

## 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 non-state organizations are based on two main organs,<sup>1428</sup> namely:

Federal (general) assembly; it decides upon actual applications guidelines and policies, membership issues and elects the members to

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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.<sup>1429</sup> They are quorum if the majority of delegates of member organizations are present.<sup>1430</sup> In fact, however, the general assemblies, in comparison to managing boards, play "secondary role".<sup>1431</sup>

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.<sup>1432</sup> 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.<sup>1433</sup> 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

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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 II; and Satzung (Statute) der ISL e.V., Sektion 8.

1433 Reutter, 2012a: 129–164.

facilities.<sup>1434</sup> This might cause a conflict of interests in which such organizations prioritize their purpose as private entities over the rights of DPs.<sup>1435</sup> 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".<sup>1436</sup> 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.<sup>1437</sup>

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"<sup>1438</sup> as the managing boards do not ensure equal representation of their Länder-level organizations.<sup>1439</sup> This, in view of the federal political structure of Germany, raises a question of legitimate political action. Nevertheless, this

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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<sup>1440</sup> 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.<sup>1441</sup> 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 legitimization 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.

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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.<sup>1442</sup> The legal regulations have, by and large, been favourable also for the establishment and functioning of organizations "for"<sup>1443</sup> 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,<sup>1444</sup> social organizations because of their reach membership numbers e.g. 2.1 million members.<sup>1445</sup> 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.<sup>1446</sup>

There are also organizations "of"<sup>1447</sup> 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.<sup>1448</sup> 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,

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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/it/81575/2\\_1\\_millionen\\_mitglieder\\_der\\_sozialverband\\_vdk\\_waechst\\_weiter\\_trotz\\_corona-krise](https://www.vdk.de/deutschland/pages/themen/soziale_gerechtigkeit/it/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.<sup>1449</sup>

## 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.<sup>1450</sup>

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.<sup>1451</sup> Accordingly, the composition of DBR is consistent with the requirements of the CPRD Committee.<sup>1452</sup> 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".<sup>1453</sup> 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

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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.<sup>1454</sup> 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".<sup>1455</sup>

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".<sup>1456</sup> 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".<sup>1457</sup> 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 principle, which means that if an organization puts a veto the decision cannot be made".<sup>1458</sup> 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

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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 professionalll 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.<sup>1459</sup> 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.<sup>1460</sup> 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.<sup>1461</sup>

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".<sup>1462</sup> Accordingly, despite the CPRD Committee recommendation to maintain umbrella organizations at each level of decision-making,<sup>1463</sup> 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<sup>1464</sup> 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

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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.<sup>1465</sup> 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<sup>1466</sup> as an umbrella DPO as the LIGA of political interests and self-representation of DPs.<sup>1467</sup> 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.<sup>1468</sup>

### 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.<sup>1469</sup> The Länder-level Organization of the Deaf in Thuringia, in turn, maintains 13 local organizations.<sup>1470</sup> Despite their federative structure, these self-advocacy DPOs face serious challenges caused by the different responsibilities of federal, state

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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://lvgth.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".<sup>1471</sup>

Besides, the federative structures affect the cooperation between and co-ordination 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".<sup>1472</sup>

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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.<sup>1473</sup> For instance, the independent living centres exist in 11 out of 16 federal states, including Hesse and Thuringia.<sup>1474</sup> 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.<sup>1475</sup>

In addition, the subject or generation-specific small representations, are active only at the federal or local governmental levels.<sup>1476</sup> For instance, the federal-level disability-specific DPOs maintain specialised organizations, e.g., the youth organization of the German Organization of the Deaf (DGB)<sup>1477</sup> 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.<sup>1478</sup> 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 non-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.<sup>1479</sup>

Furthermore, the presumption that the density and functionality of DPO representation might be also influenced by regional development peculiarities of organizations<sup>1480</sup> 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.<sup>1481</sup> Some interviews made it clear that the working place of some Länder/local-level DPOs is there living room.<sup>1482</sup> Consequently, structures guaranteeing the formation and comprehensive functioning of all groups of DPs, especially children,<sup>1483</sup> learning-disabled<sup>1484</sup> and cross-disability organizations representing all or some of the wide diversity of impairments<sup>1485</sup> 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.<sup>1486</sup>

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,<sup>1487</sup> 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.

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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 non-state organizations.

The internal governing structures of established organizations are based on their statutes.<sup>1488</sup> 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,<sup>1489</sup> namely:

General assembly: It convenes at least once in a year and consists of delegates from member organizations.<sup>1490</sup> 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.<sup>1491</sup> It is quorum with the presence of the simple majority of delegates.<sup>1492</sup> Some DPOs state that the delegates with voting rights can be only DPs,<sup>1493</sup> whereas others give voting rights to e.g., guardians or family members and legal entities.<sup>1494</sup>

Federal/Provincial Managing Board: It consists of a chairperson and deputy chairperson(s) and few other members.<sup>1495</sup> It convenes at least twice in a year and is quorum with presence of at least three members.<sup>1496</sup> 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 Querschnittsgelähmten Österreichs, Fassung vom 18.09.2021, §8.

1490 See for example: Statuten-Österreichischer Gehörlosenbund, §13; Statuten- Selbstbestimmt Leben Österreich, §7; Statuten-Verband der Querschnittsgelähmten Österreichs, §9.

1491 Ibid.

1492 Ibid.

1493 E.g., Statuten- ÖGLB, §13a (1).

1494 E.g., Statuten-Verband der Querschnittsgelähmten Österreichs, Paras. 6 and 9.

1495 Statuten-Österreichischer Gehörlosenbund, §14; Statuten- Selbstbestimmt Leben Österreich, §8; Statuten-Verband der Querschnittsgelähmten Österreichs, §10.

1496 Ibid.

ment.<sup>1497</sup> The statutes of the majority of the DPOs do not stipulate that the members of the Managing Board can be only DPs.<sup>1498</sup> 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,<sup>1499</sup> 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".<sup>1500</sup> 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<sup>1501</sup> 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.<sup>1502</sup>

In addition, the national DPOs do not ensure the representation of the Länder-level member organizations in the National Managing Boards.<sup>1503</sup> 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.<sup>1504</sup>

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1497 Ibid.

