

Law and Policy for Persons with Disabilities in Germany

– Steps Towards Adaptation to the UN CRPD

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Abstract

After a look at the constitutional foundations of the law and policy for persons with impairments as embodied in the ‘social state principle’ and in the basic right prohibiting discrimination on account of a disability, a description is given of the classic legislation governing social benefits on behalf of disabled persons as set out in the German Social Code of 2001. The main groups of benefits are those providing for medical rehabilitation, participation in working life, maintenance and other forms of support, as well as for participation in community and cultural life. On the side of the benefit providers, Germany’s traditionally ‘structured system’ encompasses various branches of social insurance along with social assistance and social compensation, thus entailing complexity and problems of coordination. The next logical and historical step followed under the General Act on Equal Treatment with the prohibition of discrimination on account of a disability in regard to working life, to standardized bulk business under civil law as well as to private-law insurance. The aim of the Act on Equal Opportunities for Persons with Disabilities, in the subsequent phase, was to enshrine positive action in the public sector for the comprehensive establishment of accessibility. Government agencies were obliged to adopt the necessary measures; in the societal realm, a procedure for negotiating ‘target agreements’ between companies and disability associations has been instituted. With Germany’s ratification of the UN CRPD in 2009, the Federal Participation Act now seeks to uncouple the law and policy for disabled persons from the former welfare system and to strengthen the participation and self-determination of persons with impairments. Benefits are to be adjusted to personal needs and provided on a person-centered basis. Major new benefits include the introduction of personal assistance and extended possibilities for transition to the general labor market. Moreover, entitled persons should now find it easier to claim benefits. To politically flank the novel statutory regulations, comprehensive National Action Plans are to be drawn up and implemented by all federal ministries on a regular basis.

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1. Constitutional Law

The constitutional norms of the Federal Republic of Germany, enshrined in the Basic Law (cf. BLFRG), possess varying levels of abstraction. On the level of ‘state objectives’ denoting the global fundamental

norms, the Basic Law proclaims for Germany the ‘social state principle’ alongside the principles of democracy, the rule of law and federalism (cf. BLFRG: Arts. 20, 28). These abstract provisions thus do not specify any concrete actions, but codify a dimension and objective of state activity. And so, the social consequences of state activity must always be kept in mind, especially by the legislature and the judiciary, in the quest to achieve social balance.

On the basic rights level, a pertinent anti-discrimination provision was first incorporated into constitutional law in 1994: “No person shall be disfavored because of disability” (BLFRG: Art. 3(3)). The basic rights set out in the Basic Law, bind “the legislature, the executive and the judiciary as directly applicable law” (BLFRG: Art. 1(3)). In the relationship of citizens among themselves, these rights do not apply directly, but can permeate civil-law relations through general clauses such as ‘public policy’ or ‘good faith’. The above clause on disability diverges from the classic principle of equality insofar as it only prohibits disadvantage, but does not preclude better treatment as, for example, in the case of dismissal protection under labor law. The underlying idea is that only through legal better treatment can real equal treatment take place. On the other hand, the norm goes only so far as to prohibit discrimination on account of disability as such; the consequences of a disability, however, can be considered in terms of general regulations – if objectively required.

2. Social Code (Books I, XII and IX)

The General Part of the Social Code (cf. SGB I) lists ‘social rights’ at the outset in Sections 3–10. Under the heading “Participation of Persons with Disabilities”, Section 10, regardless of the cause of disability and to promote their self-determination and equal participation, lays down the right to assistance required, *inter alia*:

- To influence the disability and its consequences as positively as possible;
- To minimize restrictions on employment or the need for care;
- To safeguard a place in working life in accordance with personal inclinations and capabilities;
- To foster personal development as a whole and to enable or facilitate participation in the life of society as well as an independent and self-determined lifestyle.

The regulation is formulated with a view forwards or towards a desired final condition, irrespective of the past and any possible causes for the disability.

