example, it conducted surveys of how municipalities act in relation to elderly persons/employees or how the public authorities and private companies undertake positive action.[1322]

The DIHR also uses its right of contributing to the reporting processes[1323] by submitting well-reflected parallel reports in relation to state reports to the CPRD Committee.

More specific, namely the monitoring responsibility under the Art. 16 Para. 3 CPRD[1324] is assigned to the Danish Parliamentary Ombudsman, who has been given a mandate to promote equal treatment of DPs based on the 1993 Parliamentary Decision establishing the Centre for Equal Treatment of DPs.[1325] Before getting a mandate under the Art. 33.2 of the CPRD,[1326] the ombudsman was assigned as the national preventive body

1316 CRPD/C/1/Rev.1, annex. Para.38.
1317 CRPD/C/1/Rev.1, annex. Para. 39c.
1318 Parliamentary Decision B15 of 17 December 2010.
1319 Second-level-interview DK/A 2, on 01.12.2016, Q. 13.
1320 For more see: https://www.humanrights.dk/news/gold-indicators-measuring-10-key-thematic-areas-improve-situation-persons-disabilities (Last accessed on 01.07.2022).
1321 Ibid.
1322 Second-level-interview DK/A 2, on 01.12.2016, Q. 11.
1323 CRPD/C/1/Rev.1, annex. Para. 23 d, f and g; See also, SCA, General Observation 1.4.
1324 See the following section on Protection.
1325 Act on Danish Parliamentary Ombudsman, No. 473 of 12 June 1996.
1326 The initial report of Denmark, Para.386.

under the Optional Protocol to the UN OPCAT 2009[1327] and in 2012, he received a mandate to monitor the rights of children.[1328]

3.3.3 Protection

In fact, only the Danish Parliamentary Ombudsman has a protection mandate. He has the required access to and interaction with any person, governmental organ, information, databases, records, facilities and premises.[1329] Most particularly, he carries out inspections of public administration, including psychiatric wards, and private institutions, where persons are or may be deprived of their personal liberty and private institutions responsible for tasks directly related to children.[1330] The inspections under OPCAT are carried out in dialogue with the Danish Rehabilitation Centre for Torture Victims and the Danish Institute for Human Rights.[1331] The ombudsman also examines the accessibility of the public authority buildings,[1332] and conducts investigations,[1333] handles individual complaints alleging breaches of the rights of DPs under the domestic law[1334] as it is required by the CPRD Committee.[1335] In case of violation, he makes recommendations and/or reports the matter to the Legal Affairs Committee of the Danish Parliament (Folketing), the minister, municipal council or regional council concerned.[1336] The recommendations of the Danish Parliamentary Ombudsman are not binding, but are perceived to be effective.[1337] However, in view of the fact that the Danish Parliamentary Ombudsman does not fully fulfil the principles concerning the formal institutional safeguards of

1327 Lov nr. 502 AF 12. Juni 2009, som aendrer Lov om Folketingets Ombudsmand.
1328 Supplementary Report of the Danish Parliamentary Ombudsman to the UN Committee on the Rights of the Child on Denmark's Fifth Periodic Report to the Committee. Doc.no. 16/03550–47, 2/23, Para. 4.
1329 CRPD/C/1/Rev.1, annex. Para. 12.
1330 The Act on Danish Parliamentary Ombudsman, No. 473 of 12 June 1996. Chapter 6 Sec. 19.
1331 See The page of the Ombudsman on Monitoring Visits at: https://en.ombudsmanden.dk/introduction/Monitoring_visits/ (last accessed on 01.07.2022).
1332 Ibid.
1333 The Act on Danish Parliamentary Ombudsman, No. 473 of 12 June 1996. Chapter 5.
1334 The Act on Danish Parliamentary Ombudsman, Chapter 4.
1335 CRPD/C/1/Rev.1, annex. Para. 13.
1336 The Act on Danish Parliamentary Ombudsman, Chapter 7.
1337 Abraham, 1968: 55–61.

a NHRI, it can neither be expected that he ensures impartial complaint case selection and or admission process nor that the decisions made will reflect the human-rights-based understanding of discrimination. The latter is best shown in his decision of September 2009, where he considered the right to education under Art. 24 in a complaint concerning an autistic child who had been placed in a school for disabled children against the will of its parents.[1338] The ombudsman came to the conclusion that the right to inclusive education under Art. 24 CPRD was just a right to be included in the Danish educational system, but it did not give a right to be placed in an ordinary school.

The jurisdiction of the parliamentary ombudsman extends to all parts of the public administration except the parliament, courts of justice, boards, which make satisfactory decisions on disputes between private parties and private entities.[1339] In examining the local government, the ombudsman acts in accordance with the special operational conditions of the local government.[1340]

The DIHR, as part of its tasks, provides general advice to persons that have been discriminated on the ground of disability,[1341] but it does not have a mandate to conduct independent examinations of discrimination and handle complaints related to violations of CPRD provisions[1342] as it does in relation to protection against discrimination on the grounds of gender and race where the Institute has been appointed as the Equality Body.[1343]Nevertheless, it tries to carry proactive protection by interpreting its mandate more broadly. It, for example, documents the breaches of human rights through applied research, issues annual parliamentary reports on occurring violations and publishes them both in the national language and in English,[1344] which exposes the wrongdoings of the state that might be costly and politically sensitive for the SP.[1345]

1338 "Henvisning af autistisk bam til specialskole ffem for enkeltintegrering i friskole", Ombudsmandens afgorelse af 24. September 2009, j.nr. 2009–1787–710.
1339 The Act on Danish Parliamentary Ombudsman, Chapter 2.
1340 The Act on Danish Parliamentary Ombudsman, Sec. 8.
1341 BYLAWS of THE DIHR. Sec. 5 (1).
1342 SCA Report, November 2017, 3.2 Point 4.
1343 Ibid., Para. 5 (2).
1344 DIHR publications can be found at: https://www.humanrights.dk/publications (Last accessed on 01.07.2022).
1345 Kjaerum, 2009b.

The DIHR also applies a reactive protection instrument[1346] by litigating violations of human rights of DPs before the domestic and international courts and participates in third-party interventions.[1347] This certainly contributes to the domestic implementation of human rights of DPs,[1348] but it cannot replace the efficacy of the directly available and inclusively composed human-rights-based complaint mechanism at the domestic level, especially if we take into account the long-waiting time of international proceedings.

Although the DDC might treat general disability-related problems by requesting information on the decisions made,[1349] it does not have protection competence.[1350]

3.3.4 Multi-level cooperation with state and non-state bodies

In accordance with its obligation, the Danish MF cooperates and interacts with all relevant institutions both at the international, supranational and national levels. The required cooperation with the international actors, especially the CPRD Committee[1351] takes place through DIHR in the framework of state reporting, contribution to general discussions and General Comments, as well as support in communication and inquiry procedures under the Optional Protocol to CPRD. The DIHR is also the voting member of the European National Human Rights Institutions[1352] and participates at the annual CPRD Work Forum on the EU's implementation of the CPRD,[1353] which brings together a wide range of civil society organizations, NHRIs and EU actors.

1346 CRPD/C/1/Rev.1, annex. Para. 15.
1347 See for example: Supreme Court of Denmark, Case no. 16/2016. Judgment delivered on 22 December 2016; ECTHR Judgment Strøbye and Rosenlind v. Denmark, applications (nos. 25802/18 and 27338/18).
1348 Welch/Haglund, 2017.
1349 BEK nr 897 af 12/05/2021, Sec. 36 PCS. 2.
1350 Bek nr 1635 af 22 December 2010, kapitel 11; BEK nr 897 af 12/05/2021, Sec.35 PCS.3.
1351 CRPD/C/1/Rev.1, annex. Part III.
1352 See the webpage of ENNHRI voting members at: https://ennhri.org/our-members/ (Last accessed on 01.07.2022).
1353 For more see: https://www.euro.centre.org/projects/detail/3373 (Last accessed on 01.07.2022).

At the national level, Denmark ensured the required[1354] mutual collaboration and coordination between the designated MF actors through meetings and/or being a member in each other's organs. Consultations with other bodies responsible for the promotion and protection of general human rights[1355] is also ensured.

The MF also collaborates with the executive and legislative organs. The cooperation with the legislator takes place through the DIHR annual reports to the parliament.[1356] The regular and timely cooperation and interaction of the MF with the executive branch and its FP and Coordinating Mechanism takes place through the formalized structures as it is suggested by the CPRD Committee.[1357] Most particularly, the DIHR and the Ministry of Social Affairs concluded a memorandum of understanding on their cooperation, which envisages 2 annual meetings and regular exchanges of information and opinions.[1358] Nevertheless, The Danish government did not consult the DIHR during the preparation of the initial state report except an open meeting.[1359] The access of the DIHR to such processes seems to be rather limited, which means that it complies with the requirement that NHRIs should neither prepare the country report nor report on behalf of the government.[1360]

The mutual collaboration between DDC and the central, regional and municipal governments is ensured through its composition.[1361] Nevertheless, the collaboration of the DDC with the FP is based more on and governed by the principle of subordination, whereas the DIHR, thanks to its independence, enjoys equal-level positioning in collaborating with the government.

The necessary close collaboration of the Danish MF with the DPOs[1362] takes place through DIHR and DDC. The DDC is the main actor responsible for DPO involvement in the monitoring processes.[1363] However,

1354 CRPD/C/1/Rev.1, annex, Para. 14.
1355 Principles relating to the Status of National Institutions. Methods of operation F.
1356 Bylaws of the DIHR, Sec. 5.3.
1357 CRPD/C/1/Rev.1, annex. Para. 21.
1358 Ventegodt Liisberg, 2013.
1359 Ventegodt Liisberg, 2013.
1360 SCA, General Observations, 1.4.
1361 BEK nr 897 af 12/05/2021, Sec.38.
1362 CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39e; See also CPRD Committee, General Comment No. 7. Paras. 34 – 39.
1363 Initial report of Denmark, Para.384.

the DPO appointment is limited to exclusive nomination right of the DPOD.[1364] The Danish Parliamentary Ombudsman office cooperates with the Danish Rehabilitation Centre for Torture Victims and the DIHR,[1365] but there is no formal cooperation with the DPOs or their umbrella organization. The collaboration of the DPOs in the promotion and monitoring work of the DIHR is limited to the single representative of the umbrella organization of DPOs. Regular involvement and cooperation with DPOs outside of this national structure has not been envisaged. In the best case, they might take part at irregular focused meetings of the DIHR.

Accordingly, the required[1366] inclusion of DPOs in the independent MF and the work thereof has been ensured only for selected DPOD member organizations and in a few responsibility fields falling under the promotion mandate of the DDC. Their involvement in the human rights oriented promotion, protection and monitoring activities is not ensured, whereas the CPRD Committee states, "independent MF should ensure the full involvement and participation of DPs and their representative organizations in all areas of its work".[1367] Besides, the exclusive participation and nomination rights, apparently, hinders the comprehensive and effective access of multi-level and diverse DPOs to all working processes[1368] of the Danish MF, whereas the CPRD Committee in its General Comment No. 7 explicitly states that "the existence of umbrella organizations within SPs should not, under any circumstances, hinder individuals or organizations of DPs from participating in consultations or other forms of promoting the interests of DPs".[1369] The lack of involvement and collaboration, in turn, impede the national and especially municipal DPOs from developing a human-rights-based understanding of disability, which leads to weaker (if any) implementation of the CPRD at the municipal level.

1364 BEK nr 897 af 12/05/2021, Sec.38 PCS 2.1.
1365 See The page of the Ombudsman on Monitoring Visits at: https://en.ombudsmanden.dk/introduction/Monitoring_visits/ (Last accessed on 01.07.2022).
1366 CRPD/C/1/Rev.1, annex. Para.20; See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.
1367 CRPD/C/1/Rev.1, annex, Para. 20.
1368 CRPD/C/1/Rev.1, annex. Para. 20; See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.
1369 CPRD Committee, General Comment No. 7, Para. 12a.

4. Comparative Evaluation

In the aftermath of World War II, a large number of states took the path of fundamental rights,[1370] by signing and ratifying International Treaties on individual human rights of specific groups,[1371] as well as enshrining the right to equal treatment[1372] and respect for human rights in their constitutions. This allowed judicial consideration of human rights, but did not prevent human rights violations at the domestic level.[1373] Accordingly, the United Nations initiated the promotion of the establishment of the NHRIs, and laid down a framework for NHRI design.[1374] To this end, the OPCAT contained a provision ensuring a domestic monitoring mechanism.[1375] However, soon it became clear that effective implementation of International Human Rights Treaties cannot be reached solely by installing Paris Principles compliant NHRIs. There was rather a need for an inclusive domestic structure that would enable comprehensive and systematic monitoring across the SP. The term "inclusive domestic structure" hereby addresses the form, methods, capacity and possibility of these actors in interacting with multi-sectoral and multi-level constitutional organs of states and non-state actors.

With the adoption of the CPRD in 2006, the inclusive monitoring structure became a binding requirement.[1376] Nevertheless, in analysing the structural implementation of the Monitoring Mechanisms under the Art. 33 Para. 2 CPRD from a comparative standpoint, it becomes clear that, by and large, each SP has chosen a different way of implementation. Even SPs that have similar political structures like Germany and Austria went different ways in ensuring formal institutional safeguards. This, as the evaluation that has been carried out based on an adjusted analytical framework of Katerina Linos and Tom Pegram's model,[1377] will show below, impacts the efficacy of designated/established Monitoring Mechanisms.

1370 Boli/Thomas, 2000.
1371 Simmons, 2009.
1372 Elkins/Ginsburg/Simmons, 2013; Ramirez/Soysal/Shanahan, 1997.
1373 See e.g., Hafner-Burton/Tsutsui, 2007; Hathaway, 2002; Christopher J. Fariss, 2014; Goodman/Jinks, 2003.
1374 See Linos/Pegram, 2016.
1375 OPCAT, Art. 3.
1376 CPRD, Art. 33.
1377 Linos/Pegram 2017.

4.1 Legal Status

In laying down the principles relating to the status of NHRIs, the drafters agreed that the higher the status of the instrument establishing the National Institution in a country's legislative hierarchy, the easier it would be for the institution to ensure that its independence was respected.[1378] All three examined SPs regulated the status and mandate of the designated/established monitoring actors through legislative texts. The federal government of Austria, however, opted for a new body and merged its regulation with the Federal Disability Act (BBG), which might make easier the amendment to the status, mandate and composition of the FMC.

4.2 Multi-level competence

In consideration of particular needs at the national level,[1379] the SPs to the CPRD with federal or decentralized administrations should ensure that the established or designated federal or national MFs "can properly discharge their functions at the federal, state, provincial, regional and local levels".[1380] For this purpose, the SPs might establish NHRI that shall, within the framework of its operation,"... set up local or regional sections to assist it in discharging its functions".[1381]

The examination shows, however, that the Monitoring Mechanisms do not have the needed multi-level functionality: for instance, the German Monitoring Mechanism has an established position at the federal level, but its consistent, comprehensive and permanent functionality at the Länder-level has been ensured only in 2 out of 16 federal states. I observed a similar picture also in Denmark, where the MF has an explicit mandate at the central government level, but no access to municipalities, which have autonomous powers to administer almost all disability-related policies. The FMC of Austria has been given mandate to promote and monitor the CPRD only at the federal level. Accordingly, the Länder-level monitoring has become possible only after 8 Austrian provincial Monitoring Mechan-

1378 E/CN.4/1992/43, 16 December 1991. Paras. 26, 27 and 111 -167; see also Meuwissen, 2015.
1379 Vienna Declaration and Programme of Action. Para. 36.
1380 CRPD/C/1/Rev.1, annex. Para. 18.
1381 Principles relating to the Status of National Institutions. Methods of operation E.

isms have been given legal status,[1382] but these were and still are very limited.

Thus, it might be assumed that the SPs ensured, if not inclusive, but at least adequate promotion and monitoring structures at the national/federal governmental level. However, the regulations that would ensure functionality or work of these bodies at the state/provincial and municipal levels has been either not ensured or have been adopted with considerable delay and weakness. This, presumably, affected the understanding, acceptance and implementation of the human rights of DPs at the state/local levels of SPs with federal or decentralized political structures: in over 12 years of CPRD ratification, the provision of accessibility and inclusive education has not been ensured in 16 federal states of Germany. Similar picture can be observed also in Austria. Besides, laws of 9 Austrian provinces regulating support measures for DPs are not based on a human rights understanding of disability and vary from province to province; rules of effective and inclusive access to and assistance for the primary and secondary schools differ across the 98 municipalities of Denmark.[1383]

4.3 Broad Mandate

The next important measure for ensuring an effective and functional Monitoring Mechanism is to guaranty the de jure broad mandate,[1384] encompassing the promotion, protection and monitoring of all rights enshrined in the Convention.[1385] Nevertheless, it became clear that the designated/established Monitoring Mechanisms do not have the required broad mandate.

All in all, all examined Monitoring Mechanisms have de jure promotion competences, but the scope of their responsibilities deviates from the CPRD Committee requirements.[1386]

1382 In over 11 years of CPRD ratification, 8 out of 9 provinces have more or less functional monitoring mechanisms. Corinthian monitoring committee started its work only in June 2020, whereas Monitoring Mechanism in Upper Austria is, in fact, inactive after its establishment due to lack of infrastructural safeguards. For more see the 2018 parallel report of the FMC.

1383 For more see chapter IV.

1384 Principles relating to the Status of National Institutions. Competence and responsibilities 2.

1385 CRPD/C/1/Rev.1, annex. Para. 15.

1386 CRPD/C/1/Rev.1, annex. Para. 13.

4.3.1 Promotion mandate

The GIHR, for example, has a comprehensive federal-level mandate to promote the CPRD implementation, whereas the Danish MF does not offer special trainings on CPRD. Austrian MF has promotion competence, but these activities are, on the one hand, based solely on experiences of selective affected persons, on the other hand, limited to participation at the legislative processes and awareness raising activities through public meetings. It offers neither a general nor specific human rights training on the CPRD. Most possibly, this impacts the human rights understanding of disability in the decisions and actions of both the federal and provincial state actors responsible for policy fields not affecting DPs directly, as well as non-state actors,.[1387] I observed a similar tendency at the state and/or municipal levels of Germany and Denmark.[1388] I observed the same at the state and/or municipal levels of Germany and Denmark.[1389] In addition, the regulation on Austrian MF does not envisage reporting to the federal/provincial parliaments, whereas it is perceived to be one of the effective instruments for informing the general public and legislators about the human rights violations of the SP and making recommendations for effective redress.[1390]

4.3.2 Monitoring mandate

All Monitoring Mechanisms have monitoring competences, but their functionality does not fully comply with the CPRD Committee requirements.[1391]

For instance, the GIHR/NMB and DIHR have developed evaluation systems, whereas, I could not discern a clearly defined human rights measurement system in the evaluation work of the Austrian MF. Albeit not comprehensive but all Monitoring Mechanisms have access to programs serving DPs, but access to facilities serving DPs is ensured only in public facilities of Denmark and Austria.[1392] This means that Germany does not have an

1387 For more see chapters IV and VI part on Austria.
1388 See Chapters IV and VI.
1389 See Chapters IV and VI.
1390 Brodie, 2015: 1242–1243.
1391 CRPD/C/1/Rev.1, annex. Paras. 12 and 13; CPRD, Art. 16 (3).
1392 This task, however, has been assigned to the Austrian Ombudsman Board, which unlike the MF has Paris Principles B-status.

Independent Mechanism that would monitor the human rights compliance of disability related facilities that fall under the legislative powers of federal states. Even the two federal states that mandated the GIHR/NMB with the monitoring of the CPRD implementation did not foresee such a function. Accordingly, the irregularities or even severe human rights violations persist up to date.[1393] And normally do not become subject of judicial proceedings. Therefore, there is a need for further examinations concerning the role and possibilities of Independent Mechanisms in preventing violence and human rights violations in facilities for DPs.

4.3.3 Protection mandate

According to the CPRD Committee, the MF shall handle individual and group complaints alleging violations of the rights guaranteed under the Convention either by referring the cases to the judiciary, including as part of its ability to follow up on its own recommendations[1394] or by acting as a quasi-judicial body. For this purpose they "must have expeditious and full access to information, databases, records, facilities and premises, both in urban and rural or remote areas; it must have unrestricted access to and interaction with any persons, entities, organizations or governmental bodies with which it requires to be in contact; its requests are addressed properly and in a timely manner by implementing bodies".[1395] The present examination showed, however, that none of the designated/established MFs comply with this requirement.

The GIHR/NMB does not have a protection mandate, but it submits third-party interventions both at the domestic and international levels. Although the Austrian MF has access to all documents and facilities, it does not have a de jure protection mandate and de facto does not take steps to protect the rights of DPs through litigation. Denmark, instead, assigned the protection competence to the Danish Parliamentary Ombudsman, which means that human-rights-based protection has not been ensured in cases of conflicts of norms.[1396] Nonetheless, the DIHR tries to reach human rights enforcement through strategic litigation by interpreting its mandate broadly.

1393 Schröttle et al., 2014; Wazlawik/Freck, 2016; Lorenz, 2020.
1394 SCA, General Observations 1.6.
1395 CRPD/C/1/Rev.1, annex. Para. 12.
1396 For more see chapter IV Part on Denmark.

Actually, the protection mandate as such is optional under the Paris Principles[1397] and seen as an unnecessary instrument in liberal democracies with established judicial systems,[1398] but as Felix Welti puts it, "the consideration of the CPRD by the judges of the social justice system cannot be taken for granted because, on the one hand, the CPRD cannot have been the part of their legal education and traineeships, on the other hand, the CPRD can be unknown to judges outside of Social Law (e.g., educational, administrative, construction and building laws) since the judges who work according to the specialist chamber principle perceive new legal instruments, primarily, when it affects their particular area".[1399] Besides, as the present study showed, the inconsistent and ineffective consideration of the CPRD in areas not affecting DPs directly might be even stronger in the SPs, where CPRD has been ratified but not incorporated, such as in Denmark or in SPs with shared or exclusive legislative and/or administrative powers of the state/provincial/municipal governments. In view of this, I find that the human-rights-based multi-level complaints handling mechanism assigned to an independent Paris Principle compliant institution could not only raise public legitimacy of these mechanisms[1400] but also be an effective way to implement the human rights of DPs across the SPs.

4.4 Inclusive composition and independence

Scholars believe that the value of a NHRI is that its distance, conversely, enables it to act as a bridge or mediate between government and non-government entities – a partner – trusted yet separate from both.[1401] This means that they have to have a capacity of independent collaboration both with the state and non-state actors. Independence, hereby, plays a decisive role and is subject to strict regulations requiring plural representation of CSOs and DPOs, in this case, as well as inclusion of governmental/parliamentary representatives with an advisory vote or simply in advisory organs of the Monitoring Mechanisms. The CPRD Committee, in fact, does not welcome

1397 Beco/Murray, 2014: 101–112.
1398 Nußberger, 2012.
1399 Welti, 2016: 635–658.
1400 Carver, 2000; Pegram, 2011; Linos/Pegram, 2015; For the general discussion on legitimacy see Goodman and Pegram, 2012.
1401 Beco, 2007; Beco/Murray, 2014.

this arrangement,[1402] but the Art. 33 of the CPRD requires establishment of a hybrid national structure which, in addition to CSO/DPO collaboration, denotes cooperative links to the executive and legislative organs of the state in so far as its efficacy is concerned.

The present study showed, however, that not all SPs guaranty the right balance between state and non-state actors and fail, by and large, in ensuring multi-level representation of CSOs and especially DPOs.

4.4.1 Non-state actors

The German NMB, for example, fulfils the requirement of plural DPO representation both through inclusion in its main decision-making organ and through regularly organized meetings with the federal-level DPOs. The DPO representative in the main decision-making organ of the GIHR comes from the German Disability Council. Nevertheless, organizations of and for DPs of the federal states remain outside of this framework. Denmark has a comprehensive representation of CSOs in the DIHR, but the DPO representation is limited to umbrella DPO. Similar structure is in place also in the DDC, which includes 5 members of national DPO that are nominated by the umbrella DPO. Local level disability councils have a similar composition, but they are not part of the national MF of Denmark. The regular representation of CSOs in the work of the Danish Parliamentary Ombudsman is not ensured.

The path chosen by Austrian MF diverge from that of German NMB and Danish MF: here the number of DPO representatives is equal to that of other members, but they should, similar to Denmark, be nominated by the umbrella DPO and by a provincial Antidiscrimination Commissioner. It is worth of mentioning that the Austrian FMC explicitly forbids the membership of non-Austrian/EU citizens.[1403]

The comparison, in the first place shows the dissimilar practises of MFs in including DPOs in their work: while GIHR, in general, has a broad federal-level involvement structure, Denmark and Austria maintain controlled, in transparent and limited inclusion frameworks. As a result, only privileged organizations have access to MFs and the rest, namely the overwhelming majority of DPOs do not have a possibility to participate in the human-rights-based monitoring processes. Accordingly, they have no

1402 (CRPD/C/1/Rev.1, annex), Para. 22.
1403 BBG, §13 J (3).

opportunity to develop human rights understandings of disability, which affects the comprehensive implementation of the CPRD.

Besides, the special route taken by Austria, namely ensuring the majority of disability organizations in the FMC, might be in line with the CPRD requirement,[1404] but the overrepresentation of DPOs is in contrast to the requirement of independence as it functions more as a substitute of the CSOs/DPOs than as a neutral body. Accordingly, the Austrian FMC does not have the weight of the GIHR/DIHR since it is seen primarily as a representative body of the civil society.

4.4.2 State actors

The NMB does not have representatives of the executive with voting rights. 2 out of 8 parliamentary appointees are NPS of the federal parliament. It also includes a member of the Federal Council and several governmental commissioners, including the Federal Disability Commissioner. The Danish Parliamentary Ombudsman has his own staff, but the Ombudsmen Law does not contain a provision on plurality thereof. The members of the DDC Advisory Board include central and local level governmental representatives. The DIHR not only has governmental representation with a voting right on its decision-making organ, but also allows the governmental representative to chair its decision-making organ. After long criticism, the Austrian federal government refrained from governmental representation with voting rights to the MC with the 2017 amendment of the BBG. The provincial antidiscrimination commissioners, who are appointed by the government, chair the provincial MCs. They, normally, nominate the committee members.

Against this background, it becomes clear that all examined actors of the MFs maintain some sort of governmental representation. This, in combination with other factors e.g., in transparent nomination, governmental appointment and dismissal practices, or dependant infrastructure lead to disproportional representation of the state organs, which constitutes a serious obstacle for the independence of the MFs.[1405]

In evaluating the inclusion of state and non-state actors in the work of the MFs, the study revealed convergence in non-existent or weak inclusive structures at the state/provincial and municipal levels: despite the federal

1404 Beco, 2011.
1405 See below.

structure of Germany and highly decentralised administrative structure of Denmark, the local presence of both German and Danish MFs has not been ensured. Instead, the national MFs opted for their representation at the federal/national governmental level. This, in fact, can raise the legitimacy of MFs among state actors, but in the case of Germany, where federal states have extensive disability-related and disability specific exclusive legislative and administrative powers, it cannot replace their direct involvement in the local-centred Paris Principles compliant sub-MFs. The representation of the state actors in the non-Paris Principles compliant MF, instead, might lead to subordination as the case of Tyrol clearly shows.

A similar picture could be observed with regard to state/provincial/municipal level DPO inclusion: while the GIHR ensured the comprehensive inclusion of federal-level DPOs, all interviewed DPOs had a solid understanding of human rights of DPs and effectively applied it during policy-making processes, whereas the Länder-level DPOs were aware of CPRD, but as the evaluation of legislative processes in Hesse and Thuringia showed, it has not been applied in the policy fields not affecting DPs directly.[1406] As a consequence, the provisions of the CPRD that fall under the legislative powers of the federal states, e.g., school education and accessibility have not found adequate implementation in over 12 years of ratification.[1407] Human rights understanding of disability at the national/federal level in Denmark and Austria could be discerned only in organizations that have been involved in MFs. Sub-nationally active organizations instead appeared not to apply the CPRD in their work.[1408] Accordingly, in policy fields that fall under the legislative powers of the federal states or administrative powers of municipalities, no significant dynamics of CPRD implementation could be identified.[1409]

1406 Grigoryan, 2021.
1407 See chapter IV part on Germany.
1408 It should be underlined that the TyroleanMonitoring Committee, for example includes DPs, but not DPOs. For more on the work of Austrian DPOs see Chapter VI.
1409 See chapter IV Parts on Austria and Denmark.

4.5 Appointment and dismissal

To ensure the independence and public legitimacy of MFs,[1410] their members are to be nominated in a public, democratic, transparent and participatory manner,[1411] the nomination should, preferably, be approved by the parliament.[1412] Executive approvals have to be avoided since these practices are perceived as political bias.[1413] The legislation establishing the NHRIs should also contain independent and objective dismissal procedures, with reasons "clearly defined", and not left to the discretion of those appointing the members.[1414] To this end, the dismissal should be based only on "serious grounds of misconduct or incompetence" and enacted with "fair procedures".[1415] Besides, the dismissal of members by the executive is incompatible with the independence of the MFs.[1416]

The comparative examination showed, however, that the designated/established MFs, by and large, do not follow these rules: for instance, the nomination of a representative of the German Disability Council to the decision-making organ of the GIHR, functions on the rotation principal,[1417] whereas half of the members to the decision-making organ of the GIHR are approved by the federal parliament, two of which are MPs of the Bundestag, the remaining 6 are nominated by the represented parties of the Bundestag. However, there is no regulation specifying the nomination procedure and setting-up human rights orientation of the nominees. The Danish and Austrian umbrella DPOs and the Austrian Antidiscrimination Commissioners also do not have clear nomination regulations for the MFs. The Danish Parliamentary Ombudsman is elected and can be dismissed by

1410 Carver, 2005.

1411 CRPD/C/1/Rev.1, annex. Para 15a; According to SCA General Observations 1.8, these requirements can be achieved by:
A. Publicizing vacancies broadly;
B. Maximizing the number of potential candidates from a wide range of societal groups;
C. Promoting broad consultation and/or participation in the application, screening, selection and appointment process;
D. Assess applicants on the basis of pre-determined, objective and publicly available criteria.

1412 Carver, 2005: 14.

1413 Ibid.

1414 SCA, General Observations 2.1.

1415 Ibid.

1416 SCA, General Observations 2.1.

1417 For more see chapter VI part on Germany.

the parliament. Nonetheless, the reason of the justified dismissal is unclear. The DDC secretariat and Board are located in and governed by the Social Ministry. The members of the DDC Advisory Board are approved and dismissed by the Minister of Social Affairs. The federal/national governments of Germany and Denmark have no say in dismissal procedures of NMB and DIHR members. The members to the Austrian MF are approved and dismissed by the federal government.

Thus, it becomes clear that all three MFs of the SPs do not have transparent nomination procedures. This, on the one hand, puts the legitimacy and the independence of designated/established MFs under question. On the other hand, it prevents plural representation of social forces. The none-transparent nomination practises, besides, raise the influence of the government, as it is the case in the Länder-level in Austria or the governing party as it is in Germany.

In addition, all designated Monitoring Mechanisms except DIHR and GIHR, maintain appointment and dismissal rules that make them subordinate to and functionally dependant on the executive.

4.6 Adequate infrastructure

In order to be independent of the government and not be subject to financial control that might affect its independence, the MFs should have adequate funding that would enable them to have their own staff and premises,[1418] This means that they shall have complete financial autonomy as a guarantee of their overall freedom to determine their priorities and activities.[1419] If the NHRIs are given additional responsibilities e.g., CPRD monitoring, it should be allocated additional financial resources to discharge these functions[1420] at all governmental levels.[1421]

In evaluating the financial equipment of the MFs, it became clear that German and Danish MFs had federal/national level funding from the beginning of their designation. Local level funding has been either completely missing as it was the case with the DDC and DIHR or available for highly limited/punctual parts of the SP, as it is in Germany. Federal level funding

1418 Principles relating to the Status of National Institutions (Composition); SCA, General Observations, 2.7 – 2.9.
1419 SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Para. 15 B – E.
1420 SCA, General Observations 1.10; See also CRPD/C/1/Rev.1, annex. Para. 11.
1421 (CRPD/C/1/Rev.1, annex), Paras, 18 and 19.

has been ensured starting in 2018, whereas the guaranty of financial independence at the local level still hangs in the air.

From the examined Monitoring Mechanisms only GIHR and DIHR have their own premises as of their designation. Austrian FMC obtained this opportunity only in 2018.

German and Danish MFs have paid staff. Austrian FMC, instead, might have three employees starting from 2018, whereas the local level does not have paid staff.

While initially the GIHR received an additional budget for the CPRD Mandate, as of 2016 it, similar to Danish MF, gets general allocations. The Austrian MF, as such, does not have funding for its activities.

In evaluating the infrastructure of the three MFs in light of their mandate and functionality, I could observe two similarities: the German and Danish MFs, where at least 1 mechanism is a NHRI, have, by and large, adequate human and financial resources for carrying out their mandate at the federal/national-level: while the German and Danish MFs became an indivisible and influential part of the legal and political processes, the Austrian MF still struggles with the issue of getting structural and financial independence that would ensure its human-rights-based and CPRD-compliant functioning.

However, the failure of Germany and Denmark to ensure the same level of structural and financial independence of the Monitoring Bodies at the state and municipal levels leads to convergence with Austrian structural implementation at the Länder-level: at this level the Monitoring Mechanisms of all SPs are not in the position to discharge their comprehensive responsibilities under Art. 33 Para. 2 of the CPRD.

4.7 Accessibility

In assessing the accessibility of designated/established MFs, I could observe far-reaching negative convergence: for instance, the deaf and learning disabled are, as a matter of fact, not included in the work of the MFs, primarily, because of costs connected with the sign/easy-to-speak language translation. The disability-specific assistance of disabled members has been explicitly regulated for DDC[1422] and at the Länder-level in Tyrol, whereas

1422 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sec. 40 PCS. 2.

the coverage of the voluntary work of DPs in the NMB and DIHR has not been clarified.[1423]

Unlike the DIHR all other Monitoring Mechanisms can be accessed by physically disabled, whereas the comprehensive accessibility and usability of all MFs for otherwise DPs has not been ensured. The websites and their content, including reports and thematic studies of non-disability specific Monitoring Mechanisms are not accessible.[1424]

To this end, it might be assumed that the National Human Rights Institutes in comparison to disability-specific Monitoring Mechanisms, if well equipped, can have considerable weight in promoting and monitoring the rights of DPs, but their structural accessibility is not ensured for all disabled groups. As a consequence, the required[1425] plural participation of DPs in all stages of the work of MFs does not take place. This, in turn, might make the voices of the most vulnerable disabled groups unheard.

4.8 Cooperation at the vertical and horizontal governmental levels

The close collaboration with relevant international, supranational and national actors is an indivisible part of the MFs responsibilities. In general, the collaboration is based on four main pillars, namely the CPRD Committee, relevant supranational actors, national FPs/CMs and DPOs.

In examining the collaboration with the CPRD, I could observe positive convergence: all MFs carried out their reporting obligations on time and objectively. Full supranational collaborations have been ensured in German and Danish cases, whereas the participation of the Austrian MF in the supranational cooperation structures is limited due to their unrecognized status. Accordingly, it has no access to litigation efforts of ENNHRI.

At the national level, all MFs have maintained the required[1426] links to other relevant actors at the federal/national level, but efforts ensuring effective, comprehensive and multi-sectional cooperation at the state/provincial/municipal levels could not be identified.

