

## VII. Conclusion

In the present chapter, I summarise the central findings of this research work. The conspectus is structured into posed research questions. Each of these are considered in the light of the hypotheses formulated in the chapter III (section 3.3).

### *1. How is the CPRD incorporated in the domestic law and how can this type of incorporation affect the implementation of the Convention?*

The examination of incorporation rules within the selected Civil Law systems with dualistic approach showed considerable differences in legal and political traditions of domesticating International Law. For instance, in ratifying the CPRD and its Opt-Protocol, the German federal government followed the rules of Basic Law and the Lindau Agreement by obtaining the approval of federal states. As a result, the Ratification Law obtained the status of a federal statute and became binding on state organs, including the courts. The latter consider the CPRD "in the framework of accepted methods of interpretation". Later, the federal government adopted the federal Participation Law (BTHG) to give effect to the provisions of the CPRD within the federal laws. The 16 federal states, in accordance with the principle of federal loyalty, amended selected laws to enact the provisions of the CPRD under their exclusive legislative powers. The amended laws, especially in the field of education and accessibility, in addition to persisting differences fail in guaranteeing equal right to inclusive education. Accordingly, courts do not recognise the direct effect of the CPRD, and point out the provision of progressive implementation of Art. 24 CPRD.

Austria also carried out the ratification procedure in accordance with its Constitutional Law and legislative organs. The Ratification Law contained a statement, according to which the Convention shall be fulfilled by the enactment of laws. This means that the CPRD has no direct effect on the domestic courts and administrative acts until the government adopts appropriate implementation Laws. In over 12 years of ratification, the federal government took steps to incorporate CPRD provisions concerning Guardianship Law, whereas other provisions e.g. the right to inclusive education

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remain unaddressed. Provinces that played an insignificant role in the ratification process amended their disability laws. However, amendments not only preserved the inconsistencies between the provinces but also were rather symbolic than factual.

The Danish government, in ratifying the CPRD, claimed that the domestic laws fully comply with the CPRD. As a result, it, as the majority of human rights conventions, has not been incorporated into domestic law and has to be implemented in accordance with the method of establishing norm harmony. Similar approach has been chosen for the Opt-Protocol to the CPRD. Accordingly, their implementation depends on the will of the central government as it decides on the guidelines of compliance measures. Courts, in accordance with Danish legal tradition, follow this line and do not challenge it as the CPRD and its Opt-Protocol cannot be applied directly by the courts and other state organs unless incorporated by the legislator. Thus, the CPRD and its Opt-Protocol is to be observed by the state organs, but their actions are guided by and based, exclusively, on national laws. To this end, in over 12 years of ratification, Denmark took a few legislative steps to implement the CPRD. These, nevertheless, did not even resolve the inconsistent administration of disability policies at the municipal level.

The findings above show that the states with similar legal systems and doctrine of International Law application, maintain divergent legal and political methods of domestication. These help to control the extent of International Treaties effects and avoid unwanted influence on domestic law.

Dissimilarities could be observed even between and within states with similar modes of government e.g., Germany and Austria. In these cases, the constituent unit governments within the SPs should take domestication measures within their exclusive legislative powers, but they decide on the extent and form of these measures. This, as it was assumed, if not hinders than at least slows down the successful and consistent multi-level implementation of International Treaties within the SPs.

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

#### 2.1 FPs and CMs

The exploration into the resources of FPs and CMs laid out significant differences both between the examined SPs and within a SP: since their

designation, Austrian and Danish FPs/CMs did not receive resources for discharging their functions. The unit of federal FP of Germany, instead, has been provided with adequate resources: while the resources were sufficient for awareness-raising activities, the vertical and horizontal level coordination definitely requires more human resources. The Federal State of Hesse invested in the establishment of the FP in the beginning, but CPRD-related funding has been reduced with the merge of the FP with the disability-focused department of Social Ministry. The Thuringian FP has not been equipped with any CPRD-related resources.

The CPRD drafters in general and the CPRD Committee in particular underline the adequate and comprehensive funding of FPs and CMs. The research results summarised above point out dissimilar funding approaches between the Federal Government of Germany and federal/national governments of SPs with both similar and dissimilar modes of governments, namely Austria and Denmark. Funding arrangements of German and Austrian *Länder*-level governments were, largely, convergent. Accordingly, I argue that the differing financial situation of the German federal FP can be explained by the fact that it is the only independent unit within the ministry, whereas governmental units that are tasked with relevant assignments carry out the responsibilities of a FP in Denmark, Austria and federal states of Germany. This in turn confirms the relevance of the domestication type taken by the governments of SPs.

## 2.2 National Monitoring Frameworks

The examination of infrastructural arrangements of MFs showed similarities between German and Danish MFs. Both have adequate human and financial resources for carrying out their mandate at the federal/national-level. In contrast, the Austrian Federal Monitoring Commission got legally regulated state funding covering the remuneration of its staff only in the beginning of 2018. The financial regulation does not provide for funding covering its activities.

Convergence in all examined SPs could be observed in inexistent or incomprehensive funding of the state/municipal level MFs: at this governmental level, funding is either unavailable, as it is in Austria and Denmark or it is provided only for a few federal states, as it is in Germany.

In accordance with the Paris Principles and the CPRD Committee, all designated or established MFs should have adequate infrastructure appro-

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priate for the given organizational structure of a SP. The findings above outlined different funding approaches between federal governments of SPs with similar modes of governments, namely Germany and Austria. The Danish national-level funding approach converges with that of the German Federal Government. In considering the fact that from the examined SPs only the Austrian Federal Government established a new MC composed of CSOs, I explain different outcomes by the neutral status and strength of establishment laws of GIHR, DIHR and the Danish Parliamentary Ombudsman.