If a particular benefit provider such as health or pension insurance or the Federal Employment Agency is not responsible, the general social security system “Social Assistance” (SGB XII) with its “Integration Aid for Persons with Disabilities” (Chapter 6) is obliged to render its benefits. Integration into society above all comprises aid to promote participation in community life, to enable occupational or other appropriate forms of activity as well as to make persons with disabilities as independent as possible of the need for nursing care (cf. SGB XII: § 53(3)).

Early on, Book IX of the Social Code entitled “Rehabilitation and Participation of Persons with Disabilities” (cf. SGB IX; BMAS 2017a) provided a legal definition in Section 2 whereby persons are “disabled if their bodily functions, intellectual abilities or mental health are highly likely to deviate

for more than six months from the state that is typical of their age, thus impairing their participation in society”. This provision likewise conforms to the principle of finality and is no longer primarily oriented towards deficits. Worthy of critical note, however, is that owing to the requirement of a condition that is untypical of age to merit recognition as a disability, elderly persons will by definition not qualify as being disabled, even if their participation in society is severely impaired. This constitutes a blatant case of age discrimination that refers the needy elderly to the sole receipt of (lower) benefits from long-term care insurance instead of meeting the criteria for the more comprehensive coverage of disability consequences.

Within the scope of benefits for participation, the medical rehabilitation assistance (cf. SGB IX: Chapter 4) rendered by physicians and other healthcare professionals aims to avert, eliminate, alleviate or compensate for a disability, chronic illness or nursing-care needs; existing functions and capabilities are to be supported and developed. The corresponding benefits include medical diagnostics and therapy as well as remedies and aids.

Depending on requirements, early detection and intervention come at the beginning – either in nearby interdisciplinary specialized institutions (cf. FrühV: § 3), or in transregional “socio-pediatric centers” (SGB V: § 119) for in-depth diagnosis and treatment under permanent medical supervision. This is followed, as the intended rule, by the integrated care of children with and without disabilities in kindergartens, the structure of which, however, is non-compulsory as regards beneficiaries; some parents prefer individual (segregated) advancement. Subsequently, a likewise integrated form of school education is striven for, if possible, in accordance with the regulations of the respective Land authorities, or specialized support is offered in special-needs schools emphasizing learning, visual, hearing or developmental skills and the like. At the end of schooling, the respective schools and employment agencies cooperate in providing well-founded vocational guidance. The Framework Act for Higher Education (cf. HRG: § 2(4)) lays down the obligation to consider the special needs of students with disabilities.

Participation in working life is deemed important because employment conveys contact and exchange with others, fosters the recognition and improvement of personal capabilities, contributes to broader economic independence, strengthens self-confidence and is thus as a whole conducive to social integration. The corresponding social benefits include assistance for vocational education and training and/or vocational adjustment, say, in vocational training and promotion centers (cf. SGB IX: § 35), as well as for obtaining and maintaining socially insured jobs on the general labor market within the scope of “supported employment” (cf. SGB IX: § 38a). Apart from the benefits awarded to eligible persons with disabilities, allowances are also provided to employers for on-the-job training and/or integration as well as for technical and personnel working aids in the company (cf. SGB IX: § 34).

Apart from some of the more specialized benefits cited thus far, there are also those for the basic improvement of disabled persons’ living circumstances, such as assistance in acquiring practical knowledge and skills, in promoting contact and communication with the social environment, in obtaining and furnishing a home to accommodate special needs, or in participating in community and cultural life (cf. SGB IX: §§ 55 et seqq.).

Part 2 of Book IX of the Social Code provides “Special Regulations for the Participation of Persons with Severe Disabilities” (SGB IX: §§ 68 et seqq.). The term severe disability applies to a degree of

functional impairment of at least 50 percent. The core aim is to promote the integration of severely disabled persons into working life. To that end, employers must undertake to fill five percent of positions with such persons. This placement obligation is not legally enforceable; if the quota is not met, a compensatory charge of €125-320 per month is levied, depending on the degree of non-fulfillment. The compensatory charge is administered by the integration offices (cf. SGB IX: § 102) and is used to promote the employment of persons with severe disabilities. Benefits to eligible employees include the defrayal of costs for training courses or learning material, technical work aids and personnel work assistance as well as assistance in converting automobiles needed to reach the workplace. For the most part, a local offer of specialist integration services is in place nationwide (cf. SGB IX: § 109). These services render ongoing support to government agencies in counseling persons with severe disabilities prior to and after taking up employment, in conducting job searches and application procedures, as well as with a view to enhancing their mental and social stabilization. An instrument for safeguarding and maintaining the jobs of severely disabled persons is special protection against dismissal. After six months of employment, the employer can only give notice with the consent of the integration office.