1423 For more see chapter VI.
1424 The GIHR started to address the web accessibility only as of September 2020.
1425 (CRPD/C/1/Rev.1, annex) Para. 20.
1426 Principles relating to the Status of National Institutions. Methods of operation F.

The cornerstone of Art. 33 is based, in fact, on the requirement of close collaboration with the FPs/CMs.[1427] This, however, has been comprehensively ensured only at the federal/national level. At the state/provincial and municipal level, the cooperation has proved to be either incomprehensive or punctual, as it is the case with Germany, subordinate as it is in Austria or completely missing as it is with all administrative levels of SPs.

The institutional cooperation with the DPOs outside of the structural framework of the MFs is ensured only at the federal level in Germany. Austria holds public meetings and Danish MF maintains irregular meetings with interested DPOs. The local level external cooperation is convergent with the internal DPO cooperation, meaning that it is almost non-existent.

Against this background, it might be assumed that the stipulated structural change has been effective at the federal/national level. However, this, in view of legal and political structures of SPs cannot be viewed as sufficient since the envisaged structural cooperation with other more relevant executive, legislative and/or administrative organs of SPs does not take place.

1427 It should be noted that not all SPs designated separate CMs. None of the SPs has a state/provincial/municipal CM. The Danish CM has been perceived as dysfunctional. For more see chapter IV.

VI. Organizations of DPs

In accordance with the Art. 4.3 of the CPRD, SPs shall closely consult with and actively involve DPs through their representative organizations in the development and implementation of legislation and policies to implement the CPRD, and in other decision-making processes concerning issues relating to them. The DPOs should also be involved in the monitoring processes in line with the Art. 33.3 of the CPRD. To this end, in this chapter, divided into three main parts, I study the composition, resources, aims and actions of organizations representing DPs at the multiple levels of government, based on the theoretical and methodological scope of this work. In its concluding part, I assess, comparatively, the efficacy of DPO involvement and participation in the light of the given legal and political system of Germany, Austria and Denmark.

1. Structures of DPOS

1.1 Structure of German DPOs

1.1.1 Legal Framework and Governing Configuration

The right to form associations in the Federal Republic of Germany is guaranteed by the Art. 9 GG. The eligibility framework and the structural requirements for establishment are set up by the German Civil Law (Sections 21–79 BGB), according to which the organizations should adopt statutes setting up their aims, responsibilities, the rights and duties of their members as well as their organizational structure.

To this end, the internal structures of German none-state organizations are based on two main organs,[1428] namely:

Federal (general) assembly; it decides upon actual applications guidelines and policies, membership issues and elects the members to

1428 E.g. Satzung (Statute) des Deutschen Blinden- und Sehbehindertenverbandes e.V. (DBSV), Fassung vom Mai 2014, §7; Satzung (Statute) des DGB E.V., Fassung vom 26.10.2013, §8; and Satzung (Statute) der ISL e.V. Fassung vom 11. Oktober 2017, §6. At the Länder-level e.g. Statutes (Satzungen) of the SliN e.V., Fassung

the Board of Directors. To this body belong delegates of the regular members, Board of Directors, honorary members and corporative/supportive members, who might have voting rights but not be affected. The member Länder-level organizations of the umbrella DPOs send on the proportional basis their delegates (the number fluctuates between one/two per 250 members) to the federal assembly.[1429] They are quorum if the majority of delegates of member organizations are present.[1430] In fact, however, the general assemblies, in comparison to managing boards, play "secondary role".[1431]

Board of Directors; it is elected every two/four years and consists of a President, Vice-President and about 7 members. The Board of Directors is bound by the resolutions of the administrative council and the assembly.[1432] The elected members to the Board of Directors should be from the member organizations and in some cases not be self-affected as they represent supportive members.

The Managing boards are perceived to have greater importance, as they are normally composed of the representatives of most important Länder-level member organizations.[1433] However, the assessment of the composition of the managing boards shows that the German umbrella DPOs put emphasis more on "other" member organizations than the ensuring the representation of the Länder-level member organizations. In some disability-specific umbrella self-advocacy organizations e.g., DBSV E.V. and BSK E.V., the leadership organs consist of regular members (in majority of cases represented by directly affected persons) and corporative or supporting members. Corporative members might be for example service providing organizations that manage special education or sheltered workshops and

vom 05. Oktober 2016, 6; BSBH E.V. Fassung vom 15.03.2022, §5; bith e.V. Fassung vom 14. November 2018, §8; Landesverband der Hörgeschädigten Thüringen e.V. Fassung vom 9.03.2013, §4; Landesverband "Interessenvertretung Selbstbestimmt Leben" in Thüringen e.V. Fassung vom 12.11.1999, §6.

1429 See for example, Satzung (Statute) des Deutschen Blinden- und Sehbehindertenverbandes e.V. (DBSV), Sektion 8; Satzung (Statute) des DGB E.V., Sektion 9 und 10; and Satzung (Statute) der ISL e.V., Sektion 7.

1430 Ibid.

1431 Reutter, 2012a: 129–164.

1432 See for instance, Satzung (Statute) des DBSV, Sektion10; Satzung (Statute) des DGB E.V., Sektion 11; and Satzung (Statute) der ISL e.V., Sektion 8.

1433 Reutter, 2012a: 129–164.

facilities.[1434] This might cause a conflict of interests in which such organizations prioritize their purpose as private entities over the rights of DPs.[1435] In fact, the World Federation of the Deaf, the World Blind Union and the World Federation of the Deafblind in their joint statement on inclusive education at the sixth session of the Ad Hoc Committee developing the Convention, called for choice in education by underlining that "Attendance at a mainstream school does not necessarily result in social inclusion for persons who are Blind, Deaf or Deaf-Blind".[1436] The statement was based on studies proving the negative effects the mainstream schooling might have on these groups, whereas the resocialization difficulties following the special schools have not been considered. Their position was not taken into account in the final version of the Convention. These organizations did not object to "living in the community and abolition of sheltered workshops during the negotiation of the CPRD. At the national level, however, they continue maintaining special facilities and do not question the persistence of isolating structures although the CPRD Committee made it clear that neither sheltered workshops nor special schools are in line with the CPRD provisions and required phasing out sheltered workshops through immediately enforceable exit strategies.[1437]

Such decisions might not, necessarily, reflect all members' opinions. Moreover, these positions pushed forward during the policy-making can even represent "the interest of only a minority of their membership"[1438] as the managing boards do not ensure equal representation of their Länder-level organizations.[1439] This, in view of the federal political structure of Germany, raises a question of legitimate political action. Nevertheless, this

1434 See for example the list of DBSV e.V. Corporative Members at:: https://www.dbsv.org/korporative-mitglieder.html (accessed on 01.07.2022).

1435 CPRD Committee, General Comment No 7: Paras. 11 and 13.

1436 For more see the sessions of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of DPs.

1437 CPRD Committee, Concluding observations on the initial report of Germany (CRPD/C/DEU/CO/1), Paras. 45, 46, 49 and 50.

1438 Hassel, 2010.

1439 The majority of the Federal-level umbrella DPOs neither state in their statutes that the interests of the Länder-level member organizations should be represented in the Managing Board nor these statutes have explicit provisions regulating the collaboration with the Länder-level member organizations. The Länder-level umbrella DPOs also do not have provisions regulating local representation and collaboration with the federal and local-level organizations.

aspect has not been an object of examination yet, despite the recognition of the importance of democratization[1440] in organizing moral demands.

The answers given by the DPO interviewees at the multiple governmental levels concerning the questions addressing their internal cooperation during the legislative processes, made it clear that the role of the equal Länder-level representation and cooperation in the work of the federal-level umbrella organizations is underestimated despite the fact that the majority of laws directly affecting DPs are being first developed and adopted in the federal-level legislative processes. In these cases the federal-level umbrella organizations, as the participants of the legislative processes, actually represent the so-called 'collective interests' of their Länder-level member organizations, without, in fact, involving them in interest/opinion formulation processes. Whereas, the representatives of federal and Länder-level legislative powers, including federal states and German District Association/German Association of Cities and municipalities are the indivisible part of the legislative processes.[1441] This was the case, for example, with the Federal Participation Law, where the federal-level umbrella DPOs expressed their views in the discussions of the draft law.

Besides, ensuring the inclusion of the representatives of the Länder-level member organizations in the decision-making structures/processes of the umbrella DPOs is important for the second stage of legislative processes, when the federal states develop and adopt framework laws to the federal laws. If the representatives of the Länder-level umbrella DPOs are involved in decision-making processes at the federal-level, they can ensure not only legitimation of political action and consideration of regional peculiarities in interest/opinion formulation, but also be prepared for advocating equal level interest/opinion formulation during the legislative processes of framework laws at the Länder-level.

1440 Willems, 2000.

1441 Gemeinsame Geschäftsordnung der Bundesministerien, Stand: 22. Januar 2020, §45 (1), §47 (1 and 5).

1.1.2 Types of Disability Organizations

A. Individual organizations

The existing legal framework allows the multi-level territorial presence of organizations with various profiles and types, including non-governmental and governmental interest groups such as German District Association/German Association of Cities and municipalities.[1442] The legal regulations have, by and large, been favourable also for the establishment and functioning of organizations "for"[1443] DPs, such as welfare associations and social organizations. Both are important service providers in the social sector and have big influence on social and economic policy-making processes- welfare associations because of their privileged status,[1444] social organizations because of their reach membership numbers e.g. 2.1 million members.[1445] However, their governing structures was not open to DPs. Moreover, persons with congenital disabilities have not been taken care of, which was corrected first in 1960s.[1446]

There are also organizations "of"[1447] DPs, including Disability-specific organizations e.g. for hearing and visually impaired, parent organizations, as well as small DPOs e.g. emancipatory, subject-specific and independent Living organizations.[1448] The latter was build on the exchange with and experiences in the USA. First centres for independent living were founded in Bremen and Hamburg in 1986. In 1987 followed centres in Cologne,

1442 Reutter, 2012a: 129–164.

1443 The CPRD Committee distinguishes between organizations for DPs and organizations of DPs: "organizations “for” DPs provide services and/or advocate on behalf of DPs, which, in practice, may result in a conflict of interests in which such organizations prioritize their purpose as private entities over the rights of DPs". CPRD Committee, General Comment No. 7. Para. 13; for the conflicts with the organizations for DPs and the development "of" organizations of DPs see Degener/von Miquel, 2018.

1444 Hlava, 2022.

1445 For more see: https://www.vdk.de/deutschland/pages/themen/soziale_gerechtigkeit/81575/2_1_millionen_mitglieder_der_sozialverband_vdk_waechst_weiter_trotz_corona-krise (Last accessed on 12.01.2023).

1446 Fischer, 2019.

1447 See the requirement of the CPRD Committee outlined in the Para. 94b of the General Comment No. 7; CPRD, Art. 29b.

1448 Nave-Herz, 1993; Biegler, 2000; Hlava, 2022; Arnade, 2019; the list of politically-active organizations can be found on the website of the DBR at: http://www.deutscher-behindertenrat.de/ID25209 (Last accessed on 01.07.2022).

Erlangen and Kassel. Three years later they founded the umbrella organization of Independent Living in Germany. The founding of the association should be seen as a counter-model to traditional disability organizations, where " DPs are excluded from decision-making positions". Today the ISL e.V. has over 25 member organizations, most of which are made up of centers for independent living. In addition, disabled people can also become individual members of the ISL. However, due to the small number and limited influence of the individual members, the ISL e.V. did not become a typical individual member organization.[1449]

B. Collective representation

To have a coordinated voice at the national, supranational and international political arena, German organizations have established the German Disability Council (Deutscher Behindertenrat- DBR) on December 3, 1999. It, as an active cross-disability alliance, aims at ensuring comprehensive implementation of human rights for all DPs, reducing third-party decision-making and enabling self-representation of DPs and/or chronic illness.[1450]

The DBR consists of social organizations, disability-specific self-advocacy DPOs and independent living organizations. These have to ensure the majority of affected persons in the main deciding organ of the DBR.[1451] Accordingly, the composition of DBR is consistent with the requirements of the CPRD Committee.[1452] The coordinated work of its members is ensured through the secretariat. It rotates to one of the members that has a delegate in the spokes council. This has been criticised by a DPO interviewee: "nobody from outside knows that there is a DBR; sometimes it's here, sometimes it's there".[1453] Another point of critic was that the regular personnel and material costs are borne by the member in charge of the secretariat. Larger material costs, in particular material costs for events, are borne

1449 Sporke, 2008; 50 – 54.

1450 Statut des Deutschen Behindertenrates, Fassung vom 03. Dezember 2013, §1; see also Sporke, 2008:144ff.

1451 Statut des DBR, §3 (2).

1452 CPRD Committee, General Comment No. 7, Para 12A.

1453 Third-level-interview DE/A 4, on 04.06.2018, Question 7. The original reads as follows:
"von außen weiß niemand, dass wo es deutschen Behindertenrat gibt mal ist es hier, mal ist es da. Das ist, eigentlich, nicht so schön. Eigentlich eine gute Sache, die sich aber bisschen lahmliegt."

jointly by the DBR member organizations.[1454] Consequently, the funding of the DBR secretariat is dependent on the type of member organization to which it is assigned: "presently the secretariat is led by SoVD, which is good as we receive funding from the participation fund for the second year in a row".[1455]

The political power of the DBR is further limited by the diverging interests of its members: "there is the DBR, which is not an association and all its members do not want that it becomes more professional and acts as an association".[1456] Interviewees explained this by the fact that "only a few DPOs are willing to delegate their sovereignty to the DBR or to be subordinated to a system".[1457] Besides, the interviews with umbrella DPOs showed that the organizational structure of the DBR fails in articulating the three-layer organizational interests: "we try to work together, but it's not always easy because of the unanimity principal, which means that if an organization puts a veto the decision cannot be made".[1458] In fact, the legally and thus also financially privileged status of social and to some extent also disability-specific self-advocacy DPOs cause inequality as in comparison

1454 Statut des Deutschen Behindertenrates, § 4.10.

1455 Third-level-interview DE/A 5, on 04.06.2018, Question 7. The original reads as follows:
"Was immer noch ein Problem ist, wir haben ein jährlich wechselndes Sekretariat, was zwischen den drei Säulen auf die der DBR gestützt wird, ständig wechselt und das ist manchmal mit der Kontinuität der Arbeit nicht ganz so einfach, wobei man dabei ist Strukturen zu entwickeln um die Arbeitsweise dazu professionalisieren. Momentan ist der Sitz des Sekretariats bei SoVD und was auch gut ist, wir bekommen jetzt schon das zweite Jahr in Folge eine Förderung aus dem Partizipationsfond für das Sekretariat, also dass man das auch finanzieren kann, wenn man so eine Sekretariatsstelle hat".

1456 Third-level-interview DE/A 4, on 04.06.2018, Question 7. The original reads as follows:
"Es gibt den deutschen Behindertenrat. Das ist kein Verband, und die ganzen Mitglieder wehren sich dagegen, dass es zu professionell wird, dass das ein Verband wird, weil jeder Verband Angst hat, dass er untergeht".

1457 Third-level-interview DE/A 5, on 04.06.2018, Question 7. The original reads as follows:
"... weil wenige Verbände bereit sind, ein Stück weit ihre Hoheit da aufzugeben oder sich da einem System unterzuordnen, sagen wir es mal so".

1458 Third-level-interview DE/A 4, on 04.06.2018, Question 7. The original reads as follows:
"... wir versuchen zusammen zu arbeiten, und es ist nicht immer ganz einfach, also Einstimmigkeitsprinzip, also wenn ein Verband Veto einlegt, kommt der Beschluss nicht zustande".

to independent living organizations, they are much more influential and conflict-capable.[1459] Unequal acting powers of organizations, in turn, affect the relationships between and within organizations. As a result, the DBR is not in a position to fully fulfil the aim of its formation, according to which it shall offensively voice the collective interests of DPOs at the federal-level legislative processes.[1460] Similarly, it does not represent the collective interests of the Länder-level DPOs and thus fails in ensuring unified and strong presence at the Länder-level.[1461]

In the federal states the efficacy of the DPO coordination work often depends on financial and human resources of the Länder-level DPOs: "the process of interest formulation as a Länder-level organization and interest coordination with other Länder-level DPOs is less successful as they, depending on the federal state, lack the professionalization and financial resources".[1462] Accordingly, despite the CPRD Committee recommendation to maintain umbrella organizations at each level of decision-making,[1463] there are no strong uniting and coordinating organizations. While in Hessen the members of the only self-advocacy umbrella organization (Landesarbeitsgemeinschaft der Selbsthilfe E.V.) feel misrepresented[1464] in Thuringia the DPOs refuse to become the member of the newly established and state-financed Thuringian LIGA of political interests and self-representation of DPs

1459 Reutter, 2012a: 132 – 136.

1460 Third-level-interview DE/A 4, on 04.06.2018, Question 7; Third-level-interview DE/A 5, on 04.06.2018, Question 7; See also, Sporke, M., "Behindertenpolitik im aktivierenden Staat. Eine Untersuchung über die wechselseitigen Beziehungen zwischen Behindertenverbänden und Staat", Kassel 2008. SS. 144 – 149.

1461 Third-level-interview DE/A 4, on 04.06.2018, Question 7; Third-level-interview DE/A 5, on 04.06.2018, Question 7; Third-level-interview DE/B-H 1, on 05.07.2016, question 7; Third-level-interview DE/B-T 1, on 25.06.18, question 7.

1462 Third-level-interview DE/A 5, on 04.06.2018, Question 4. The Original reads as follows:
"… auf Landesebene ist glaube ich dieser Prozess, seine Interessen zu formulieren als Landesorganisation aber dann auch zu vernetzen mit anderen Landesorganisationen von Behindertenverbänden sehr viel weniger stark ausgeprägt, weil es da an der Professionalisierung noch fehlt. Und Einbindung anderer zivilgesellschaftlicher Akteure, da wird es dann noch schwieriger. Also, das ist glaube ich eher das strukturelle Problem, dass wir auf Bundesebene anfangen, einen gewissen Professionalisierungsgrad zu erreichen, den wir auf Landesebene vielleicht in manchen Ländern erreichen, aber in manchen Bundesländern vielleicht überhaupt noch nicht haben, weil da die Ressourcen fehlen um das zu machen oder auch die Bedingungen fehlen um das zu machen".

1463 CPRD Committee, General Comment No. 7, Para. 12a.

1464 E.g., Third-level-interview DE/B-H 1, on 05.07.2016, Q 15.

by stating that it is too radical for example with regard to sheltered workshops and special schools for disabled.[1465] Besides, the DPOs that did not become a member of the LIGA of political interests and self-representation of DPs, state that they would rather see the Thuringian Extra Parliamentary Alliance for CPRD implementation[1466] as an umbrella DPO as the LIGA of political interests and self-representation of DPs.[1467] In view of the short establishment time of the league of self- advocacy, it could not be assessed if it will be successful in taking collective political action and strengthening the overall participation structures of Thuringian DPOs, especially with regard to cooperation of Länder and municipal-level DPOs.[1468]

1.1.3 Multi-level representation

Depending on the type of DPOs, the establishment and representation might vary from governmental level to governmental level: some disability-specific self-advocacy organizations e.g., the German Organization of the Blind and Partially Sighted and Organization of the Deaf operating at the federal-level have a federal structure. This means that these are represented in the 16 Federal States and strive to maintain representations at the municipal-level. The Organization of the Blind and Partially Sighted in Hesse, for example, has 10 regional groups across Hesse.[1469] The Länder-level Organization of the Deaf in Thuringia, in turn, maintains 13 local organizations.[1470] Despite their federative structure, these self-advocacy DPOs face serious challenges caused by the different responsibilities of federal, state

1465 Third-level-interview DE/B-T 3, on 27.05.2019, Q. 7; Third-level-interview DE/B-T 4, on 04.06.2019, Q. 7; Third-level-interview DE/B-T 5, on 07.06.2019, Q. 7.

1466 The Thuringian extra parliamentary alliance for Equality of DPs has been established in 1999, by several Organizations. The main aim of the alliance was to achieve the adoption of the State Equality Law Following. The adoption of the State Equality Law it was renamed to "extra Parliamentary Alliance for CPRD Implementation".

1467 Third-level-interview DE/B-T 3, on 27.05.2019, Q. 7; Third-level-interview DE/B-T 4, on 04.06.2019, Q. 7; Third-level-interview DE/B-T 5, on 07.06.2019, Q. 7.

1468 The multi-level interviews and detailed research of DPO activities in Thuringia showed that there are no collaborative and coordinative actions between the Länder-level DPOs.

1469 See, BSBH – Bezirksgruppen at: https://www.bsbh.org/ueber-uns-bsbh/bezirksgruppen/ (Last accessed on 01.07.2022).

1470 For more info refer to the homepage of the Landesverband der Gehörlosen Thüringen e.V at: https://lvglth.de/ (Last accessed on 01.07.2022).

and local governments for specific issues: "citizens often find it obscure, why now, for example, they can turn to the arbitration service of the federation in case of discrimination, but when a communication of a local authority is not accessible, they have no arbitration board, because it does not exist at the Länder-level, so sometimes it's not really clear when is the federal government responsible and when the state government has to take action, and the responsible organs are often unclear: e.g., we see this in a conciliation procedure on micro census; the micro census is distributed by the federal states, but the questionnaire for statistical survey has been developed and made available by the federal government, so now they argue whether it is a federal or state matter. Such things make it very difficult to really come up with solutions".[1471]

Besides, the federative structures affect the cooperation between and coordination with the Länder-level DPOs and their municipal organizations: "especially in small/medium sized cities, the municipal governments call for participation and then wait who will register for participation, and then it happens so that small groups or even individuals with a disability, who do not have the appropriate legal expertise and are not organised and as a rule have no connection to DPOs, register as a participant, as a result of which the Länder-level DPOs are neither aware of processes taking place in many local governments nor they know the content of the contribution made by a disabled participant".[1472]

1471 Third-level-interview DE/A 5, on 04.06.2018, Q. 10. The Original reads as follows: "Was es aber auch sehr schwer macht, ist der Föderalismus und die unterschiedliche Zuständigkeit von Bund, Ländern und Kommunen für bestimmte Themen. Das ist für die Bürger schon oft undurchsichtig, warum jetzt zum Beispiel sie sich wegen eines Falles von Diskriminierung an die Schlichtungsstelle des Bundes wenden können, aber wenn ein Bescheid durch eine Kommune nicht barrierefrei zur Verfügung gestellt wird, hat man keine Schlichtungsstelle, weil es auf Landesebene so etwas nicht gibt. Und wann ist Bund zuständig? Wann ist Land zuständig? Das ist manchmal nicht so eindeutig erkennbar. Und die Schnittstellen werden da oft auch nicht richtig behandelt. Wir sehen das auch gerade in einem Schlichtungsverfahren was wir bei der Schlichtungsstelle haben, wo es um den Mikrozensus geht. Der Mikrozensus wird durch die Bundesländer verteilt, aber wird ja, also dieser Fragebogen zur statistischen Erhebung wird ja im Bund konzipiert und zur Verfügung gestellt, und jetzt streiten sich die Stellen, ob das denn überhaupt eine Bundes- oder Landesangelegenheit sei. Also solche Dinge, also das macht es sehr schwierig, da wirklich zu Lösungen zu kommen".

1472 Third-level-interview DE/B-H 1, on 05.07.2016, Q 5. The Original reads as follows: "Auf kommunaler Ebene läuft das in der Regel so je nachdem, wie die Selbsthilfe kommunal aufgestellt ist: Wenn es vor Ort Aktivisten gibt`s, dann kriegt man auch

In comparison to disability-specific large DPOs, the cross-disability human-rights-oriented DPOs have very little chances to develop meaningful participation structures at the federal, state and municipal governmental levels.[1473] For instance, the independent living centres exist in 11 out of 16 federal states, including Hesse and Thuringia.[1474] The representation rate becomes even lower in consideration of municipal levels: e.g., in Hesse and Thuringia the centre with several group and subject orientations exist only in 1 out of 443 (Hesse) and 631 (Thuringia) municipalities.[1475]

In addition, the subject or generation-specific small representations, are active only at the federal or local governmental levels.[1476] For instance, the federal-level disability-specific DPOs maintain specialised organizations, e.g., the youth organization of the German Organization of the Deaf (DGB)[1477] E.V. that might be supported in line with the Section 12 SGB VIII, but the majority of DPOs do not have groups for children. As a result, the interests of disabled children are represented mainly by organizations founded by parents and/or professionals working with children, which might be the result of the lack of appropriate supportive measures and structures that would ensure children's comprehensive participation rights.[1478] Similarly, the Federal Association of Disabled and Chronically Ill Parents (bbe e.) V. is politically active only at the federal-level and the

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was mit. Aber wenn es ja keine Aktivisten gibt, oder es ist ja so, so wie nicht jeder in der Gesellschaft, ist, ist auch nicht jeder behinderter Mensch irgendeine Selbsthilfe oder in irgendeinem Verband organisiert und gerade in kleinen, mittleren Städten, wenn so Gruppen gebildet werden, läuft das oft so, dass man das irgendwie öffentlich bekannt macht und dann abwartet, wer sich dann meldet oder da melden sich auch viele Menschen mit Behinderung, die nicht organisiert sind, die haben natürlich keine Bindung zu den Verbänden. So kriegt man als Verbände viele Orts nicht mit, was da eigentlich läuft und kriegt auch nicht mit, was die Betroffenen eigentlich inhaltlich vortragen…".

1473 Third-level-interview DE/B-T 1, on 25.06.18; Third-level-interview DE/B-T 3, on 04.06.19; Third-level-interview A 1, on 15.05.2018.

1474 The list of centres/member organizations might be found at: https://www.isl-ev.de/index.php/verband-zentren/zentren-mitgliedsorganisationen (Last accessed on 01.07.2022).

1475 Ibid.

1476 For more on the structure, types and functioning of German none-state organizations see, Weber, 1976; Mayntz, 1990; Sebaldt/Straßner, 2004; Winter/Willems, 2007; Weßels,2007; Reutter, 2012a: 129 – 164.

1477 See Satzung (Statute) des DGB E.V., Sektion 4.

1478 For the discussion on the children's participation rights and possibilities see Maier-Höfer, 2016; Richter/Krappmann/Wapler, 2020; Percy-Smith/Thomas, 2009; Mörgen/Schnitzer, 2016.

Accessible Thuringia is not represented in or does not have a federal-level DPO.[1479]

Furthermore, the presumption that the density and functionality of DPO representation might be also influenced by regional development peculiarities of organizations[1480] have been confirmed also during the interview preparation process and in the interviews with Thuringian DPOs. The majority of existing disability-specific DPOs refused to be interviewed on the CPRD implementation in Thuringia. The only interviewee representing a disability specific DPO criticised the ideology and work of the newly established human rights-oriented cross-disability DPO.[1481] Some interviews made it clear that the working place of some Länder/local-level DPOs is there living room.[1482] Consequently, structures guaranteeing the formation and comprehensive functioning of all groups of DPs, especially children,[1483] learning-disabled[1484] and cross-disability organizations representing all or some of the wide diversity of impairments[1485] are not ensured at all governmental levels. Moreover, there are no steps and actions towards the implementation of the CPRD by already existing municipal-level DPOs due to insufficient or in majority of cases volunteer workforce.[1486]

This, in taking into account the federal structure of Germany, where federal states have exclusive legislative and administrative powers in the fields of e.g., school education, building and construction, and the municipalities have the right to regulate all local affairs on their own,[1487] including bases of financial autonomy (Art. 28 GG), cannot be viewed as sufficient for carrying out the tasks envisaged by the Art. 4.3 and 33.3 of the CPRD at all governmental levels.

1479 Third-level-interview DE/B-T 3, on04.06.2019.
1480 Eichener et al. 1992: 15–51; Wiesenthal, 1995; Lehmbruch, 2000: 88–109.
1481 Third-level-interview DE/B-T 5, on 07.06.2019, Q. 7.
1482 Third-level-interview DE/B-T 4, on 04.06.2019; Third-level-interview DE/A 5, on 04.06.2018, Q. 5.
1483 See the requirement of the CPRD Committee outlined in the General Comment No. 7, Paras. 25, 74, 94 I and N.
1484 Ibid. Paras. 79, 80, 83.
1485 Ibid. Para. 12.
1486 Third-level-interview DE/B-H 1, on 05.07.2016, Q. 9; Third-level-interview DE/B-H 3, on 14.06.2018, Q. 1; Third-level-interview DE/B-T 4, on 04.06.2019, Qs. 3 and 7.
1487 Wittkämper 1963; Brüsewitz, 2019.

1.2 Structure of Austrian DPOs

1.2.1 Legal Framework and Governing Configuration

The Federal Republic of Austria ensures the freedom of association through the Association Act (Vereinsgesetz 2002). This, similar to appropriate German Civil Law provisions, lays down the configurational and operationalization requirements of Austrian none-state organizations.

The internal governing structures of established organizations are based on their statutes.[1488] These define the aims and actions of DPOs and the rights of their member organizations. To this end, the operation of Austrian DPOs is, by and large, ensured through two main organs,[1489] namely:

General assembly: It convenes at least once in a year and consists of delegates from member organizations.[1490] As one of the main organs of the organization, the general assembly decides on the most important issues of the organization, including election of federal managing Board Members, admission or expulsion of members, defining priority policy, discussing the proposals and approving the budget of the organization.[1491] It is quorum with the presence of the simple majority of delegates.[1492] Some DPOs state that the delegates with voting rights can be only DPs,[1493] whereas others give voting rights to e.g., guardians or family members and legal entities.[1494]

Federal/Provincial Managing Board: It consists of a chairperson and deputy chairperson(s) and few other members.[1495] It convenes at least twice in a year and is quorum with presence of at least three members.[1496] The leaders of the federal/provincial Managing Board are responsible for external representation of the organization and its administrative manage-

1488 Karlhofer, 2012: 521 – 550.

1489 See for example: Statuten-Österreichischer Gehörlosenbund, Fassung vom 9. November 2017, §12; Statuten- Selbstbestimmt Leben Österreich, Fassung vom 2020, §6; Statuten-Verband der Querschnittgelähmten Österreichs, Fassung vom 18.09.2021, §8.

1490 See for example: Statuten-Österreichischer Gehörlosenbund, §13; Statuten- Selbstbestimmt Leben Österreich, §7; Statuten-Verband der Querschnittgelähmten Österreichs, §9.

1491 Ibid.

1492 Ibid.

1493 E.g., Statuten- ÖGLB, §13a (1).

1494 E.g., Statuten-Verband der Querschnittgelähmten Österreichs, Paras. 6 and 9.

1495 Statuten-Österreichischer Gehörlosenbund, §14; Statuten- Selbstbestimmt Leben Österreich, §8; Statuten-Verband der Querschnittgelähmten Österreichs, §10.

1496 Ibid.

ment.[1497] The statutes of the majority of the DPOs do not stipulate that the members of the Managing Board can be only DPs.[1498] This means that contrary to the definition of the CPRD Committee, according to which, these organizations should only be led, directed and governed by DPs and consist of disabled members,[1499] Austrian Disability-specific organizations allow not only membership of non-DPs and entities that organize and/or maintain sheltered/special structures but also give them voting rights and elect as a member to their Managing Boards. Moreover, they are defined by provincial laws and act as "service providers".[1500] This, evidently, contradicts not only their statutory purpose to promote equal rights of their target group and provide support to live independently, but also leads to a conflict of interests[1501] as they prioritize their purpose as private entities over the rights of DPs. Accordingly, they might be seen as an encouraging factor for the persistence of sheltered structures in Austria, which has been criticised by the CPRD Committee.[1502]

In addition, the national DPOs do not ensure the representation of the Länder-level member organizations in the National Managing Boards.[1503] Accordingly, there is no systematic cooperation between the national and their Länder-level member organizations. As a result, provincial DPOs are not only excluded from the CPRD monitoring procedures, such as the shadow reporting submitted by the national organizations but also their views are not being taken into account in expressing positions on federal-level legislative processes, that covers a considerable number of policy fields affecting DPs.[1504]

1497 Ibid.
1498 E.g., Statuten- ÖGLB, §14a; Statuten-Verband der Querschnittgelähmten Österreichs, §10.
1499 CPRD Committee, General Comment No. 7, Para 11.
1500 See for example, Tiroler Teilhabegesetz – THG, as amended by LGBl. Nr. 62/2022, §41, §42.
1501 CPRD Committee, General Comment No. 7, Para. 13.
1502 CPRD Committee, Concluding observations on the initial report of Austria. Paras. 36, 40 and 44.
1503 E.g., Statuten- ÖGLB, §14a; Statuten-Verband der Querschnittgelähmten Österreichs, §10.
1504 See chapter IV part on Austria.

1.2.2 Types of Disability Organizations

A. Individual Organizations

The above-mentioned legal framework ensures the required environment for the establishment of organizations with various profiles,[1505] including state interest organizations e.g., Österreichische Gemeindebund and none-state interest organizations, comprising also diverse disability-related organizations.[1506] These include not only organizations that are defined as organizations for DPs[1507] e.g., cross-group social, charitable and parent organizations,[1508] but also those that should be seen as 'self-advocacy' organizations[1509] such as disability-specific organizations[1510] and cross-disability independent living organizations e.g. BIZEPS. However, there are some much more vulnerable groups of DPs that do not have organized political representation in Austria. For instance, the majority of disability-specific and cross-disability human-rights-oriented DPOs do not maintain groups for disabled children. There are also no organizations representing the interests of disabled women and migrants. There are a few learning-disabled groups in some provinces, but there is no independent organization representing the interest of this group that is composed and governed by affected persons.[1511]

B. Collective Representation

The collective interests of disability organizations are represented by the Austrian Disability Council (Österreichischer Behindertenrat), which till May 2017 was called Austrian Association of Rehabilitation (Österreichische Arbeitsgemeinschaft für Rehabilitation). Nevertheless, the renaming of

1505 CPRD Committee. General Comment No. 7. Paras. 12f, 24, 94b.
1506 See for example the list of organizations enlisted in the "Report of the Austrian Disability Council on the implementation of the CPRD in Austria", 2013: 35ff.
1507 CPRD Committee, General Comment No. 7, Para 13.
1508 These include, for example, Kriegsopfer- und Behindertenverband Österreich (KOBV), Wiener Soziale Dienste, Caritas Österreich, Kinderfreunde Wien and Lebenshilfe Österreich.
1509 CPRD Committee, General Comment No. 7, Para. 11.
1510 E.g., – Blinden- und Sehbehindertenverband Österreich, Österreichische Gehörlosenbund, Multiple Sklerose Gesellschaft Wien.
1511 Gritsch et al., 2009.

the organization did not lead to membership restructuring. Consequently, despite the requirement of the CPRD Committee,[1512] the majority of its members are from disability-help organizations and service providers, charity organizations, parent organizations and few disability-specific organizations.[1513] Besides, its governing structures do not ensure the set standard[1514] of openness, democratic decision-making and representation of full and wide diversity of DPs.[1515] Accordingly, independent living organizations point out that it does not represent their interests: "there is an organization that sees itself as an umbrella organization for DPs. However, one has to consider how it is structured. The majority of members from this organization are not from DPOs, which means that there is an umbrella organization for DPs but there is no umbrella organization of DPs".[1516] In addition, it is the main collaboration partner of the federal government, it has the exclusive right to nominate the DPO representatives to the Federal Disability Advisory Board[1517] and to FMC.[1518] This de facto limits the participation rights of other less visible disabled groups, whereas "the existence of umbrella organizations within SPs should not, under any circumstances, hinder individuals or organizations of DPs from participating in consultations or other forms of promoting the interests of DPs."[1519]

Although the Disability Council does not have representative bodies in the nine Provinces of Austria, it is the main DPO contact in disability-specific policies and the exclusive DPO actor in indirect policy fields for the

1512 CPRD Committee, General Comment No. 7, Para. 11.

1513 To see the full list of members, refer to members (Mitglieder) page of the Austrian Disability Council at: https://www.behindertenrat.at/ueber-uns/mitglieder/ (Last accessed on 01.07.2022).