1498 E.g., Statuten- ÖGLB, §14a; Statuten-Verband der Querschnittsgelähmten 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 Querschnittsgelähmten 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,<sup>1505</sup> including state interest organizations e.g., Österreichische Gemeindebund and non-state interest organizations, comprising also diverse disability-related organizations.<sup>1506</sup> These include not only organizations that are defined as organizations for DPs<sup>1507</sup> e.g., cross-group social, charitable and parent organizations,<sup>1508</sup> but also those that should be seen as 'self-advocacy' organizations<sup>1509</sup> such as disability-specific organizations<sup>1510</sup> 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.<sup>1511</sup>

### 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

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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,<sup>1512</sup> the majority of its members are from disability-help organizations and service providers, charity organizations, parent organizations and few disability-specific organizations.<sup>1513</sup> Besides, its governing structures do not ensure the set standard<sup>1514</sup> of openness, democratic decision-making and representation of full and wide diversity of DPs.<sup>1515</sup> 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".<sup>1516</sup> 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<sup>1517</sup> and to FMC.<sup>1518</sup> 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".<sup>1519</sup>

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

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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.<sup>1520</sup> 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.<sup>1521</sup> 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.<sup>1522</sup> These should follow the statutes of the umbrella organization<sup>1523</sup> and/or adopt their own statutes aligned to the statutes issued by their umbrella organizations.<sup>1524</sup> 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".<sup>1525</sup> "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..."<sup>1526</sup> "The

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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 Querschnittsgelähmten 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"<sup>1527</sup> Nevertheless, the attempt to do this failed.<sup>1528</sup>

## 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.<sup>1529</sup> This means that, unlike Germany, there is no law in Denmark stipulating specific requirements for organizations to be 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:<sup>1530</sup>

General assembly (Landsmødet): They convene at least once in a year and are open to all their members.<sup>1531</sup> 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.<sup>1532</sup> They are quorum with the simple majority of members present.<sup>1533</sup>

Executive Board (Hovedbestyrelsen): they consist of a chairperson and chairmen of all municipal chapters and in some cases also other members.<sup>1534</sup> The Executive Boards convene at least once in a year and are quorum with presence of at least half of the Executive Board members.<sup>1535</sup> 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.<sup>1536</sup> Some DPOs limit the voting rights to only self-affected persons,<sup>1537</sup> some ensure at least the equal representation of affected persons in the Executive Boards,<sup>1538</sup> whereas others do not set up such limitations.<sup>1539</sup> 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.<sup>1540</sup> This confirms that a substantial share of Danish interest groups are not only in conflict with the human rights understanding of the CPRD<sup>1541</sup> but also do not operate as democratic organizations to a degree that is consistent with the notion of groups as 'little democracies'.<sup>1542</sup>

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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<sup>1543</sup> 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.<sup>1544</sup> The Danish Umbrella Disability Organization (DPOD), hereby, lists 35 member organizations,<sup>1545</sup> 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.<sup>1546</sup> However, there is no DPO composed and represented by disabled children.<sup>1547</sup>

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,<sup>1548</sup> 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.,

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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.<sup>1549</sup> In view of the fact that Denmark is one of the world's leading countries regarding women's representation,<sup>1550</sup> 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,<sup>1551</sup> and proven higher rate of discrimination of disabled women in comparison to disabled men in various policy fields e.g., education and employment,<sup>1552</sup> 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.<sup>1553</sup>

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,<sup>1554</sup> which affects the implementation of the right to inclusive education significantly.<sup>1555</sup> 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.<sup>1556</sup> As a matter of fact, these are the umbrella organizations as it is the case with the disability organizations (DPOD).<sup>1557</sup>

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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. Collective 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.<sup>1558</sup>

The main governing organ of the DPOD, which among other things, decides on DPO nomination to the national, regional and municipal public authorities,<sup>1559</sup> consists of representatives of affiliated organizations, youth group, elected members from the municipal and regional chapters.<sup>1560</sup> Nevertheless, the statute of the DPOD, regardless of the CPRD Committee requirements<sup>1561</sup> does not, explicitly, state that the majority of the members to its main deciding organ should be DPs.<sup>1562</sup> 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<sup>1563</sup> but also increases the influence of privileged interest groups by limiting the required access of diverse disabled groups<sup>1564</sup> to decision-making processes.<sup>1565</sup> 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

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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<sup>1566</sup> 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."<sup>1567</sup> 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".<sup>1568</sup>

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<sup>1569</sup> has not been ensured even in the municipal governments, which have decision-making and administrative autonomy in almost all disability policies, including inclusive education.<sup>1570</sup> Accordingly, it is not surprising that the municipalities, despite their obligation to "actively apply and consider the CPRD"<sup>1571</sup> do not feel responsible for ensuring the consistent implementation of the International Law,<sup>1572</sup> such as the right to inclusive education for all disabled children.<sup>1573</sup>

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1566 For more see: About DDAA at: <https://dd1.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 Ombudsmann, FOB 2005.14 – 1, tilgngelig p : [https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle\\_bsager/05-425/#cp-title](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.<sup>1574</sup> 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.<sup>1575</sup> 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.<sup>1576</sup> 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.<sup>1577</sup> Similar measures exist also in the statutes of disability-specif-

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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.).<sup>1578</sup> and Organization of the Blind and Partially Sighted (DBSV).<sup>1579</sup> The latter, for example, received EUR 815,133.50 from its 53 member organizations in 2017.<sup>1580</sup>

The Länder-level umbrella DPOs also maintain such arrangements.<sup>1581</sup> 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<sup>1582</sup> 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.<sup>1583</sup> 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.<sup>1584</sup> 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.<sup>1585</sup>

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.<sup>1586</sup> 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.<sup>1587</sup> 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.<sup>1588</sup> 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.<sup>1589</sup> Initially, the scope of addressees has

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1585 Ibid.