Persons who despite these tools cannot be integrated into the general labor market can find employment in sheltered workshops for persons with disabilities (cf. SGB IX: §§ 136 et seqq.) if they are able to perform a minimum of economically useful work. The work is of a value-creating, productive nature and thus goes beyond rehabilitative ergotherapy. Disabled persons in sheltered workshops enter into an employee-like legal relationship, are subject to health, long-term care, pension and accident insurance, and are entitled to wages in line with the work performed, flanked by a stimulatory “employment promotion allowance” (SGB IX: § 43). Persons who are unable to perform the required minimum of economically useful work or for whom such achievement would entail highly complex supervision and care are attended to and advanced in individual groups – if possible, under the roof of a sheltered workshop (cf. SGB IX: § 136(3)).

As to the structures and implementary elements for the provision of the diverse benefits and services, these are not rendered from a single source. Germany has a historically evolved ‘structured system’ of benefit provision (cf. SGB IX: § 6), consisting of health, pension, accident and unemployment insurance, along with the institutions of social assistance or basic security for jobseekers respectively, youth welfare services, as well as social compensation for victims of war, the military, crime and vaccination (cf. BMAS 2017b; - 2017c).

To mitigate the disadvantages posed by the multiplicity of benefit providers in performing their tasks, the law specifies unifications and additional commitments on the part of these institutions. For example, there is a central Federal Working Group on Rehabilitation, in which “joint recommendations” (SGB IX: § 13) by the rehabilitation providers are drawn up and resolved. Regarding the frequent problem of finding the responsible benefit provider (cf. SGB IX: § 4), the rule is that the benefit institution addressed must within two weeks decide whether it is competent and, if not, immediately forward the respective application to the presumably correct addressee. Benefit provision or preliminary needs assessment by way of an expertise must ensue within three weeks. These time limits are not unenforceable; if they are not met, claimants themselves can, after having set an unsuccessful deadline, procure the benefit and

demand reimbursement of the necessary outlay from the benefit provider. The claimant nevertheless bears the perhaps daunting risk of exceeding the bounds of economy and thrift (cf. SGB IX: § 15).

Rules that enable persons with disabilities to lead a more self-determined life include the right of request and choice for justified concerns (cf. SGB IX: § 9) as well as the option of applying for a financial “personal budget” (SGB IX: § 17) on one’s own responsibility, rather than for a number of diverse, often cross-institutional benefits in kind. Beneficiaries thus change sides from being passive recipients of aid to experts on their own account, thus acting as an organizing contractual partner towards a supplier selected by him in the open market.

For the judicial enforcement of statutory claims, affected individuals (cf. SGB IX: § 63) can engage an association related to their cause for litigation who bears the financial risk and contributes accumulated expertise. The federal government periodically reports to parliament on developments in rehabilitation and social participation (cf. BMAS 2016). In doing so, it gives its appraisal of any need for action, whereby political parties, associations and other advocacy groups can press for the clarification of open issues in the subsequent political debate.

3. General Act on Equal Treatment

The purpose of the “General Act on Equal Treatment” (cf. GAET) is “to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation” (GAET: § 1). In so far, it substantiates Article 3(3) sentence 2 of the Basic Law, which applies directly only to government bodies. Through the provisions of the General Act on Equal Treatment, the principle underlying the basic equality right becomes directly applicable in the areas of labor law (cf. GAET: Part 2); bulk business transactions under civil law which typically occur in a large number of cases under comparable conditions without regard of person and the comparable conditions arise in a large number of cases (cf. GAET: Part 3); as well as private-law insurance (cf. GAET: § 19(1) no. 2). The scope of protection against discrimination has thus been extended in that it applies to all disabled persons regardless of the type, severity or recognition of the disability.