1514 CPRD Committee, General Comment No. 7, Paras. 11, 12a and 94d.

1515 For the regulations governing the work and structure of this organization refer to Bylaws section in the about us German language webpage of the Austrian Disability Council at: https://www.behindertenrat.at/ueber-uns/mitglieder/ (Last accessed on 01.07.2022); for the relevant UN Committee requirements see, CPRD Committee, General Comment No 7, Para. 12a.

1516 Third-level-interview AT/A 3, on 25.05.2016, Q. 7. The original reads as follows: "Es gibt eine Organisation, die sich als Dachverband für Menschen mit Behinderungen sieht. Allerdings muss man bedenken, wie die aufgebaut sind. Die Mehrheit der Menschen aus dieser Organisation kommen nicht aus den DPO's. Ja, es gibt einen Dachverband für Menschen mit Behinderungen. Es gibt aber keinen Dachverband von Menschen mit Behinderungen."

1517 Bundesbehindertengesetz – BBG, as amended by BGBl. I Nr. 100/2018, §10 Abs. 1.6.

1518 BBG, §13j (1).

1519 CPRD Committee, General Comment No. 7, Para. 12a.

provincial legislators.[1520] This, on the one hand, hinders the formation of strong disability coalitions at the Länder-level by making the provincial actors not to be aware of and feel responsible for ensuring the equal implementation of the rights of DPs. On the other hand, it might be seen as critical as there is no regular and comprehensive cooperation between the federal and provincial DPOs, which is necessary for capturing the Länder-level peculiarities aggravating the CPRD implementation in the legislative and administrative processes.

1.2.3 Multi-Level Representation

Depending on their type, Austrian non-state organizations might differ according to centralization level, namely: have federal, central or mix organizational type.[1521] The majority of politically active Austrian DPOs belong to the latter type. This means that they are governed centrally and have two-level administrative structures, they have umbrella organizations at the national level, which in their turn, maintain member organizations active in 9 provinces of Austria.[1522] These should follow the statutes of the umbrella organization[1523] and/or adopt their own statutes aligned to the statutes issued by their umbrella organizations.[1524] The Länder-level member organizations, by and large, do not maintain municipal chapters.

Despite the two-level structures, both the federal and Länder-level DPOs stated that they have difficulties connected with the federal structure of Austria: "the confused relationship between the federation and provinces is a problem".[1525] "In the beginning of the whole, when we as CS started to press and say that they have to implement this and that, we often got the answer that the CPRD is not binding on the provinces…"[1526] "The

1520 For more see the part 3 section 3.2ff.

1521 Karlhofer, 2012: 527 – 528.

1522 Statuten-Österreichischer Gehörlosenbund, §1 (2, 3); Statuten- Selbstbestimmt Leben Österreich, §1 (2); Statuten-Verband der Querschnittgelähmten Österreichs, §1.

1523 See for example: Statuten-Österreichischer Gehörlosenbund, §6b (1.1) und §6c (1); Statuten- Selbstbestimmt Leben Österreich, §4 (1).

1524 See for example: Statuten-Österreichischer Gehörlosenbund, §6c (2).

1525 Third-level-interview AT/A 3, on 25.05.2016, Q. 16. The original reads as follows: "Ja in Österreich das verworrene Verhältnis zwischen Bund und Land. Föderalismus ist wahrscheinlich das größte Problem in Österreich."

1526 Third-level-interview AT/A 1, on 23.05.2016, Q. 2. The original reads as follows: "Zu Beginn des Ganzen, als wir als Zivilgesellschaft, begonnen haben, Druck zu machen und zu sagen aufgrund der UN-BRK habt ihr dies und jenes durchzuset-

difficulties could be solved if the competencies and powers of Federation and Provinces would be clearly defined".[1527] Nevertheless, the attempt to do this failed.[1528]

1.3 Structure of Danish DPOS

1.3.1 Legal framework and governing configuration

According to Section 75.1 of the Danish Constitution, "Citizens shall, without previous permission, be free to form associations for any lawful purpose". The establishment of state and non-state organizations is regulated through various legal acts.[1529] This means that, unlike Germany, there is no law in Denmark stipulating specific requirements for organizations to being declared legal. Therefore, the bylaws drafted by the founders and members of the organizations are the only "laws" that regulate the internal affairs, membership management and territorial representation of organizations.

In accordance with the bylaws, the internal structures of Danish DPOs are based on two governing organs:[1530]

General assembly (Landsmødet): They convene at least once in a year and are open to all their members.[1531] As the decision-making body of the organization, the general assemblies decide on the most important issues of organizations, including election of executive Board Members, defining priority policy, discussing the proposals and approving the budget of the

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zen, haben wir oftmals die Antwort gekriegt, die UN BRK betreffe die Bundesländer nicht. Die Bundesländer seien nicht gebunden hieß es, der Staat oder der Bund seien vielleicht verpflichtet, aber die Bundesländer seien eigenständig. ...".

1527 Third-level-interview AT/A 3, on 25.05.2016, Q. 18.

1528 Österreichischer Behindertenrat, 2018. Art. 4.

1529 Among others legislation on public fundraising (Lov om offentlige indsamlinger- LOV nr 511 af 26/05/2014). For identifying the adequate level of public support, the applying organizations should be approved in accordance with the Danish Tax Assessment Act (Ligningsloven- LBK nr 66 af 22/01/2019).

1530 E.g., Dansk Blindesamfunds vedtægter, 1. januar 2011, § 5.2; Vedtægter for Danske Døves Landsforbund, 29. april 2017, § 03.

1531 E.g., Dansk Blindesamfunds vedtægter, § 9 PCS. 1 and 4; Vedtægter for Dansk Handicap Forbund, 22. oktober 2016, § 9 PCS. 1.

organization.[1532] They are quorum with the simple majority of members present.[1533]

Executive Board (Hovedbestyrelsen): they consist of a chairperson and chairmen of all municipal chapters and in some cases also other members.[1534] The Executive Boards convene at least once in a year and are quorum with presence of at least half of the Executive Board members.[1535] The Executive Boards are responsible for establishing the principle guidelines for the organization's work and coordination of the overall activities, as well as consideration of proposals.[1536] Some DPOs limit the voting rights to only self-affected persons,[1537] some ensure at least the equal representation of affected persons in the Executive Boards,[1538] whereas others do not set up such limitations.[1539] Consequently, DPs can also be in minority in the decision-making organs of the DPOs, and represent the 30 percent of members that have little or no say on the political role of interest groups.[1540] This confirms that a substantial share of Danish interest groups are not only in conflict with the human rights understanding of the CPRD[1541] but also do not operate as democratic organizations to a degree that is consistent with the notion of groups as 'little democracies'.[1542]

1532 E.g., Dansk Blindesamfunds vedtægter, § 9; Vedtægter for Dansk Handicap Forbund, § 9.
1533 Ibid.
1534 E.g., Dansk Blindesamfunds vedtægter, § 8 PCS. 2; Vedtægter for Dansk Handicap Forbund, § 11 PCS. 1.
1535 E.g., Dansk Blindesamfunds vedtægter, § 8 PCS. 6 and 8; Vedtægter for Dansk Handicap Forbund, § 11 PCS. 4.1. and 2.
1536 E.g., Dansk Blindesamfunds vedtægter, § 8 PCS. 1.
1537 E.g., Vedtægter for Dansk Handicap Forbund, § 3 PCS. 2 and 3.
1538 E.g., vedtægter for Danske Døves Landsforbund, Sect. 4.3.6.
1539 E.g., Dansk Blindesamfunds vedtægter, Sect. 3 PCS. 5.
1540 Christiansen, 2012; Binderkrantz/Krøyer, 2012.
1541 See the statement of the UN CRPD Committee in its General Comment No. 7, Para. 13.
1542 Binderkrantz, 2020.

1.3.2 Types of Disability organizations

A. Individual Organizations

The constitutional freedom of CS to organize[1543] contributes to the establishment of diverse interest groups, including state organizations e.g., Local Government Denmark (Kommunernes Landsforening) and non-state organizations such as welfare organizations, social and parent organizations, as well as disability-related organizations. The latter type is presumed to comprise a wide range of organizations representing almost all illnesses, a group of patients or a social problem.[1544] The Danish Umbrella Disability Organization (DPOD), hereby, lists 35 member organizations,[1545] including LEV National Organization Denmark, which is an interest group for persons with learning disabilities, organizations of visually and hearing impaired persons. Some of these maintain youth groups that are members of the Danish Youth Council that is an umbrella organization with more than 70 children and youth organizations.[1546] However, there is no DPO composed and represented by disabled children.[1547]

The representation of disabled migrants in the form of independent organization is also missing, which is not surprising given the scope of legal framework regulating the immigration and integration in Denmark,[1548] but the Documentation and Advisory Centre on Racial Discrimination (DRC), promotes their interests at the international level, among other things, by contributing to the shadow Report of Danish DPOs on the CPRD. Disabled women are another vulnerable group that has neither an independent interest organization nor is part of a collective interest organizations e.g.,

1543 According to Sect. 75.1 of the Danish constitution (Danmarks Riges Grundlov- Lov nr. 169 af 5. Juni 1953):
"'Citizens' shall, without previous permission, be free to form associations for any lawful purpose."

1544 Christiansen/Nørgaard/Sidenius 2012: 101 – 128.

1545 For the list of the members see the webpage on Medlemsorganisationer | Danske Handicaporganisationer at: https://handicap.dk/om-dh/medlemsorganisationer (Last accessed on 01.07.2022).

1546 See the list of the DUFs member organizations at: https://duf.dk/om-duf/dufs-medlemmer (Last accessed on 01.07.2022).

1547 Combined second and third periodic reports of Denmark (CRPD/C/DNK/2–3), Para. 50; For more on the political participation rights of Danish children (excluding migrant children) see Hartoft, 2019: 295 – 314.

1548 DIHR 2019 Annual Report.

Danish Council of Women that has 44 member organizations.[1549] In view of the fact that Denmark is one of the world's leading countries regarding women's representation,[1550] the presumption that disabled women and their topics might be underrepresented seems implausible. However, in considering that the level of inclusion in political life of disabled people does not match the percentage of the population who have an impairment in EU Member States, including Denmark,[1551] and proven higher rate of discrimination of disabled women in comparison to disabled men in various policy fields e.g., education and employment,[1552] it might be assumed that disabled women and their topics are underrepresented in Danish domestic politics. This might explain, to some extent, the failure of the state to make its laws and policies inclusive of disabled women and girls.[1553]

In fact, the underrepresentation or even none-representation of more vulnerable groups in the decision-making processes is typical for the Danish post-crises and World War II participation politics. On the one hand, unpopular decisions are made outside of institutional decision-making structures e.g., the case of municipal reform policy,[1554] which affects the implementation of the right to inclusive education significantly.[1555] On the other hand, there is a strong tendency towards centralised inclusion of interest organizations: ministries include only the representative of the strongest interest organization in an area to have only one organization to negotiate with instead of having to negotiate with each and every interest group in the field.[1556] As a matter of fact, these are the umbrella organizations as it is the case with the disability organizations (DPOD).[1557]

1549 For the list of member organizations see the website of Kvinderådet at: https://denstoredanske.lex.dk/Kvinder%C3%A5det (Last accessed on 01.07.2022).
1550 UN DP, GDI, 2020.
1551 For more on political participation of DPs see Waltz/Schippers, 2020: 517 – 540; Priestley et al., 2016.
1552 CPRD Committee, Concluding Observations on the initial report of Denmark, Paras. 18 – 19; See also CEDAW Committee, Concluding Observations on the ninth periodic report of Denmark (CEDAW/C/DNK/CO/R.9), adopted on 8 March 2021, Paras. 10, 11 and 30.
1553 DPOD, 2013: 55 – 56.
1554 Christiansen, 2020.
1555 For more see chapter IV.
1556 Christiansen, 2020.
1557 For more see below.

B. Colective Representation

The DPOD is the only nation-wide umbrella organization in Denmark. As it was mentioned above, it consists of various disability organizations, but the DPOs that have less than 500 members and operate less than 5 years cannot, normally, be member of the organization.[1558]

The main governing organ of the DPOD, which among other things, decides on DPO nomination to the national, regional and municipal public authorities,[1559] consists of representatives of affiliated organizations, youth group, elected members from the municipal and regional chapters.[1560] Nevertheless, the statute of the DPOD, regardless of the CPRD Committee requirements[1561] does not, explicitly, state that the majority of the members to its main deciding organ should be DPs.[1562] To this end, it might be assumed that the norms of informal participation and privileged inclusion of interest groups not only pre-structure the freedom of association by narrowing down the scope of freedom of association stipulated by the Danish constitution[1563] but also increases the influence of privileged interest groups by limiting the required access of diverse disabled groups[1564] to decision-making processes.[1565] This, in turn, jeopardizes the opportunities of the establishment and successful functioning of small human-rights-oriented interest organizations e.g., disabled women, migrants and children in the legislative processes.

1.3.3 Multi-Level Representation

To carry out their statutory responsibilities, the national DPOs maintain territorial representation, but they are governed centrally. Some of them have three-level administrative structures- national, regional and municipal. At the national level operate the Danish umbrella DPO and the national organizations of each DPO. At the regional and municipal-level work the

1558 VEDTÆGT for Danske Handicaporganisationer, 25. maj 2016, Sec. 3.
1559 Ibid. Sec. 7.14.
1560 Ibid., Sec. 7.2.
1561 CPRD Committee, General Comment No. 7, Para 12A.
1562 VEDTÆGT for Danske Handicaporganisationer, Sec. 7.
1563 Christiansen/Nørgaard/Sidenius, 2012: 101 – 128.
1564 CPRD Committee, General Comment No. 7, Para. 94g.
1565 CPRD Committee, General Comment No. 7, Para. 15.

municipal branches of national DPOs and DPOD. However, not all the DPOs have their branches at each and every municipality. The Organization of the Deaf, for example, has branches only in 16 out of 98 municipalities[1566] and even the physical presence of some DPOs in the municipalities does not guaranty their political representation: "our representation is ensured at the national and regional levels but at the municipal-level, they are not willing to have representatives from 33 organizations, accordingly, they select representatives from groups of sensory, physical and intellectual disabilities.[1567] As a result, in municipalities, where the Danish association of the blind does not have representatives, the representatives of the other groups identify that here is an issue relating to the blind and ask the local wing of the Danish Association of the Blind what they think about it, but if they don't ask, nobody can come after them, so if we don't keep an eye on the municipal-level our needs or our views would not be known and considered".[1568]

This underlines, on the one hand, the strict selectivity of participation, on the other hand, it makes it clear that the required country-wide representation of diverse, especially more vulnerable disabled groups at all decision-making levels[1569] has not been ensured even in the municipal governments, which have decision-making and administrative autonomy in almost all disability policies, including inclusive education.[1570] Accordingly, it is not surprising that the municipalities, despite their obligation to "actively apply and consider the CPRD"[1571] do not feel responsible for ensuring the consistent implementation of the International Law,[1572] such as the right to inclusive education for all disabled children.[1573]

1566 For more see: About DDAA at: https://ddl.dk/om-os/ (Last accessed on 01.07.2022).
1567 Third-level-interview DK/A 2, on 02.12.2016, Q. 7.
1568 Ibid.
1569 CPRD Committee, General Comment No. 7, Para. 15.
1570 initial Report of Denmark (CRPD/C/DNK/1), Paras. 1, 9 -12; For more see chapter IV.
1571 Combined second and third periodic reports of Denmark, Para. 7.
1572 Third-level-interview DK/A 2, on 02.12.2016, Q. 5; For the official statement of municipal government see Folketingets Ombudsmand, FOB 2005.14 – 1, tilgngelig pä: https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/05-425/#cp-title (Last accessed on 01.07.2022); See also Andersen, 2016, 6. udgave, s. 50. See also chapter IV part on Denmark.
1573 For more on the implementation differences between the municipalities and various disability groups see CPRD Committee, Concluding Observations on the

2. Resources of DPOS

2.1 Resources of German DPOs

In general, Germany has a supportive environment for the functioning of non-governmental organizations.[1574] However, its selective partnership approach creates disadvantageous framework for non-service providing organizations. The Welfare organizations, for example, have stable financial means due to privileged legal status in Bundessozialhilfegesetz and Social Code books e.g., SGB VIII, SGB IX and SGB XI.[1575] The financial support provided to organizations of DPOs has been subject to the same logic: e.g., the disability specific organizations, most particularly organizations of physically and visually DPs have much more opportunities of getting constant funding as small human-rights oriented and subject-specific organizations. The funding is based on several types. Funding options of Länder-level DPOs, thereby, significantly diverge from that of the federal-level DPOs.

Membership contributions, non-state funding and donations: the funding of the federal-level self-advocacy cross-disability organizations is ensured, partly, through the membership contributions of their Länder-level organizations. For instance, the Section 3 (1) of the ISL E.V. statute stipulates that legal entities e.g., associations could become its member, when they agree to be bound by the ISL E.V. aims (§ 2.1) and accept its statute and membership fee regulation.[1576] Thus, the member organizations should pay an annual membership fee of EUR 100, when they have only voluntary staff. However, with each newly employed non-voluntary staff member, they should pay EUR 100 more. The payment can be reduced by 10 or 25 percent depending on the annual funds of the member organization.[1577] Similar measures exist also in the statutes of disability-specif-

Initial Report of Denmark, as well as second shadow and parallel reports of the DPOs and DIHR; for analysis see chapter IV.

1574 Non-governmental organizations pursuing charitable, benevolent, or ecclesiastical purposes in a selfless, exclusive, and direct form might be exempt from taxes in line with the tax code (Abgabenordnung, as amended by BGBl. I S. 4607, Sections 51–68); See Zimmer, 1996.

1575 See, Schmid, 1996; Schmid/Mansour, 2007; Welti, 2015a.

1576 Satzung (Statute) der ISL e.V., Sektion 3.1.

1577 Beitragsordnung (Membership Fee Regulation) der ISL e.V. in der Fassung vom 17.09.2011.

ic self-advocacy organizations, such as the German Organization of the Deaf (DGB e.V).[1578] and Organization of the Blind and Partially Sighted (DBSV).[1579] The latter, for example, received EUR 815,133.50 from its 53 member organizations in 2017.[1580]

The Länder-level umbrella DPOs also maintain such arrangements.[1581] This leaves the local-level organizations without any financial means for recruiting qualified staff or conducting professional and independent political work as they have to rely on the cooperation with experts e.g., lawyers of the large CSOs, including welfare organizations[1582] that, among other things, carry out also disability-related work and have conflicting interests in a number of issues.

In addition to membership contributions, German umbrella DPOs receive donations and get Project-related funding from non-Governmental organizations like Aktion Mensch.

Individual and Partnership Funding of the insurance institutions: The federal-level DPOs also get funding from financial means provided to self-advocacy groups, self-advocacy organizations and self-advocacy contact points dedicated to prevention, rehabilitation, early detection, counselling, overcoming of diseases and disabilities.[1583] The Individual and Partnership Funding (Gemeinschaftsförderung) of the insurance institutions stipulated by the Section 20h of the SGB V. Thus, in 2017, for example, the DBSV obtained EUR 137,686.15 and ISL e.V. received about EUR 78,433 from the Partnerships Fund and individual project funding of the insurance institutions. This type of funding is also available to some Länder-level disability-specific organizations, but its scope and amount is much less than the funding available to federal-level DPOs.[1584] Accordingly, cross-dis-

1578 Satzung des DGB E.V., Sektion 5, Sektion 6a.
1579 Satzung des DBSV, Sektion 4, Sektion 5 Abs. 1C und Abs. 2.
1580 DBSV Finanzbericht 2017. Retrieved from: https://www.dbsv.org/finanzberichte.html (Last accessed on 01.07.2022).
1581 Based on the DPO type the membership fee may range from EUR 12 to EUR 85 per year.
1582 Third-level-interview DE/Bt 4 on 04.06.2019, Q. 3.
1583 SGB IX, As amended by BGBl. I S. 3234, §45.
1584 For the data on federal-level funding see: https://www.vdek.com/vertragspartner/Selbsthilfe.html (Last accessed on 01.07.2022); for funding in Hesse see: https://www.gkv-selbsthilfefoerderung-he.de/daten-fakten/ (Last accessed on 01.07.2022); The data in Thuringia has been requested via Email and received on 19.05.2022 from Mario Grothe (Referent- Verband der Ersatzkassen e.V.(vdek)-Landesvertretung Thüringen).

ability organizations almost do not have a chance of getting funded at the Länder-level. Furthermore, organizations of learning disabled do not get funding in this framework at Länder-level and funding at the federal-level is smaller than other DPO allocations.[1585]

State Funding: The federal-level DPOs also receive funding from governmental institutions, such as BMAS. The funding from BMAS is based on the Compensation Fund stipulated by the Section 78 of the SGB IX, which is being provided for projects addressing the creation of employment opportunities for DPs.

Länder-level Governments also envisage project-related governmental funding. In Hesse, for example, the DPOs might apply for funding within the 2011 Directive on the promotion of social facilities and non-financial social measures (Investitions- und Maßnahmenförderungsrichtlinie) that aims at providing funding for organizations representing interests of diverse vulnerable groups, including DPs.[1586] Besides, the Hessian State FP stated that the work of the Hessian DPOs is being financed through the CPRD implementation fund amounting to EUR 500 thousand.[1587] The description of the financial situation of interviewed Länder-level DPOs, however, did not contain such type of funding.

The project-related funding of Thuringian DPOs is provided through the Directive on non-financial social measures allocated to associations and organizations for the care of the disabled and the promotion of counselling centres for DPs.[1588] The aim of the funding is to support the executive bodies and supra-regional counselling centres of organizations for DPs in carrying out their statutory responsibilities e.g., care and support of DPs through disability-specific counselling. The funding is provided for administrative, material and personnel expenses and covers up to 50 to 70 percent of the eligible expenditure.[1589] Initially, the scope of addressees has

1585 Ibid.

1586 Investitions- und Maßnahmenförderungsrichtlinie- IMFR, as amended by StAnz. 2022, 338, Para. 1.

1587 Hessisches Sozialministerium, "Umsetzungsstand- Hessischer Aktionsplan zur Umsetzung der UN-Behindertenrechtskonvention", Berichtszeitraum 2012 – 2015.

1588 Richtlinie zur Förderung nichtinvestiver sozialer Maßnahmen an Vereine und Verbände für Aufgaben der Betreuung von Menschen mit Behinderungen sowie zur Förderung von Beratungsstellen für Menschen mit Behinderungen im Freistaat Thüringen, as amended by ThürStAnz 2021, 1772.

1589 Ibid., Paras. 6 and 7.

been limited to organizations for sensory disabilities like deaf and blind.[1590] However, with the amendment of the Directive in 2018,[1591] the scope of addressees has been expanded to include all groups of DPs.[1592]

The Länder-level DPO funding mentioned above do not envisage the required support for reasonable accommodation,[1593] e.g., personal assistants for the blind, a sign plain/language translator. This, in fact, constitutes a serious obstacle as the work of the majority of Länder and local-level organizations is being carried out with the help of disabled volunteers, who do not, de facto, get assistance for their voluntary activities in the majority of cases.[1594]

After the amendment of the BGG (BGBl. I S. 2561, 2571), the German self-advocacy organizations get state-funding also in carrying out independent participation consulting of DPs in line with the Section 32 SGB IX. As a result, the nation-wide self-advocacy organizations received funding for 400 independent peer-to-peer consulting positions as of 2018. The positions are covered by federal funds.[1595]

The amended Federal Disability Equality Act (BGG), in addition, envisages financial support for the federal-level organizations of DPs, especially

1590 See, Drucksache 6/6005, 01.08.2018.

1591 Thüringer Staatsanzeiger Nummer 12/2018, Seiten 295 ff.

1592 See, Drucksache 6/6005, 01.08.2018.

1593 See the requirements of the CPRD Committee in the General Comment No. 7, Paras. 46, 71 and 94 B.

1594 Actually, a possibility to apply for assistance has been envisaged with the adaption of the Federal Participation Law (BTHG) in 2016. However, the broad formulation of the provision limits the scope of entitlement. See: BTHG, as amended on 02.06. 2021 by BGBl. I S. 1387, §78 (5): "Beneficiaries who perform voluntary work, are to be provided reimbursement covering reasonable expenses of needed assistance, unless the support can be reasonably provided free of charge. The necessary support should be provided primarily in the context of family, friendship, neighborly or similar personal relationships (Leistungsberechtigten Personen, die ein Ehrenamt ausüben, sind angemessene Aufwendungen für eine notwendige Unterstützung zu erstatten, soweit die Unterstützung nicht zumutbar unentgeltlich erbracht werden kann. Die notwendige Unterstützung soll hierbei vorrangig im Rahmen familiärer, freundschaftlicher, nachbarschaftlicher oder ähnlich persönlicher Beziehungen erbracht werden)".

1595 SGB IX, §32 (5).

the self-advocacy organizations.[1596] According to funding guidelines[1597] adopted by the BMAS, the goal of the funding is to enable and/or facilitate the active and comprehensive participation of DPs and their representative organizations at the public affairs and political decision-making processes of the federation.[1598] In 2016, the allocated fund amounted to EUR 500 thousand and starting from 2017 it added up to one million euros annually. The funding is provided for the empowerment and capacity-building, structural and start-up support, organizational development, training, disability-specific aids and compensations for disability-related additional needs, as well as youth development.[1599]

Federal states, despite their exclusive legislative and administrative responsibilities in a number of disability-related policy fields, did not introduce measures ensuring the needed sustained political participation:[1600] "at the federal-level we have the participation fund, through which one can promote empowerment, unfortunately however, this is only available at the federal-level, whereas we need this instrument at the Länder-level Disability Equality Laws that would include also local and communal levels, thus contributing to the initiation of effective political participation processes".[1601] Consequently, the Länder-level DPOs continue to be politically dysfunctional as they, unlike the federal-level umbrella DPOs, do not have the necessary level of professionalization[1602] to acquire alternative funding.

1596 Behindertengleichstellungsgesetz (BGG), as amended on 23.05.2022 by BGBl. I S. 760, Sektion 19: "Der Bund fördert im Rahmen der zur Verfügung stehenden Haushaltsmittel Maßnahmen von Organisationen, die die Voraussetzungen des § 15 Absatz 3 Satz 2 Nummer 1 bis 5 erfüllen, zur Stärkung der Teilhabe von Menschen mit Behinderungen an der Gestaltung öffentlicher Angelegenheiten".

1597 Bundesministerium für Arbeit und Soziales, "Richtlinie für die Förderung der Partizipation von Menschen mit Behinderungen und ihrer Verbände an der Gestaltung öffentlicher Angelegenheiten", Fassung vom 27. April 2022.

1598 Ibid., Sektion 1.

1599 Ibid., Sektion 3.

1600 CPRD Committee, General Comment No. 7, Paras. 45, 60–64, 94b.

1601 Third-level-interview DE/A 5, on 04.06.2018, Question 4. The Original reads as follows:
"Wir haben ja auf Bundesebene den Partizipationsfonds, wo man genau so ein empowerment auch fördern kann. Aber eben leider nur auf Bundesebene. Sowas bräuchten wir eigentlich auf Landesebene bei Behindertengleichstellungsgesetzen und auch auf lokaler und regionaler Ebene, dass wir viel stärker solche Partizipationsprozesse auch anstoßen können".

1602 Willems, 2000.

In reviewing the financial data of the cross-disability and some disability-specific DPOs, e.g., organizations of physically disabled, the deaf and the blind and partially sighted at the federal-level, it becomes evident that the disability-specific DPOs have more financial capacities in comparison with the cross-disability DPOs. As a result, the cross-disability DPOs have smaller number of employees and less chances of implementing long-run projects and should concentrate more on actual topics: "we have five full-time and two part-time employees and we get project-related funding. That is always a balancing act; on the one hand we shall produce a brochure or organize an event or a training, on the other hand we are responsible for political advocacy, which means that we should simultaneously be politically active: e.g., publish commentaries on draft-laws and be represented in various committees… it's always a double work… we need a reasonable institutional support to focus on real political work, which is not the case presently".[1603]

The disability-specific DPOs, such as DBSV, instead, have more than double the fulltime and part time qualified employees of the cross-disability DPOs.[1604] Consequently, they can, simultaneously, provide continuous disability-related consultations, initiate legal representation and take targeted action in actual political issues. In view of the project-related responsibilities and diversity of the themes, however, even these organizations point out the fact of not having sufficient human and financial resources: "no, no it's not enough what we have in manpower, one should say it very clearly, be-

1603 Third-level-interview DE/A 4, on 04.06.2018, Question 7. The original reads as follows:
"Also sieben Leute, zum Teil Teilzeit… also wir haben fünf Vollzeitäquivalente. Und wir finanzieren uns über Projekte. Derzeit haben wir acht Projekte parallel, worüber wir finanziert werden, das ist immer ein Spagat – einerseits müssen wir eine Broschüre machen oder irgendwelche Veranstaltungen, bei diesem Projekt, müssen wir irgendwas produzieren, Fortbildung machen, Veranstaltung machen, und gleichzeitig sind wir die politische Interessenvertretung. Das heißt, wir müssen die Politik mitnehmen, die Stellungnahme, Gesetzesvorhaben, die in verschiedenen Gremien vertreten und so. Das ist eben die Frage, ich weiß nicht, was davon wir nebenbei machen... Es ist sowas Doppeltes. Wir bräuchten eine vernünftige institutionelle Förderung, um sich wirklich konzentrieren zu können auf politische Interessenvertretung. Das ist nicht der Fall."; The same has been confirmed by the following cross-disability DPO interviewee: Third-level-interview De/A 2, on 15.05.2018, question 8.

1604 The list of actual staff members can be seen on contact-persons (Ansprechpartner) page of the DBSV at: https://www.dbsv.org/ansprechpartner-dbsv.html (last accessed on 01.07.2022).

cause the tasks are so diverse: on the one hand we have full-time structure, on the other hand we are supported by volunteers, who are involved in the respective topics, which is very good and necessary and yet we should prioritize and cannot handle all the issues with the same intensity because there are no resources, whereas we in comparison to other DPOs are well positioned, but with regard to variety of issues of inclusion it is still not enough".[1605]

In view of the political structure of Germany, the federal-level DPOs, on the one hand, pointed out insufficient human resources to ensure equally qualified political participation at all governmental levels: "we are challenged in view of the incredibly wide range of topics, so that one has to dance at several weddings at the same time, and that's what makes it so difficult, because you have to take a qualified position everywhere, so it is not enough to say, our rights are not being taken into account, but it is required and rightly expected that one comes up with concrete suggestions with regard to solution of a certain problem. These are sometimes questions that are not so easy to answer, as one needs expertise".[1606] On the other hand, they, in taking into account the varying legal regulations and different political participation frameworks in the federal states, underlined

1605 Third-level-interview DE/A 5, on 04.06.2018, Question 8. The Original reads as follows:
"Nein. Nein es reicht nicht aus was wir an Manpower haben, muss man ganz klar sagen, weil die Aufgaben so vielfältig sind. Also wir haben ja einerseits die hauptamtliche Struktur hier unterstützt dann durch ehrenamtlich, die sich im jeweiligen Themenfeld engagieren. Das ist auch sehr gut und sehr notwendig und trotzdem müssen wir priorisieren und können nicht alle Fragestellungen mit der gleichen Intensität bearbeiten, wie es eigentlich schön wäre, weil da einfach die Ressourcen fehlen, und da muss man schon sagen, uns geht es als Verband schon relativ gut personell. Also wir sind da schon relativ, vergleichsweise, gut aufgestellt, aber es reicht trotzdem nicht, im Angesicht der Vielfalt die das Thema Inklusion mit sich bringt".

1606 Third-level-interview DE/A 5, on 04.06.2018, Question 16. The Original reads as follows:
"Ja, definitiv ist das so. Wir haben die Herausforderung, A: dass es unheimlich weites Themenfeld ist, das habe ich schon erläutert, dass man also quasi auf mehreren Hochzeiten gleichzeitig tanzen muss, und das macht das so schwierig, weil man ja auch überall qualifiziert Stellung nehmen muss, also es reicht ja nicht zu sagen: Unsere Rechte sind nicht berücksichtigt. Sondern es wird ja schon gefordert, auch zu Recht gefordert, dass man Vorschläge macht, wie konkret kann denn jetzt Abhilfe geschaffen werden für ein bestimmtes Problem. Das sind ja manchmal Fragen die gar nicht so leicht zu beantworten sind, wo man auch Expertise braucht".

that they do not have the necessary financial means to ensure the same level of legal protection and equality also at the Länder-level: "we do not have so much resources to guaranty equal level of rights and disadvantage settlements in all federal states, especially in considering the very different regulations in the various federal states and the varying frameworks. This is most visible in educational laws and disability equality laws, but one can also see it with regard to the laws on allowance for the blind of the federal states, as well as in the implementation process of the EU directive on public websites and E-government; every federal state implements it differently, which makes our work of ensuring the similar level of protection and disadvantage compensation in all federal states extremely difficult".[1607]

Thus, it can be concluded that the financial support provided to federal-level DPOs falls, by and large, into the framework of service providing activities. Nevertheless, an important step has been taken towards diversification of finance support by introducing the political participation funds, which contributes to the sustained political operation of large federal organizations, but not sufficient for full and comprehensive participation of the DPOs, "especially smaller self-advocacy organizations"[1608] at the legislative processes and MFs.[1609] Despite the requirements of the CPRD Committee,[1610] the funding measures of the federal states for the Länder-level DPOs are limited, exclusively, to the service providing framework, as a

1607 Ibid. The Original reads as follows:
"Und zumal, dass wir in den unterschiedlichen Bundesländern ganz unterschiedliche Regelungen haben, und das wir gar nicht so viele Ressourcen haben um hinterher sein zu können, dass wir ein gleiches Niveau von Rechten und Nachteilsausgleichen in allen Bundesländern gewährleisten können, weil die Rahmenbedingungen unterschiedlich sind. Das sieht man bei Bildung sehr stark, das sieht man aber auch im Blindengeld zum Beispiel sehr stark, dass wir sehr unterschiedliche Blindengeldgesetze in den Bundesländern haben, und auch bei den Behindertengleichstellungsgesetzen sieht man es zum Beispiel sehr deutlich. Und man wird es jetzt auch sehen bei der Umsetzung der EU Richtlinie zu öffentlichen Webseiten. Das wird sehr unterschiedlich gehandhabt werden. Oder das Niveau E-Gouvernement Gesetz, also wie regeln die Länder ihre Behördenkommunikation zum Beispiel. Das ist extrem schwierig für uns als Verband, sicherzustellen, dass in allen Ländern ähnliche Schutzniveaus und Ansprüche auf Barrierefreiheit und Nachteilsausgleiche bestehen".

1608 See the recommendation of the CPRD Committee in the Concluding observations on the initial report of Germany. Para. 10.