1586 Investitions- und Maßnahmenförderungsrichtlinie- IMF, 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.<sup>1590</sup> However, with the amendment of the Directive in 2018,<sup>1591</sup> the scope of addressees has been expanded to include all groups of DPs.<sup>1592</sup>

The Länder-level DPO funding mentioned above do not envisage the required support for reasonable accommodation,<sup>1593</sup> 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.<sup>1594</sup>

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.<sup>1595</sup>

The amended Federal Disability Equality Act (BGG), in addition, envisages financial support for the federal-level organizations of DPs, especially

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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.<sup>1596</sup> According to funding guidelines<sup>1597</sup> 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.<sup>1598</sup> 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.<sup>1599</sup>

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:<sup>1600</sup> "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".<sup>1601</sup> 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<sup>1602</sup> to acquire alternative funding.

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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".<sup>1603</sup>

The disability-specific DPOs, such as DBSV, instead, have more than double the fulltime and part time qualified employees of the cross-disability DPOs.<sup>1604</sup> 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-

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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".<sup>1605</sup>

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".<sup>1606</sup> On the other hand, they, in taking into account the varying legal regulations and different political participation frameworks in the federal states, underlined

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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".<sup>1607</sup>

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"<sup>1608</sup> at the legislative processes and MFs.<sup>1609</sup> Despite the requirements of the CPRD Committee,<sup>1610</sup> the funding measures of the federal states for the Länder-level DPOs are limited, exclusively, to the service providing framework, as a

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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<sup>1611</sup> concerning DPs. Legislative and administrative processes in the policy fields that concern DPs indirectly<sup>1612</sup> 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

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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.<sup>1613</sup>

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".<sup>1614</sup>

The Tyroleandisability laws did not envisage financial support for self-advocacy disability organizations. Either the new so called "Tyrolean Participation Law" adopted in 2018 (LGBI. 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,<sup>1615</sup> 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".<sup>1616</sup>

Länder-level organizations do not get support from their federal-level umbrella organizations despite the fact that the Länder-level organizations pay membership fee.<sup>1617</sup>

Consequently, the "Tyrolean DPOs / and the affected employees thereof have no resources except themselves"<sup>1618</sup> to carry out their responsibilities envisaged by the Art. 4.3 and Art. 33.3 of the CPRD.<sup>1619</sup>

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,<sup>1620</sup> the majority of Austrian DPOs, despite the

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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,<sup>1621</sup> 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.<sup>1622</sup> The allocation of subsidies is regulated through a number of laws, including the Social Services Act.<sup>1623</sup> 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.<sup>1624</sup> However, local-level DPO representatives do not get paid for their job.<sup>1625</sup>

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.<sup>1626</sup> Resources for consulting come partially from the government and partially from the organizations own funds.<sup>1627</sup> Some disability organizations might also get funded for commissioning research on disability-specific topics e.g., employment and disabled children attending regular schools.<sup>1628</sup>

The DPOD, as the umbrella organization of member national DPOs, receives membership payments.<sup>1629</sup> It also gets governmental funding related

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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.<sup>1630</sup> In addition, DPOD gets funded by Charity Lottery, which it shares with its member organizations.<sup>1631</sup>

The DPOD maintains a secretariat. It has about 30 employees, some of whom come from the member organizations and thus are paid by them.<sup>1632</sup> 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.<sup>1633</sup> Therefore, the secretariat should be seen as the key resource for ensuring the political effectiveness of Danish DPOs.<sup>1634</sup> Nevertheless, the DPOD resources are much more modest than that of the trade unions, business groups, and institutional groups.<sup>1635</sup> This, evidently, leads to inequality in the interest group system resulting in policy imbalances.<sup>1636</sup>

### 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<sup>1637</sup> governed by the independent living notion, for example, underlines the human rights approach instead of disability-specific support and advocacy<sup>1638</sup> and acts accordingly.<sup>1639</sup> 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-

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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/med\\_ia/document/handicaporganisationernes\\_hus\\_uk\\_final-a.pdf](https://handicap.dk/sites/handicap.dk/files/med_ia/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.<sup>1640</sup>

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.<sup>1641</sup> 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.<sup>1642</sup> The participation at the policy-making processes is subject to strict regulations<sup>1643</sup> 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.<sup>1644</sup> Moreover, the decision of individual ministries to organize consultation processes is further narrowed down through a number of regulations,<sup>1645</sup> which maintain "se-

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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"<sup>1646</sup> with large governmental and non-governmental organizations. The scope of the traditionally involved non-state organizations might, however, differ depending on the policy field<sup>1647</sup> e.g., employer associations,<sup>1648</sup> social<sup>1649</sup> and welfare<sup>1650</sup> organizations in disability policies, teacher unions<sup>1651</sup> 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).<sup>1652</sup>

### 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,<sup>1653</sup> 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

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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; Döbbins/Nikolai 2019: 564–583.

1652 E.g., Sporke, 2008; Degener/von Miquel (Hrsg.), 2019.

1653 For more see chapter IV.

Teilhabeberichts),<sup>1654</sup> and The Council of Participation of DPs (Beirat für die Teilhabe von Menschen mit Behinderungen- Section 86 SGB IX).<sup>1655</sup> Furthermore, the Federal Disability Commissioner assigned as the CM under the CPRD maintains an Advisory Board (Inklusionsbeirat).<sup>1656</sup> These bodies help the federal government to fulfil its obligations,<sup>1657</sup> 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.<sup>1658</sup> The majority of the state and some municipal disability advisory boards have been established well before the CPRD ratification.<sup>1659</sup> 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.<sup>1660</sup> 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

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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 (Hess-BGG, 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 weak 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.<sup>1661</sup>

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.<sup>1662</sup>

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.<sup>1663</sup>

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

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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.<sup>1664</sup> A similar advisory organ is stipulated by the Hessian School Law, which includes the State Disability Commissioner as one of its members.<sup>1665</sup> 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.<sup>1666</sup> 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 Hoc Committee was established to negotiate the CPRD, the German Federal-level DPOs, in contrast to Länder-level DPOs,<sup>1667</sup> were the integral part of it.<sup>1668</sup> 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."<sup>1669</sup> 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.<sup>1670</sup>

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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<sup>1671</sup> and is subject to detailed participation provisions stipulated by the Procedural Rules of the appropriate ministries at the particular governmental level.<sup>1672</sup> 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.<sup>1673</sup> As a matter of fact, these are those that have been already included in advisory boards in a given policy field.<sup>1674</sup> 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.<sup>1675</sup> 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<sup>1676</sup> 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.<sup>1677</sup> The DPOs did not object as they were afraid of reservations, especially in