In the field of labor law, the prohibition of discrimination applies to all statuses of the employment relationship – from the employer to the employed and also indirectly to employees among one another. The prohibition of unequal treatment, however, does not apply if such treatment can be objectively justified, for example by the nature of the work, religious references or age-related traits (cf. GAET: §§ 8 et seqq.). To avoid or eliminate discrimination, employers are obliged to provide extensive information to the staff, to enable affected persons to lodge (sanction-free) complaints, and to take appropriate measures in the event of violations, including even the dismissal of discriminators (cf. GAET: §§ 12 et seq.). If employees with disabilities feel discriminated against, they have the right to refuse performance where the employer fails to take suitable action, and also to claim damages and compensation in money (cf. GAET: §§ 14 et seq.).

Civil-law bulk transactions that come under the equal treatment precept include, for example, restaurant visits, hotel bookings or certain rental contracts. Reference to disability factors in the case of insurance

contracts is admissible only if this is based on actuarial risk assessment with the aid of statistical surveys. In pertinent cases of discrimination, persons with disabilities are entitled to claim remedy of the less favorable treatment as well as damages and compensatory payments.

Implementary means to effectively achieve the statutory objectives include, among others, a reversal of the burden of proof in proceedings – that is, if in a dispute disabled persons can provide circumstantial evidence for the assumption of discrimination, the opposing party bears the burden of proof that no violation of equal treatment provisions occurred.

The tasks of providing information, advice, documentation and accompanying scientific research have been entrusted to the Federal Anti-Discrimination Agency (cf. GAET: Part 6). An advisory council is assigned to the agency for the purposes of promoting dialogue with the relevant social groups and organizations.

4. Act on Equal Opportunities for Persons with Disabilities

The objective of the Act on Equal Opportunities for Persons with Disabilities (cf. BGG) is to specify positive action on the part of diverse actors for the nationwide creation of a (more) disabled-friendly environment. Accordingly, the Act aims “to ensure the equal participation of persons with disabilities in the life of society and to enable them to lead a self-determined life” (BGG: § 1). The federal and the Länder administrations must undertake to “actively promote” the aforesaid objective (BGG: § 7(1)). In this context, in substantiating the above-cited supplement to the basic right of equality before the law in Article 3(3) sentence 2 of the Basic Law, the legal definition of ‘discrimination’ has been standardized to the effect that such discrimination occurs “if persons with and without disabilities are treated differently for no compelling reason and persons with disabilities are therefore directly or indirectly impaired in their equal participation in the life of society” (BGG: § 7(2)).

A substantive focus of the Act is on the improvement of accessibility in a comprehensive sense. The future-oriented definition is: “structural and other works, transport means, technical objects of use, information processing systems, acoustic and visual information sources and communication facilities, as well as otherwise organized areas of life are barrier-free if they are accessible and utilizable for persons with disabilities in a customary manner, without any particular impediment and largely without the help of others” (BGG: § 4). Public authorities are obliged to create the necessary structures for accessibility in the following areas: civil new buildings, refurbishments and extensions, and transportation; written notices and forms; and, stepwise, information technology with regard to their Internet presence (cf. BGG: §§ 8, 10 et seq.). German sign language is recognized as a separate language, as is the right to use it and other communication aids in dealing with public authorities (cf. BGG: §§ 6, 9).

The Act nevertheless lays an equally important focus, beyond the public administration, on the private economic sector as well as on creating options for pertinent clubs and associations to advance the interests of persons with disabilities by way of structured and effective procedures, thereby using “agreements on objectives” as an instrument (cf. BGG: §§ 5, 13(3)). Such agreements can be initiated by non-profit associations which for at least three years have been devoted ideationally to the concerns of

persons with disabilities. Contracting partners on the other side are companies or business associations with varying degrees of factual and regional competence. It is up to those immediately involved to adopt flexible regulations in accordance with the respective circumstances and requirements. The sole statutory requirement is that the business unit addressed is obliged to open negotiations, with the further course of negotiations then up to the dialog partners alone. To foster public communication, the Federal Ministry of Labor and Social Affairs has set up a “target agreement register” (BMAS 2003). Announcements for the opening of negotiations are published on its website. Within a period of four weeks, other associations may join the thus opened negotiations; a positive conclusion of an agreement must be reported to the register. On the consent of both parties, the text of the target agreement is also released on the website.