1609 See the requirement underlined in the CPRD Committee General Comment No. 7, Para. 39.

1610 Ibid., Paras. 22, 39, 45, 60, 61, 62, 63, 64, 94 B, I, J and P.

result of which, the human and financial resources of the Länder-level disability-specific DPOs suffice merely for providing and organizing member consultations, whereas the non-disability-specific DPOs are excluded from the financial support schemes. This highly limits the scope and capacity of political action of the Länder-level DPOs; they reduce their focus and participation to only legislative processes and to policy fields directly[1611] concerning DPs. Legislative and administrative processes in the policy fields that concern DPs indirectly[1612] e.g., education, but have essential significance for achieving inclusion of DPs in the long-run, are being disregarded despite the fact that they are under the exclusive legislative powers of the federal states.

2.2 Resources of Austrian DPOs

The Austrian umbrella organizations for DPs, self-advocacy and war victims might be provided with financial support on the basis of Section 50.1 of The Federal Disability Act (BBG). Specifically, it states under the Section 50 that the Federal Minister of Labour, Social Affairs and Consumer Protection should, within the set limit of the Federal Financing Act, reimburse, in form of subsidies, the costs of these organizations arising from responsibilities assigned to them by the legislator in the field of disability support and their involvement in and coordination of publicly important disability areas. If there are several such associations that meet the requirements of the Section 10 Abs. 1 Z 6, the Federal Minister of Labour, Social Affairs and Consumer Protection, in considering the public interest importance in the provided services, decides on the allocation of funds. As a result, disability-organizations that do not have member organizations active in all

1611 According to Para. 20 of the CPRD Committee General Comment No. 7, "Examples of issues directly affecting DPs are deinstitutionalization, social insurance and disability pensions, personal assistance, accessibility requirements and reasonable accommodation policies".

1612 According to Para. 20 of the CPRD Committee General Comment No. 7, "Examples of … Measures indirectly affecting DPs might concern constitutional law, electoral rights, access to justice, the appointment of the administrative authorities governing disability-specific policies or public policies in the field of education, health, work and employment".

9 federal states have no chance of having financial means and qualified staff to carry out their political work.[1613]

In addition to federal funds that cover "project-related activities and employee costs, some DPOs have self-generated resources and receive membership contributions, which altogether amounts to EUR 200–230.000 annually".[1614]

The Tyroleandisability laws did not envisage financial support for self-advocacy disability organizations. Either the new so called "Tyrolean Participation Law" adopted in 2018 (LGBl. Nr. 32/2018) provides for supportive measures that would assist the Länder-level representative organizations of DPs or self-advocacy organizations for participating at the political processes. The new "Participation Law" instead, regulates that the costs of services, such as mobile support, communication and orientation, employment and educational promotion, and housing that might be provided, among other institutions, also by the disability organizations,[1615] should be covered by the province. Accordingly, the "disability-specific organizations such as Organization of the Blind are on one hand a self-advocacy organization, on the other hand they act as a service provider".[1616]

Länder-level organizations do not get support from their federal-level umbrella organizations despite the fact that the Länder-level organizations pay membership fee.[1617]

Consequently, the "Tyrolean DPOs / and the affected employees thereof have no resources except themselves"[1618] to carry out their responsibilities envisaged by the Art. 4.3 and Art. 33.3 of the CPRD.[1619]

Thus, the financial support of Austrian non-governmental organizations, similar to Germany, is characterized by privileged and service-oriented funding form. While the sustained operation of welfare and social organizations is more than ensured,[1620] the majority of Austrian DPOs, despite the

1613 Third-level-interview AT/A 1, on 23.05.2016, Q. 9. The original reads as follows: "Die großen Organisationen haben JuristInnen".
1614 Third-level-interview AT/A 3, on 25.05.2016, Q. 8.
1615 Tiroler Teilhabegesetz, §5, §41 und §42 (1).
1616 Third-level-interview AT/B-T 1, on 27.10.2015, Q. 12.
1617 Third-level-interview AT/B-T 1, on 27.10.2015, Q. 12.
1618 Third-level-interview AT/B-T 1, on 27.10.2015, Q. 8.
1619 Third-level-interview AT/B-T 2, on 27.10.2015, Q. 8; Third-level-interview AT/B-T 1, on 27.10.2015, Q. 8 and 12.
1620 Schneider/Haider 2009.

clear requirement of the CPRD Committee,[1621] do not have regular funding that would ensure their sustained and independent political participation. The financial situation of provincial DPOs is much more critical.

2.3 Resources of Danish DPOS

Denmark maintains a supportive environment for the functioning of non-governmental organizations. However, the public subsidies, similar to Germany and Austria, are focused on the role of CSOs as performer of different tasks and tackling social problems.[1622] The allocation of subsidies is regulated through a number of laws, including the Social Services Act.[1623] Interest groups intending to register a non-profit organization, however, should prove that they have adequate public support under the Danish Tax Assessment Act.

The part of resources of the Danish national DPOs come from the individual membership contributions. The municipal representative branch members contributions go directly to their national organizations, which decide on the allocation of funds to the municipal representative bodies.[1624] However, local-level DPO representatives do not get paid for their job.[1625]

Apart from the membership payments, the Danish national DPOs, in general, get funded by legacies and donations but they also receive project related governmental funding.[1626] Resources for consulting come partially from the government and partially from the organizations own funds.[1627] Some disability organizations might also get funded for commissioning research on disability-specific topics e.g., employment and disabled children attending regular schools.[1628]

The DPOD, as the umbrella organization of member national DPOs, receives membership payments.[1629] It also gets governmental funding related

1621 CPRD Committee, General Comment No. 7, Para. 94b.
1622 Habermann/Ibsen, 1997.
1623 Law Social Services (Serviceloven- LBK nr 1287 af 28/08/2020).
1624 Third-level-interview DK/A 3, on 29.10.2019, Q. 8.
1625 Third-level-interview DK/A 3, on 29.10.2019, Q. 7.
1626 Third-level-interview DK/A 2, on 02.12.2016, Q. 8.
1627 Ibid.
1628 Ibid.
1629 Third-level-interview DK/A 1, on 02.12.2016, Q. 8.

to projects and case-work for managing parking processes for DPs.[1630] In addition, DPOD gets funded by Charity Lottery, which it shares with its member organizations.[1631]

The DPOD maintains a secretariat. It has about 30 employees, some of whom come from the member organizations and thus are paid by them.[1632] For clarifying this point, it should be mentioned that the majority of Danish DPOs work under one roof which has been built based on the principles of universal design and is administered by the DPOD.[1633] Therefore, the secretariat should be seen as the key resource for ensuring the political effectiveness of Danish DPOs.[1634] Nevertheless, the DPOD resources are much more modest than that of the trade unions, business groups, and institutional groups.[1635] This, evidently, leads to inequality in the interest group system resulting in policy imbalances.[1636]

3. Aims and Actions of DPOS

3.1 Aims and Actions of German DPOs

The responsibilities of German DPOs depend on their types and aims. The ISL e.V. as a cross-disability DPO[1637] governed by the independent living notion, for example, underlines the human rights approach instead of disability-specific support and advocacy[1638] and acts accordingly.[1639] Disability-specific self-advocacy organizations, instead, address only one specific group of disability: e.g., visual, hearing, or physical impairment. Consequently, they strive to combine medical-based services with the pro-

1630 Ibid.
1631 Third-level-interview DK/A 3, on 29.10.2019, Q. 8 and 13.
1632 Third-level-interview DK/A 1, on 02.12.2016, Q. 8.
1633 For more see House of DPs at: https://handicap.dk/sites/handicap.dk/files/media/document/handicaporganisationernes_hus_uk_final-a.pdf (Last accessed on 01.07.2022).
1634 Binderkrantz et al., 2015.
1635 Binderkrantz, 2020.
1636 For more see the third part of this chapter on Denmark; See also Schlozman et al., 2012.
1637 For more about the history of the ISL E.V. see: Sporke, 2008: 44.
1638 Satzung (Statute) der ISL e.V., §2.1.
1639 Ibid., §2.3.

motion, protection and implementation of the human rights and full participation of the particular disability-group they represent.[1640]

The scope of statute-based responsibilities of the federal-level DPOs does not significantly differ from that of the state-level DPOs. They are tasked with a number of interconnected fundamental functions that include counselling affected persons, educating the general public about the rights of DPs, promoting the interests of DPs in the legislative processes, protecting the rights of DPs through legal representation before the courts and take appropriate steps to evaluate the implementation and report and/or undertake appropriate action in case of incompliance.[1641] In performing some of their responsibilities, the Länder-level DPOs, however, show significant divergence with that of the federal-level DPOs, as it will be evident from the following subsections.

3.1.1 Promoting the rights of DPs in decision-making processes

Germany has a long tradition of institutionalised participation at the decision-making processes of its executive and legislative organs.[1642] The participation at the policy-making processes is subject to strict regulations[1643] that envisage involvement of umbrella organizations, but do not ensure the right to consideration, whereas the General Comment No. 7. Para. 48: states that "views of DPs, through their representative organizations, should be given due weight". And what is more, the background and context in which these participation provisions originated indicate that the executive and legislative governments aimed more at limiting and filtering the influence of organizations than at ensuring plural participation.[1644] Moreover, the decision of individual ministries to organize consultation processes is further narrowed down through a number of regulations,[1645] which maintain "se-

1640 See for example, Satzung (Statute) des DBSV, §2; Satzung (Statute) des DGB E.V., §2.

1641 For example, see the statutes Satzung- BSBH, Fassung vom 14.10.2016, §3; Satzung-Landesverband "Interessenvertretung Selbstbestimmt Leben" in Thüringen e.V., §2.

1642 Schröder, 1976; Ullmann, 1988; Raschke, 1988; Alemann, 1989; Benzner,1989; Tennstedt, 1992; Sebaldt, 1997; Winter, 1997; Weßels, 2000; Kleinfeld, 2007; Voelzkow, 2007; Winter/Blumenthal, 2014.

1643 Weber 1976: 175–185.

1644 Schröder 1976: 74.

1645 Schröder 1976: 88.

lective partnership"[1646] with large governmental and non-governmental organizations. The scope of the traditionally involved non-state organizations might, however, differ depending on the policy field[1647] e.g., employer associations,[1648] social[1649] and welfare[1650] organizations in disability policies, teacher unions[1651] in educational policies. The involvement of German DPOs in the political and legislative processes became normalcy in the process and through adoption of Book IX of the Social Code, 'Integration and Rehabilitation of DPs' (SGB IX, 2001), the Federal Disability Equality Act (BGG, 2002) and General Equality Act (AGG, 2006).[1652]

3.1.1.1 Participation in Advisory Bodies

In Germany, the federal, state and municipal governments maintain advisory boards/commissions/bodies that play decisive roles in formulating and implementing policy objectives and content. The majority of such bodies are subject to strict regulations that set the number and scope of representatives from the state and non-state actors. Accordingly, the members from the non-state organizations of such bodies might differ depending on the policy field and be limited to legally privileged governmental organizations e.g., German District Organization/German Organization of Cities and Municipalities and non-governmental organizations, such as welfare organizations. For example, the Federal Ministry for Employment and Social Affairs (BMAS) that has been designated as the FP under the CPRD,[1653] has a number of advisory boards, but the participation of organizations "of" DPs has only been ensured in few of them: e.g., the Commission for the reports on the life Situation of DPs (Wissenschaftliche Beirat des

1646 Weber 1976: 278.
1647 Rehder/Winter/Willems, 2009.
1648 E.g., Schroeder/Weßels, 2010.
1649 E.g., Winter, 2007: 341ff; Sporke, 2008: 44–49.
1650 E.g., Tennstedt, 1992: 342–356; Rauschenbach et al. (Hrsg.), 1995; Schmid, 1996; Boeßenecker, 1998: Backhaus-Maul, 2000: 22–30; Strünck, 2000: 185 ff; Schmid/Mansour, 2007: 244 ff; Kiepe/Schroeder, 2020.
1651 Hartong/Nikolai, 2016: 105–123; Nikolai/Briken/Niemann, 2017: 114–142; Dobbins/Nikolai 2019: 564–583.
1652 E.g., Sporke, 2008; Degener/von Miquel (Hrsg.), 2019.
1653 For more see chapter IV.

Teilhabeberichts),[1654] and The Council of Participation of DPs (Beirat für die Teilhabe von Menschen mit Behinderungen- Section 86 SGB IX).[1655] Furthermore, the Federal Disability Commissioner assigned as the CM under the CPRD maintains an Advisory Board (Inklusionsbeirat).[1656] These bodies help the federal government to fulfil its obligations,[1657] to ensure regular contact of the federal-level DPOs to FP and CM. However, the constant collaboration is limited. And what is more, even in these few advisory boards, the number of representatives from or appointed through DPOs is much smaller in comparison to other privileged governmental and non-governmental organizations. Hence, their influence can be neither comprehensive nor game changing.

Similar advisory structures exist also at the state and municipal governmental levels. In direct policy fields these are maintained by the FPs, the functioning or even existence (in the case of Thuringia) of which has been doubted by the Länder-level DPO interviewees, especially those that have been also active at the municipal-level.[1658] The majority of the state and some municipal disability advisory boards have been established well before the CPRD ratification.[1659] Nevertheless, their functioning, especially at the municipal-level has not been legally regulated. The amendments of state disability equality laws induced by the CPRD ratification brought advancement in this respect.[1660] In particular, they have been attached to the Länder-level disability commissioners, who despite their legal obligations to involve and consult the DPOs, have been perceived to have either very

1654 For more see:https://www.bmas.de/DE/Service/Presse/Meldungen/2019/wissenschaftlicher-beirat-einberufen.html (Last accessed on 01.07.2022).

1655 From 49 members only 6 can be nominated by the Federal-level DPOs. Länder-level DPOs have no representation, whereas both federal states and municipal governments have considerable number of members.

1656 For more see chapter IV.

1657 CPRD Committee, General Comment No. 7, Paras. 35 and 41.

1658 E.g., third-level-interview DE/B-H 1, on 05.07.2016, Q. 6; Third-level-interview DE/B-T 1, on 25.06.18, Q. 6. Third-level-interview DE/B-H 3, on 14.06.2018.

1659 Bundesarbeitsgemeinschaft für Rehabilitation, 2000.

1660 E.g., inclusion advisory board of Hessian State has been legally stipulated (HessBGG, As amended on 19.06.2019 by GVBl. S. 161, §19), but no improvement for the municipal disability advisory boards; expansion of Thuringian State advisory board (ThürGIG, as amended on 30.07.2019 by GVBl. 2019, 303, §20), but the status of municipal advisory boards remains week and their functioning largely unregulated (ThürGIG, §21.1).

limited functionality as it was in the case of Hesse or be disinterested in cooperation with disability organizations as it is the case with Thuringia.[1661]

The amendments also enlarged the participation scope of DPOs in the Disability Advisory Boards. However, neither Hessian nor Thuringian disability equality laws envisaged explicit provision of reasonable accommodation for disabled members of the disability advisory boards. As a consequence, DPs included in an advisory body/working group did not have de facto opportunity of effective participation because they did not have assistance during the voluntary work. Such a provision has been first introduced with the Federal Participation Law (BTHG) in 2016, but its efficacy is presumed to be insignificant due to the narrow scope of entitlement.[1662]

In indirect policy fields, the involvement of DPOs in existing advisory organs has not been ensured even in the fields of fundamental importance for DPs: e.g., Federal Ministry of Education and Research, which is responsible for vocational and higher education policies, maintains several advisory boards, but the participation of DPOs is ensured in none of them.[1663]

Comparable picture could be observed also at the Länder-level legislative processes. The DPOs have not been included in the advisory boards concerning policy fields affecting DPs indirectly: e.g., The Thuringian Ministry of Education maintains a state school Advisory Council, which plays an important role in developing and monitoring the implementation of educational laws. Nevertheless, among its 32 members representing various governmental and non-governmental organizations, there is no member

1661 E.g., third-level-interview DE/B-H 2, on 30.05.18, Q. 9; Third-level-interview DE/B-H 5, on 31.10.2019, Q. 16; Third-level-interview DE/B-T 5, on 07.06.2019, Qs. 3 and 17.

1662 BTHG, §78 (5) "Beneficiaries who perform voluntary work, are to be provided reimbursement covering reasonable expenses of needed assistance, unless the support can be reasonably provided free of charge. The necessary support should be provided primarily in the context of family, friendship, neighbourly or similar personal relationships (Leistungsberechtigten Personen, die ein Ehrenamt ausüben, sind angemessene Aufwendungen für eine notwendige Unterstützung zu erstatten, soweit die Unterstützung nicht zumutbar unentgeltlich erbracht werden kann. Die notwendige Unterstützung soll hierbei vorrangig im Rahmen familiärer, freundschaftlicher, nachbarschaftlicher oder ähnlich persönlicher Beziehungen erbracht werden)".

1663 See for example BAföG, as amended on 23.05.2022 by BGBl. I S. 760, § 44 (3); StipG, as amended on 29.03.2017 BGBl. I S. 626, §12 (2).

representing the interests of DPs through their organizations.[1664] A similar advisory organ is stipulated by the Hessian School Law, which includes the State Disability Commissioner as one of its members.[1665] While it is positive that at least the Disability Commissioner has been included in the Advisory Council, it cannot but be mentioned that the honorary Commissioner (2012- 2020) met the representatives of organizations addressing different disabilities only once in a year in the framework of her Inclusion Council.[1666] Accordingly, the effectivity and form of her participation at this Council might be put under question.

3.1.1.2 Participation at decision-making processes of executive organs

In summer 2002, when the Ad Hock Committee was established to negotiate the CPRD, the German Federal-level DPOs, in contrast to Länder-level DPOs,[1667] were the integral part of it.[1668] They were supported by and closely coordinated with the federal FP: "during the CPRD negotiation we had a good contact to the government, as a result of which it funded our trips to New York, and the BMAS kept us informed; presently we are at this or that stage, and it regularly consulted with us; So what does the DBR think, which way should we go".[1669] The close collaboration between the DPOs and the federal government terminated at the point when the national level executive and legislative organs became responsible for the ratification of the CPRD.[1670]

1664 See TH ThürSchulG, as amended on 5.05.2021 by GVBl. S. 215, §39; ThürMitwVo, as amended on 17.07.2014 by GVBl. S. 562, §7.
1665 HSchG, as amended on 13.05.2022 by GVBl. S. 286, 302, §99a.
1666 Third-level-interview DE/B-H 4, on 31.10.2019, Q. 17.
1667 E.g., Third-level-interview DE/B-H 1, on 05.07.2016, Q. 1; Third-level-interview DE/B-H 2, on 30.05.18, Q. 1.; Third-level-interview DE/B-H 3, on 14.06.2018, Q. 1; Third-level-interview DE/B-H 4, on 31.10.2019, Q. 1; Third-level-interview DE/B-H 5, on 31.10.2019, Q. 1; Third-level-interview DE/B-T 1, on 25.06.18, Q. 1; Third-level-interview DE/B-T 5, on 07.06.2019, Q. 1.
1668 Arnade, 2015; see also Bentele, 2021.
1669 Third-level-interview DE/A 4, on 04.06.2018, Q. 1. The Original reads as follows: "Es war während der Verhandlung BRK, also ein guter Kontakt der Regierung zur Zivilgesellschaft, dass uns auch die Reisen nach New York finanziert wurden, und dass wir Immer von BMAS informiert worden sind; also wir stehen an der oder der Stelle; also was meinte deutscher Behindertenrat, in welche Richtung könnte es weitergehen, das war ganz okay".
1670 Third-level-interview DE/A 4, on 04.06.2018, Q. 1.

At the national level, the federal and state ministries maintain two-step draft-law development procedure. The involvement therein is organized offline[1671] and is subject to detailed participation provisions stipulated by the Procedural Rules of the appropriate ministries at the particular governmental level.[1672] These ensure early possible (first and second-step) consultancy and involvement of privileged state and none-state umbrella organizations both at the vertical and horizontal level of governments.[1673] As a matter of fact, these are those that have been already included in advisory boards in a given policy field.[1674] Accordingly, the core participating interest groups remain the same within the policy fields.

In the second-step of draft law development procedure, ministries consult, in addition to privileged organizations, non-state interest groups that have not been involved in the first-step development procedures. As a result, the scope of participating interest groups might be enlarged and perceived as different from other policy development phases.[1675] Therefore, it should not be surprising that the DPOs had serious difficulties to get in touch with the government for knowing how the CPRD ratification process went on[1676] at the first step of its development. As a result, the federal government developed and passed the Ratification Law with the statement that German laws fully fulfil the requirements of the CPRD.[1677] The DPOs did not object as they were afraid of reservations, especially in

1671 Denmark, for example, has an online platform, where all ministries publish draft laws and invite CSOs and other relevant actors to submit their commentaries. For more see the part on Denmark in this chapter or chapter IV.

1672 GGO, §47.3; For federal states see e.g. the Common procedural rules of Hessen State Ministries (Gemeinsame Geschäftsordnung der Staatskanzlei und Ministerien des Landes Hessen (HessGGO), as amended on 29.12.2021 by StAnz. 2022, 76, §56; Gemeinsame Geschäftsordnung für die Landesregierung sowie für die Ministerien und die Staatskanzlei des Freistaats Thüringen (ThürGGO), as amended on 21.07.2020 by GVBl. S. 444, §21.1.

1673 GGO. (cooperation with Federal Commissioners and coordinators) §21, (cooperation with Federal states) §36, as well as involvement and participation of the Federal States and municipal umbrella governmental organizations prier to draft law formulation (§41) and after the draft law development (47 (1 and 5), and (for ministerial participation at the vertical level), §45. The same selective cooperation and involvement provisions exist in, for example, procedural rules of the hessian and Thuringian Ministries.

1674 See above.

1675 Klenk, 2019.

1676 Third-level-interview DE/A 4, on 04.06.2018, Q. 1.

1677 BT-Dr. 16/10808.

the field of education.[1678] The federal government continued the practise of excluding the DPOs from the CPRD implementation process, this time by the processing of the CPRD translation into German language, which, eventually, led to strong criticism by the DPOs.[1679] To correct the situation, the federal-level DPOs undertook a number of actions: "we wrote many e-mails … explaining the difference between integration and inclusion and why is the correct translation important, we discussed the issue during the DBR meeting with chancellor Merkel and we and other European DPOs sent letters to German and other German speaking country chancellors with the request to correct the translation, but the complaints of the DPOs found no acceptance in Germany since the federal government of Germany believed that the translation of the Convention into German language was super".[1680] Consequently, the "article 3 DPO started the shadow translation of the CPRD (in summer of 2018 it published the third edition of the translation".[1681] In response to criticism, the federal government of Austria, instead, adopted a new coordinated translation of the CPRD and its Optional Protocol in 2016.[1682]

The two-step draft law procedure has been applied also in the case of the CPRD Implementation Law (Bundesteilhabegesetz). This time, however, DPOs have been invited to participate at the first-step High Level Participation Procedure already in July 2014.[1683] On 26 April 2016, the Federal Ministry of Labour and Social Affairs published the initial draft (Referentenentwurf) of the Federal Participation Law. After the publication, consulted disability organizations were in disarray and deep disagreement: "We had the so-called High-Level Participation Procedure on the Federal Participation Act, where we put much effort… I would say that was a fake participation, and I feel (betrayed) because when we saw the draft bill,

1678 Third-level-interview DE/A 4, on 04.06.2018, Q. 1.
1679 Third-level-interview DE/A 4, on 04.06.2018, Q. 1; see also BRK-Allianz 2013; DBR 2018.
1680 Third-level-interview DE/A 4, on 04.06.2018, Q. 1. The Original reads as follows: "Und wir haben dann auch hinter her jede Menge Mails geschrieben…Wir hatten auch vom deutschen Behindertenrat … ein Treffen mit Kanzlerin Merkel, und haben dann das Thema angesprochen… Wir haben dann vom deutschen Behindertenrat, und andere Behindertenorganisationen in deutschsprachigen Ländern Briefe an Merkel und anderen Kanzlern geschrieben. Das was nichts. Als Antwort kam, „es ist alles supi".
1681 Third-level-interview DE/A 4, on 04.06.2018, Q. 1.
1682 BGB l. III Nr. 105/2016.
1683 Miles-Paul, 2014.

we dropped out of faith as it was worse than the previous law, but the government is proud that we have participated".[1684]

In fact, the government addressed a number of concerns raised in the Concluding Observations on the Initial Report of Germany but in the view of DPO's the reforms failed to ensure accessibility in the private sector and failed to ensure exit strategies from the sheltered structures.[1685] Accordingly, DPOs started a chain of protests that resulted in small amendments, but did not led to consideration of their main demands in the final version (Kabinettsentwurf) of 22 June 2016.[1686] Therefore, The DPOs continued their protest actions[1687] with the hope of achieving significant amendments in the parliamentary procedures.[1688] The protests have been covered not only by own information channels but also public media.

Comparable participation procedures took place also in connection with the development of the first and second National Action Plans,[1689] during which the DPOs have been part of the working groups organized and maintained by the FP and CM. Nevertheless, the DPOs criticised both action plans and complained about missing participation efficacy at these working groups.[1690]

The federal-level DPO interviewees also criticised the accessibility of their political participation: "the deadlines for comments are always too short. With this digital accessibility ... there's a week to comment. The documents are often not accessible. This is an eternal point of contention".[1691]

The participation of non-state organizations at the draft-law development is hard to check as these processes are none-transparent[1692] across the

1684 Third-level-interview DE/A 4, on 04.06.2018, Q. 5. The original reads as follows; "Wir haben jetzt beim Bundesteilhabegesetz ein so genanntes Hochrangiges Beteiligungsverfahren, wo es wirklich aufwendig beteiligt worden ist, ich würde sagen, das war eine Scheinbeteiligung, und fühle mich (betrogen), die Regierung ist aber stolz darauf, dass wir uns beteiligt haben". And Q. 8: "Also als wir den Referentenentwurf sahen, sind wir vom Glauben abgefallen, weil es schlechter war als das bisherige Recht".

1685 Deutscher Behindertenrat et al., 2018:2 et seq.

1686 Miles-Paul, 2016a.

1687 Schmahl, 2016a.

1688 Miles-Paul, 2016b.

1689 Der Nationale Aktionsplan der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention (NAP 1.0), 2011; Nationaler Aktionsplan 2.0 der Bundesregierung zur UN-Behindertenrechtskonvention (NAP 2.0), 2016.

1690 CRPD Alliance, 2013:8; Deutscher Behindertenrat et al., 2018:2.

1691 CRPD Alliance, 2013:8; Deutscher Behindertenrat et al., 2018:2.

1692 Rasch, 2020.

Länder-level ministries, as, unlike the Federal Ministries, they do not publish relevant documentation on their webpages. However, the Länder-level DPO interviews and the review of the parliamentary processes, it became evident that the awareness among the Länder-level executive authorities concerning the involvement of the DPOs in political processes directly affecting DPs has increased after the CPRD ratification. For instance, the Hessian State Social Ministry, designated as FP, started to involve the DPOs through their representative umbrella organizations in political processes with its 2012 decision to develop an Action Plan for the implementation of the Convention.[1693] For this purpose, it has established thematic working groups composed of various state and non-state representatives, including Hessian umbrella organizations of and for DPs (Landesarbeitsgemeinschaft Selbsthilfe e.V, Paritätische Wohlfahrtsverband Hessen), as well as Disability Commissioner and Disability Advisory Board (Landesbehindertenrat). Accordingly, the DPOs had a possibility to express their views on issues e.g. vocational training, school integration and traffic infrastructure through their Länder-level umbrella organization and/or Disability Council.[1694] Nevertheless, the member DPOs to the state umbrella organizations, state that the umbrella organizations, which were there only representatives in the steering group and working group, were totally inactive: "during the development of the action plan, where we were represented by an umbrella organization, we did not even get the minutes of the meetings… when we asked them to represent our point of view they refused to do it… we find the indirect representation to be difficult as the representative of the umbrella organization cannot be aware and understand different disability-specific needs and views".[1695] Besides, the Hessian DPO interviewees experienced accessibility issues related to missing of reasonable accommodation for hearing and visually impaired, as well as learning disabled participants of decision-making processes at the state and municipal governmental levels.[1696]

The Thuringian government, instead, opted for direct DPO participation in building up the working groups for the development of the Disability

1693 LT-Drucksache 18/1673.

1694 Ibid.

1695 E.g., third-level-interview DE/B-H 1, on 05.07.2016, Q. 1 and 15; Third-level-interview DE/B-H 3, on 14.06.2018, Qs. 8 and 17.

1696 E.g., third-level-interview DE/B-H 4, on 31.10.2019, Q. 5, Third-level-interview DE/B-H 5, on 31.10.2019, Q. 15; Third-level-interview DE/B-H 1, on 05.07.2016, Q. 12.

Action Plans. Nevertheless, the initial high participation rate in the established thematic working groups was reduced to 3 members (two members from the Länder-level government and a member from a DPO).[1697] The Thuringian State FP explained this by saying that "not all DPOs were able to hold out because the subject was difficult",[1698] whereas the interviewed DPO representatives pointed out serious accessibility issues for the disabled participants.[1699]

Overall, the representatives of the Länder-level DPOS from both federal states expressed high dissatisfaction with regard to effectivity[1700] of their political participation: the majority of the measures included in the Action Plans have already been realised or were in the process of implementation.[1701] The remaining newly set actions have been put under the financing reservations.[1702] Hence, the majority of representatives of the DPOs perceived the cooperation with the Länder-level government as one-sited, meaning that the expressed opinions of the DPOs are not being taken into account by the state and municipal governments.[1703] Nonetheless, the Länder-level DPOs did not attempt to exert pressure through protests or media, which speaks about the low level of professionalism[1704] caused by missing resources for political participation.

In policy fields affecting DPs indirectly, the involvement and consultation of DPOs by the federal-level ministries is very limited or non-existent.[1705] For example, the majority of draft law development processes carried out by the Federal Ministry of Education and Research, which is responsible for drafting laws in the field of vocational and higher education, contain no written commentary on/behalf of DPs, even from the

1697 E.g., third-level-interview DE/B-T 4, on 04.06.2019, Q. 1, 5 and 15.
1698 First-level-interview DE/B-T 2, on 23.05.2018, Q. 5.
1699 E.g., third-level-interview DE/B-T 1, on 25.06.18, Q. 12; Third-level-interview DE/B-T 5, on 07.06.2019, Q. 15; Third-level-interview DE/B-T 2, on 11.09.18, Q. 5.
1700 E.g., third-level-interview DE/B-T 1, on 25.06.18, Q. 2; Third-level-interview DE/B-H 2, on 30.05.18, Q. 2.
1701 E.g., third-level-interview DE/B-H 2, on 30.05.18, Q. 2; Third-level-interview DE/B-T 1, on 25.06.18.
1702 E.g., third-level-interview DE/B-H 2, on 30.05.18, Q. 2; Third-level-interview DE/B-T 5, on 07.06.2019, Q. 2.
1703 E.g., third-level-interview DE/B-H 2, on 05.07.2016, Q. 2; Third-level-interview DE/B-T 1, on 25.06.18, Qs. 5 and 17.
1704 Willems, 2000: 83 ff.
1705 Third-level-interview DE/A 5, on 04.06.2018, Q. 5.

Federal Disability Commissioner. Only the section enlisting the documents on the law promoting professional advancement (AFBG) contain written commentaries on behalf of DPs, but these commentaries were submitted by welfare organizations.[1706]

At the Länder-level, the involvement practice of the DPOs in the policy fields affecting DPs indirectly is similar to that of the federal-level. In the educational policy field that fall under the exclusive responsibility of the Länder-level governments, for instance, the interviewed DPO representatives could not even remember being informed or consulted.[1707] Their chances of obtaining information on their own would fail or at least be complicated due to the none-transparency of the federal state governments. The observation of legislative processes of Länder-level parliaments in policy fields affecting DPs indirectly confirms the non-involvement of the DPOs.

3.1.1.3 Participation at legislative processes of parliaments

The draft laws submitted to the Federal Parliament (Bundestag),[1708] or one of the 16 federal state parliaments (Landtage)[1709] are sent to their Standing Committees (standing Ausschüsse). These, conditioned by the requirements of the working parliament,[1710] are based on a cooperative structure and correspond to the structure of the executive branch.[1711] The composition of the Committees is based on the proportional strength of the Fractions. Recommendations of Standing Committees mostly have binding effect for the final approval of the Parliaments.

1706 For more see the webpage of the_Federal Ministry of education and research containing documents on the_developed lawsGesetze – BMBF at: https://www.bmbf.de/bmbf/de/service/gesetze/gesetze_node.html (Last accessed on 01.07.2022.).

1707 Third-level-interview DE/B-T 1, on 25.06.18, Q. 4 and 18; Third-level-interview DE/B-T 4, on 04.06.2019, Q. 4; Third-level-interview DE/B-H 1, on 05.07.2016, Q. 9; Third-level-interview DE/B-H 5, on 31.10.2019, Q. 4.

1708 Grundgesetz für die Bundesrepublik Deutschland (GG), as amended on 28.06.2022 by BGBl. I S. 968, Art. 38 (1).

1709 Hessische Verfassung, as amended on 12.12.2018 by GVBl. S. 752, Art. 75; TH Verf, as amended on 11.10.2004 by GVBl. S. 745, Art. 48; See also Linck, 1996; Schiller,2016; Leunig, 2018.

1710 Steffani, 1979.

1711 Ismayr, 2008a; Siefken, 2021.

For making informed decisions, Committees, in collaboration with the responsible ministry, might invite experts from state and non-state[1712] bodies, as well as academics to a hearing. Therefore, Thomas von Winter argues that the list of interest groups and experts invited by governing parties does not significantly differ from the experts involved in the previous phase of the draft-law development,[1713] there might be differences at this final phase of policy-making as the opposition may invite other experts than the responsible ministry and the members of the parliamentary majority, but their influence might be doubted. Accordingly, the parliamentary hearings are perceived as "largely ritualized and predictable events that are well prepared by the parliamentary parties"[1714] and aim at "presenting decisions already taken as appropriate".[1715] Nevertheless, in issues of high interest to the public, parliamentary hearings might lead to considerable amendments or even hinder the passage of the bill.[1716]

For instance, in the public hearings of the Bundestag on the BTHG that was accompanied by protests,[1717] the members of the responsible Committee invited representatives of umbrella governmental and non-governmental organizations that have been part of the policy-making process. These included 2 representatives of welfare organizations, 2 representatives of German district organization/German organization of cities and municipalities, a representative from sheltered workshop providing organizations providers (BAG WfbM) and a representative from an organization that acts on behalf of workers of sheltered workshops (Werkstatträte Deutschland), 1 representative of German Trade Union and 2 representatives of other relevant organizations, the head of the NMB, 2 non-affected and 3 affected (legal) experts, two of whom represented the views of DPOs, as well as a representative from the federation of self-help organizations of DPs and a representative of a parent organization "Lebenshilfe e.V.". It should be mentioned that there is also a possibility to submit a non-invited written

1712 Geschäftsordnung des Deutschen Bundestages (BTGO), as amended on 18.3.2022 by I 562, §70; Geschäftsordnung des Hessischen Landtags, as amended on 23.02.2022 by GVBl. S. 130, §93.3; Geschäftsordnung des Thüringer Landtags, Fassung vom 22.07.2022, §79.
1713 Winter, 2014.
1714 Oertzen, 2006: 238.
1715 Sack/Fuchs, 2014: 163, 172.
1716 Siefken, 2021: 123.
1717 Schmahl, 2016b.

commentary and some DPOs made use of this opportunity.[1718] However, the efficacy of this opportunity remains questionable, especially in considering the intensive workload and time constraints of committee members.