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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 prior 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.<sup>1678</sup> 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.<sup>1679</sup> 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."<sup>1680</sup> Consequently, the "article 3 DPO started the shadow translation of the CPRD (in summer of 2018 it published the third edition of the translation".<sup>1681</sup> In response to criticism, the federal government of Austria, instead, adopted a new coordinated translation of the CPRD and its Optional Protocol in 2016.<sup>1682</sup>

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.<sup>1683</sup> 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,

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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 I. 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".<sup>1684</sup>

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.<sup>1685</sup> Accordingly, DPOs started a chain of protests that resulted in small amendments, but did not lead to consideration of their main demands in the final version (Kabinettsentwurf) of 22 June 2016.<sup>1686</sup> Therefore, The DPOs continued their protest actions<sup>1687</sup> with the hope of achieving significant amendments in the parliamentary procedures.<sup>1688</sup> 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,<sup>1689</sup> 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.<sup>1690</sup>

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".<sup>1691</sup>

The participation of non-state organizations at the draft-law development is hard to check as these processes are none-transparent<sup>1692</sup> across the

1684 Third-level-interview DE/A 4, on 04.06.2018, Q. 5. The original reads as follows; "Wir haben jetzt beim Bundesbehindertenrechtsgesetz ein so genanntes Hochrangiges Beteiligungsverfahren, wo es wirklich aufwendig beteiligt worden ist, ich würde sagen, das war eine Scheinbeteiligung, und fühle mich (betroffen), 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.<sup>1693</sup> 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.<sup>1694</sup> 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".<sup>1695</sup> 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.<sup>1696</sup>

The Thuringian government, instead, opted for direct DPO participation in building up the working groups for the development of the Disability

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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).<sup>1697</sup> The Thuringian State FP explained this by saying that "not all DPOs were able to hold out because the subject was difficult",<sup>1698</sup> whereas the interviewed DPO representatives pointed out serious accessibility issues for the disabled participants.<sup>1699</sup>

Overall, the representatives of the Länder-level DPOS from both federal states expressed high dissatisfaction with regard to effectiveness<sup>1700</sup> 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.<sup>1701</sup> The remaining newly set actions have been put under the financing reservations.<sup>1702</sup> 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.<sup>1703</sup> Nonetheless, the Länder-level DPOs did not attempt to exert pressure through protests or media, which speaks about the low level of professionalism<sup>1704</sup> 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.<sup>1705</sup> 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

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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.<sup>1706</sup>

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.<sup>1707</sup> 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),<sup>1708</sup> or one of the 16 federal state parliaments (Landtage)<sup>1709</sup> are sent to their Standing Committees (standing Ausschüsse). These, conditioned by the requirements of the working parliament,<sup>1710</sup> are based on a cooperative structure and correspond to the structure of the executive branch.<sup>1711</sup> 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.

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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](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<sup>1712</sup> 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,<sup>1713</sup> 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"<sup>1714</sup> and aim at "presenting decisions already taken as appropriate".<sup>1715</sup> Nevertheless, in issues of high interest to the public, parliamentary hearings might lead to considerable amendments or even hinder the passage of the bill.<sup>1716</sup>

For instance, in the public hearings of the Bundestag on the BTHG that was accompanied by protests,<sup>1717</sup> 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

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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.<sup>1718</sup> 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<sup>1719</sup> 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.<sup>1720</sup>

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.<sup>1721</sup>

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.<sup>1722</sup> In comparison

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1718 Bundestag, Ausschussdrucksache 18(II)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(II)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(II)1036; Zusammenstellung der schriftlichen Stellungnahmen zum Barrierefreiheitsstärkungsgesetzesentwurf: Ausschussdrucksache 19(II)1036 und Ausschussdrucksache 19(II)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](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/II152), Ausschussvorlage AFG 18/18, Stand: 16.II.2009; Stellungnahmen Gleichstellungsgesetz (Drucks. 19/2184), Ausschussvorlage SIA 19/43, Stand: 04.II.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.<sup>1723</sup>

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.<sup>1724</sup> For example, the Committee of Migration, Justice and Consumer Protection of the Thuringian Parliament in considering the bill on Participants Transparent Documentation Law<sup>1725</sup> decided to invite 19 experts, none of whom were from DPOs.<sup>1726</sup> In these cases even the state Disability Commissioner are not invited to submit their opinions.<sup>1727</sup> 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.<sup>1728</sup>

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<sup>1729</sup> and policy-

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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,<sup>1730</sup> 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".<sup>1731</sup> 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

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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<sup>1732</sup> reserved for only 'selected partners'<sup>1733</sup> 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:<sup>1734</sup> 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.<sup>1735</sup> 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".<sup>1736</sup> Instead, it tries to ensure the required transparency,<sup>1737</sup> 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.<sup>1738</sup> Whereas without ensured transparency of political actions there cannot be trust in political processes.<sup>1739</sup> 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

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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,I) that might improve but not solve the transparency issue of the parliament as of 2019.

1739 BVerfGE 40, 296 Rn. 327.

of DPs.<sup>1740</sup> 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.<sup>1741</sup> Therefore, the DPOs take a "detour" through the public<sup>1742</sup> 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.<sup>1743</sup> Sabine Ruß, instead, finds that ensuring the presence of the particular interest group is a precondition for political success.<sup>1744</sup> 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<sup>1745</sup> 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-

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<sup>1740</sup> BVerfG, Beschluss des Ersten Senats vom 16. Dezember 2021 – 1 BvR 1541/20 -, Rn. 75.

<sup>1741</sup> Bauer, 2015: 273–293.

<sup>1742</sup> Hackenbroch, 1998; Roos, 2000; Vowe, 2007.

<sup>1743</sup> Lipsky, 2014; Bernardi/Bischof/Wouters, 2020; Mongiello, 2016; Oehmer, 2014.

<sup>1744</sup> Ruß, 2009; See also, Walgrave/Vliegenthart, 2012; Gillion, 2013; Aleman, 2015; Brewer, 2018.