As an additional complementary element, recognized disability associations have power of representation for their clientele in administrative or social-law proceedings, along with their own right of collective action in cases of general importance (cf. BGG: §§ 12, 13). Last but not least, the Act provides for the office of the Federal Government Commissioner for Matters relating to Persons with Disabilities. His/her task is to “make[s] certain that the federal government’s responsibility for ensuring equal living conditions for persons with and without disabilities is met in all spheres of social life” (BGG: § 15). The special feature of such a commissioner, as opposed to an advocacy association, is that s/he represents a part of the common good, rather than taking a more or less egoistic group stance.

With the “Act to Further Develop Equal Opportunities Law for Persons with Disabilities” of 2016 (cf. BGRWa), important elements of the existing legislation were adjusted to meet contemporary needs and demands. Thus, the new definition in conformity with the UN CRPD concept now reads: “Persons with disabilities within the meaning of this Act are persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with attitudinal- and environment-related barriers may hinder their participation in society on an equal basis with others” (BGRWa: § 3).

The coverage of the law has been extended in terms of its personal scope in that recipients of public institutional benefits must likewise apply the basic tenets of the Act on Equal Opportunities for Persons with Disabilities (cf. BGRWa: § 1(3) sent. 2); in terms of its material scope, tasks now include the government funding of measures adopted by recognized organizations on behalf of persons with disabilities to strengthen their participation in shaping public affairs (cf. BGRWa: § 19). To stabilize and professionalize the relevant activities, the “Federal Department for Accessibility” (BGRWa: § 13) has been instituted as a central contact point to deal with enquiries by government agencies as well as by business and commerce, associations and civil society; to gather and furnish information; to build up a network; to accompany research projects; and to engage in public relations activities for creating awareness.

Besides the adoption of measures, a failure to make appropriate arrangements for persons with disabilities now also constitutes a form of prohibited discrimination against which affected individuals or advocacy associations may proceed (cf. BGRWa: §§ 7(2), 15(2)). The task of establishing accessibility has been expanded to include existing buildings; by 2021, binding and verifiable action and time plans are to be drawn up to that end (cf. BGRWa: § 8(3)). In the communication sphere, the introduction of “plain language” is to facilitate understanding (BGRWb: § 11). Government agencies are called upon to heighten and extend their competence here, to increase the furnishing of information along these lines,

and all in all to augment the use of plain language. Last but not least, an independent, non-partisan, and confidential Arbitration Service, based with the Federal Commissioner for Matters relating to Persons with Disabilities, has been launched for low-threshold conflict resolution (cf. BGRWa: § 16). Affected individuals and recognized advocacy associations can apply to this service free of cost. Arbitration aims to achieve amicable settlement; for this purpose, the arbitrator can offer the use of mediation.

5. Federal Participation Act

The “Act to Strengthen the Participation and Self-Determination of Persons with Disabilities”, the long version of the title, was adopted in late 2016 (cf. BTHGa). The beginning of the legislative procedure was marked by the coalition agreement between the Christian Democrats and the Social Democrats upon their formation of a new government following federal elections in 2013. The agreement declares: “The common efforts of the Federation, the Länder and the municipalities to achieve greater inclusion require a secure statutory framework. With due regard to Federal/Länder fiscal relations, we will therefore draft a federal benefit law for persons with disabilities ... We seek to lead persons who on account of a substantial disability have only limited possibilities to participate in society out of the previous ‘welfare system’ and to further develop integration assistance into a modern right to participation. Benefit entitlement is to be guided by personal needs and determined on a person-oriented basis under a uniform federal procedure. Benefits should no longer be awarded along institution-centered, but person-centered lines.” (CDU: p. 78). In preparation for the procedure, the lead Federal Ministry of Labor and Social Affairs appointed a high-level working group comprising representatives of relevant government agencies, welfare associations, all major disability organizations and also welfare associations, who in nine meetings identified and processed problem areas, thereby pointing out (partially, quite divergent) options for action (cf. BMAS 2015). A final joint recommendation was not intended, nor was it feasible. The ensuing parliamentary and societal debate was characterized by harsh disputes, protest demonstrations on the Internet and in the federal capital of Berlin, and partial compromises, but also by disappointments on both sides.