The public hearing on BTHG took 2 hours and 13 min., the significant and the majority of questions of the Committee members went to welfare organizations and representatives of sheltered workshops. The representative of the self-help organizations of DPs got only 3 short questions. Invited experts[1719] also got 3 and more questions each, the majority of which were significant questions. The Commission suggested the adoption of the draft law with a number of amendments, some of which were a reaction to criticism of the non-state organizations. Comparable procedure could be observed also in examining other direct policy-making processes accompanied with strong public coverage.[1720]

The presence of DPs in the public hearings of the Bundestag affecting DPs indirectly is not ensured even in cases when they address vocational or higher education.[1721]

The hearings of federal state parliaments are often none-public. This means that the list of participants and their arguments are not accessible to the general public and in some policy field's e.g., inclusive education even to researchers. Nevertheless, the examination showed that only selected DPOs are invited to submit written commentaries and/or take part at hearings on the draft laws directly addressing DPs.[1722] In comparison

1718 Bundestag, Ausschussdrucksache 18(11)801.

1719 It should be mentioned that the affected three experts were, in fact, the members of the Forum of Disabled lawyers, which prior to the development of the Draft law developed and published suggestions to new Participation law.

1720 Zusammenstellung der schriftlichen Stellungnahmen zum Intensivpflege- und Rehabilitationsstärkungsgesetzesentwurf: Ausschussdrucksache 19(11)861; Zusammenstellung der schriftlichen Stellungnahmen zum Entwurf eines Gesetzes zur Stärkung der Teilhabe von Menschen mit Behinderungen sowie zur landesrechtlichen Bestimmung der Träger der Sozialhilfe: Ausschussdrucksache 19(11)1036; Zusammenstellung der schriftlichen Stellungnahmen zum Barrierefreiheitsstärkungsgesetzesentwurf: Ausschussdrucksache 19(11)1036 und Ausschussdrucksache 19(11)1137.

1721 For more see the webpage of the Federal Ministry of education and research containing documents on the developed laws Gesetze – BMBF at: https://www.bmbf.de/bmbf/de/service/gesetze/gesetze_node.html (Last accessed on 01.07.2022).

1722 See for example, Stellungnahmen Gleichstellungsgesetz (Drucks. 18/1152), Ausschussvorlage AFG 18/18, Stand: 16.11.2009; Stellungnahmen Gleichstellungsgesetz (Drucks. 19/2184), Ausschussvorlage SIA 19/43, Stand: 04.11.2015; Stellungnahmen Änderung Behinderten-Gleichstellungsgesetz (Drucks. 20/178), Ausschussvorla-

to organizations of visually and hearing impaired, persons with learning disabilities did not even surface in the list of invited organizations.[1723]

Similar to legislative processes of Bundestag, the state-level legislators do not include the DPOs in the list of affected organizations in considering draft laws that do not directly address DPs.[1724] For example, the Committee of Migration, Justice and Consumer Protection of the Thuringian Parliament in considering the bill on Participants Transparent Documentation Law[1725] decided to invite 19 experts, none of whom were from DPOs.[1726] In these cases even the state Disability Commissioner are not invited to submit their opinions.[1727] In other legislative amendment processes: e.g. Children/Teenager Support Law, diverse standpoints of various groups of DPs are in the best case represented collectively by the state Disability Commissioner and the Disability Council.[1728]

The review of the Thuringian and Hessian Parliamentary documents also revealed that the commentaries of consulted Länder-level DPOS were, overall, human-rights oriented and based their requirements/argumentations on the CPRD. Nevertheless, they proved not to be solidarity-aware; none of the consulted DPOs took effort to represent the views of missing disability-groups or to point out their absence.

Thus, it becomes clear that the institutional participation based on "selective partnership" still plays an important role in social and public policy-making processes. However, the need to comply with the existing international, supranational and national participation rules[1729] and policy-

ge/SIA/20/1, Stand: 26.04.2019; see also, Thüringer Gesetz zur Inklusion und Gleichstellung von Menschen mit Behinderungen -Drucksache 6/6825.

1723 Ibid. See also the Parliamentary Documents to Thüringer Gesetz über den barrierefreien Zugang zu den Websites und mobilen Anwendungen öffentlicher Stellen sowie zur Änderung des Thüringer E-Government-Gesetzes- Drucksache 6/6686.

1724 See for example, Stellungnahmen Drucks. 19/5728, Ausschussvorlage INA 19/64, UDS 19/9; Drucks. 19/3570, Ausschussvorlage/WKA/19/20.

1725 ThürBeteilDokG- LT-Drucksache 6/4807.

1726 Ausschuss für Migration, Justiz und Verbraucherschutz, Auszug Drs. 6/4807, 26. Januar 2018.

1727 See for example the documentation to ThürBeteildokG- Drucksache 6/4807.

1728 See for example, Stellungnahmen Zweites Gesetz zur Änderung des Hessischen Kinder- und Jugendhilfegesetzbuches (Drucks. 20/127), Ausschussvorlage SIA 20/2, am 14.05.19.

1729 CPRD Committee, General Comment No. 7. See also, Gamper, 2015; Grigoryan, 2021.

legitimation practises,[1730] the federal and state executive and legislative organs strive to ensure access of relevant interest groups to policy formulation and development processes. Hereby, interest groups that have been identified by the decision-makers as irrelevant are excluded from all three decision-making phases. In these cases, both federal and Länder-level DPOs do not strive to apply alternative influencing mechanisms. Reasons for this might be threefold: First, the DPOs as irrelevant group do not get on-time information about decision-making processes concerning indirect policy field's e.g., vocational training and primary/secondary education. Accordingly, they get to know about the developments/amendments in the best case at the final stage, when it is almost impossible to land a success. Second, the DPOs, especially at the Länder-level have limited resource capacity. Consequently, they have to prioritise the direct policy fields even if the possibility to influence certain policy fields exists only at the particular governmental level. The best example here is the primary and secondary educational policy field in the federal states shown above. Third, the inactivity might be explained by the fact that in certain indirect policy fields there is no consensus between disability-specific organizations and independent living movement concerning sheltered structures as the disability-specific organizations are part of it.

In involving the interest groups identified as relevant, the federal and Länder-level governments follow the strategy of power-reduction through participation. For example, by including a few DPOs in advisory boards concerning direct policy fields, they create an impression that these are the indivisible part of decision-making processes, whereas in reality, the "traditional power elite hold the majority of seats and a few hand-picked 'worthy' representatives of DPOs can be easily outvoted and outfoxed".[1731] In the Länder-level advisory boards, the contribution of the DPOs is incomparably weaker due to missing resource capacity and reasonable accommodation for affected participants.

In the second and third phases of legislative processes affecting DPs directly, the federal executive and legislative organs formally include and consult the DPOs in policy-development processes, but their "participation remains just a window-dressing ritual' meaning that these are restricted to only input of citizens' ideas and by no means aim at combining other

1730 Bogumil/Kuhlmann, 2015: 237–251; Fink/Ruffing, 2015: 253–271: Klenk, 2019; Peters, 2020; Schmidt, 2020.

1731 Arnstein, 1969: 220 f.

modes of genuine participation[1732] reserved for only 'selected partners".[1733] The weight of selective interests become much more visible at the Länder-level, where the decision-makers limit the participation either to a few state-wide umbrella organizations or hinder the effective or overall participation of DPOs through social selection as they disadvantage groups with weak articulation opportunities:[1734] E.g., for groups that need reasonable accommodation to participate. Nonetheless, the federal and Länder-level governments declare the consultation processes as successful on the bases of the number of DPO attendance to the meetings/hearings or an opportunity to answer to a few questions without providing information to DPOs about the outcomes of such processes, including an explicit explanation of the findings, considerations and reasoning of decisions on how their views were considered and why as it is required by the CPRD Committee.[1735] The federal government even goes as far as to consider the provision of detailed information on decision-making processes as, "an inadmissible over-control of executive processes".[1736] Instead, it tries to ensure the required transparency,[1737] solely through the publication of the opinions and commentaries of interest groups and experts that agreed to transparency on the websites of the appropriate ministries. The Bundestag and its committees also maintain external transparency, but the real decision-making processes remain behind the scenes. Therefore, there is a need for further research that could shed light on this. The examined federal state governments and parliaments did not even feel obligated to publish policy relevant documentations on their websites.[1738] Whereas without ensured transparency of political actions there cannot be trust in political processes.[1739] Consequently, the consulted but not considered DPO representatives come to the conclusion that their participation was a "fake participation", because their opinions do not find due consideration leading to effective implementation of the rights

1732 Arnstein, 1969: 219f.
1733 Wittkämper 1963: 47; Weber 1976: 184ff; Schröder 1976: 88f; Winter, 2014: 179ff.
1734 Holtkamp et al. 2006: 255.
1735 Ibid.
1736 BT-Drucksache 19/30097 (Last accessed on 01.07.2022).
1737 CPRD Committee, General Comment No. 7, Paras. 23, 33 and 43.
1738 Thuringia adopted the ThürBeteilDokG (as adopted on 07.02.2019 by (GVBl. 2019,1) that might improve but not solve the transparency issue of the parliament as of 2019.
1739 BVerfGE 40, 296 Rn. 327.

of DPs.[1740] This, in contrast to the authority's intention to ensure input-legitimation, leads to disappointment and frustration among the participants, as the expectations connected with the participation cannot be achieved because the opportunities to influence the formal policy-making processes are highly limited.[1741] Therefore, the DPOs take a "detour" through the public[1742] to influence the decision-making processes by ensuring the presence of their requirements through protests and mass-media. Some scholars, however, doubt the success of these instruments.[1743] Sabine Ruß, instead, finds that ensuring the presence of the particular interest group is a precondition for political success.[1744] In measuring the general capacity of DPOs to influence legislative processes in multi-level prospective, where I observed high level activity regarding federal laws and far-reaching reluctance of the Länder-level DPOs to use public media and protests to influence the political processes at the Länder-level, I cannot but agree with Sabine Ruß's presumption. In assessing the influence of the German DPOs in accordance with the degree of their success, I see, however, only minimal amendments or hindrance of the worst-case scenario. And even these could not have come about if there would not exist broad rejection of amendments among the relevant none-state actors. Accordingly, I argue that ensuring visibility of a particular group helps to focus attention on the issue, but it does not fundamentally determine the outcomes of the legislative process[1745] and by no means can be considered sufficient for paradigm shift required by the CPRD. Against this background, the role of monitoring activities and resulting complaint filing opportunities should gain more weight.

3.1.2 Monitoring the implementation of the rights of DPs

As part of the monitoring responsibilities at the international level, the federal-level DPOs have submitted coordinated shadow reports in the context of the examination of the Reports of Germany. The first and following re-

1740 BVerfG, Beschluss des Ersten Senats vom 16. Dezember 2021 – 1 BvR 1541/20 -, Rn. 75.
1741 Bauer, 2015: 273–293.
1742 Hackenbroch, 1998; Roos, 2000; Vowe, 2007.
1743 Lipsky, 2014; Bernardi/Bischof/Wouters, 2020; Mongiello, 2016; Oehmer, 2014.
1744 Ruß, 2009; See also, Walgrave/Vliegenthart, 2012; Gillion, 2013; Aleman, 2015; Brewer, 2018.
1745 Melenhorst, 2017.

ports have been prepared by the secretariat of the German Disability Council, which was successful in coordinating and formulating the first shadow and updating reports between the DPOs of the federal-level: "since the last state review procedure we have provided update on the bases of some points of concluding observations; we showed progress and regress with regard to the recommendations, and then we developed questions based on list of issues and sent it to DPOs and received about 200 comments, which we summed up with our group and sent it to Geneva.[1746] The cost of first shadow report preparation and its translations into English language, as well as easy-to-read and sign language versions has been covered by Aktion Mensch, which allocated EUR 50,000 for the reporting project.[1747]

The Länder-level DPOs were completely left out from the shadow reporting processes.[1748] The federal-level umbrella DPOs explained this approach by insufficient professionalism of the Länder-level DPOs[1749] and lack of resources: "resources were enough to produce a well-researched and detailed report covering every CPRD article. Would more resources be needed to prepare a better, more detailed, more comprehensive report that would include the local and Länder-level? Yes".[1750]

1746 Third-level-interview DE/A 4, on 04.06.2018, Q. 9. The Original reads as follows: "Wir haben ein Update gemacht, das ist seit der letzten Staatenprüfung passiert, in Bezug auf einzige abschließende Bemerkungen, auf die Empfehlung, da hat jeder von uns ein paar Empfehlungen genommen, das hat der Ausschluss empfohlen, und ist nichts passiert, und da ist nichts passiert. Und an dieser Stelle ist es bisschen vorwärtsgegangen, und an der Stelle ist ziemlich zurückgegangen. Wir haben aber ein Update gemacht, und dann haben wir Fragen, also Vorschläge gesammelt für die Liste of issues. Das haben wir an alle Verbände rumgeschickt, wer hat welche Fragen, das sind 200 Vorschläge gekommen, und wir haben uns als Kernteam zusammengesetzt und haben das eingedampft. Das war natürlich verdoppelt, was man zusammenfassen konnte. Wo waren Lücken, haben wir neue Fragen entwickelt. Das haben wir alles übersetzen lassen und nach Genf geschickt".

1747 Third-level-interview DE/A 4, on 04.06.2018, Q. 11.

1748 Third-level-interview DE/B-H 1, on 05.07.2016, Q. 11; Third-level-interview DE/B-T 1, on 25.06.18, Q. 11.

1749 Third-level-interview DE/A 4, on 04.06.2018, Q. 11.

1750 Third-level-interview DE/A 5, on 04.06.2018, Q. 11. The Original reads as follows: "Die Ressourcen sind ausreichend, um einen gut recherchierten, detaillierten Bericht von 81 Seiten vorzulegen, der auf jeden Artikel der UN-BRK eingeht. Wären mehr Ressourcen zielführend, um einen besseren, detaillierteren, ausführlicheren Bericht, unter anderem mit Bezug auf die kommunale und Landesebene vorzubereiten? Ja".

At the national level, the active involvement of the federal-level umbrella DPOs has been ensured in the leading organs of the 'National' Human Rights Institute,[1751] regular consultation meetings.[1752] And during the reporting procedures: "yes, we have regular consultations with the NMB. It takes into account our commentaries but transfer of information is not always optimal; during the first state report we sent everything what we had to the NMB, but in-between we heard little about their intentions. Afterword, when we saw the final report, it was ok".[1753] However, it was pointed out that the consultation processes with the NMB take place an inaccessible venue and that representatives with learning disabilities are unable to participate because of the difficult language spoken during the meetings.[1754]

The NMB neither has representative bodies at the Länder-levels nor permanent competencies or resources to act in the federal states. None of the interviewed Länder-level DPOs of Hesse and Thuringia have been invited to CS consultations of the NMB.[1755] Accordingly, the CPRD Committee expressed concern that "the SP does not provide the adequate resources on a permanent basis to support the independent monitoring mechanism's work in accordance with article 33 (2 CPRD)".[1756] Nevertheless, this issue has not been resolved yet, which means that Länder-level DPOs are excluded from the opportunity of being involved and consulted by this body despite the requirement of the CPRD Committee to guaranty that independent MFs allow for, facilitate and take care of the active involvement of DPOs

1751 For more see chapter V part 1.1.

1752 See chapter V Part 3.1.

1753 Third-level-interview DE/A 4, on 04.06.2018, Q. 12. The original reads as follows; "Ja, es gibt die regelmäßige Verbändekonsultationen bei der Monitoring-Stelle, da werden wir einbezogen. Man hört uns an. Ja. Die Informationsweitergabe ist nicht immer optimal. Bei der ersten Staatenprüfung haben wir alles, was wir haben, an die Monitoring-stelle geschickt. Und umgekehrt haben wir wenig erfahren, was die vorhaben. Nachher, als wir fertigen Bericht gesehen haben, klar, aber zwischendurch haben wir wenig erfahren. Aber insgesamt ist es okay".

1754 Ibid.

1755 E.g., third-level-interview DE/B-H 5, on 31.10.2019, Q. 12; Third-level-interview DE/B-T 4, on 04.06.2019, Q. 12.

1756 CPRD Committee, Concluding observations on the initial report of Germany, Paras. 61 and 62 C; see also CPRD Committee, General Comment No. 7, Paras. 31, 32, 94 S; CPRD Committee, Concluding observations on initial report of Mexico, (CRPD/C/MEX/CO/1), Paras. 61 and 62; initial report of Argentina (Paras. 51 and 52), combined second and third periodic reports of Australia, (CRPD/C/AUS/CO/2–3), Paras. 61 B and D, 62 B and D.

and give due consideration to their views and opinions in its reports and analysis[1757] inclusive of all governmental levels.[1758]

3.1.3 Protecting the rights of DPs

In Germany, the right of individuals to access justice is guaranteed by the Constitutional Law[1759] and confirmed in the rules of procedure of administrative and social courts[1760] that are of high relevance for the issues of DPs. To this end, individuals are prevented from taking action against any general violation of rights if they are not directly affected.[1761] This had to ensure the elimination of popular lawsuits.[1762] In initiating administrative and Social Law proceedings, disabled individuals might be represented by the DPOs,[1763] where they are members. Although the disabled individuals have to bear the cost risk of an administrative or Civil Law proceedings[1764] themselves, this is the most wide spread form of legal support that German DPOs are willing to provide to their members.

After the adoption of the Directive 2000/78/EG, the federal government was forced to ensure that[1765] "associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of the Directive are complied with, may engage, either on behalf or in support of the complainant… in any judicial and/or administrative procedure provided for the enforcement of obligations under the Directive".[1766] While the Directive

1757 CPRD Committee, General Comment No. 7, Para. 38.
1758 Ibid. Paras. 31, 32, 94 S.
1759 GG, Arts. 19 (4) and 103 (1); see, Schmidt-Aßmann in: Maunz/Dürig, GG, Art. 19 Abs. 4 Rn. 8.
1760 VwGO, as amended on 8.10.2021 by BGBl. I S. 4650, §42 (2) and SGG, as amended on 5.10.2021 by BGBl. I S. 4607, §54 (1) sentence 2.
1761 Böttiger in: Breitkreuz/Fichte, SGG, § 54 Rn. 87; Von Albedyll in: Bader u.a., VwGO, § 42 Rn. 61.
1762 BVerwG vom 29.10.1963 – VI C 198.61, BVerwGE 17, 87, juris-Rn. 33; BSG vom 27.01.1977 – 7 RAr 17/76, BSGE 43, 134, juris-Rn. 37.
1763 VwGO, §67 (2.6); SGG, §73 (2.8).
1764 The proceedings before the social courts are free of charge for disabled people (§ 183 Sentence 1 SGG).
1765 Düwell, BB 2001: 1527, 1531.
1766 Council of the European Union, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, 27 November 2000, OJ L 303, 02/12/2000 P. 0016 – 0022, Art. 9(2).

addresses only the field of work and employment, the regulations allowing two-type DPO litigations go beyond the required field of protection framework,[1767] but do not comprise the private sector. Most particularly, the §14[1768] of the BGG (Federal Disability_Equality Law) and disability equality laws of the federal states allow the recognised DPOs to act on behalf of a disabled individual (Prozessstandschaft). Accordingly, they can assert the infringement of a subjective right of a DP in their own name at the particular governmental level. Since in this case the person concerned is not the plaintiff, the risk of legal costs should be borne by the complaint filing DPO. Consequently, the application of this instrument is not so common.

The second type of DPO litigation is provided by the section 15 BGG[1769] and the disability equality laws of the federal states,[1770] according to which the German DPOs that are recognized by the appropriate organs can file a class action lawsuit (Verbandsklage). Hereby, they may request investigations that aim at clarifying the breaches of the provisions set out in §15 BGG or the Disability Equality Law of the relevant federal state without violation of their own rights and without the personal participation of the affected person. The class action lawsuit has a subsidiary function, which means that it is secondary to the individual lawsuit filed by the affected person. This, however, does not apply in the event when there is a case of general significance, for instance, when there are a number of similar cases. In filing a class action lawsuit, the federal and state (except Bremen)[1771] DPOs should bear the litigation costs if they are unsuccessful.

Despite the above mentioned limited political influence opportunities and persisting inaccessibility of judicial bodies and procedures for disabled individuals,[1772] the DPO litigation instrument has been used only a few times.[1773] The reasons for limited use are diverse. Some scholars, for ex-

1767 BGG, §§ 14, 15 and SGB IX, § 85; see also; Hlava, 2018: 365f; Frehe, 2013.
1768 Formar §12 BGG.
1769 Formar §13 BGG.
1770 E.g., HessBGG, §17; ThürGIG, §24.
1771 BREMBGG, as amended on 20.10.2020 by Brem.GBl. S. 1172, §20 (1).
1772 BT-Drucksache 19/32690: 178–188; Welti et al, 2014: 294; BVerfG, Beschluss der 1. Kammer des Ersten Senats vom 27. November 2018 – 1 BvR 957/18.
1773 BVerwG, Urteil vom 05. April 2006- 9 C 1/05–, BVerwGE 125, 370–384; Verwaltungsgerichtshof Baden-Württemberg, Urteil vom 21. April 2005- 5 S 1410/04–, juris; Verwaltungsgerichtshof Baden-Württemberg, Beschluss vom 06. Dezember 2004- 5 S 1704/04–, juris; Verwaltungsgerichtshof Baden-Württemberg, Beschluss vom 06. Dezember 2004- 5 S 1704/04 –, juris; BVerwG, Urteil vom 05. April 2006- 9 C 2/05–, juris; Qualified organizations registered in accordance with

ample, explain the reluctant use of collective legal action by resource insufficiency.[1774] The findings outlined in the section 2.1 of this chapter confirm the restricted resources of the DPOs: resources of federal-level DPOs suffice merely for sustainable operation but not enough for their comprehensive political action. Resources of the Länder-level, instead, are limited to only service providing activities of disability-specific DPOs. As a result, the federal, and especially the Länder-level DPOs do not have appropriate human resources e.g., lawyers that would be able to take legal action. The half of DPOs participating in the Federal Disability Equality Law evaluation, stated also that they do not apply class action lawsuits because of resource unavailability.[1775] The other half, however, mentioned reasons other than the resource insufficiency. In considering the DPO litigation from a comparative prospective, it becomes clear that resource factor is important but the rights-based application of resources might be dependent more on the internal governing structures of organizations.

Lisa Vanhala, for instance, assumes that only organizations that are composed of DPs and adopt the understanding, that DPs are the subjects of law, will apply the strategic litigation instrument.[1776] As the section 1.1 of the present chapter revealed, the main governing organs of the majority of federal and DPOs do not have to be composed of affected members. Moreover, the disability-specific DPOs do not yet follow the notion that DPs are the subjects of law in all their working strategies/policy-objectives. This might raise the temptation to agree with Vanhala's assumption. However, the comprehensive analysis of legal and political opportunities show that it would be too naive to admit that this factor is a dependent variable for the application of strategic litigation by the DPOs. Therefore, many scientists see the reason for the limited or non-application of strategic litigation by the DPOs rather in the legal constraints.[1777]

One of the legal restrictions for reluctant use lays in the fact that the right to collective action of DPOs in Germany is limited to a declaratory

§ 4 UKlaG, might also file an injunction class action lawsuit under §§ 2, 3 (1) Nr. 1 UKlaG if an entrepreneur violates consumer protection laws. See the case, Schleswig-Holsteinisches Oberlandesgericht, Urteil vom 11. Dezember 2015 – 1 U 64/15.

1774 Kitschelt, 1986: 57 – 85; McCarthy/Zald, 1977: 1212–41.

1775 Welti et al, 2014: 293.

1776 Vanhala, 2011.

1777 Hilson, 2002; Andersen, 2005; Wilson/Rodrıguez Cordero, 2006: 325–51.

action.[1778] I.e., even if the court finds that antidiscrimination regulations or participation rights have been violated, the litigating DPO has no right to claim the removal of the violating factor or at least a right to claim compensation.

The second legal obstacle lays in the fact that Germany basically limits the DPO litigation rights to only social and administrative cases on prohibition of discrimination and accessibility of public authorities and issues covered by the federal and state laws.[1779] Some federal states even limit the scope of protection to only state organs by leaving out municipal governments,[1780] which are in fact responsible for the accessibility and building of schools. Consequently, the opportunities of DPOs to take legal action is not only limited at the Länder-level, but the strategic significance of such actions diminishes as school, accessibility and building responsibilities fall under the exclusive legislative and administrative powers of federal states and thus court decisions of a federal state in these matters are not valid for other federal states. A number of attempts to file a complaint against, for example school discrimination under the federal law, were not successful.[1781]

Besides, federal states prioritize specialist laws e.g., education laws and building regulations over the disability-specific laws. This limits the possibilities of effective redress as non-disability-specific laws offer a very low-level (if any) protection against discrimination. For example, The Bavarian Association of the Blind and Visually Impaired filed a class action lawsuit against the non-barrier-free rebuilding of the forecourt of the train station. Due to immense media attention on this case, an effective remedy seems to become plausible. An analogous case in Lower Saxony, where the lack of accessibility caused several accidents, was forwarded to a litigation project for filing a class action lawsuit against the city in question. Although Disability Equality Law of Lower Saxony is similar to Bavarian law, this case could not be taken up as the examination showed that unlike Bavaria, the Road Law of Lower Saxony does not contain a sufficiently binding obligation to ensure accessibility.[1782]

1778 Third-level-interview DE/B-H 1, on 05.07.2016, Q 13; Welti et al, 2014: 294.
1779 BGG, §15 (1).
1780 E.g., HessBGG, § 9 (1); BayBGG, as amended on 24.07.2020 by GVBl. S. 388, Art. 9 (1.1); SächsInklusG, as amended on 2.07.2019 by SächsGVBl. S. 542, §1 (2.3).
1781 VGH Kassel, Urteil vom 12. 11. 2009–7 B 2763/09; BVerfG, Beschluss der 1. Kammer des Ersten Senats vom 14. September 2021- 1 BvR 1525/20.
1782 Grigoryan/Richter, 2021.

In addition, the scope of litigation does not include protection against exclusion from decision-making and MFs or ineffective participation at the legislative processes as it requires the CPRD Committee.[1783] Consequently, the DPOs are not given explicit right to file a complaint against lack of DPO participation. However, they could try to bring a motion on scope of participation rights[1784] by claiming, for example, that there is a discretionary error in the design of existing procedures. This could be a legitimate argumentation especially after the recent FCC decision where it recognized the fundamental importance of DPO participation.[1785] Nevertheless, the chances that a legal practitioner of a DPO will come to this idea or would be willing to ignore the financial risk given the ambiguity of legal norms, might be highly doubted.

In considering the limited application of DPO litigation, the federal government followed the suggestion of the BGG evaluation researchers[1786] to introduce the low-threshold conflict resolution instrument (Schlichtungsstelle)[1787] assigned to the Federal Commissioner for DPs and made it mandatory before the class action lawsuit.[1788] Both disabled individuals and organizations representing the interests of DPs[1789] can use the low-threshold conflict resolution instrument to file a complaint against discrimination and accessibility issues in the appropriate public authorities and with the adoption of the Accessibility Strengthening Law also in the private sector.[1790] To this end, several federal-level DPOs use the instrument to clarify a number of material and legal questions of a general nature: e.g., feasibility study evaluating the behavior of elevator users.[1791]

1783 CPRD Committee, General Comment No. 7, Paras. 65 and 66.
1784 Urteil vom 14. Mai 2014- B 6 KA 29/13 R–, BSGE 116, 15–25, SozR 4-2500 §140f Nr. 2.
1785 BVerfG, Beschluss des Ersten Senats vom 16. Dezember 2021- 1 BvR 1541/20 -, Rn. 75.
1786 Welti et al., 2014: 489.
1787 BT-Drs. 18/7824: 42f.
1788 BT-Drs. 18/7824: 42.
1789 BGG, §6 (3).
1790 Barrierefreiheitsstärkungsgesetz, BT-Drs.-19/28653: 29f.
1791 Schlichtungsstelle nach dem Behindertengleichstellungsgesetz bei dem Beauftragten der Bundesregierung für die Belange von Menschen mit Behinderungen, Jahresbericht 2018: 26; For the subsequent reports refer to the webpage of the Federal Disability Commissioner at: https://www.schlichtungsstelle-bgg.de/Webs/SchliBGG/DE/AS/service/jahresberichte/jahresberichte.html (Last accessed on 01.07.2022).

Only 6 out of 16 federal states established arbitration bodies.[1792] As a result, the state and municipal-level DPOs have no contact-institution at the Länder-level to report and or file an extrajudicial complaint against discrimination on the ground of disability or failure to provide reasonable accommodation in the public sector.

Over four-years experience shows that the majority of extrajudicial complaint cases in Germany end with settlements. While this should be seen as a positive sign, it cannot but be noted that settlements are effective only for the parties involved and do not correspond to the result of legal proceedings.[1793] This means that an individual or a DPO might file an extrajudicial complaint against inaccessibility of a federal or an appropriate state ministry and reach an accessibility agreement, but this will not affect all other inaccessible authorities. Consequently, the DPOs/individuals should dispute all other similar cases one by one as in comparison with the court decisions, extrajudicial settlements prevent the development of binding judicature and thus the formation of sensitivity among decision-makers for antidiscrimination rights and participation regulations as a mandatory part of the value order.

3.2 Aims and Actions of Austrian DPOs

Similar to Germany, the aims of Austrian DPOs differ depending on the type of organization: e.g., disability-specific organizations such as for example the Austrian Organization of the Deaf, aim at consulting, educating, promoting and protecting the rights and interests of a specific group, including deaf, hearing impaired and deaf-blind persons.[1794] Organizations based on the idea of independent living, instead, do not put difference between types of disabilities and aim at realisation of self-representation and independent decision-making of all DPs.[1795] The actions applied by the Austrian DPOs to achieve their aims, however, do not, significantly, differ

1792 BremBGG, §22; HmbBGG, as amended on 19.12.2019 by HmbGVBl. 2020, 13, §13a; LGBG, as amended on 27.09.2021 by GVBl. S. 1167, §33; SBGG, as amended on 8.12.2021 by Amtsbl. I S. 2629, §17; NBGG, as amended on 16.12.2021 by Nds. GVBl. S. 921, §9d; Landesinklusionsgesetz- Rheinland-Pfalz, as amended on 17.12.2020 by GVBl. S. 719, §15 (4).

1793 E.g., BgleiSV, as amended on 2.06.2021 by BGBl. I S. 1387, §8 (5).

1794 E.g., Statuten- Österreichischer Gehörlosenbund, §2.

1795 Statuten- Selbstbestimmt Leben Österreich, §2.

from each other and thus include the following responsibilities both at the federal and Länder-levels.

3.2.1 Promoting the rights of DPs in legislative processes

In general, Austrian legislative processes are characterized by institutionalized participation practises that are based on two phases: initial identification and formulation of needed measure in specialised advisory boards of executive and policy preparation in the ministries.[1796] The involvement of interest groups in the second phase is based more on political traditions than on clear regulations.

3.2.1.1 Participation in Advisory Bodies

Austria, similar to Germany, maintains advisory boards in various policy areas. The participation of interest groups therein are subject to strict regulations, which are inclusive of privileged state and none-state interest organizations.[1797] The ratification of the CPRD by Austria did not change the situation much: for instance, the federal government maintains disability Advisory Board that, subsequent to BBG amendment, acts as the interministerial and parliamentary coordination body for the implementation of the CPRD.[1798] It consists of nominees of umbrella organization "for" DPs, disability ombudsman, and chairperson of the FMC and representatives of other interest groups e.g., employer and employee organizations, social insurance institution, political parties of National Council and members of various ministries.[1799] While this body evidently contributes to the mutual exchange of relevant parties, its effectivity might be put under question: in the first place, it is quorum even when less than half of the invited members are present.[1800] This means that decisions might be taken without presence and/or consent of disability-related organizations. Second, the Federal Disability Advisory Board, normally, convenes once in a year,[1801] which in view

1796 Pelinka, 2008: 431ff; Karlhofer, 2012: 521.
1797 Lamplmayr/Nachtschatt, 2016: 56ff.
1798 BBG, §8 (2.4).
1799 BBG, §9 (1).
1800 BBG, §12 (3).
1801 BBG, §12 (1).

of the density of decision-making processes, cannot be perceived as sufficient for meeting the requirement of regular liaison with and effective participation of the DPOs by FPs and/or Coordinating Mechanisms through formal procedures of consultation[1802] nor for ensuring the appropriate level of DPO consideration in the legislative initiatives directly affecting DPs. Consequently, it might be presumed that the involvement of DPOs in these bodies aims only at the legitimation of decisions made.[1803] Third, its membership instead of being open to diverse DPOs[1804] is limited to nomination by the umbrella organization[1805] and approval of the responsible federal minister[1806] that might lead to exclusion of uncomfortable members or non-participation of particular groups of DPs e.g., the deaf and learning-DPs on the ground of financial consideration.[1807] It is worth mentioning as well that disabled migrants from non-EU states, who do not have citizenship, cannot be part of the Federal Disability Advisory Board,[1808] whereas the SPs have to ensure the effective participation of disabled migrants and similar groups.[1809]

With the adoption of TyroleanParticipation Law, the provincial government established a Participation Board that functions as an advisory mechanism.[1810] It includes directly affected persons (5 members that do not represent a DPO), governmental representatives and municipal/city associations, as well as other interest groups such as trade unions, employer and employee associations and service providers.[1811] As in the Federal Disability Advisory Board, the TyroleanParticipation Council, does not ensure the equal balance of affected persons.[1812] However, it in contrast to the federal-level, admits affected persons but not their representative organizations as a member. In consideration of some DPO criticism, according to which the

1802 CPRD Committee, General Comment No. 7, Paras. 35 and 41.
1803 Mladenov, 2009: 43.
1804 CPRD Committee, General Comment No. 7: Para. 27.
1805 BBG, §10 (1.)6.
1806 BBG, §10 (1).
1807 The work and list of members of the Federal Disability Council is in fact not public, so it is impossible to evaluate the efficacy of DPO participation thereof.
1808 BBG, §11 (1).
1809 CPRD Committee, General Comment No. 7, Para. 50.
1810 Tiroler Teilhabegesetz, §47 (1).
1811 Tiroler Teilhabegesetz, §47 (2).
1812 Tiroler Teilhabegesetz, §47 (2 and 6).

interests of the TyroleanDPOs are not compatible with the CPRD[1813] this approach might be perceived as justified. However, it does not dissolve the valid presumption that an affected representative without the support of a competent organization might be too enforcement-weak against professionalised state and non-state representatives.