<sup>1745</sup> 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.<sup>1746</sup> 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.<sup>1747</sup>

The Länder-level DPOs were completely left out from the shadow reporting processes.<sup>1748</sup> The federal-level umbrella DPOs explained this approach by insufficient professionalism of the Länder-level DPOs<sup>1749</sup> 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."<sup>1750</sup>

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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 Ausschuss 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,<sup>1751</sup> regular consultation meetings.<sup>1752</sup> 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"<sup>1753</sup> 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.<sup>1754</sup>

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.<sup>1755</sup> 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)".<sup>1756</sup> 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

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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<sup>1757</sup> inclusive of all governmental levels.<sup>1758</sup>

### 3.1.3 Protecting the rights of DPs

In Germany, the right of individuals to access justice is guaranteed by the Constitutional Law<sup>1759</sup> and confirmed in the rules of procedure of administrative and social courts<sup>1760</sup> 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.<sup>1761</sup> This had to ensure the elimination of popular lawsuits.<sup>1762</sup> In initiating administrative and Social Law proceedings, disabled individuals might be represented by the DPOs,<sup>1763</sup> where they are members. Although the disabled individuals have to bear the cost risk of an administrative or Civil Law proceedings<sup>1764</sup> 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<sup>1765</sup> "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".<sup>1766</sup> While the Directive

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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,<sup>1767</sup> but do not comprise the private sector. Most particularly, the §14<sup>1768</sup> 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<sup>1769</sup> and the disability equality laws of the federal states,<sup>1770</sup> 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)<sup>1771</sup> 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,<sup>1772</sup> the DPO litigation instrument has been used only a few times.<sup>1773</sup> The reasons for limited use are diverse. Some scholars, for ex-

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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.<sup>1774</sup> 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.<sup>1775</sup> 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.<sup>1776</sup> 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.<sup>1777</sup>

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

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§ 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/Rodriguez Cordero, 2006: 325–51.

action.<sup>1778</sup> 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 lies 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.<sup>1779</sup> Some federal states even limit the scope of protection to only state organs by leaving out municipal governments,<sup>1780</sup> 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.<sup>1781</sup>

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.<sup>1782</sup>

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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. II. 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.<sup>1783</sup> 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<sup>1784</sup> 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.<sup>1785</sup> 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<sup>1786</sup> to introduce the low-threshold conflict resolution instrument (Schlichtungsstelle)<sup>1787</sup> assigned to the Federal Commissioner for DPs and made it mandatory before the class action lawsuit.<sup>1788</sup> Both disabled individuals and organizations representing the interests of DPs<sup>1789</sup> 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.<sup>1790</sup> 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.<sup>1791</sup>

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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.<sup>1792</sup> 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.<sup>1793</sup> 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.<sup>1794</sup> 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.<sup>1795</sup> The actions applied by the Austrian DPOs to achieve their aims, however, do not, significantly, differ

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<sup>1792</sup> 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).

<sup>1793</sup> E.g., BgleiSV, as amended on 2.06.2021 by BGBl. I S. 1387, §8 (5).

<sup>1794</sup> E.g., Statuten- Österreichischer Gehörlosenbund, §2.

<sup>1795</sup> 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.<sup>1796</sup> 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.<sup>1797</sup> 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 inter-ministerial and parliamentary coordination body for the implementation of the CPRD.<sup>1798</sup> 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.<sup>1799</sup> While this body evidently contributes to the mutual exchange of relevant parties, its effectiveness might be put under question: in the first place, it is quorum even when less than half of the invited members are present.<sup>1800</sup> 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,<sup>1801</sup> which in view

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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<sup>1802</sup> 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 legitimization of decisions made.<sup>1803</sup> Third, its membership instead of being open to diverse DPOs<sup>1804</sup> is limited to nomination by the umbrella organization<sup>1805</sup> and approval of the responsible federal minister<sup>1806</sup> 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.<sup>1807</sup> 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,<sup>1808</sup> whereas the SPs have to ensure the effective participation of disabled migrants and similar groups.<sup>1809</sup>

With the adoption of Tyrolean Participation Law, the provincial government established a Participation Board that functions as an advisory mechanism.<sup>1810</sup> 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.<sup>1811</sup> As in the Federal Disability Advisory Board, the Tyrolean Participation Council, does not ensure the equal balance of affected persons.<sup>1812</sup> 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

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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<sup>1813</sup> 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.<sup>1814</sup>

### 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<sup>1815</sup> and ordinance of the state government on the rules of procedure of the Tyroleanstate government,<sup>1816</sup> 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.<sup>1817</sup> Nevertheless, this instrument neither includes accessibility provisions nor is "known to or applied by the public servants"<sup>1818</sup> 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.<sup>1819</sup> The involvement of the latter can, in some cases, be limited

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<sup>1813</sup> 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.

<sup>1814</sup> Bildungsdirektionen-Einrichtungsgesetz, as adopted by BGBl. I Nr. 138/2017, §20.

<sup>1815</sup> See Bundesministeriengesetz, as amended by BGBl. I Nr. 98/2022.

<sup>1816</sup> See Verordnung der Landesregierung vom 30. März 1999 über die Geschäftsordnung der Tiroler Landesregierung, as amended by LGBl. Nr. 73/2021.

<sup>1817</sup> For English language version of this instrument see: Standards for public participation 2008 at: [https://unece.org/fileadmin/DAM/env/pp/pjpeg/Austria\\_pp\\_standards.pdf](https://unece.org/fileadmin/DAM/env/pp/pjpeg/Austria_pp_standards.pdf) (Last accessed on 01.07.2022).

<sup>1818</sup> Lamplmayr/Nachtschatt, 2016: 39f.