The expansive and profound legislative package with its aspiration to initiate a ‘system change’ is to enter into force in several reform stages in order to secure the necessary informational and institutional-organizational forerun for the changeover. A few smaller improvements took effect soon after promulgation in the law gazette; the main part of the new rehabilitation law becomes effective from 1 January 2018, while the fundamental provisions of integration assistance law are to apply two years later, from 1 January 2020. The especially contentious part that redefines the category of persons legally entitled to integration assistance has been postponed and is first to be tested as an exemplary model and investigated scientifically (cf. BT-Drs.) before it is newly referred to parliament as a draft law.

The reformed definition is as follows: “Persons with disabilities are persons who have physical, mental, intellectual or sensory impairments which in interaction with attitudinal- and environment-related barriers may hinder their equal participation in society ... An impairment ... exists if their body and health condition deviates from the state that is typical of their age” (BTHGa: § 2(1)). Missing here as opposed to the UN CRPD definition are the adjectives ‘full’ and ‘effective’ in regard to participation (cf. BMAS

2011: Preamble e) and Art. 1(2)). Participation is thus considered not in individual-absolute, but merely social-relative terms – which is doubtless a minus compared with the UN concept. Whether and which practical effects will ensue therefrom is hard to assess prognostically. Then again, in addition to the UN version, deviation from the age-typical state as a requirement for the existence of disability has been retained. Physical or mental impairments typical of age thus do not constitute impairments within the meaning of German disability law, even if they gravely hinder participation in life – as already criticized above, an unacceptable form of age discrimination. The notion behind this astonishing construct could be that the legislator considered the UN concept, which might be deemed dialectical, as being too indefinite in legal terms on account of: (1) quantitatively not clearly specified impairments and (2) their diffusely linked interaction (3) in conjunction with several possible barriers. The paradigm of interaction is a good approach for complexly assessing and understanding disability from the viewpoint of social science and policy. At the same time, it can be interpreted plausibly in almost unlimited differing directions and is thus too imprecise for the targeted stipulation of legal social benefit claims. At least one objectifiable criterion ought to form the basis and limit of a benefit obligation.

With the extension of existing benefits for persons with disabilities, the Federal Participation Act also provides for the introduction of more or less new benefits. A qualitative step has been to widen benefits for social participation by way of ‘personal assistance benefits’ towards the self-determined and independent manageability of everyday life at home and in the community, beginning if necessary with the day structuring. The benefits should be rendered as qualified assistance by skilled personnel (cf. BTHGa: § 78(1)(2)). Also a special assistance to “mothers and fathers with disabilities for looking after and raising their children” (BTHGa: § 78(3)) is incorporated.

“Participation in education” (BTHGa: §§ 75, 112) is now enshrined in short independent chapters. As in the past, disability legislation under German social law is solely geared to ‘supportive benefits’ so that persons with disabilities can embrace education offers on an equally entitled basis. Despite this objective restriction on their scope, the amended provisions have clarified previous, regularly arising questions and problems in favor of persons with disabilities: Assistance for participation in education now includes benefits in support of open all-day school clubs. Pupils with disabilities are thus entitled to publicly funded assistance so they can spend their afternoons with other classmates. The way to ongoing higher education offers has also been smoothed supportively, for example through consecutive or interdisciplinary master’s courses or through doctorates conducive to employment, so that in principle the entire educational spectrum is encompassed.