In comparison to the disability-specific advisory bodies, the interests of DPs are not represented in advisory boards concerning indirect policy fields. For example, in the education policy field that falls under the shared responsibilities of federation and provinces, DPs unlike a large number of other interest groups, are not even represented in the advisory boards of educational directorates.[1814]

3.2.1.2 Participation at decision-making processes of executive organs

In formulating and drafting policies, Austrian Federal Ministries and provincial units do not maintain or follow detailed participation norms. The law on Federal Ministries[1815] and ordinance of the state government on the rules of procedure of the Tyroleanstate government,[1816] for example, do not contain explicit provisions for consulting or involving non-state organizations. In 2008, the Austrian federal government adopted the Standards of Public Participation (Standards der Öffentlichkeitsbeteiligung) addressed to federal authorities.[1817] Nevertheless, this instrument neither includes accessibility provisions nor is "known to or applied by the public servants".[1818] This contributes, by and large, to strategy of selective political participation, which means that only privileged organizations e.g., umbrella associations of social partners and Disability Council have access to legislative processes.[1819] The involvement of the latter can, in some cases, be limited

1813 Third-level-interview AT/B-T 1, on 27.10.2015; Second/third-level-interview AT/B-T 2, on 27.10.2015; Third-level-interview AT/B-T 3, on 28.10.2015.
1814 Bildungsdirektionen-Einrichtungsgesetz, as adopted by BGBl. I Nr. 138/2017, §20.
1815 See Bundesministeriengesetz, as amended by BGBl. I Nr. 98/2022.
1816 See Verordnung der Landesregierung vom 30. März 1999 über die Geschäftsordnung der Tiroler Landesregierung, as amended by LGBl. Nr. 73/2021.
1817 For English language version of this instrument see: Standards for public participation 2008 at: https://unece.org/fileadmin/DAM/env/pp/ppeg/Austria_pp_standards.pdf (Last accessed on 01.07.2022).
1818 Lamplmayr/Nachtschatt, 2016: 39f.
1819 Karlhofer, 2012: 526ff; Pelinka, 1997: 488.

to the final stage. Besides, the involvement of DPOs in the development of policies directly affecting DPs has been rather an exception than the rule:[1820] for instance, after participating at the CPRD negotiation process at the international level, the Austrian federal-level DPOs have not been involved in the CPRD ratification processes,[1821] their participation started with the development of the National Disability Action Plan during which they have been invited to three working forums at the initial and final stages of development where they have been informed about the actual status of drafting. The DPOs were then asked to submit written opinions on the draft version.[1822] Nevertheless, the NAP has been adopted without taking into account the commentaries of the DPOs supposedly because "the Austrian Federal Ministry of Finance stated already in the context of the draft version of the national action plan that there will not be additional budget for implementing the national action plan".[1823]

In view of this, the DPOs have stated in their report to the CPRD Committee that their participation at the legislative processes has been neither transparent[1824] nor takes place on an equal footing.[1825] As a result, the CPRD Committee recommended that Austria develops and adopts overarching legislative framework and policy ensuring "the real and genuine participation by DPs through their representative organizations with respect to the development and implementation of legislation and policies concerning DPs".[1826]

Following the recommendation of the CPRD Committee, Austria invested considerable effort to ensure the early-stage, accessible and full representation of DPs, including learning disabled in reforming the Guardianship Law (Erwachsenenschutzrecht).[1827] Nevertheless, this participative process was destined to serving as a just one-time model of best-practice as Austrian federal government continues excluding DPOs from participation at the legislative processes directly affecting DPs: the federal government,

1820 Lamplmayr/Nachtschatt, 2016: 56ff.
1821 Third-level-interview AT/A 1, on 23.05.2016, Q. 1.
1822 Third-level-interview AT/A 1, on 23.05.2016, Q. 5.
1823 Austrian Civil Society Representatives, April 2013.
1824 Austrian Civil Society Representatives, April 2013.
1825 Third-level-interview AT/A 1, on 23.05.2016, Q. 5.
1826 CPRD Committee, Concluding Observations on the Initial Report of Austria, Para. 11.
1827 Österreichischer Behindertenrat, 2018: Art. 12; Lamplmayr/Nachtschatt, 2016: 70.

for example, did not even consult[1828] DPOs in developing the draft of a Joint Objective Agreement towards Inclusive disability politics between federation and provinces (Zielvereinbarung "Inclusive Behindertenpolitik) proposed by the BMASK in 2015,[1829] which defines the DPO participation as an important principle.[1830]

The provincial government of Tyrol also does not maintain the culture of broad and plural political participation of organizations representing DPs, even in the direct policy fields, such as the rehabilitation of DPs.[1831] As a result, the TyroleanDPOs, for example, have not only been excluded from the ratification processes of the CPRD but some of them also did not realise its significance for DPs.[1832] Only in 2016 the Tyroleangovernment opted for broad DPO participation by using method of legislative theatre during the development of the TyroleanParticipation Law.[1833] Nevertheless, in reviewing the written commentaries of the DPOs submitted on this law, it becomes clear that the DPO commentaries were focused rather on punctual disability-specific aspects than on human-rights-based evaluation and/or argumentation.[1834] Missing human rights awareness and professionalization might be explained by inexistent human rights oriented financial resources for the political work of DPOs.[1835] The TMC confirms this assumption in its 2016 opinion on the amendment of the Tyroleanrehabilitation act, where it stated that Tyrol should, in line with the CPRD, ensure the organized and legally recognised representation of DPs through self-affected persons. It further noted that the amended Rehabilitation Act should ensure that the residents, clients of disability support facilities (regardless of the type

1828 Link, 2015.

1829 See BMASK "Entwurf Zielvereinbarung „Inklusive Behindertenpolitik 2015" at: https://www.bizeps.or.at/downloads/zielverein_entwurf.pdf (Last accessed on 01.07.2022).

1830 Ibid.: 12.

1831 For more see for example the legislative process of Tiroler Rehabilitationsgesetz before and after the CPRD ratification at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000088&FassungVom=2013-12-06 (Last accessed on 01.07.2022).

1832 Second/third-level-interview AT/B-T 2, on 27.10.2015, Q. 1 et seq.; Third-level-interview AT/B-T 3, on 28.10.2015; third-level-interview AT/B-T 3, on 27.10.2015.

1833 Tiroler Teilhabegesetz, as adopted by LGBl. Nr. 32/2018; See also Staffler, 2017.

1834 For the written commentaries of the DPOs refer to Parliamentary documentation of this law at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000709 (Last accessed on 01.07.2022).

1835 For more details, see the section on DPO resources at the Länder-level.

of services such as mobile or stationary), as well as all DPs in Tyrol have a self-selected and independent representation of their interests. Therefore, elected representatives should receive all resources necessary for their representation.[1836] The opinion of the TMC, nevertheless, has not been taken into account in amending the TyroleanRehabilitation Act in 2017.

In contrast to punctual consultation of DPOs in direct policy fields, their involvement in initial policy development has either not been ensured in indirect policy fields[1837] e.g., building and construction, education and employment,[1838] or interests of DPs have been considered after the development of the draft law and only through the 'so called' umbrella DPO e.g., the final draft law on school reform.[1839]

In reviewing the Tyroleandraft-law development processes in indirect policy fields, I could observe convergence with the federal-level: the interests of DPs are either not represented or the "so called" umbrella DPO is the only organization invited to submit a commentary to a draft law. For instance, DPOs have not been involved in the initial drafting and adoption processes of the TyroleanSchool Organization Law (Schulorganisationsgesetz) in 1991.[1840] Their participation has not been ensured also in subsequent amendments of the law.[1841] Instead, in 2018 the Tyroleangovernment invited the so-called "umbrella DPO" to comment on the final draft of the TyroleanSchool Organization Law.[1842]

Although the political participation opportunity of Austrian DPOs is limited in developing direct policies and almost inexistent in indirect policy

1836 Stellungnahme und Empfehlungen zum Reha-Gesetz-NEU des Tiroler Monitoringausschusses zur Förderung und Überwachung der Umsetzung der UN-BRK, (2016): 75 – 81. Retrieved from: https://verband.gehoerlos-tirol.at/download/Stellungnahme_Reha-Gesetz-NEU-Empfehlungen.pdf (Last accessed on 01.07.2022).

1837 Austrian NGO Delegation. "Presentation on Austria for the occasion of the side Event of the CPRD Committee". Geneva, 16 April 2013. Retrieved from: https://www.sliö.at/un-konvention (Last accessed on 01.07.2022).

1838 Behindertenrat, 2018: Arts. 1–4, 9, 24, 27 and 32.

1839 Bildungsreformgesetz 2017 (BGBl. Nr. 138/2017); See also Stellungnahmen des Österreichischen Behindertenrats 2017. Accessed at: https://www.behindertenrat.at/2017/11/stellungnahmen-2017/.

1840 For materials on this law, see the parliamentary documents at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000013.

1841 Tiroler Schulorganisationsgesetz 1991, as amended by LGBl. Nr. 100/2019 (Last amendment by LGBl. Nr. 55/2022).

1842 Stellungnahmen des Österreichischen Behindertenrats 2018. Retrieved from: https://www.behindertenrat.at/wp-content/uploads/2018/05/Stellungnahme-BildungsreformG.pdf (Last accessed on 01.07.2022).

fields, they, normally, do not attempt to exert pressure through protests. In exceptional cases they just publish an open letter on their Austrian-wide news website. However, in September 2022, the DPOs organized an Austrian-wide protests with requirements to implement the CPRD.[1843] The none-intensive use of public-pressure actions might be caused, on the one hand, by the incompatibility of disability interests with the mass-media marketability criteria. For example, Maria Pernegger in her study on "DPs in Austrian Mass Media" found out that the large part of the reporting on DPs are reduced to their disability and are initiated by the media itself and leaves little room for experts from the field or for NGOs and interest groups.[1844] On the other hand, the dependent and service provider-based financing situation of DPOs[1845] allows an assumption that the DPOs are not really willing to start a public campaign against the government. To confirm this presumption, however, there is a need for further in-depth two/three-site research.

3.2.1.3 Participation at legislative processes of parliaments

The directly elected Federal Parliament (Nationalrat) and the nine state parliaments (Landtage)[1846] make up the primary legislative organs of Austria.[1847] Without the consent of these organs no bill can become a law.[1848] Nevertheless, in comparison to the German Bundestag, the Nationalrat is rather weak due to MPs loyalty to party-politics, financial restrictions and dependency on pre-parliamentary' corporative processes of the executive.[1849] This means that in reviewing bills, standing committees (ständige Ausschüsse) did not conduct consultative processes. Such an opportunity has been introduced only as of August 2021.[1850] Evaluation procedures are

1843 Österreichischer Behindertenrat, 2022.
1844 Pernegger, 2017: 88ff.
1845 See section 2.2 of this chapter.
1846 B-VG, Arts. 26 Abs. 1, 95 Abs. 1.
1847 B-VG, Arts. 24, 41 Abs. 1, 95 Abs. 1; see Tsebelis/Money, 1997; Lijphart, 1999; Fallend, 2000; Foster, 2013: 22–30.
1848 VfGH Judgement of 28 June 2001, VfSlg 16.241/2001.
1849 Miklin, 2015; Pelinka, 2009.
1850 For more see: https://fachinfos.parlament.gv.at/politikfelder/parlament-und-demokratie/wie-funktionieren-begutachtungsverfahren-zu-gesetzesentwuerfen/ (Last accessed on 01.07.2022).

generally handled via the parliament's website. However, it cannot be ruled out that commentaries are sent directly to the responsible ministry.[1851] Similar procedures have been adopted also by the provincial governments, including Tyrol.[1852] In view of this, it is not surprising that the ministries are seen as the main target point of DPOs and the influence opportunities through politicians has been considered as a difficult undertaking.[1853] It remains to be seen whether the new participation opportunities will change the influencing priorities of DPOs.

3.2.2 Monitoring the implementation of the rights of DPs

In line with its responsibility as an official umbrella organization,[1854] the Austrian Disability Council submitted an alternative report to the CPRD Committee in the context of the examination of Austria.[1855] In the initial alternative report, the Austrian Disability Council criticised the failure of the federal government to regulate the implementation of CPRD provisions falling under the joint competencies of federation and 9 provinces, eradicate medical-based model of disability in federal and provincial laws, ensure inclusive education and employment, create effective framework for multi-level DPO participation and guaranty the independence of MCs.[1856] The following CSOs response to the list of issues of the CPRD-Committee prepared by the independent living organizations in collaboration with the Austrian Disability Council was much more detailed in pointing out legal gaps and maladministration.[1857]

The second CPRD alternative report submitted by the Austrian Disability Council in collaboration with the independent living organizations stated that the problems criticised in the initial alternative report not only remained unsolved, but they have gotten even worse.[1858] While the alternative reports address the legal and political obstacles connected with the federal structure of Austria, none of the reports show specific difficulties

1851 Ibid.
1852 Tiroler Landesordnung 1989, as amended by LGBl. Nr. 36/2022, Art. 36; see also Bußjäger, 2015: 226.
1853 Third-level-interview AT/A 1, on 23.05.2016, Q. 10.
1854 Initial Report of Austria (CRPD/C/AUT/1), Paras. 361f.
1855 Austrian Disability Council, 2013.
1856 Ibit.: Part IV and Art. 33.
1857 Austrian Civil Society Representatives, 2013.
1858 Österreichischer Behindertenrat, 2018: 3.

facing the Länder-level DPOs in monitoring the Convention. This might be explained by the fact that the provincial DPOs have been neither involved in the reporting procedures[1859] nor enjoy close cooperation with the umbrella organization.[1860]

At the national level, the Austrian DPOs see the monitoring provision stipulated by Art. 33 of the CPRD as a task that can be realised primarily by being a member of the FMC: "in the framework of CSO work, it is our task to ensure intensive involvement in FMC".[1861] However, its nomination regulation allows only a controlled participation of selected DPOs[1862] and explicitly excludes some disabled groups e.g., non-EU disabled migrants from participation.[1863] Accordingly, the voice of much more vulnerable disabled groups remain unheard, whereas the provision of full and effective participation obligates the SPs to facilitate participation and consult with DPs representing the wide diversity in impairments,[1864] including migrants, refugees, asylum seekers, internally displaced persons, undocumented and stateless persons.[1865]

The understanding and/or opportunity to monitor the implementation processes through the MC does not even exist at the Länder-level because the DPOs active in Austrian Provinces neither have the necessary resources nor appropriate qualified staff for it.[1866] Besides, the interviews with the Tyroleandisability-organizations showed that the TMC neither cooperates with the disability organizations nor ensures regular dialogue with them.[1867] Instead, it prefers the individual participation of DPs over DPOs.[1868] This might prove to be problematic as affectedness neither automatically guaranties appropriate qualifications for human-rights-based work nor ensures

1859 Third-level-interview AT/B-T 1, on 27.10.2015, Q. 11; Third-level-interview AT/B-T 2, on 27.10.2015, Q. 11; Third-level-interview AT/B-T 3, on 28.10.2015, Q. 11.
1860 See Part 1 section 1.2 of the present chapter.
1861 Third-level-interview AT/A 3, on 25.05.2016, Q. 8. The original reads as follows: "Im Rahmen unserer zivilgesellschaftlichen Arbeit ist es unsere Aufgabe… uns ganz intensiv in den Monitoringausschuss einzubinden".
1862 For more details on the composition of the Federal Monitoring Committee, see the Chapter V Part 1 section 1.2.
1863 BBG, §13j (3).
1864 CPRD Committee, General Comment No. 7: Para. 27.
1865 CPRD Committee, General Comment No. 7: Para. 50.
1866 Third-level-interview AT/B-T 1, on 27.10.2015; Third-level-interview AT/B-T 2, on 27.10.2015; Third-level-interview AT/B-T 3, on 28.10.2015.
1867 Ibid.
1868 For more details, see the Chapter V sections 2.1.2. and 2.3.2.

that the standpoint of an affected individual will legitimately represent the collective views/interests of that particular group of DPs without being elected/nominated by them.[1869]

3.2.3 Protecting the rights of DPs

Unlike Germany, Austrian constitutional act (BV-G) does not explicitly provide for the right to effective judicial redress. However, this right is guaranteed by relevant domestic laws and the Art. 13 ECHR, which is a part of the Austrian Constitutional Law.[1870] Accordingly, similar to Germany, the Austrian legal system is based on the principle of individual right to effective legal protection (subjektives Recht).[1871] To ensure the enforceability of subjective rights of DPs in matters of Employment and Social Law, Austria also allows an individual court representation through disability organizations represented in the Federal Disability Advisory Board before the courts of first instance.[1872] The proceedings before the administrative courts also envisage an individual court representation through non-state organizations.[1873] If a plaintiff cannot pay the costs of a proceeding without affecting the necessary maintenance for him/herself and his/her family, he/she might be granted a legal aid by the competent court provided that the conduct of the case is not wilful or hopeless. The legal aid might include exemption from court fees, interpreters, experts and in case of necessity the representation of a lawyer. However, the legal aid does not include those costs that are to be reimbursed to the defendant – if he/she wins the process. This affects the application of this instrument.[1874]

Subsequent to the adoption of Directive 2000/78/EG, Austrian government also introduced a provision giving a possibility to file a class action lawsuit (Verbandsklage) concerning the provisions of the Federal Disability Equality Act.[1875] Such an instrument has not been envisaged by provincial

1869 Third-level-interview AT/B-T 1, on 27.10.2015; Second/Third-level-interview AT/B-T 2, on 27.10.2015.
1870 Thurnherr, 2008a; Gamper, 2010; Lachmayer, 2019.
1871 VwSlg 14.750 A/1997; see also Antoniolli/Koja, 1996: 283; Giera/Lachmayer, 2016.
1872 ASGG, as amended by BGBl. I Nr. 61/2022, §40 (2.3a).
1873 Allgemeines Verwaltungsverfahrensgesetz 1991, as amended by BGBl. I Nr. 58/2018, §10.
1874 For some lidigation cases of the Klagsverband see: https://www.klagsverband.at/rechtssprechung/gerichte/oesterreichische-gerichte (Last accessed on 01.07.2022).
1875 BGStG, as amended by BGBl. I Nr. 32/2018, §13.

disability acts. Initially the litigation could be filed only by the Austrian Disability Council and was limited to declaratory judgments. After the substantial criticism,[1876] the list of authorized bodies has been extended to the Litigation Association for the Protection of Discrimination Victims (Klagsverband) and the Disability Attorney (Behindertenanwalt).[1877] The amendment also allowed an action claiming the omission and elimination of discrimination based on a disability in the case of large corporations.[1878] This legal instrument can be applied only after carrying out a conciliation procedure and is limited to only the provisions of the Federal Disability Equality Act and employment regulations for DPs.[1879] Accordingly, it does not comprise the required rights of disability organizations to political participation.[1880] Due to its, by and large, declaratory nature, limitation of litigation authorization, narrow applicability area and high process-cost risk,[1881] this instrument has not been applied till 2017 BGStG amendment. In summer 2021, the Klagsverband was first to file a class action lawsuit against the Ministry of Education in cooperation with other DPOs.[1882] The litigation was accompanied by mass-media coverage that promised to lead to success.

In contrast to class action lawsuit, the conciliation procedure addressing the federal disability equality act and equal employment regulations under the BeinstG proved to be a successfully used instrument for reaching accessibility in Austria.[1883] As of December 31, 2018, there were a total of 2,761 completed arbitration cases,[1884] 174 of which can be accessed online.[1885] The Tyroleangovernment also established a conciliation body addressing the

1876 CPRD Committee, Communication No. 21/2014 (CRPD/C/14/D/21/2014); CPRD Committee, concluding observations on the initial report of Austria, paras. 12f; Austrian Civil Society Representatives, 2013.
1877 BGBl. I Nr. 155/2017, Art. 2.
1878 BGStG, §13.
1879 BGStG, §10 (2) and §14 (1).
1880 CPRD Committee, General Comment No. 7: Paras. 65f; For the General limitations in administrative cases see Giera/Lachmayer, 2016.
1881 Österreichischer Behindertenrat, 2018: Art. 5.
1882 For more see: https://www.klagsverband.at/archives/17650 (Last accessed on 01.07.2022).
1883 Schober et al., 2012: 55ff.
1884 See: Combined second and third reports submitted by Austria to the CRPD Committee (UN-BRK- Zweiter und dritter Staatenbericht Österreichs) (CRPD/C/AUT/2–3), 15 – 16.
1885 For more details see the database of BIZEPS (Schlichtungen – BIZEPS) at: https://www.bizeps.or.at/schlichtungen/ (Last accessed on 01.07.2022).

TyroleanParticipation Act (TTHG).[1886] Its composition, however, does not seem to be independent of provincial Government.

While there is no information on the use of the provincial conciliation procedure, it is evident that the majority of federal conciliation procedures ended up with a settlement. This could be rated positively if not for the fact that the extrajudicial settlements are valid only for the parties involved and by no means have general legal effect. Accordingly, they might have hindering effect for the creation of binding legal norms through case-law.

3.3 Aims and Actions of Danish DPOS

According to their statutes, Danish national DPOs aim at representing disability specific interests in the society and at the political processes, as well as advising and supporting their members,[1887] the responsibilities listed in the statutes, thereby, do not contain monitoring the implementation of the CPRD and awareness raising about the rights thereof. As the sub-sections below show, the majority of Danish DPOs also do not provide protection of the rights of DPs through legal advice or action.

3.3.1 Promoting the rights of DPs in legislative processes

Traditionally, the Danish organized interest groups are involved in executive decision-making processes at the national and municipal governmental levels if their particular interests are affected.[1888] However, the decision-making organs do not maintain, by and large, formal participation rules[1889] as it is required by the CPRD Committee.[1890] Accordingly, the decision regarding the extent and the form of interest group involvement in Committees and consultations is made by the appropriate ministries and standing committees of the parliament.[1891] To this end, the interest group representation might differ not only depending on the phase of policy-making but also depending on the policy field and governmental level.

1886 TTHG, §36, §37.
1887 E.g., Dansk Blindesamfunds vedtægter, Sect. 2; Vedtægter Landsforeningen Autisme, Juni 2018, Sect. 3.
1888 Christensen, 1980; Christiansen/Nørgaard, 2003; Pedersen, 2020.
1889 Christiansen/Nørgaard/Sidenius, 2012.
1890 CPRD Committee, General Comment No. 7, Paras. 94e and 18.
1891 Pedersen, 2020; Christiansen/Nørgaard/Sidenius, 2012.

3.3.1.1 Participation in advisory bodies

Unlike the law drafting processes in executive organs of the state and legislative processes in the parliament, Denmark maintains exact rules for advisory bodies both in the central and municipal governments. The representation of interest groups is ensured through umbrella organizations. The density or inclusion of a particular interest group might hereby differ from policy field to policy field. For instance, in direct policy field, the Social Ministry, which is the CPRD FP, maintains a Disability Advisory Council (DDC) consisting of 17 members from various state and non-state interest groups.[1892] The interests of DPs are ensured through the Danish umbrella organization of DPs (DPOD), which appoints five representatives from its member organizations.[1893] Disability organizations outside of this organization are not included in DDC. Accordingly, members representing the interests of DPs are in minority. The costs for the required reasonable accommodation[1894] of the DDC members is covered.[1895]

The established CM does not even ensure a systematic collaboration and/or contact with DPOs[1896] despite the appropriate obligations.[1897]

In indirect policy fields, such as primary, lower and higher secondary public education, which are under the jurisdiction of the municipalities, the permanent inclusion of the DPOD and its member organizations in advisory councils of the central government, such as National Agency for Education and Quality is not ensured: "The Agency for education and quality collaborates with CSOs representing DPs. This collaboration is situation based and relates to different fields".[1898] Besides, DPOD nominates 10 representatives to the annual meetings of unit in the Agency for Education and Quality providing support for DPs in private primary, and lower secondary education, youth education, vocational training, higher education,

1892 Bekendtgørelse om retssikkerhed og administration på det sociale område (BEK nr 993 af 26/06/2020), Sect. 36.

1893 Ibid., Sub-sect. 2.1; e.g., third-level-interview DK/A 3, on 29.10.2019, Q. 7; the DDC is a part of the Danish Monitoring Framework for more see also chapter V part on Denmark.

1894 CPRD Committee, General Comment No. 7, Para. 22.

1895 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sect. 40 Sub-sect. 2.

1896 Third-level-interview DK/A 1, on 02.12.2016, Q. 13.

1897 For more see chapter IV part on Denmark.

1898 Danish ministry of children and education, personal communication, February 3, 2020.

adult education and in-service training.[1899] The National Agency for IT and Learning, instead, includes no DPO representative in its work.[1900]

At the municipal-level, the involvement of disability organizations in advisory bodies concerning all issues affecting DPs takes place through municipal disability councils[1901] established after the decentralization reform of 2007.[1902] The municipal disability councils have no legal obligation to consider the discussed issues in the light of the CPRD.[1903] Disability organizations try to promote the implementation of the CPRD at the local-level, but they experience "that this document has been the document for the disability organizations… and something that we have been very excited about, because it's on the mind of our members, but we have seen that the implementation work around in the country has been very slow. We see it when there is the big talks and it's party time, the politicians will say we ratified the Convention, everything is good, but on the practical level, the administration, we don't see that the principles of the Convention have been followed or respected".[1904]

The municipal disability councils are composed of equal number of municipal council appointees and representative organizations of DPs.[1905] Unlike the DDC they allow membership from disability organizations/groups outside of the umbrella DPO member organizations.[1906] The members are not entitled to individual compensations, but expenses for the necessary disability-related reasonable accommodation[1907] such as sign language interpretation are covered by the municipal councils.[1908]

1899 Danish ministry of children and education, personal communication, February 3, 2020.

1900 Danish ministry of children and education, personal communication, February 3, 2020.

1901 Bekendtgørelse om retssikkerhed og administration på det sociale område, chapter 8.

1902 Ventegodt Liisberg, 2013.

1903 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sect. 30.

1904 Third-level-interview DK/A 3, on 29.10.2019, Q. 1; Third-level-interview DK/A 2, on 02.12.2016, Q.5.

1905 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sect. 28; Second-level-interview DK/A 1, on 01.12.2016, Q. 10.

1906 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sect. 27 Sub-sect. 7.

1907 CPRD Committee, General Comment No. 7, Para. 22.

1908 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sect. 31 Sub-sect. 2.

The decisions of the disability councils are not binding on the local government.[1909] Therefore, "Municipal disability councils can give advice to the commune. They will be heard in all the questions regarding disability, but they don't have a possibility to decide anything.... and of course, they can make influence, so that the areas are being taken seriously. But the commune, that is the authority, they do the assessments, they make the decisions and they pay for it, so that of course has a big influence on how things have been done".[1910] The weak influence opportunities might be well seen in considering the assistance in school education: "while we take part at discussions through the disability councils; we are not being listened to."[1911]

To this end, it becomes clear that the ability of established individual DPOs to participate at the first phase of decision-making processes concerning issues of direct relevance to DPs is strongly jeopardized, on the one hand, by the selective nomination policy of the central government. This hinders the required participation of wide diversity of DPs.[1912] On the other hand, the tradition of institutionalized political processes ensuring advantageous position of privileged interest groups,[1913] especially in policies of indirect relevance to DP's e.g., education endangers the principle of equal and meaningful participation governing the CPRD.

Plural and equal participation of disabled groups at the administrative level is possible, but its effect obtains manipulated significance (if any) due to the unbinding nature of such processes and unequal position of DPOs.[1914]

3.3.1.2 Participation at decision-making processes of executive organs

Danish central government maintains two-step draft law development processes. In the first step the ministries convene a working group/committee commissioned with the development of the draft law. This step is arranged in accordance with the principles of institutional participation, meaning

1909 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sect. 29.
1910 Third-level-interview DK/A 3, on 29.10.2019, Q. 4.
1911 Third-level-interview DK/A 1, on 02.12.2016, Q. 4.
1912 CPRD Committee, General Comment No. 7, Para. 15.
1913 Siaroff, 1999.
1914 Arnstein, 1969: 218.

that the responsible ministry invites the privileged state and non-state interest organizations to participate.[1915] Depending on the policy field the non-state representation might differ, whereas the involvement of state organizations the National Organization of Regions (Danske Regioner) and especially the National Organization of Municipalities (Kommunernes Landsforening) are involved in all policy-making phases. The basis for the intense involvement of these organizations in the work of many ministries is seen in their close linkage to governing parties and wide range of administrative responsibilities in the various policy fields.[1916]

In issues concerning the interests of DPs, the partner organization of the government is the DPOD.[1917] For instance, after the signing of the Convention by Denmark, the DPOD was invited to participate at the governmental working groups on CPRD such as the structural implementation of the Art. 33.[1918] It disagreed with the conclusion of the working group, that Danish law fully complies with the CPRD provisions,[1919] but it failed in pointing out concrete examples of legal instruments that were in breach of the CPRD provisions: e.g., non-existence of general prohibition of discrimination on the grounds of disability and reasonable accommodation and ban on voting rights of persons under the full guardianship.[1920] As a result, it was decided that Denmark needs only to establish a MF and amend the electoral laws to allow DPs to receive and choose assistance in voting.[1921] To this end, the Danish parliament was proposed to ratify the Convention without its Optional Protocol. The DPOD achieved the ratification of the Optional Protocol only after about three years long intensive lobbying.[1922] The DPOD was also unsuccessful in persuading the government to adopt

1915 Johansen/Kristensen, 1982; Christiansen/Rommetvedt, 1999; Christiansen et al., 2010; Binderkrantz/ Christiansen, 2015; Christiansen, 2020.
1916 Christiansen/Nørgaard/Sidenius, 2012.
1917 VEDTÆGT for Danske Handicaporganisationer, Sect. 2; Third-level-interview DK/A 3, on 29.10.2019, Q. 5; Third-level-interview DK/A 3, on 29.10.2019, Qs. 7 and 8.
1918 Third-level-interview DK/A 1, on 02.12.2016, Q. 1.
1919 Third-level-interview DK/A 1, on 02.12.2016, Q. 1.
1920 Ventegodt Liisberg, 2013.
1921 Lov nr. 1347 af 19/12 2008 om lov om sendring af lov om valg til Folketinget, lov om valg af danske medlemmer til Europa-Parlamentet og lov om kommunale og regionale valg vedrorende hjaelp til stemmeafgivningen efterleves denne bestemmelse i Danmark.
1922 Third-level-interview DK/A 1, on 02.12.2016, Q. 1.

a National Disability Plan,[1923] and what is more, the government stated in its combined second and third periodic report that "there are currently no plans to prepare and adopt a new action plan".[1924]

Although the representation in the first step takes place primarily through the DPOD, DPOs might, although rarely, be invited to public hearings. The interviewed DPOs stated, overall, that the public hearings are accessible for the blind and physically DPs.[1925] However, some groups e.g., hearing impaired and learning disabled might be excluded from the consultations without explanation.[1926]

In the second step, the responsible ministries make the drafted law available for public consultations. The consultations on proposals of public interest to amend acts, executive orders etc. are published on an online consultation platform (Høringsportalen).[1927] This platform is partially accessible for the blind and physically DPs, but has no tools that would enable the independent participation of hearing impaired and learning disabled. Similarly, the DPOs usually have very little time to comment on the draft law: they send out green books or white books or committee reports or a draft legislation and they send it to the DPOD here which they distribute to their single organizations and ask them if they want to comment, usually within a very short time, so even if it is very complicated and large, you don't have even 14 days or 3 weeks to comment on it, that's the way they do it.[1928]

The individual DPOs might comment on the draft law published on the online consultation portal, but they do it only when the policy in question concerns disability-specific issues.[1929]

Accordingly, the representation of DPs in indirect policy fields at the second step of law development processes remains the exclusive responsibility of DPOD. In reforming its governmental structure, for example, Danish government aimed at assigning the municipalities with responsibilities

1923 DIHR, annual report to the Danish parliament, 2019.
1924 Draft Combined second and third periodic reports of Denmark, submitted on 17 April 2020. Para. 14.
1925 Third-level-interview DK/A 3, on 29.10.2019, Q. 5; Third-level-interview DK/A 2, on 02.12.2016, Q. 12.
1926 DPOD, 2013: 14 and 16; Third-level-interview DK/A 2, on 02.12.2016, Q. 12.
1927 At: https://hoeringsportalen.dk/Hearing (Last accessed on 01.07.2022).
1928 Third-level-interview DK/A 2, on 02.12.2016, 17.
1929 Third-level-interview DK/A 3, on 29.10.2019, Q. 8; Third-level-interview DK/A 3, on 29.10.2019, Q.5.

to manage education, welfare and assistance.[1930] The Danish disability organizations headed by the DPOD, expressed their collective disagreement with the reform pointing out its dangers for DPs.[1931] Nevertheless, the reform law has been passed,[1932] which brought about a significant structural change. Most specifically, the influence of national organization of municipalities was ensured also in the field of educational policies, where it, as the administrator of national school policies, acquired monopolistic power in decision-making processes.[1933] As a result, it could effectively block efforts of DPOD to promote human rights of disabled children in educational policies. For example, the DPOD pointed out that after the adoption of a law on special needs teaching in the Danish compulsory schooling (folkeskole), both undiagnosed and diagnosed disabled children face problems in getting assistance and support they need and regular school teachers lack the professional qualifications to ensure appropriate inclusion of disabled children.[1934] Moreover, it underlined that due to the fact that the inclusive school implementation is the responsibility of municipalities, inclusion in elementary school varies from one municipality to another.[1935] As a result, the CPRD Committee, in its Concluding Observation on the Initial Report of Denmark,[1936] stated that decentralized structure and responsibility of municipalities may not be appropriate for insuring the teaching of specialized tools such as braille and sign language communication, "and that the SP perceives a risk of dilution of knowledge in education with specialized support".[1937] Moreover, it expressed concern about the lack of clarity regarding the extent to which pupils with disabilities receive adequate support and accommodation to facilitate their education, and the discrepancies in accomplishment rates between pupils with and without disabilities in elementary, secondary and higher education.[1938] Nevertheless, the Danish government, despite the CPRD recommendation

1930 DPOD, 2013: 8 – 9.
1931 Third-level-interview DK/A 1, on 02.12.2016, Q. 4.
1932 DPOD, 2013: 8 – 9.
1933 Wiborg, 2016.
1934 DPOD, 2013: 8 -9, 38 – 39.
1935 DPOD, 2013.
1936 CPRD Committee, Concluding observations on the initial report of Denmark.
1937 CPRD Committee, Concluding observations on the initial report of Denmark, Para. 46.
1938 CPRD Committee, Concluding observations on the initial report of Denmark, Para. 52.

to take action,[1939] did not solve any of the educational issues raised by the DPOs.[1940] Hence, the DPOs "try to get in very early by contacting politicians to make the signed law be the right one",[1941] but "in 99 percent of cases they don't give a shit".[1942]

Thus, it is evident that in the second decision-making phase the plural representation of DPs remains secondary to privileged and selected interest organizations. Their opportunity to participate at such processes is further constrained by the lack of regulations establishing procedures for meaningful[1943] and mainstreamed[1944] participation, clear time frames, accessibility of consultations, including an obligation to provide reasonable accommodation.[1945]

Due to limited political participation efficacy, Danish DPOs, led by the DPOD, try to influence policy-making processes through demonstrations; organize discussions with many governmental levels and have some different initiatives about disability rights, both at the local and national levels.[1946] They also communicate their political agenda to politicians through publications on the web-based media.[1947] However, the CPRD finds no significant place in these actions. This might be caused, first and foremost, by the already mentioned lack of necessary human-rights-based orientation of national disability-specific organizations.[1948] Another factor that has not been the subject of examination within this study but is worth mentioning as an encouragement for further research, might be seen in the selective access opportunities to available Danish mass-media.[1949]

1939 CPRD Committee, Concluding observations on the initial report of Denmark, Para. 53 and 54.
1940 Draft Combined second and third periodic reports of Denmark, submitted on 17 April 2020. Paras. 16, 17, 20, 67, 190, 192, 195 and 199.
1941 Third-level-interview DK/A 3, on 29.10.2019, Q. 5.
1942 Third-level-interview DK/A 2, on 02.12.2016, Q. 17.
1943 See the requirement of the CPRD stated in the General Comment No. 7, Para. 48.
1944 Ibid. Paras. 15, 18 and 20.
1945 Ibid. Paras. 22 and 94e; the newly adopted Act no. 688 of 8 June 2018 on a Ban against Discrimination on the Grounds of Disability does not contain comprehensive provision on reasonable accommodation.
1946 Third-level-interview DK/A 1, on 02.12.2016, Q. 19; Third-level-interview DK/A 2, on 02.12.2016, Q. 14.
1947 Third-level-interview DK/A 1, on 02.12.2016. Q. 10.
1948 Ventegodt Liisberg, 2013; Vanhala, 2011.
1949 Binderkrantz/Christiansen, 2014: 202–220.