<sup>1819</sup> 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:<sup>1820</sup> 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,<sup>1821</sup> 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.<sup>1822</sup> 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".<sup>1823</sup>

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<sup>1824</sup> nor takes place on an equal footing.<sup>1825</sup> 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".<sup>1826</sup>

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).<sup>1827</sup> 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,

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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<sup>1828</sup> 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,<sup>1829</sup> which defines the DPO participation as an important principle.<sup>1830</sup>

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.<sup>1831</sup> 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.<sup>1832</sup> Only in 2016 the Tyroleangovernment opted for broad DPO participation by using method of legislative theatre during the development of the TyroleanParticipation Law.<sup>1833</sup> 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.<sup>1834</sup> Missing human rights awareness and professionalization might be explained by inexistent human rights oriented financial resources for the political work of DPOs.<sup>1835</sup> 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](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.<sup>1836</sup> The opinion of the TMC, nevertheless, has not been taken into account in amending the Tyrolean Rehabilitation 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<sup>1837</sup> e.g., building and construction, education and employment,<sup>1838</sup> 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.<sup>1839</sup>

In reviewing the Tyrolean draft-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 Tyrolean School Organization Law (Schulorganisationsgesetz) in 1991.<sup>1840</sup> Their participation has not been ensured also in subsequent amendments of the law.<sup>1841</sup> Instead, in 2018 the Tyrolean government invited the so-called "umbrella DPO" to comment on the final draft of the Tyrolean School Organization Law.<sup>1842</sup>

Although the political participation opportunity of Austrian DPOs is limited in developing direct policies and almost nonexistent in indirect policy

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1836 Stellungnahme und Empfehlungen zum Reha-Gesetz-NEU des Tiroler Moniterringausschusses 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](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.sli.o.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.<sup>1843</sup> 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.<sup>1844</sup> On the other hand, the dependent and service provider-based financing situation of DPOs<sup>1845</sup> 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)<sup>1846</sup> make up the primary legislative organs of Austria.<sup>1847</sup> Without the consent of these organs no bill can become a law.<sup>1848</sup> 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.<sup>1849</sup> 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.<sup>1850</sup> Evaluation procedures are

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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.<sup>1851</sup> Similar procedures have been adopted also by the provincial governments, including Tyrol.<sup>1852</sup> 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.<sup>1853</sup> 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,<sup>1854</sup> the Austrian Disability Council submitted an alternative report to the CPRD Committee in the context of the examination of Austria.<sup>1855</sup> 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.<sup>1856</sup> 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.<sup>1857</sup>

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.<sup>1858</sup> While the alternative reports address the legal and political obstacles connected with the federal structure of Austria, none of the reports show specific difficulties

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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 Ibid.: 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<sup>1859</sup> nor enjoy close cooperation with the umbrella organization.<sup>1860</sup>

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".<sup>1861</sup> However, its nomination regulation allows only a controlled participation of selected DPOs<sup>1862</sup> and explicitly excludes some disabled groups e.g., non-EU disabled migrants from participation.<sup>1863</sup> 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,<sup>1864</sup> including migrants, refugees, asylum seekers, internally displaced persons, undocumented and stateless persons.<sup>1865</sup>

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.<sup>1866</sup> Besides, the interviews with the Tyroleandisability-organizations showed that the TMC neither cooperates with the disability organizations nor ensures regular dialogue with them.<sup>1867</sup> Instead, it prefers the individual participation of DPs over DPOs.<sup>1868</sup> This might prove to be problematic as affectedness neither automatically guarantees appropriate qualifications for human-rights-based work nor ensures

1859 Third-level-interview AT/B-T 1, on 27.10.2015, Q. II; Third-level-interview AT/B-T 2, on 27.10.2015, Q. II; Third-level-interview AT/B-T 3, on 28.10.2015, Q. II.

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.<sup>1869</sup>

### 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.<sup>1870</sup> Accordingly, similar to Germany, the Austrian legal system is based on the principle of individual right to effective legal protection (subjektives Recht).<sup>1871</sup> 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.<sup>1872</sup> The proceedings before the administrative courts also envisage an individual court representation through non-state organizations.<sup>1873</sup> 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.<sup>1874</sup>

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.<sup>1875</sup> Such an instrument has not been envisaged by provincial

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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 I4.750 A/1997; see also Antonioli/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 litigation 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,<sup>1876</sup> the list of authorized bodies has been extended to the Litigation Association for the Protection of Discrimination Victims (Klagsverband) and the Disability Attorney (Behindertenanwalt).<sup>1877</sup> The amendment also allowed an action claiming the omission and elimination of discrimination based on a disability in the case of large corporations.<sup>1878</sup> 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.<sup>1879</sup> Accordingly, it does not comprise the required rights of disability organizations to political participation.<sup>1880</sup> Due to its, by and large, declaratory nature, limitation of litigation authorization, narrow applicability area and high process-cost risk,<sup>1881</sup> 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.<sup>1882</sup> 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.<sup>1883</sup> As of December 31, 2018, there were a total of 2,761 completed arbitration cases,<sup>1884</sup> 174 of which can be accessed online.<sup>1885</sup> The Tyroleangovernment also established a conciliation body addressing the

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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).

Tyrolean Participation Act (TTHG).<sup>1886</sup> 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,<sup>1887</sup> 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.<sup>1888</sup> However, the decision-making organs do not maintain, by and large, formal participation rules<sup>1889</sup> as it is required by the CPRD Committee.<sup>1890</sup> 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.<sup>1891</sup> 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.

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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.<sup>1892</sup> The interests of DPs are ensured through the Danish umbrella organization of DPs (DPOD), which appoints five representatives from its member organizations.<sup>1893</sup> 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<sup>1894</sup> of the DDC members is covered.<sup>1895</sup>

The established CM does not even ensure a systematic collaboration and/or contact with DPOs<sup>1896</sup> despite the appropriate obligations.<sup>1897</sup>

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".<sup>1898</sup> 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,

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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.<sup>1899</sup> The National Agency for IT and Learning, instead, includes no DPO representative in its work.<sup>1900</sup>

At the municipal-level, the involvement of disability organizations in advisory bodies concerning all issues affecting DPs takes place through municipal disability councils<sup>1901</sup> established after the decentralization reform of 2007.<sup>1902</sup> The municipal disability councils have no legal obligation to consider the discussed issues in the light of the CPRD.<sup>1903</sup> 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".<sup>1904</sup>

The municipal disability councils are composed of equal number of municipal council appointees and representative organizations of DPs.<sup>1905</sup> Unlike the DDC they allow membership from disability organizations/groups outside of the umbrella DPO member organizations.<sup>1906</sup> The members are not entitled to individual compensations, but expenses for the necessary disability-related reasonable accommodation<sup>1907</sup> such as sign language interpretation are covered by the municipal councils.<sup>1908</sup>

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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.<sup>1909</sup> 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".<sup>1910</sup> 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."<sup>1911</sup>

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.<sup>1912</sup> On the other hand, the tradition of institutionalized political processes ensuring advantageous position of privileged interest groups,<sup>1913</sup> 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.<sup>1914</sup>

### 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

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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.<sup>1915</sup> 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.<sup>1916</sup>

In issues concerning the interests of DPs, the partner organization of the government is the DPOD.<sup>1917</sup> 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.<sup>1918</sup> It disagreed with the conclusion of the working group, that Danish law fully complies with the CPRD provisions,<sup>1919</sup> 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.<sup>1920</sup> 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.<sup>1921</sup> 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.<sup>1922</sup> The DPOD was also unsuccessful in persuading the government to adopt

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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 vedrørende hjælp til stemmeafgivningen efterleves denne bestemmelse i Danmark.