At the Länder-level, instead, I could observe sufficient convergence between Germany and Austria. With the exception of permanent funding of two federal states, the other 14 federal states of Germany, similar to nine Austrian provinces, do not ensure adequate, permanent or all-comprising funding of monitoring activities. Denmark, despite its highly decentralised structure, factually did not adopt monitoring measures at the municipal level. This convergence is another vivid result of the chosen domestication approach of constituent unit governments of SPs.

### 2.3 Organizations of DPs

The study of funding opportunities of CSOs in the examined SPs revealed that they are exempt from taxes. This is, certainly, beneficial for their sustained operation. The CSOs also receive legally regulated state funding in addition to membership contributions. However, the overwhelming part of these is based on the service providing logic. Accordingly, organizations acting as service providers, in other words 'selected partners' of the state, have more chances to get regular funding than the human-rights-based small DPOs. The amount of state funding, moreover, decreases or even amounts to zero at the governmental level. Besides, this type of funding does not contain the provision of reasonable accommodation. Among examined SPs, only selected German federal-level DPOs have an opportunity to receive governmental funding for their political participation, including reasonable accommodation.

The Concluding Observations and General Comment No. 7 adopted by the CPRD Committee stress the importance of state funding for sustained operation of DPOs, especially with regard to political participation. The results presented above show, overall, convergent funding approaches across the examined SPs. Only the Federal Government of Germany intro-

*3. How is the interplay within and between the actors under the Art. 33 CPRD organized*

duced the DPO funding for political participation with the CPRD implementation law (BTHG). This, on the one hand, reveals the strength of federal-level DPOs. On the other hand, it supports the assumption that the successful application of International Treaties depends on legal traditions and methods of multi-level domestication.

*3. How is the interplay within and between the actors under the Art. 33 CPRD organized and what are the roles of these actors in the implementation process of the Convention at the vertical and horizontal governmental levels?*

The research into the multi-level structures and cross-sectoral cooperations and actions of indicated actors, showed, in the first place, that they are not always adjusted to or have sufficient competence/power to discharge their functions within the multi-level structures of examined SPs.

For instance, Germany and Austria designated FPs and CMs at each governmental level with legislative powers. However, their levels are the lowest in the ministerial hierarchy. Accordingly, they do not have the appropriate competences to address law-making processes at the horizontal governmental level. The vertical-level cooperation between the federal and Länder-level FPs and CMs take place only within the framework of their competencies. Both Germany and Austria do not maintain municipal-level FPs. The tasks of the Danish FP and CM are assigned to the Social Ministry. This means that it is on the same hierarchical level as other ministries. Nevertheless, it, unlike the Ministry of Finance, neither has direct competence to access and/or influence law-making processes of other ministries, nor coordinate the CPRD implementation with 98 municipalities. Thus, all examined SPs, independent of their mode of government, opted more or less for similar arrangements. This affects the successful implementation of the CPRD, especially in policy fields falling under the exclusive or shared legislative powers of federal states/provinces and administrative powers of Danish municipalities.

The observed state/municipal level weakness or inexistence of Monitoring Mechanisms and DPOs further accentuate the results caused by the insufficient performance of state-level FPs and CMs.

For example, The Federal Republic of Germany, similar to Denmark, designated its Human Rights Institution as the Monitoring Body. It has regular access to and cooperation with the federal FP, CM and the Bundestag.

I could not discern its active participation in federal-level indirect policy-making processes. In the same vein, its formal cooperation with and permanent functioning has not been ensured in the majority of federal states. I observed a similar monitoring gap in Danish municipalities.

The federal Republic of Austria established the financially dependent FMC composed of CSOs, filtered DPOs and FP. The MCs designated by the provinces are even more dependent on their functioning and actions. Moreover, not all of them maintain formal cooperations with DPOs.

The examination of DPOs revealed that Germany has well-financed federal-level DPOs. These not only successfully cooperate with the designated federal FP, CM and NMB, but also use almost every possible opportunity to influence the federal-level political processes despite existing practices of selective partnerships. Underfinanced state-level DPOs, instead, neither possess sufficient professionalism to build effective political alliances nor have comprehensively accessible, regular and transparent access to designated state-level FPs. Their cooperation with the NMB has not been ensured.

Austrian and Danish DPOs also attempt to maintain multi-level structures. However, only the privileged umbrella organizations of DPs, namely the Austrian Disability Council and DPOD and their member organizations have formal and regular access to FPs, CMs and MFs. Their cooperation and participation opportunities are even more limited at the provincial and municipal governmental levels.

The findings above clearly show that only German federal-level actors stipulated by the Art. 33 CPRD have the required capacity to perform their responsibilities. Accordingly, formal and active cooperation has been decisive for the implementation of the CPRD provisions concerning direct policy fields. Close cooperation and joint actions could not be identified in indirect policy fields and at the state level, which explains the poor or inconsistent horizontal-level implementation of the CPRD. The impact becomes particularly visible from a vertical perspective. The cross-country multi-level evaluation of remaining selected SPs also confirm the assumption that the effective implementation of the CPRD is dependent on the mutual, regular, vertical and horizontal cooperation and coordination within and between the governmental bodies and non-governmental actors, such as the Independent Monitoring Mechanisms and DPOs.