3.3.1.3 Participation at legislative processes of parliament

In Denmark, the legislative agreements are found in an informal yet highly institutionalized mechanism of ministries by making the substantial policy negotiations rare or absent in parliamentary committee meetings.[1950] This means that the minority government reaches the necessary agreement with other parties before submitting the draft law to the parliament. Accordingly, the room for tangible amendments made by parties not involved in the informal negotiations is very small at the parliamentary arena. Nonetheless, the standing order of the Danish parliament contains a few formal rules that allow the involvement of the interest groups in the work of the parliamentary committees. The first opportunity for interest groups to get involved is provided by section 20 of the Standing Order, according to which the interest groups might request the members of parliament to ask written or oral questions to ministers, who are required to respond within a set time frame. The DPOD often uses this opportunity to promote their interests in direct policy fields: "as we found that the ratification wasn't as quick as we wanted it to be, we made some of politicians to post questions to the responsible ministers in the parliamentary discussions".[1951]

Secondly, a committee may decide to receive deputations[1952] during the consideration of a proposed law. Hereby, committees might plan and carry out public hearings[1953] involving experts, scientists, and representative of interest organizations. However, due to the fact that each committee corresponds to a ministry,[1954] it is more plausible that the invited experts would represent interest groups that are part of the institutional arrangements of policy-making[1955] than be a weapon of the weak.[1956]

To this end, it is not surprising that the parliament is the secondary contact of the DPOD, especially in indirect policy fields: "we do discuss a lot with the ministry of education. When they do not want to listen to us

1950 Christiansen/Jensen, 2021.
1951 Third-level-interview DK/A 1, on 02.12.2016, Q. 1.
1952 Standing Order of Danish Parliament, (Forretningsorden for Folketinget- BEK nr 9458 af 17/06/2021), Sect. 8 Sub-sect. 5.
1953 Ibid., Sect. 8 Sub-sect. 8.
1954 For more see the parliaments webpage about committees at: https://www.thedanishparliament.dk/en/committees/about-the-committees (Last accessed on 01.07.2022).
1955 Rommetvedt et al., 2012.
1956 Binderkrantz 2005; Rommetvedt et al. 2012.

as much as we want them to, of course we would be in contact with other politicians to try to see if we can make sure that we have majority in parliament for doing other things what the ministry of education doesn't want to do".[1957] Nevertheless, in considering the fact that private members of Danish parliament might propose a bill, but the likelihood that it will be past is much smaller than in the case of the bill proposed by the government,[1958] this option might not be perceived as the primary path of a relatively small interest group.

The chances of DPOs to effectively voice their discontent in the rights-based policy implementation at the parliamentary arena[1959] can be further hampered by the sectorization principle in appointing committee members. For example, 82 percent of the committee members have experience in local governments,[1960] which are responsible for all disability-related policy implementation.

3.3.2 Monitoring the implementation of the rights of DPs

Following the ratification of the CPRD, Denmark established a MF composed of Danish Parliamentary Ombudsmen, DIHR and DDC, which is active only at the national level.[1961] While the former does not maintain institutional collaboration with disability organizations, the DIHR and DDC ensure some sort of DPO representation: The DIHR allows only 1 representative from DPOD and DDC contains only five DPOD member organizations that have to be nominated by the DPOD.[1962] To this end, the DPOD enjoys monopolistic access to DIHR and has exclusive power to decide the nomination of individual DPOs to the DDC, despite the statement of the CPRD Committee that the "existence of umbrella organizations within states parties should not, under any circumstances, hinder individuals or organizations of DPs from participating in consultations or other forms of promoting the interests of DPs".[1963] In considering the requirement of the

1957 Third-level-interview DK/A 1, on 02.12.2016, Q. 4.
1958 Pedersen, 2020.
1959 Pedersen/Christiansen/Binderkrantz, 2014: 199–225.
1960 Hansen 2010: 393.
1961 For more see chapter V.
1962 E.g., third-level-interview DK/A 3, on 29.10.2019, Q. 7.
1963 CPRD Committee, General Comment No. 7, Para. 12a.

CPRD Committee to ensure plural,[1964] full and regular[1965] participation of DPOs, it might be doubted if the existing participation structure of the MF is sufficient for ensuring the required formal mechanisms of comprehensive participation at the national level.[1966] Furthermore, it should be noted as well that the designated monitoring actors, despite their obligation to maintain accessibility,[1967] do not ensure the accessibility of the documents published on their web pages for blind users. Similarly, there is no information in sign or easy-to-read languages on the webpages of all three actors of the MF, including the Danish Parliamentary Ombudsman, who is responsible for the complaint mechanism.

Although Denmark is one of the most decentralized countries in the world,[1968] it did not ensure the required monitoring structures[1969] at the municipal-level.[1970] This means that there are no institutional structures ensuring inclusive monitoring processes in 98 municipalities. Accordingly, the identification of and taking action against non-CPRD conform actions of municipal organs falls under the own responsibility of disabled individuals,[1971] despite the fact that the 2017 DIHR report on the Legal Security in municipalities made it clear that citizens with disabilities and with ethnic background other than Danish experience more difficulties in communicating with the local authorities than others and feel to a lesser degree that they were consulted and treated in a fair manner during their complaint case.[1972]

Apart from the institutional participation in the national MF, the DPOD together with its member organizations also submitted the shadow report in connection with the Initial Report of Denmark, where it criticized the failure of the Danish government to implement not only the right to inclusive education but also other decisive provisions of the CPRD. In particular, it stated that the involvement of DPOs in the political processes

1964 CPRD Committee, General Comment No. 7, Paras. 15, 27 and 28.
1965 Concluding observations on the initial report of Denmark. Para. 67.
1966 CPRD Committee, General Comment No. 7, Paras. 37 and 38.
1967 CRPD/C/1/Rev.1, annex, Para. 20.
1968 Ivanyna/Shah, 2014; Rodden, 2004; Ladner et al., 2016; Houlberg/Ejersbo, 2020. For the effects on the implementation of the CPRD see chapter IV part on Denmark.
1969 CRPD/C/1/Rev.1, annex, Para. 18.
1970 For more see chapter V part on Denmark.
1971 Lemann Kristiansen, 2017.
1972 Jacobsen et al. 2017, (for English summery see P. 10).

by the government is insufficient and that some groups of DPs e.g., hearing impaired and learning disabled are excluded from accessing the political processes.[1973]

While the Shadow Report managed to communicate general problems connected with the municipal-level involvement of DPOs, it failed in ensuring direct involvement of the municipal-level DPOs in reporting processes.[1974] Therefore, the fact that the municipal governmental level is out of the MF and that municipal representatives of DPOs work on a voluntary basis did not surface in the Initial Shadow Report.

In using the opportunity to assess further implementation of the CPRD through the instrument of state reporting, the DPOD also formulated a commentary on the draft Second and Third Periodic Reports of Denmark, where it not only reiterated the issues communicated already in the first reporting procedure but also pointed out constant deterioration, especially in policy fields under the administrative powers of municipalities.[1975]

3.3.3 Protecting the rights of DPs

The Danish Constitution 'Grundloven' ensures only a minimum level of legal protection for individual citizens. Detailed provisions on access to justice are provided by ordinary legislation. These, however, do not require the violation of a so-called subjective right for an individual to file a complaint or case against a public body. It is enough to prove that there is an interest in the matter e.g., some sort of affectedness.[1976] However, the complainant's should first undergo quasi-judicial proceedings maintained by the Danish administrative bodies.[1977] Thereby, individuals might be entitled

1973 DPOD, 2013: 14 – 16.

1974 Third-level-interview DK/A 1, on 02.12.2016, Q. 11.

1975 The comment of the DPOD on the draft report is available in Danish at: https://handicap.dk/arbejder-vi-for/vidensbank/hoeringssvar-om-udkast-til-regeringsrapport-med-svar-paa-spoergsmaal-fra (Last accessed on 01.07.2022); See also the comment of the LAP – Landsforeningen Af nuværende og tidligere Psykiatribrugere, available in Danish at: https://www.lap.dk/vedroerende-udkast-til-danmarks-2-og-3-kombinerede-periodiske-rapport-til-fns-handicapkomite-crpd/ (Last accessed on 01.07.2022).

1976 Mørup, 2017.

1977 Constitutional law of Denmark, Sect. 63 Sub-sect. 1: "... though any person wishing to question such authority shall not, by taking the case to the courts of justice, avoid temporary compliance with orders given by the executive authority".

to legal aid by lawyer-based legal aid offices (Advokatvagter)[1978] or private legal aid offices (Retshjælpskontorer),[1979] including all three pre-trial steps: e.g., very basic verbal legal advice (step I), extended verbal legal advice, including written components (step II), and conciliation proceedings with quasi-judicial administrative bodies (step III).[1980] The right to subsidised legal aid in the steps II and III is subject to proven financial need.[1981]

The quasi-judicial administrative bodies exist in almost all policy fields, including social and antidiscrimination e.g., Board of Equal Treatment (Ligebehandlingsnævnet).[1982] The explicit representation of DPs in this body is not ensured.[1983] There are also two complaint boards for extensive special needs education.[1984] The DPOD might nominate two representatives to the complaint board on primary and lower secondary public education as it does the Local Government Denmark (the municipality's organization)[1985] and other strong interest groups e.g., unions of teachers and school principals.[1986] In the complaint board on lack of or insufficient special need support in private primary, lower secondary, youth and higher education, the DPOD is allowed to have only one representative.[1987] Accordingly, the representation of DPs in these boards is too small to have a significant influence.

Although DPs are under or even non-represented in quasi-judicial administrative bodies, none of the interviewed DPOs, including the umbrella

1978 These are legal aid offices composed of lawyers giving legal advice free of charge. For more see Lemann Kristiansen, 2017.

1979 Private legal aid offices have been the first to provide legal aid to people without means through university-associated volunteer lawyers and law students. For more see Lemann Kristiansen, 2017.

1980 The judicial Procedure Act (Retsplejeloven- LBK nr 1101 af 22/09/2017), Sect. 323.

1981 Ibid.; see also Lemann Kristiansen, 2017.

1982 The Board addresses complaints concerning general discrimination based, among others, on disability. Outside the labour market e.g., education (lov om Ligebehandlingsnævnet (LBK nr 1230 af 02/10/2016), Sect. 1), it does not consider violations relating to reasonable accommodation as there is no appropriate law in Denmark. for more see chapter IV part on Denmark.

1983 Lov om Ligebehandlingsnævnet, Sect. 3.

1984 Danish ministry of children and education, personal communication, February 3, 2020.

1985 Ibid.

1986 Wiborg, 2016, 2020.

1987 Danish ministry of children and education, personal communication, February 3, 2020.

DPO use the available state subsidies[1988] to enable the much-needed legal aid[1989] in the extrajudicial proceedings.[1990] However, some of them started to provide informal legal advice to their member in these processes.[1991]

Individuals also have a right to file a complaint before the domestic courts.[1992] If an individual has a proven chance of winning the case, he/she might receive public funding.[1993]

In 2008, the Danish government introduced the new capital in the judicial Procedure Act allowing class action lawsuits (Gruppesøgsmål).[1994] This opened an opportunity to initiate collective litigation against violations concerning Civil Law cases by appointing a group representative, which might be an association.[1995] The representative of the group must provide security for arising legal costs.[1996] If the applicant can prove success in the case, the process costs could be covered by public funding.[1997] Despite the limited political opportunities to influence the legislative processes, Danish DPOs, unlike other Scandinavian states e.g. Sweden,[1998] do not use strategic litigation to promote the implementation of the rights of DPs.[1999]

The reasons for non-application of available legal instruments to litigate can be based on organizational, structural and legal constraints. The organizational limitations might be explained by the lack of the necessary human-rights-based orientation of national disability-specific organizations:[2000] The answers of interviewed national DPO representatives concerning their actions to promote the implementation of the CPRD, left the

1988 The judicial Procedure Act, Sect. 323.
1989 Sejr et al. 1977; Lemann Kristiansen, 2009, 2017.
1990 Third-level-interview DK/A 3, on 29.10.2019, Q. 4; see also the responsibilities stipulated by the statutes of disability organizations: e.g., Dansk Blindesamfunds vedtægter, Sec. 2; Vedtægter Landsforeningen Autisme, Sect. 3; Vedtægter- Dansk Handicap Forbund, Sect. 2; Vedtægter- Danske Døves Landsforbund, Sect. 02; VEDTÆGT for Danske Handicaporganisationer, Sect. 2.
1991 Third-level-interview DK/A 3, on 29.10.2019, Q. 4.
1992 Constitutional law of Denmark, Sect. 63 (1).
1993 The judicial Procedure Act, Sect. 330 ff.
1994 Judicial Procedure Act, kapital 23a; Betænkning nr. 1468; Andersen, 2007; Aagaard/Røn, 2007.
1995 Judicial Procedure Act, Sect. 254 b 7 and Sect. 254c 2.
1996 Ibid., Sec. 254 e Sub-sec. 2.
1997 Judicial Procedure Act, Sec. 254 e Sub-sec. 7.
1998 Lejeune, 2017.
1999 Langford/Madsen/Schaffer, 2019.
2000 Vanhala, 2011.

impression that there work should be focused rather on disability specific services than on the promotion of rights-based policy implementation.[2001]

The disinterest of Danish DPOs in strategic litigation might also be conditioned by unclear definition for proof of success[2002] and missing legal framework for a claim e.g., Denmark did not include the right of reasonable accommodation in its newly adopted law on cross-sectoral prohibition of discrimination of DPs.[2003] Accordingly, the legal possibility of DPOs to complain against inaccessible political participation processes as it is required by the CPRD Committee[2004] is constrained.

However, the study of the legal and political structures[2005] leave no reason to doubt that the corporatist political culture of Scandinavian states,[2006] where select interest groups participate in processes of policy making and implementation based on compromise and consensus,[2007] and legal systems, where courts have traditionally deferred to the elected executive bodies and judges see themselves as the administrators of the will of the legislators,[2008] offer conditions under which a rights revolution is unlikely to occur.[2009]

4. Comparative Evaluation

Comparative studies on non-governmental organizations have been carried out first starting from mid-1980s.[2010] Research on disability-related organizations were in minority and focused on individual states.[2011] The growing

2001 Third-level-interview DK/A 1, on 02.12.2016; Third-level-interview DK/A 2, on 02.12.2016; Third-level-interview DK/A 3, on 29.10.2019.
2002 Judicial Procedure Act, Sec. 328 Sub-sec. 2.
2003 Lov nr. 688 af 8. Juni 2018 om forbud mod forskelsbehandling på grund af handicap.
2004 CPRD Committee, General Comment No. 7, Paras. 65 and 66.
2005 For more see chapter IV part on Denmark.
2006 Blom-Hansen, 2000; Christiansen et al. 2010; Öberg et al., 2011; Christiansen, 2020; Binderkrantz, 2020.
2007 Lejeune, 2017; Vanhala, 2016.
2008 Strang, 2009; Schaffer, 2017; Christensen, 2020.
2009 Langford/Madsen/Schaffer, 2019.
2010 Reutter, 2012b: 11 – 54; Schmitter/Streeck 1981; Hartmann 1985; Grant 1987; Schmid, 1996; Reutter 2012.
2011 For Germany see Hammerschmidt, 1992; Schulz, 1995; Köbsell, 2006; Hermes, 2007; Sporke, 2008; Nieß, 2016; Theresia/Miquel, 2019. For Austria see research project History of Disability Movement in Austria (Geschichte der Behindertenbe-

human rights awareness and fast developing digital opportunities for networking and advocacy contributed to the growing political success not only at the local and national but soon also at the international levels.[2012] This, of course, fueled the scholarly interest towards legal and political participation of disability organizations, but failed in studying their structure, resource capacity and advocacy efforts in multi-level political environments and comparative prospective. Therefore, in the following sections I provide comparative evaluation of the findings from the individual case studies analysed above.

4.1 Multi-level structural configuration of DPOs

In studying the legal and political environments of German, Austrian and Danish DPOs, I found legal frameworks beneficial for the establishment of CSOs, including DPOs. Accordingly, all three SPs have a number of disability-specific organizations. There are some groups, however, that do not have separate representative organizations in examined states. For instance, in all three states there are no independent representative organization of disabled migrants and children. This might be explained on the one hand, by the particular weakness of these groups, especially none-EU migrants. On the other hand, explicit legal exclusion of disabled migrants from political participation, as it is in Austria and missing legal provisions regulating the inclusion of these groups cannot be considered as the most beneficial way for ensuring political participation opportunities.

The examination of DPO bylaws and their external and internal structures[2013] in the political environment of all three SPs showed that in all examined SPs the small and/or subject specific organizations did not have countrywide representations. For example, an interest organization of disabled women exist only in Germany and only at the federal level. Accordingly, their opportunities to participate at the political processes were limited to same-level governments. Large disability-specific DPOs such as organizations of blind, deaf and physically disabled, instead, maintain

wegung in Österreich). For Denmark see Buksti/Johansen 1979; Hansen/Henriksen 1984; Torpe/Kjeldgaard 2003.

2012 Keck/Sikkink, 1998; Charlton, 2000; Fleischer/Zames, 2001; Drinan, 2002; Heyer, 2015; Degener/Miquel, 2019; Pettinicchio, 2019.

2013 Willems, 2000.

member organizations/chapters at the vertical and horizontal governmental levels. In Germany, which has a strong federal political structure, the Länder-level umbrella DPOs are member organizations of the federal level umbrella organizations, but they are self-governing bodies and normally have their own statutes. In states with moderate federal structures, as it is in Austria, the organizational system of DPOs is moderately self-governing as their statutes are aligned to the statutes of their federal level umbrella DPO, which envisage some degree of subordination.[2014] In contrast, the local representations of Danish DPOs do not, normally, have self-governing competences; they are attached to their national organizations as chapters and fall under their supervision and control. To this end, it might be admitted that there are parallels between external structures of large organizations and the political-administrative system.[2015] Most particularly the political opportunity to take effective action.

Nevertheless, the cross-country and multi-level comparison shows that while the external structures of large organizations are adapted to the federative system, they fail in ensuring comparable internal governing structures. Despite the federative structure of German and Austrian DPOs, the considerable number of federal level umbrella DPOs do not ensure equal representation of the Länder-level member organizations in their main deciding organs, namely the managing boards. Besides, the multi-level cross-country interviews and evaluation of participation of DPOs at the policy-making processes at the federal, state and municipal-levels show that the federal level umbrella DPOs, despite the charged membership contributions do not include, cooperate, support and advise the Länder-level member organizations during the political processes. The federal level umbrella DPOs also do not collaborate and coordinate with the Länder-level member organizations during the federal level political processes, even in direct policy fields that normally fall under the shared responsibilities of federation and federal states/provinces. This, on the one hand, limits the legitimation of the federal/national level DPO actions in the federal/national political processes as they do not consider and include the views of their vertical level member organizations in their decision-making procedures. On the other hand, it hinders the development of necessary organizational structures that would allow adoption and implementation of equal-line of action at the vertical governmental levels. In contrast to German and Aus-

2014 The association Act (Vereinsgesetz 2002), as amended by BGBl. I Nr. 211/2021, §1.4.
2015 Schmitter, 1981a, 1981b.

trian DPOs, executive boards of Danish DPOs include the representatives of municipal chapters. Consequently, decisions made centrally reflect the position of local chapter representatives.

The organizational structure can play a decisive role also in aim-setting and strategy choice. Lisa Vanhala, who studied the organizational structures and actions of the UK and Canadian DPOs, found that governance structures of organizations shape the "meaning frames": DPOs that are composed and lead by members that have human rights understanding of disability, act in accordance with this notion[2016]. In examining the organizational structure of German and Austrian DPOs and their aims and actions, I, in addition to privileged welfare and social organizations, observed two types of politically active organizations "of" DPs e.g., disability-specific and cross-disability DPOs. While cross-disability DPOs aim at human rights promotion and are composed and governed by the DPs, disability-specific DPOs undertake legally stipulated roles of service providers and act as human rights promoters. They are partially composed and governed by members that represent sheltered workshops and/or special schools. As a result, the disability-specific DPOs do not question the sheltered/special structures, whereas the cross-disability DPOs fight vehemently against them. In other policy fields, however, aim-setting and strategy choice of the federal level disability-specific DPOs coincide with the cross-disability DPOs and are thus based on the human rights approach of disability. In contrast, Danish DPOs belong, by and large, to disability specific types of organizations, where participation of affected representatives in the governing organs is not obligatory. This, of course, prevents them from having human-rights-based structures.

The strategy of 'selective cooperation[2017] also affects the ability of organizations to act collectively. In all three SPs, there are coalitions of disability organizations at the federal/national level but their political power shade internal disagreements between privileged disability-related organizations and small DPOs: the German Disability Council, which consists of legally privileged organizations and disability-specific and small cross-disability organizations, is unsuccessful in fulfilling its aim of acting as a uniting voice of disability related organizations as its small member DPOs are afraid of being overridden by the large organizations. I observed disagree-

2016 Vanhala 2011.
2017 Weber, 1976: 278; Reutter, 2012a: 135.

ments and conflicts also between the independent leaving organizations and so called "Austrian umbrella DPO". These, nevertheless, could be suppressed or kept small due to the legally stipulated monopolistic power of the umbrella organization. The privileged status of certain Danish organizations,[2018] ensures not only the similar situation, but also leads to concentration and centralization of organizations.[2019] In the field of disability policy, where DPOD is the only umbrella organization across Denmark that has a privileged access to decision-making processes and exclusive right for the DPO nomination to national and municipal-level public authorities. This reduces incentives to create new and competing organizations and holds the spectrum of pluralism under control.[2020]

I found even greater impact of privileged organizations on the ability of DPOs to form coalitions or act cooperatively at the state/local-level: both in Germany and Austria there are no real functional coalitions at the Länder-level and poor if any cooperation between DPOs during the political processes. The municipal-level collaboration of Danish DPOs is ensured through DPOD, which helps to promote its agenda.

Thus, it becomes clear that the influential part of DPOs do not possess the necessary structures to promote human-rights-based political action in selected policy fields e.g., education and employment. The lack of human rights oriented internal governing structures[2021] also affects the ability of collective action in policies causing conflicts of interests. However, research results indicate that human-rights-based governing configuration of DPOs does not fall from the sky. I rather argue that its development and adaption is closely connected with the type of funding, political opportunities of participation and access to human rights training and frameworks discussed below.

2018 Jensen, 1998: 370–371.
2019 Ibsen, 1997; Ibsen, 1997.
2020 Christiansen et all., 2012: 101–128.
2021 Vanhala, 2011.

4.2 Resources of DPOs in multi-level prospective

Many scholars suggest that the resource availability is fundamental to successful performance of organized interests.[2022] Therefore, it is not surprising that the CPRD Committee requires the SPs to provide for legal frameworks ensuring the prioritised financial support of DPOs in performing their political and monitoring activities at the vertical and horizontal governmental levels.[2023] Financial resources, hereby, play an important role in capacity building[2024] and acquiring working location, expert staff and sustained functionality.[2025] In the case of representative organizations of DPs, the financial support should cover reasonable accommodation[2026] for ensuring equal access of DPs to deliberative and decision-making processes.[2027]

According to Heike Klüver, the survival of interest groups is crucially affected by interest group type and the public salience of the policy area they are working in.[2028] The disability-related issues have persistent actuality that explains the long-term existence of DPOs. However, if I consider the sub-types of disability organizations examined in this study and replace the criterion of "survival" with multi-level financial capacity, I cannot but arrive at the conclusion that there are significant differences not only between the various disability organizations but also between the governmental level of their operation. In fact, the representative organizations of DPs in comparison to other public interest groups cannot secure their sustainable operation through the traditional financial sources e.g., membership fees.[2029] The main cause of this is the diversity of interest groups of DPs and the resulting small member capacity. Besides, the membership fees of Austrian, Danish and German DPOs are collected by following the bottom-top collection logic: e.g., in the federal states, the municipal membership fees

2022 Kohler-Koch, 1994; Gerber, 1999; Hall/Deardorff, 2006; Baumgartner et al., 2009; Binderkrantz et al., 2015; Mongiello, 2016; Klüver, 2019; Stevens/Bruycker, 2020.
2023 CPRD Committee, General Comment No. 7: Paras. 24, 33, 46, 61 – 64, 94p; these requirements are confirmed in the concluding Observations of the CPRD Committee concerning Arts. 4.3 And 33.3.
2024 CPRD Committee, General Comment No. 7. Paras. 45, 60–64, 94b.
2025 Schlozman/Tierney, 1986: 97; Drutman, 2015; Dür/Mateo, 2016; Nownes/Newmark, 2016.
2026 CPRD Committee, General Comment No. 7: Para. 46.
2027 Welti, 2005: 535ff; Beauvais, 2018.
2028 Klüver, 2019.
2029 McCarthy/Zald, 1977; Schmitter/Streeck, 1999.

go to the Länder-level DPOs and these in turn pay membership fees to their federal-level DPOs. In Denmark, the collection is concentrated in national DPOs that in turn pay membership fees to the DPOD. Accordingly, the lower the governmental level is, the resource poor are the DPOs in the examined states.

In view of this, the need for a legal framework allowing beneficial environment and state financial support gains much more weight. In examining the financial framework of organized interest groups in the selected SPs, I found that all three SPs maintain a tax exemption system beneficial for the sustained operation of organized interests.[2030] The SPs also provide legally stipulated financial support, but the overwhelming part of these is built up around the service providing logic.[2031] This means that the chances of human-rights-based DPOs to get constant state funding are incomparably smaller than that of organizations acting as service providers among other things. The amount of state funding, moreover, decreases or even amounts to zero with the governmental level. Besides, the state funding does not address the provision of accessibility.

Among all three states, only selected German federal-level DPOs might get governmental funding for their political work, including reasonable accommodation. The DPOs in the Länder of Germany, all-over Austria and Denmark should, thus, carry out their advocacy work without having separate financial resources for it. Accordingly, the lower the governmental level is, the more intensive the DPOs should prioritize their actions. This narrows down their field of action to only disability-specific policies and forces them to save on the expert staff imperative for successful advocacy work.

Thus, in evaluating the mentioned financial sources of DPOs in the light of their multi-level promotion, monitoring and protection actions in indirect and direct policy fields,[2032] I argue that the amount and type of funding plays an important role in professionalization, agenda setting and identity choice of the DPOs.

2030 For the requirement, see the CPRD Committee, General Comment No. 7: Para. 64.
2031 See part 2 of this chapter.
2032 See part 3 of this chapter.

4.3 Vertical and horizontal level political participation of DPOs

The right of every individual to participate at government of his country, directly or through freely chosen representatives has found its first international recognition with Art. 21 of the Universal Declaration of Human Rights in 1948. Later, it was reaffirmed by the Art. 25 of the International Covenant on Civil and Political Rights and specified by other human rights instruments.[2033] Explicit reference to participatory governance can be found also in EU Primary Law.[2034]

The Involvement and consultation of DPOs has been mentioned in international non-binding instruments, such as the 1975 Declaration on the Rights of DPs and 1993 UN Standard Rules. The Art. 5 of the 1983 ILO Convention No. 159 concerning vocational rehabilitation and employment was the first binding legal instrument to envisage representative participation rights of DPs in the employment policy-making. The comprehensive participation rights of DPs, thus, has been ensured only with the adoption of the CPRD. It requires the SPs to closely consult with and actively involve DPs, including children with disabilities, through their representative organizations in all phases of political decision-making processes.[2035] Hereby, public authorities should give due consideration and priority[2036] to DPOs in all stages of decision-making processes[2037] across all governmental levels without any limitations or exceptions.[2038] The obligation to involve and consult the DPOs applies to the full range of legislative, administrative and other measures that may directly or indirectly impact the rights of DPs.[2039]In including and consulting the DPOs, decision-making organs should ensure the accessibility and transparency of these processes.[2040]

Nevertheless, the required plural and prioritised participation of DPOs at political processes or frameworks are aggravated by regulations and political traditions contributing to the creation of "selective partnerships".

2033 ICERD, Art. 5c; CEDAW, Art. 7; CRC, Arts. 12 and 23 (1; EU Charter, Arts. 41(2, 3) and 44.
2034 2012/C 326/01 – oj C 326/13, Arts. 10(3) and 11; see also Organ/Alemanno (eds.), 2021; Lindgren/Persson, 2018; Alemanno, 2018; Ferri, 2015.
2035 CPRD, Art. 4 (3).
2036 CPRD Committee, General Comment No. 7. Para. 23.
2037 Ibid. Para. 15.
2038 Ibid. Para. 69.
2039 Ibid. Para. 18.
2040 Ibid. Paras. 45, 46, 47, 54, 71, 94e.

The selected partners of the state and their influence on decision-making processes, thereby, differ from policy field to policy field.[2041]

In policies affecting DPs directly, the German federal government, for example, ensures inclusion of DPOs only in selective advisory boards. Social and welfare organizations, instead, are represented everywhere. Länder-level governments, prior to CPRD ratification, ensured the inclusion of DPOs only at the Länder-level disability councils, whereas welfare and social organizations could be found in all-important advisory boards. After the ratification, the DPOs were included in some Inclusion Councils attached to the Länder-level disability commissioners. The DPO representatives at both governmental levels were in minority, which means that they de facto do not have a tangible chance of influencing or preventing unwanted decisions of the majority.[2042] The Austrian federal government, along the prevailing number of relevant interest groups, includes a small number of DPO representatives in Federal Disability Advisory Board by limiting their participation to nominations of the Austrian umbrella DPO. Participation of non-citizens thereof is not allowed. The Länder-level DPOs, which are defined by some provincial disability laws e.g., Tyrol and seen by DPs as service providing organizations, are included only in newly established Participation Council attached to Social Ministry. The central and local governments of Denmark allow various DPO participation in national and municipal disability councils. However, similar to Austria, their participation is subject to nomination by the umbrella DPO. This of course prevents the required plural participative structures.

In policy fields addressing DPs indirectly e.g., school, vocational and higher education, German DPOs are not part of advisory boards at both the federal and Länder-levels, while teacher unions, municipal associations, church representatives and other interest groups form the constant part of these advisory boards. In the best case, as it is in Hesse, the Länder-level educational advisory boards allow for the participation of the Disability Commissioner. Austria also does not include DPOs in advisory boards of indirect policy fields. Denmark, instead, along powerful interest groups such as teacher unions and municipal associations,[2043] includes one or two

2041 Winter/Willems, 2007; Winter/Willems, 2009; Rehder et al., 2009; Reutter/Rütters, 2007; Klenk, 2019.
2042 Arnstein, 1969: 220 f.
2043 Wiborg, 2016, 2020.

representatives of the umbrella DPO in selected education-related advisory boards of the central government.

The inclusion results of the DPOs in advisory boards correlate, overall, with the DPO inclusion and consultation practices of the executive organs. German non-state organizations that have been included in the advisory councils concerning direct policy fields are invited to work also on policy development. Non-state organizations, especially the DPOs left out from the initial processes, get a chance of commenting only at the final stage of draft law of the relevant federal/state ministry. At this phase, in contrast to advisory bodies, the dissatisfaction and disarray caused by intransparency and unequal access and influence opportunities becomes visible. I could also observe similarities between inclusion practises in Austrian federal advisory boards and participation patterns at the direct policy-making processes of the federal executive organs. Most particularly, the Austrian umbrella DPO is being closely consulted, whereas other DPOs stay out of these processes with some exceptions. At the Länder-level, the political participation structures have been developed well after the CPRD ratification: for example, the Tyroleangovernment started to consult the DPOs only with the development of Participation Law in 2016. Both federal and provincial governments of Austria do not ensure transparent participation and decision-making processes. Denmark, that maintains a strong commission system, but institutionalized participation by associations in legislative procedures in the form of public and regular hearings, is a rare exception,[2044] also shows parallels between involvement in the governmental advisory boards/committees and participation/involvement in policy making-processes; the Danish umbrella DPO takes part in political processes concerning DPs directly. Disability-specific DPOs submit commentaries only in cases when the law in question concerns particular disability issues. Although Denmark maintains a transparent commentary procedure, the decision-making processes as such remain behind the veil and inaccessible to some disability groups.

In indirect policy fields' e.g., primary and secondary education, where the German organizations "of" DPs are not included in federal/Länder-level advisory boards, they are excluded from the participation at the policy-making and adaption processes. Austrian federal and provincial governments, instead, invite the Austrian umbrella DPO to comment on the final versions of the draft educational laws starting from 2017–2018.

2044 Christiansen et al., 2012.

In Denmark, where primary and secondary education falls under the administrative powers of the self-governing municipalities, the DPOD can submit commentaries on the final versions of the draft laws published on the online consultation website, but it usually does not have a significant influence due to incomparably powerful interest organizations of municipal associations and teacher unions.

I observed convergence also in legislative processes of German federal and Länder-level parliaments: in all direct policy fields, where DPOs have been invited to participate in the previous two decision-making phases, they have been invited also to public hearings of the federal and state parliaments. Nevertheless, they had very little if any opportunity to influence the decision-making processes due to disadvantageous structures of public hearings e.g., unequal argumentation time, minority of their representatives[2045], and number of substantive questions asked.[2046] The involvement of DPOs in indirect policy fields e.g., education could not be discerned at any governmental level. In comparison to Germany, Austrian and Danish political traditions in general and parliamentary structures in particular did not allow or promote participation opportunities for DPOs.

Thus, the comparative outlook on the DPO inclusion in and participation at the three-phases of policy-making discussed above, reconfirms the observation that the influence of institutionalised participation frameworks in the policy-formulation and decision-making processes continues to prevail over the plural participation.[2047] The policy-makers try to achieve broad policy legitimation by ensuring plural interest group involvement. However, privileged legislative status securing the involvement and consultancy of selective governmental and non-governmental organizations in all three phases of policy production processes excludes the DPOs from overall participation in indirect policy fields and prevents their comprehensive access to direct policy fields. This reduces the opportunities of DPOs to influence the direct policy fields drastically, as the plural interest groups of DPs are, normally, invited to comment only on the final version of a draft law, which in contrast to the authorities intention to ensure input-legitimation, leads to disappointment and frustration among the participants, as the expectations connected with the participation cannot

2045 Bendix, 2016; Curry, 2015; Sinclair, 1997, 2006.
2046 Esterling, 2004, 2007.
2047 Winter, 2014.

be achieved because the opportunities to influence the policy-making processes at this stage are highly limited.[2048]

The strategy of selective cooperation[2049] also leads to programmatic and administrative domination of a few large organizations, especially at the state and municipal governmental levels. This is because at these governmental levels the DPOs are dependent on legal advice of large disability-related organizations and do not maintain strong umbrella organizations that could represent their collective interests.