1922 Third-level-interview DK/A 1, on 02.12.2016, Q. 1.

a National Disability Plan,<sup>1923</sup> 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".<sup>1924</sup>

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.<sup>1925</sup> However, some groups e.g., hearing impaired and learning disabled might be excluded from the consultations without explanation.<sup>1926</sup>

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).<sup>1927</sup> 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.<sup>1928</sup>

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.<sup>1929</sup>

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.<sup>1930</sup> The Danish disability organizations headed by the DPOD, expressed their collective disagreement with the reform pointing out its dangers for DPs.<sup>1931</sup> Nevertheless, the reform law has been passed,<sup>1932</sup> 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.<sup>1933</sup> 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.<sup>1934</sup> 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.<sup>1935</sup> As a result, the CPRD Committee, in its Concluding Observation on the Initial Report of Denmark,<sup>1936</sup> 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".<sup>1937</sup> 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.<sup>1938</sup> Nevertheless, the Danish government, despite the CPRD recommendation

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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,<sup>1939</sup> did not solve any of the educational issues raised by the DPOs.<sup>1940</sup> Hence, the DPOs "try to get in very early by contacting politicians to make the signed law be the right one",<sup>1941</sup> but "in 99 percent of cases they don't give a shit".<sup>1942</sup>

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<sup>1943</sup> and mainstreamed<sup>1944</sup> participation, clear time frames, accessibility of consultations, including an obligation to provide reasonable accommodation.<sup>1945</sup>

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.<sup>1946</sup> They also communicate their political agenda to politicians through publications on the web-based media.<sup>1947</sup> 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.<sup>1948</sup> 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.<sup>1949</sup>

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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.<sup>1950</sup> 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"<sup>1951</sup>

Secondly, a committee may decide to receive deputations<sup>1952</sup> during the consideration of a proposed law. Hereby, committees might plan and carry out public hearings<sup>1953</sup> involving experts, scientists, and representative of interest organizations. However, due to the fact that each committee corresponds to a ministry,<sup>1954</sup> it is more plausible that the invited experts would represent interest groups that are part of the institutional arrangements of policy-making<sup>1955</sup> than be a weapon of the weak.<sup>1956</sup>

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

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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."<sup>1957</sup> 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,<sup>1958</sup> 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<sup>1959</sup> 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,<sup>1960</sup> 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.<sup>1961</sup> 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.<sup>1962</sup> 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".<sup>1963</sup> In considering the requirement of the

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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,<sup>1964</sup> full and regular<sup>1965</sup> 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.<sup>1966</sup> Furthermore, it should be noted as well that the designated monitoring actors, despite their obligation to maintain accessibility,<sup>1967</sup> 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,<sup>1968</sup> it did not ensure the required monitoring structures<sup>1969</sup> at the municipal-level.<sup>1970</sup> 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,<sup>1971</sup> 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.<sup>1972</sup>

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

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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 Ivanya/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 summary 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.<sup>1973</sup>

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.<sup>1974</sup> 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.<sup>1975</sup>

### 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.<sup>1976</sup> However, the complainant's should first undergo quasi-judicial proceedings maintained by the Danish administrative bodies.<sup>1977</sup> Thereby, individuals might be entitled

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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 Psykiatrisbrugere, 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)<sup>1978</sup> or private legal aid offices (Rets hjælpskontorer),<sup>1979</sup> 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).<sup>1980</sup> The right to subsidised legal aid in the steps II and III is subject to proven financial need.<sup>1981</sup>

The quasi-judicial administrative bodies exist in almost all policy fields, including social and antidiscrimination e.g., Board of Equal Treatment (Ligebehandlingsnævnet).<sup>1982</sup> The explicit representation of DPs in this body is not ensured.<sup>1983</sup> There are also two complaint boards for extensive special needs education.<sup>1984</sup> 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)<sup>1985</sup> and other strong interest groups e.g., unions of teachers and school principals.<sup>1986</sup> 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.<sup>1987</sup> 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

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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<sup>1988</sup> to enable the much-needed legal aid<sup>1989</sup> in the extrajudicial proceedings.<sup>1990</sup> However, some of them started to provide informal legal advice to their member in these processes.<sup>1991</sup>

Individuals also have a right to file a complaint before the domestic courts.<sup>1992</sup> If an individual has a proven chance of winning the case, he/she might receive public funding.<sup>1993</sup>

In 2008, the Danish government introduced the new capital in the judicial Procedure Act allowing class action lawsuits (Gruppesøgsmål).<sup>1994</sup> This opened an opportunity to initiate collective litigation against violations concerning Civil Law cases by appointing a group representative, which might be an association.<sup>1995</sup> The representative of the group must provide security for arising legal costs.<sup>1996</sup> If the applicant can prove success in the case, the process costs could be covered by public funding.<sup>1997</sup> Despite the limited political opportunities to influence the legislative processes, Danish DPOs, unlike other Scandinavian states e.g. Sweden,<sup>1998</sup> do not use strategic litigation to promote the implementation of the rights of DPs.<sup>1999</sup>

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.<sup>2000</sup> The answers of interviewed national DPO representatives concerning their actions to promote the implementation of the CPRD, left the

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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.<sup>2001</sup>

The disinterest of Danish DPOs in strategic litigation might also be conditioned by unclear definition for proof of success<sup>2002</sup> 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.<sup>2003</sup> Accordingly, the legal possibility of DPOs to complain against inaccessible political participation processes as it is required by the CPRD Committee<sup>2004</sup> is constrained.

However, the study of the legal and political structures<sup>2005</sup> leave no reason to doubt that the corporatist political culture of Scandinavian states,<sup>2006</sup> where select interest groups participate in processes of policy making and implementation based on compromise and consensus,<sup>2007</sup> 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,<sup>2008</sup> offer conditions under which a rights revolution is unlikely to occur.<sup>2009</sup>

#### *4. Comparative Evaluation*

Comparative studies on non-governmental organizations have been carried out first starting from mid-1980s.<sup>2010</sup> Research on disability-related organizations were in minority and focused on individual states.<sup>2011</sup> The growing

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- 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.<sup>2012</sup> 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<sup>2013</sup> 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

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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 Willem, 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.<sup>2014</sup> 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.<sup>2015</sup> 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 legitimization 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-

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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<sup>2016</sup>. 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'<sup>2017</sup> 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-

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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,<sup>2018</sup> ensures not only the similar situation, but also leads to concentration and centralization of organizations.<sup>2019</sup> 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.<sup>2020</sup>

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<sup>2021</sup> 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.

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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.<sup>2022</sup> 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.<sup>2023</sup> Financial resources, hereby, play an important role in capacity building<sup>2024</sup> and acquiring working location, expert staff and sustained functionality.<sup>2025</sup> In the case of representative organizations of DPs, the financial support should cover reasonable accommodation<sup>2026</sup> for ensuring equal access of DPs to deliberative and decision-making processes.<sup>2027</sup>

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.<sup>2028</sup> 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.<sup>2029</sup> 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

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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.<sup>2030</sup> The SPs also provide legally stipulated financial support, but the overwhelming part of these is built up around the service providing logic.<sup>2031</sup> 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,<sup>2032</sup> I argue that the amount and type of funding plays an important role in professionalization, agenda setting and identity choice of the DPOs.

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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.<sup>2033</sup> Explicit reference to participatory governance can be found also in EU Primary Law.<sup>2034</sup>

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.<sup>2035</sup> Hereby, public authorities should give due consideration and priority<sup>2036</sup> to DPOs in all stages of decision-making processes<sup>2037</sup> across all governmental levels without any limitations or exceptions.<sup>2038</sup> 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.<sup>2039</sup> In including and consulting the DPOs, decision-making organs should ensure the accessibility and transparency of these processes.<sup>2040</sup>

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".

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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.<sup>2041</sup>

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.<sup>2042</sup> 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,<sup>2043</sup> includes one or two

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2041 Winter/Willems, 2007; Winter/Willems, 2009; Rehder et al., 2009; Reutter/Rüters, 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,<sup>2044</sup> 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.

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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<sup>2045</sup>, and number of substantive questions asked.<sup>2046</sup> 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.<sup>2047</sup> The policy-makers try to achieve broad policy legitimization 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

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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.<sup>2048</sup>

The strategy of selective cooperation<sup>2049</sup> 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:<sup>2050</sup> 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,<sup>2051</sup> as well as missing regulations ensuring reasonable accommodations.<sup>2052</sup> 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 Tyrolean Participation 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

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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<sup>2053</sup> by having access to all working stages and governmental levels in a manner that is accessible to all groups of DPs.<sup>2054</sup>

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

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2053 CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39<sup>E</sup>; 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.<sup>2055</sup> Similarly, in developing the only and much criticised Danish National Action Plan,<sup>2056</sup> 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.

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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.<sup>2057</sup> Public pressure gains importance when the negotiation path failed or the institutional channels of influence were clogged.<sup>2058</sup> 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.<sup>2059</sup> 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".<sup>2060</sup> Consequently, further research is needed to evaluate the access to and use of media and

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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<sup>2061</sup> and became the indivisible part of European states constitutions<sup>2062</sup> and EU Primary<sup>2063</sup> and Secondary Laws.<sup>2064</sup>

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".<sup>2065</sup> 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.<sup>2066</sup> Most particularly, it, in underlining the provision of reasonable

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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.

## VI. Organizations of DPs

accommodation and general accessibility of the legal system,<sup>2067</sup> 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,<sup>2068</sup> especially through their organizations“ at all levels of decision-making.<sup>2069</sup>

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.<sup>2070</sup> 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.<sup>2071</sup>

Some scholars explain this by resource insufficiency.<sup>2072</sup> 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.<sup>2073</sup> 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

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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<sup>2074</sup>. 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<sup>2075</sup>. 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-levels. It, however, limits the access to these instruments to only organizations that have met the registration requirements.<sup>2076</sup> 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).<sup>2077</sup> 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.<sup>2078</sup> Besides, Danish legal and political traditions do not create a

2074 Vanhala, 2011.

2075 Hilson, 2002; Andersen, 2005); Wilson/Rodriguez 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<sup>2079</sup> comprising accessibility of legal buildings and proceedings,<sup>2080</sup> as well as, the promotion of the active involvement and participation of DPs in the administration of justice.<sup>2081</sup> 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.<sup>2082</sup> These observations are confirmed also by the case law of the CPRD Committee<sup>2083</sup> and ECTHR.<sup>2084</sup> Thus, it is not surprising that the 37.8 % of DPOs surveyed in the framework of the German Federal

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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.<sup>2085</sup>

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.<sup>2086</sup> The majority of Austrian Länder limit the scope of addressees by leaving out non-Austrian citizens.<sup>2087</sup> Besides, the scope of protection in the field of work and employment allow too many exceptions.<sup>2088</sup> 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.<sup>2089</sup> 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<sup>2090</sup> 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.<sup>2091</sup> Redress and reparation include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>2092</sup> Both German and Austrian disability equality

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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)<sup>2093</sup> 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.<sup>2094</sup> The same is true for Austria.<sup>2095</sup> 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.<sup>2096</sup>

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.<sup>2097</sup> 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,<sup>2098</sup> 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

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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](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<sup>2099</sup> 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."<sup>2100</sup> 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.<sup>2101</sup> 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.<sup>2102</sup>

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.<sup>2103</sup> Two German Länder, instead, limit the scope of class action lawsuits to Länder-level organs by leaving out municipal governments,<sup>2104</sup> 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

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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.