Furthermore, these so called "plural participation processes" are socially selective as they disadvantage groups with weak articulation opportunities:[2050] while for the majority of interest groups the meaningful participation is seen in the right and given opportunity to participate, the equal and effective political participation of DPOs can fail on process and structural inaccessibility,[2051] as well as missing regulations ensuring reasonable accommodations.[2052] The multi-level comparison between selected SPs revealed that DPs participation in political processes is jeopardized by inaccessibility and/or unavailability of reasonable accommodations: as a matter of fact, only some disability-specific advisory boards of German federation and federal states ensured reasonable accommodation. Such provisions have been provided also for The Danish Disability Councils and TyroleanParticipation Board. In the second and third decision-making phases, DPO representatives have not always been provided with accessible documents, the venues have been sometimes inaccessible, and in the best case, they have only one week to comment on draft laws. The situation at the state/provincial/municipal-levels is even more critical as here the large part of political work of DPOs is being carried out on a voluntary basis. This means that the disabled DPO representatives cannot always acquire reasonable accommodation. As a result, they might be included in an Advisory Board/commission but de facto do not have equal participation opportunities thereof. The self-advocacy organizations of learning disabled have been included in one-time legislative process e.g., in Austria, participate at annual inclusion days in Berlin but their constant participation and

2048 Bauer, 2015: 273–293.
2049 Weber, 1976: 278.
2050 Holtkamp et al., 2006: 255.
2051 Williams, 2000; Young, 2011.
2052 For the requirements, see CPRD Committee, General Comment No. 7, Paras. 45, 46, 47, 54, 71, 94e; See also Welti, 2005: 335 – 356.

involvement in at least one decision-making phase is not ensured in any governmental level of the SPs examined.

4.4 DPO Involvement in monitoring activities

The inclusion of CSOs in domestic monitoring processes has been one of the fundamental principles of the international legal instruments regulating National Monitoring Bodies. With the CPRD, the inclusion of and collaboration with CSOs and most importantly DPOs became one of the central pillars for the successful implementation of the CPRD. Thereby, their monitoring role is twofold: on the one hand, they have to actively participate at the international reporting processes. On the other hand, they should be the integral part of the domestic MFs[2053] by having access to all working stages and governmental levels in a manner that is accessible to all groups of DPs.[2054]

The cross-country comparison showed that DPOs had access to the international monitoring activities. However, domestic report preparation processes were not inclusive of state/local-level DPOs. Accordingly, reports did not always address the obstacles of the state/local-level DPOs.

In examining the domestic monitoring role of the DPOs, it became clear that SPs addressed the requirement of participative monitoring differently. The German NMB ensured the inclusion of DPOs in its decision-making organ and organized regular consultations with federal-level DPOs. However, the accessibility of these processes were not always in place. The Danish NMB allowed a single representation of the Danish umbrella DPO in its governing body, but did not offer regular consultations for various representative organizations of DPs. Besides, not all actors of the MF ensure accessibility. In the Austrian Federal Monitoring Commission, the CSO, including DPO, representatives are in majority but their independence and neutrality has been jeopardized by the nomination regulations and financial control of the federal government. The examined Länder-level Monitoring Commission allowed only individual disabled members participation and did not offer regular cooperation with DPOs. Accessibility

2053 CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39[E]; See also CPRD Committee, General Comment No. 7. Paras. 34–39.

2054 CRPD/C/1/Rev.1, annex. Para. 20; See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.

for hearing impaired and learning disabled has not always been ensured. Access of disabled migrants is denied.

Cross-country convergence could be observed, however, in studying the availability and/or strength of participative structures of designated Monitoring Bodies in vertical comparison: the state/local-level DPO participation has not been ensured in Germany and Denmark. Austrian provinces allow direct or representative participation of DPs but their acting powers are aggravated by the full dependency of designated Monitoring Commissions.

Thus, cross-country and multi-level evaluation reveals that the majority of German umbrella DPOs, a selected number of Austrian federal level DPOs and the Danish umbrella DPO, have access to, are involved in and cooperate actively with the Independent Monitoring Mechanisms. As a result, they developed a solid understanding of the human-rights-based approach of disability, which is mirrored in their political actions. In contrast, the state/Länder-level DPOs in Germany and Austria, as well as individual national DPOs and their local chapters of Denmark that have been excluded from the negotiation and adoption processes of the CPRD and have no access to independent mechanisms, use the CPRD either at a very limited extent, as it is in Germany or not at all as it is in Austria and Denmark. I explain the moderate use of the CPRD by the German Länder-level DPOs by the fact that they have had an opportunity, although at a later point, to participate at the development of Länder-level action plans on the implementation of the CPRD, whereas the majority of Austrian provinces, including Tyrol did not develop and adopt such Action Plans as of Spring 2020.[2055] Similarly, in developing the only and much criticised Danish National Action Plan,[2056] the interests of all Danish DPOs have been represented by the Danish umbrella DPO and its selective members. Thus, it becomes evident that inclusion and active participation of DPOs in political process and MFs leads to professionalization and development of rights-based political objectives and strategies.

2055 Müllebner, 2019.

2056 DPOD, 2013: 146; DIHR, 2015: 7; CPRD Committee, 2014: Paras. 8 and 9.

4.5 Alternative instruments of influence

4.5.1 Awareness Raising Activities

It is presumed that the public arena is secondary to the institutional negotiation arena for the promotion of interest groups' agendas.[2057] Public pressure gains importance when the negotiation path failed or the institutional channels of influence were clogged.[2058] The public arena was and is significant above all for the weak organizations that could not establish privileged relationships with political decision-makers – i.e. had no direct communication channels with the political power centre.[2059] To this end, they organize public campaigns, protests/demonstrations, petitions and use mainstream and own media as an alternative method of pressuring policy-makers.

In conducting cross-country and multi-level evaluation, I observed rate variation depending on governmental level and the regional peculiarities in applying these promotion techniques. In Germany, for instance, federal-level and some Länder-level DPOs organize protests and use mass media to influence decision-making processes in direct policy fields. Such efforts could not be observed in eastern states and in indirect policy fields. Austrian DPOs maintain centralized information website on disability-specific news, but their access and use of mass media is insignificant. Danish DPOs also use protest and mass media techniques when they see no other way of influence, but these are destined to failure if other organizations do not join them. Besides, in comparison to Austrian and Danish DPOs, German representative organizations of DPs tend to use the mass media increasingly as a complimentary pressure-making tool in political and legal actions.

Overall, it became clear that for DPOs it is very difficult to make their cause to the news due to selective access conditions of mass media. As Anne Skorkjær Binderkrantz & Peter Munk Christiansen put it: "group resources and priorities affect the input of groups to the news production, while factors related to the functioning of the media are important in determining the output in terms of interest group access to the media".[2060] Consequently, further research is needed to evaluate the access to and use of media and

2057 Sebaldt 1997: 254; Sebaldt/Straßner 2004: 153.
2058 Koch-Baumgarten, 2014: 183.
2059 Roos, 2000; Hackenbroch, 1999, 1998: 54, 220; Beyme, 1997.
2060 Binderkrantz/Christiansen, 2014.

its efficacy as a political action strategy, especially with regard to targeted decision-making actors.

4.5.2 Collective Legal Action

Historically, the opportunity of accessing justice has been the privilege of individuals. It has been regulated by a number of international legal instruments[2061] and became the indivisible part of European states constitutions[2062] and EU Primary[2063] and Secondary Laws.[2064]

In 2000, the EU introduced a provision allowing representative litigations on behalf/in the name of marginalized groups, including DPs. It required the member states "to ensure that associations, organizations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations".[2065] The Directive had to be implemented into the member states laws as of December 12, 2003. Accordingly, all EU member states enacted measures allowing collective legal actions within the labour laws. Some member states, including Austria and Germany extended the provision beyond the work and employment

The adaption of the CPRD reconfirmed this obligation by requiring a comprehensive right to access to justice for disabled individuals and groups.[2066] Most particularly, it, in underlining the provision of reasonable

2061 E.g., UDHR (GA Res. 217a), Art. 9; ICCPR (GA Res. 2200A- XI), Art. 2 (3); ECHR, Art. 6.
2062 For the examined states see part 3 of this chapter (protecting the rights of DPs).
2063 Unlike issues concerning the employees of EU institutions (TFEU, Art. 270), the individual access to the CJEU is highly limited as natural or legal person may only "institute proceedings against an act addressed to that person or which is of direct and individual concern to them and against a regulatory act which is of direct concern to them and does not entail implementing measures" (TFEU, Art. 263), but there is also the possibility for defense of rights through the instrument of preliminary reference by the national courts (267 TFEU).
2064 Council Directive 2000/78/EC, Art. 9 (1).
2065 Council Directive 2000/78/EC, Art. 9 (2).
2066 CPRD, Art. 13; Flynn, 2017: 281–294; Flynn, 2018.

accommodation and general accessibility of the legal system,[2067] requires that "states parties recognize effective remedies, including of a collective nature, or class actions to enforce compliance with the right of DPs to participate,[2068] especially through their organizations" at all levels of decision-making.[2069]

Many scholars assume that the use of strategic litigation might prove to be a successful instrument for the achievement of political goals of marginali

zed groups.[2070] Indeed, in considering the observed limited opportunities of political influence, the instruments of strategic litigation through representative organizations seems to be a key to effective protection and implementation of the rights of DPs. however, the DPOs remain relatively passive in adopting this instrument for promoting their cause.[2071]

Some scholars explain this by resource insufficiency.[2072] The research group of the BGG evaluation also found that half of the DPOs, the majority of which were from state/municipal-level governments, did not apply class action lawsuits because of resource unavailability.[2073] These findings are confirmed also in the present study: financial resources of federal/national-level DPOs suffice merely for sustainable operation but not enough for their comprehensive advocacy work. Financial resources of the Länder-level, instead, are limited to only service providing activities and political participation in selected disability-specific policy fields. However, in considering the case of Danish DPOs, which have united financial capacity and a centralized legal system in comparison to Germany and Austria, it is clear that resource factor is important but the rights-based application

2067 CPRD Committee, General Comment No. 2 (CRPD/C/GC/2), Para. 33. See also CPRD Committee, Concluding Observations on El Salvador, (CRPD/C/SLV/CO/1), para. 30; CPRD Committee, Concluding Observations on Mexico, (CRPD/C/MEX/CO/1), para. 26c; CPRD Committee, Concluding Observations on Costa Rica, (CRPD/C/CRI/CO/1), para. 26.

2068 CPRD Committee, General Comment No. 7, Para. 66.

2069 Ibid. Para. 65.

2070 Lempert, 1976; Zemans, 1983: 700; Lawrence, 1990; Harlow/Rawlings, 1992; McCann, 1994; Manfredi, 2004; Rhode, 2004; Francioni, 2007; Jacobs, 2007; Van de Meene/Van Rooij, 2008; Ghai/Cottrell, 2010; Genn, 2010; Hlava, 2018; Müller, 2019.

2071 Schober et al., 2012: 5.1.2.ff; Welti et al., 2014: 289 – 295, 510; Hlava, 2018: 337 – 453; Langford/Madsen/Schaffer, 2019.

2072 Kitschelt, 1986: 57–85; McCarthy/Zald, 1977: 1212–41.

2073 The other half mentioned other reasons discussed below.

of resources is dependent on the internal governing structures of organizations. Lisa Vanhala, for example, assumes that only organizations that are composed of DPs and adopt the understanding that DPs are the subjects of law, will apply the strategic litigation instrument[2074]. Although the observations above could induce such presumptions, the analysis of legal and political opportunities show that it would be too naive to admit that this factor is a dependent variable for the application of strategic litigation by the DPOs.

A number of scientists see the reason for the limited or non-application of strategic litigation by the DPOs rather in the legal constraints[2075]. The comparative examination of states with dissimilar and similar political systems in the present study identified several types of legal constraints. First of all, the limitations might aim at general access limitations. It implies opportunity restraints to access to justice for disability organizations: Germany allows judicial action, including individual representation in social and administrative court cases and class action lawsuits, as well as extrajudicial complaint mechanism at the federal and some Länder-level s. It, however, limits the access to these instruments to only organizations that have met the registration requirements.[2076] Austria also allows selected DPOs to provide individual court representation and collective legal action. However, till 2016 it granted this right only to so called 'umbrella DPO' and after 2018 to one more non-governmental organization specialising on antidiscrimination cases (Section 13 BGStG).[2077] The available extrajudicial complaint mechanisms are open to individuals, but not DPOs. Denmark introduced collective action opportunity, but prioritises the tradition of individual legal aid provision through legal clinics, where it makes the subsidisation of their actions in the steps II and III dependent on proven financial need of the complainant. Consequently, there remain only a few legal aid offices that provide legal advice to disadvantaged groups of society.[2078] Besides, Danish legal and political traditions do not create a

2074 Vanhala, 2011.
2075 Hilson, 2002; Andersen, 2005); Wilson/Rodrıguez Cordero, 2006: 325–51.
2076 For the List of approved organizations, refer to BMAS webpage on Liste anerkannter Verbände für Zielvereinbarungen und Verbandsklagen at: https://www.bmas.de/DE/Soziales/Teilhabe-und-Inklusion/Barrierefreie-Gestaltung-der-Arbeit/Zielvereinbarungen-und-Mobilitaetsprogramme/zielvereinbarungen-anerkannter-verbaende.html Last accessed on 01.07.2022).
2077 See: Second and Third State CPRD Report of Austria, 2019.
2078 Lemann Kristiansen, 2017.

beneficial environment for DPO litigation. To this end, it becomes evident that even if states envisage litigation mechanisms for DPOs, they limit, as it is in Austria, or control, as it is in Germany, their access to these instruments. In addition, the evaluation results suggest a supposition that states with considerable centralised systems are not open for granting effective litigation rights to DPOs as it is in Denmark, or limit it to a governmentally-controlled/supported DPO, as it is in Austria. Consequently, further research is needed that might shed light on this issue.

The limitations might also be caused by the structural inaccessibility of judicial systems and processes. The CPRD Committee consistently recommended the SPs to review their legislation in order to ensure the explicit provision of procedural accommodations[2079] comprising accessibility of legal buildings and proceedings,[2080] as well as, the promotion of the active involvement and participation of DPs in the administration of justice.[2081] This is of particular importance for DPOs that are composed and governed by disabled members/employees that are in charge of legal proceedings. Reports and studies show, however, that the large number of legal proceedings and court buildings in SPs, including the examined states, remain inaccessible to DPs.[2082] These observations are confirmed also by the case law of the CPRD Committee[2083] and ECTHR.[2084] Thus, it is not surprising that the 37.8 % of DPOs surveyed in the framework of the German Federal

2079 CPRD Committee, Concluding Observations on the Initial report of Kenya (CRPD/C/KEN/CO/1, Para. 26 (b); CPRD Committee, Concluding observations on the initial report of Ecuador (CRPD/C/ECU/CO/1), Para. 27c; CPRD Committee, Concluding observations on the initial report of China (CRPD/C/CHN/CO/1), Para. 24.

2080 CPRD Committee, general comment No. 1 (CRPD/C/GC/1), para. 39; CRPD/C/ARM/CO/1, para. 21; CRPD/C/BIH/CO/1, para. 24; CRPD/C/CAN/CO/1, para. 30 (b); and CRPD/C/CYP/CO/1, para. 36.

2081 OHCHR, the International Principles and Guidelines on Access to Justice, 2020.

2082 FRA 2011; OHCHR, Report on the right to access to justice under Article 13 of the CPRD, 2017; Federal Monitoring Committee, 2018: Arts. 9 and 13; Schroeder et al., 2014: 107 – 111; Antidiskriminierungsstelle – Vierter Gemeinsamer Bericht (BT-Drucksache 19/32690): chapter 2.7; Theben, 2022; Sdorra, 2022; Lawson, 2016; Flynn, 2017; see also CRPD/C/COL/CO/1, para. 34; CRPD/C/JOR/CO/1, para. 28 (b); CRPD/C/IRN/CO/1, para. 29 (a); and CRPD/C/THA/CO/1, para. 27.

2083 Makarov v. Lithuania (CRPD/C/18/D/30/2015); Beasley v. Australia (CRPD/C/15/D/11/2013); Lockrey v. Australia (CRPD/C/15/D/13/2013).

2084 I.C. v. Romania, 24 May 2016; Stanev v. Bulgaria, 17 January 2012; Mocie v. France, 8 April 2003; Shtukaturov v. Russia, 27 March 2008; Jasinskis v. Latvia, 21 December 2010.

Disability Equality Law Evaluation have chosen not to apply strategic litigation instrument due to access barriers in filing the lawsuit.[2085]

Another legal restriction is based on the scope of legal action that DPOs might take. Germany, for example, limits the DPO litigation rights to only social and administrative cases on prohibition of discrimination and accessibility of public authorities and issues covered by the federal and Länder laws.[2086] The majority of Austrian Länder limit the scope of addressees by leaving out non-Austrian citizens.[2087] Besides, the scope of protection in the field of work and employment allow too many exceptions.[2088] Furthermore, the scope of litigation in both countries does not provide explicit protection against exclusion from decision-making and MFs or ineffective participation at the legislative processes, as it requires the CPRD Committee.[2089] Consequently, the DPOs are not given explicit right to file a complaint against lack of DPO participation. Nonetheless, they could try to bring a motion on scope of participation rights[2090] by arguing, for example, that there is a discretionary error in the design of existing procedures, but the chances that a legal practitioner of a DPO will come to this idea or would be willing to ignore the financial risk given the ambiguity of legal norms, might be highly doubted.

The desire of DPOs to apply class action lawsuits might also diminish due to the lack or insufficiency of adequate reparations, redress and forcibility of the court decisions. The primary purpose of these should be to guaranty the possibility of seeking injunctions.[2091] Redress and reparation include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[2092] Both German and Austrian disability equality

2085 Welti et al, 2014: 294.
2086 BGG, §15 (1) and §16 (3).
2087 E.g., Tiroler Antidiskriminierungsgesetz, as amended by LGBl. Nr. 144/2018, §4 (1); Wiener Antidiskriminierungsgesetz, as amended by LGBl. Nr. 39/2018, §2 (1.6).
2088 E.g., BGStG, §2 (3); Tiroler Antidiskriminierungsgesetz, §4 (2); Wiener Antidiskriminierungsgesetz, §2 (7).
2089 CPRD Committee, General Comment No. 7. Paras. 65 and 66.
2090 Urteil vom 14. Mai 2014- B 6 KA 29/13 R–, BSGE 116, 15–25, SozR 4-2500 §140f Nr 2.
2091 CRPD/C/BEL/CO/1, Para. 12.
2092 UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution/ adopted by the General Assembly, 21 March 2006, A/RES/60/147, Para. 18; Committee against Torture, general comment No. 3, Para. 6.

laws (BGG and BGStG)[2093] do not provide for a general right to removal and injunctive relief against barriers or discriminatory behavior. This means that even if the court finds that antidiscrimination regulations or participation rights have been violated, the litigating DPO has no right to claim the removal of the violating factor or at least a right to claim compensation. The DPO interviewees in the framework of the present study and 24.5 % of DPO participants in the BGG evaluation survey, for example, stated that they see no meaning in class action lawsuit as it has just a declaratory nature.[2094] The same is true for Austria.[2095] Furthermore, in cases where the compensation amount is left to the discretion of the court, it often sets only compensation that does not justify the risk of litigation costs incurred by the victim. This, in considering the particular situation, can neither be seen as satisfactory nor serve as an effective guarantee for non-repetition of discrimination.[2096]

Legal restrictions might also be of procedural nature: both Germany and Austria make the provision of extrajudicial process mandatory for application of class action lawsuit.[2097] This means that the DPOs should first go through the extrajudicial procedure and only in the case of disagreement of the parties involved, they could start a class action lawsuit. In fact, the extrajudicial process has been first adopted by and actively used in Austria. After the 2014 BGG Evaluation, where the research group, in noting the obstacles connected with the application of the class action lawsuit, concluded that the adaption of this instrument would facilitate access to justice,[2098] it was introduced also in Germany with the 2016 BGG amendment. Subsequent to its adoption, the extrajudicial dispute resolution mechanism became an intensively used instrument also in Germany. However, the comparison between Austria and Germany gives reasons to

2093 After the adaption of 2018 Inclusion Package, Austria envisaged injunctive relief in the event of harassment. Besides, in the event of class action lawsuits, a right to injunctive relief or removal can also be asserted against large corporations. In all other cases, discriminated persons can only claim insignificant damage compensations. For more refer to: https://www.parlament.gv.at/PAKT/VHG/XXV/A/A_02309/index.shtml.

2094 Welti et al, 2014: 294.

2095 Österreichische Behindertenrat, 2018: 5.

2096 See CEDAW/C/JPN/CO/7–8, Para. 25; A/72/133, Para. 49; See Committee against Torture, general comment No. 3, Para. 18.

2097 BGStG, §10 (2); BGG, §15 (2).

2098 Welti et al, 2014: 481f.

question the general efficacy of this instrument: over 2,761[2099] completed complaint cases in Austria and more than 170 cases in Germany show that the cases end with settlement. While this should be seen as a positive sign, it cannot but be noted that settlements are effective only for the parties involved and do not correspond to the result of legal proceedings (Section 8.5 BgleiSV). This means that an individual or a DPO might file an extrajudicial complaint against inaccessibility of a federal ministry and reach an accessibility agreement, but this will not affect all other inaccessible federal authorities. Consequently, the DPOs/individuals should dispute all other similar cases one by one as in comparison with the court decisions, extrajudicial settlements do not have general legal effect. Besides, the mandatory factor of this instrument in combination with the fact that complaint cases, normally, end up with the settlement might have a hindering effect for the creation of case law.

Finally, some scholars argue that opportunities of DPOs to take legal actions might be limited due to the configuration of states: "the political configuration of the state shapes the opportunities afforded to movements; shifts in that configuration can open or close 'windows' for legal action".[2100] For instance, German and Austrian federations and Länder have exclusive and shared legislative and/or administrative powers: e.g., school education in Germany falls under the exclusive legislative and administrative powers of Länder, whereas in Austria it is under the shared responsibility of federation and Länder. Similarly, Länder laws regulate the participation benefits in Austria, whereas in Germany they fall under the federal legislative power. In addition to these specific laws, German and Austrian federal and Länder governments maintain antidiscrimination laws, which are secondary to specific laws. This limits the possibilities of effective redress as non-disability-specific laws offer a very low-level (if any) protection against discrimination. For example, the Bavarian Association of the Blind and Visually Impaired filed a class action lawsuit against the inaccessible rebuilding of the forecourt train station. Due to immense media attention on this case, an effective remedy seems to become plausible. An analogous case in Lower Saxony, where the lack of accessibility caused several accidents, was forwarded to a litigation project for filing a class action lawsuit against the city in question. Although Disability Equality Law of Lower Saxony is

2099 As of December 31, 2018, there were a total of 2,761 completed arbitration proceedings, see "UN-BRK- Zweiter und dritter Staatenbericht Österreichs": 15 – 16.

2100 Andersen, 2005.

similar to Bavarian law, this case could not be taken up by the litigation project as the examination showed that unlike Bavaria, the road law of Lower Saxony does not contain a sufficiently binding obligation to ensure accessibility.[2101] The same is true for primary and secondary education laws of Länder. Thus, the strategic significance of such actions diminishes as school, accessibility and building responsibilities fall under the exclusive legislative and administrative powers of Länder, which means that court decisions of a federal state in these matters are not valid for other federal states. Moreover, attempts to file a complaint against, for example school discrimination under the federal law, were not successful.[2102]

Besides, the antidiscrimination laws of federation and Länder are by no means identical as they differ in important aspects, such as the range of their application: For example, the German and Austrian federal disability equality laws allow extrajudicial and ordinary judicial action covering all federal organs.[2103] Two German Länder, instead, limit the scope of class action lawsuits to Länder-level organs by leaving out municipal governments,[2104] which are in fact responsible for the accessibility and building of schools. Consequently, the opportunities of DPOs to take legal action might vary from Länder to Länder and be limited depending on governmental level.

Against this background, it becomes clear that the opportunities of DPOs to promote, protect and monitor the implementation of the rights of DPs are dependent on the legal and political structures of the given SP. In view of this, the DPOs should reconsider their horizontal and vertical level collaborations and governing structures and compliment traditional

2101 Grigoryan/Richter, 2021.

2102 VGH Kassel, Urteil vom 12.11.2009 – 7 B 2763/09; Hessischer Verwaltungsgerichtshof, Beschluss vom 12. November 2009 – 7 B 2763/09; OVG Lüneburg, Beschluss vom 16. September 2010 – 2 ME 278/10; Hessischer Verwaltungsgerichtshof, Beschluss vom 16. Mai 2012 – 7 A 1138/11.Z; Verwaltungsgerichtshof Baden-Württemberg, Beschluss vom 21. November 2012 – 9 S 1833/12; VG Aachen, Beschluss vom 03. September 2014 – 9 L 521/14; VG Aachen, Beschluss vom 03. September 2014 – 9 L 522/14; Bayerischer Verwaltungsgerichtshof, Beschluss vom 04. September 2015 -7 CE 15.1791; BVerfG, Nichtannahmebeschluss vom 14. September 2021 – 1 BvR 1525/20; Bayerischer Verwaltungsgerichtshof, Beschluss vom 28. Dezember 2021 – 7 CE 21.2466; Sächsisches Oberverwaltungsgericht, Beschluss vom 14. Februar 2022 – 2 B 334/2.

2103 BGStG, §2.

2104 See for example: HessBGG, §9; SächsInklusG, §1.

protection techniques including evidence-based research and mass media involvement.

VII. Conclusion

In the present chapter, I summarise the central findings of this research work. The conspectus is structured into posed research questions. Each of these are considered in the light of the hypotheses formulated in the chapter III (section 3.3).

1. How is the CPRD incorporated in the domestic law and how can this type of incorporation affect the implementation of the Convention?

The examination of incorporation rules within the selected Civil Law systems with dualistic approach showed considerable differences in legal and political traditions of domesticating International Law. For instance, in ratifying the CPRD and its Opt-Protocol, the German federal government followed the rules of Basic Law and the Lindau Agreement by obtaining the approval of federal states. As a result, the Ratification Law obtained the status of a federal statute and became binding on state organs, including the courts. The latter consider the CPRD "in the framework of accepted methods of interpretation". Later, the federal government adopted the federal Participation Law (BTHG) to give effect to the provisions of the CPRD within the federal laws. The 16 federal states, in accordance with the principle of federal loyalty, amended selected laws to enact the provisions of the CPRD under their exclusive legislative powers. The amended laws, especially in the field of education and accessibility, in addition to persisting differences fail in guaranteeing equal right to inclusive education. Accordingly, courts do not recognise the direct effect of the CPRD, and point out the provision of progressive implementation of Art. 24 CPRD.

Austria also carried out the ratification procedure in accordance with its Constitutional Law and legislative organs. The Ratification Law contained a statement, according to which the Convention shall be fulfilled by the enactment of laws. This means that the CPRD has no direct effect on the domestic courts and administrative acts until the government adopts appropriate implementation Laws. In over 12 years of ratification, the federal government took steps to incorporate CPRD provisions concerning Guardianship Law, whereas other provisions e.g. the right to inclusive education

remain unaddressed. Provinces that played an insignificant role in the ratification process amended their disability laws. However, amendments not only preserved the inconsistencies between the provinces but also were rather symbolic than factual.

The Danish government, in ratifying the CPRD, claimed that the domestic laws fully comply with the CPRD. As a result, it, as the majority of human rights conventions, has not been incorporated into domestic law and has to be implemented in accordance with the method of establishing norm harmony. Similar approach has been chosen for the Opt-Protocol to the CPRD. Accordingly, their implementation depends on the will of the central government as it decides on the guidelines of compliance measures. Courts, in accordance with Danish legal tradition, follow this line and do not challenge it as the CPRD and its Opt-Protocol cannot be applied directly by the courts and other state organs unless incorporated by the legislator. Thus, the CPRD and its Opt-Protocol is to be observed by the state organs, but their actions are guided by and based, exclusively, on national laws. To this end, in over 12 years of ratification, Denmark took a few legislative steps to implement the CPRD. These, nevertheless, did not even resolve the inconsistent administration of disability policies at the municipal level.

The findings above show that the states with similar legal systems and doctrine of International Law application, maintain divergent legal and political methods of domestication. These help to control the extent of International Treaties effects and avoid unwanted influence on domestic law.

Dissimilarities could be observed even between and within states with similar modes of government e.g., Germany and Austria. In these cases, the constituent unit governments within the SPs should take domestication measures within their exclusive legislative powers, but they decide on the extent and form of these measures. This, as it was assumed, if not hinders than at least slows down the successful and consistent multi-level implementation of International Treaties within the SPs.

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

2.1 FPs and CMs

The exploration into the resources of FPs and CMs laid out significant differences both between the examined SPs and within a SP: since their

designation, Austrian and Danish FPs/CMs did not receive resources for discharging their functions. The unit of federal FP of Germany, instead, has been provided with adequate resources: while the resources were sufficient for awareness-raising activities, the vertical and horizontal level coordination definitely requires more human resources. The Federal State of Hesse invested in the establishment of the FP in the beginning, but CPRD-related funding has been reduced with the merge of the FP with the disability-focused department of Social Ministry. The Thuringian FP has not been equipped with any CPRD-related resources.

The CPRD drafters in general and the CPRD Committee in particular underline the adequate and comprehensive funding of FPs and CMs. The research results summarised above point out dissimilar funding approaches between the Federal Government of Germany and federal/national governments of SPs with both similar and dissimilar modes of governments, namely Austria and Denmark. Funding arrangements of German and Austrian Länder-level governments were, largely, convergent. Accordingly, I argue that the differing financial situation of the German federal FP can be explained by the fact that it is the only independent unit within the ministry, whereas governmental units that are tasked with relevant assignments carry out the responsibilities of a FP in Denmark, Austria and federal states of Germany. This in turn confirms the relevance of the domestication type taken by the governments of SPs.

2.2 National Monitoring Frameworks

The examination of infrastructural arrangements of MFs showed similarities between German and Danish MFs. Both have adequate human and financial resources for carrying out their mandate at the federal/national-level. In contrast, the Austrian Federal Monitoring Commission got legally regulated state funding covering the remuneration of its staff only in the beginning of 2018. The financial regulation does not provide for funding covering its activities.

Convergence in all examined SPs could be observed in inexistent or incomprehensive funding of the state/municipal level MFs: at this governmental level, funding is either unavailable, as it is in Austria and Denmark or it is provided only for a few federal states, as it is in Germany.

In accordance with the Paris Principles and the CPRD Committee, all designated or established MFs should have adequate infrastructure appro-

priate for the given organizational structure of a SP. The findings above outlined different funding approaches between federal governments of SPs with similar modes of governments, namely Germany and Austria. The Danish national-level funding approach converges with that of the German Federal Government. In considering the fact that from the examined SPs only the Austrian Federal Government established a new MC composed of CSOs, I explain different outcomes by the neutral status and strength of establishment laws of GIHR, DIHR and the Danish Parliamentary Ombudsman.

At the Länder-level, instead, I could observe sufficient convergence between Germany and Austria. With the exception of permanent funding of two federal states, the other 14 federal states of Germany, similar to nine Austrian provinces, do not ensure adequate, permanent or all-comprising funding of monitoring activities. Denmark, despite its highly decentralised structure, factually did not adopt monitoring measures at the municipal level. This convergence is another vivid result of the chosen domestication approach of constituent unit governments of SPs.

2.3 Organizations of DPs

The study of funding opportunities of CSOs in the examined SPs revealed that they are exempt from taxes. This is, certainly, beneficial for their sustained operation. The CSOs also receive legally regulated state funding in addition to membership contributions. However, the overwhelming part of these is based on the service providing logic. Accordingly, organizations acting as service providers, in other words 'selected partners' of the state, have more chances to get regular funding than the human-rights-based small DPOs. The amount of state funding, moreover, decreases or even amounts to zero at the governmental level. Besides, this type of funding does not contain the provision of reasonable accommodation. Among examined SPs, only selected German federal-level DPOs have an opportunity to receive governmental funding for their political participation, including reasonable accommodation.

The Concluding Observations and General Comment No. 7 adopted by the CPRD Committee stress the importance of state funding for sustained operation of DPOs, especially with regard to political participation. The results presented above show, overall, convergent funding approaches across the examined SPs. Only the Federal Government of Germany intro-

duced the DPO funding for political participation with the CPRD implementation law (BTHG). This, on the one hand, reveals the strength of federal-level DPOs. On the other hand, it supports the assumption that the successful application of International Treaties depends on legal traditions and methods of multi-level domestication.

3. How is the interplay within and between the actors under the Art. 33 CPRD organized and what are the roles of these actors in the implementation process of the Convention at the vertical and horizontal governmental levels?

The research into the multi-level structures and cross-sectoral cooperations and actions of indicated actors, showed, in the first place, that they are not always adjusted to or have sufficient competence/power to discharge their functions within the multi-level structures of examined SPs.

For instance, Germany and Austria designated FPs and CMs at each governmental level with legislative powers. However, their levels are the lowest in the ministerial hierarchy. Accordingly, they do not have the appropriate competences to address law-making processes at the horizontal governmental level. The vertical-level cooperation between the federal and Länder-level FPs and CMs take place only within the framework of their competencies. Both Germany and Austria do not maintain municipal-level FPs. The tasks of the Danish FP and CM are assigned to the Social Ministry. This means that it is on the same hierarchical level as other ministries. Nevertheless, it, unlike the Ministry of Finance, neither has direct competence to access and/or influence law-making processes of other ministries, nor coordinate the CPRD implementation with 98 municipalities. Thus, all examined SPs, independent of their mode of government, opted more or less for similar arrangements. This affects the successful implementation of the CPRD, especially in policy fields falling under the exclusive or shared legislative powers of federal states/provinces and administrative powers of Danish municipalities.

The observed state/municipal level weakness or inexistence of Monitoring Mechanisms and DPOs further accentuate the results caused by the insufficient performance of state-level FPs and CMs.

For example, The Federal Republic of Germany, similar to Denmark, designated its Human Rights Institution as the Monitoring Body. It has regular access to and cooperation with the federal FP, CM and the Bundestag.

I could not discern its active participation in federal-level indirect policy-making processes. In the same vein, its formal cooperation with and permanent functioning has not been ensured in the majority of federal states. I observed a similar monitoring gap in Danish municipalities.

The federal Republic of Austria established the financially dependent FMC composed of CSOs, filtered DPOs and FP. The MCs designated by the provinces are even more dependent on their functioning and actions. Moreover, not all of them maintain formal cooperations with DPOs.

The examination of DPOs revealed that Germany has well-financed federal-level DPOs. These not only successfully cooperate with the designated federal FP, CM and NMB, but also use almost every possible opportunity to influence the federal-level political processes despite existing practices of selective partnerships. Underfinanced state-level DPOs, instead, neither possess sufficient professionality to build effective political alliances nor have comprehensively accessible, regular and transparent access to designated state-level FPs. Their cooperation with the NMB has not been ensured.

Austrian and Danish DPOs also attempt to maintain multi-level structures. However, only the privileged umbrella organizations of DPs, namely the Austrian Disability Council and DPOD and their member organizations have formal and regular access to FPs, CMs and MFs. Their cooperation and participation opportunities are even more limited at the provincial and municipal governmental levels.

The findings above clearly show that only German federal-level actors stipulated by the Art. 33 CPRD have the required capacity to perform their responsibilities. Accordingly, formal and active cooperation has been decisive for the implementation of the CPRD provisions concerning direct policy fields. Close cooperation and joint actions could not be identified in indirect policy fields and at the state level, which explains the poor or inconsistent horizontal-level implementation of the CPRD. The impact becomes particularly visible from a vertical perspective. The cross-country multi-level evaluation of remaining selected SPs also confirm the assumption that 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.

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