As regards participation in working life, the German labor market is shaped by a number of segregated structural elements. The UN Committee on the Rights of Persons with Disabilities voiced its ‘concern’ over this matter and recommended in its “concluding observations on the initial report of Germany” of 13 April 2015 (GIHR 2015: on Art. 27, nos. 49 et seq.) that the “State party provide regulations that effectively create an inclusive labor market in accordance with the Convention by [...] phasing out sheltered workshops through immediately enforceable exit strategies and timelines [...]”. Germany did not comply herewith (criticized by GIHR 2017) because sheltered workshops enjoy a high level of acceptance on the part of those concerned owing to the balance they create between productive work and

social aids. As a result, the Federal Participation Act has adopted a two-pronged approach: On the one hand, the rules governing sheltered workshops have been selectively improved, hence their existence reinforced; on the other, preventive alternatives to their use are being tested and more flexible options for transition and return to and from the general labor market created. With a view to their further development, sheltered workshops are to become more democratic and gender-sensitive. The workshop council now also enjoys the right to parity co-determination in nine matters, including shop rules, work time regulations, pay, vacation planning, meals as well as sanitary and common rooms (cf. BTHGb: no. 4). A ‘women’s representative’ is to be elected in every shop by and on behalf of the female shop workers. She is to “represent the interests of women with disabilities working in the shop vis-à-vis the workshop management, notably in the areas of equal opportunities for women and men, reconciliation of family and work life, as well as protection against physical, sexual and mental harassment or violence” (BTHGb: no. 10 § 39a(1)).

With the aim of keeping employees on the general labor market, five-year, well-funded and academically accompanied innovative model projects (cf. BTHGa: § 11) have been established to research and test new ways to maintain earning capacity.

As an alternative to the claiming of benefits in a sheltered workshop, entitled persons with disabilities can by their own choice revert to “other service providers” (BTHGa: §§ 60, 62), for example of a private-sector nature. A (tentative) opting out of a sheltered workshop and into an insurable employment relationship on the general labor market is possible via a “budget for work” (BTHGa: § 61), whereby employers receive a wage subsidy of up to 75 percent for the coverage of their economic interests. The subsidy is to compensate for the respective employee’s diminished performance and for expenses incurred for instruction and aid owing to the disability. If the employment relationship is terminated, entitlement to admission in a sheltered workshop is restored (cf. BTHGa: § 220(3)).

A novelty under severe disability law is that if an employer gives a severely disabled person notice without involving the representative for persons with severe disabilities, the dismissal shall be invalid (cf. BTHGa: § 178(2)). The previous consequence in such a case was that the execution of the dismissal had to be suspended and said involvement obtained retroactively.

The Federal Participation Act likewise does not abolish the ‘structured system’ of rehabilitation in Germany, but seeks to regulate procedures, decision-making and benefit provision in a transparent and targeted fashion by means of comprehensive and clear provisions, so that benefits appear to come ‘from a single source’ (cf. BTHGa: §§ 12-24). The first stage of the process is marked by the rather mechanical determination of the ‘performing rehabilitation provider’, who in the case of multiple providers is also responsible for the overall management. The previously horizontal form of cooperation has replaced by a hierarchical structure with mutual claims to recourse. A ‘supplementary independent consultation on matters of participation’ is to be built up in the form of peer counseling (cf. BMAS 2017d: EUTB) over the next five years with the help of €58 million in annual funds.

The second stage comprises the uniform and verifiable assessment of individual rehabilitation requirements through systematic work processes and standardized tools. If expertise is needed, it is to be solicited without delay and drawn up within two weeks. If differing categories of benefits (e.g. for

medical rehabilitation and participation in working life) or several rehabilitation providers are required, the performing rehabilitation provider in consultation with the other providers and in liaison with the entitled individual determines the prospective benefits along functional lines. This occurs with a view to their aim, type and scope; the benefits are then summarized in writing so that they mesh seamlessly and are documented in the ‘participation plan’. For joint briefing on the assessments of rehabilitation needs, a ‘participation plan conference’ can be conducted with all parties involved.

The position of claimants who themselves procure rehabilitation benefits – upon expiry of the statutory decision deadline without notification of reasons or a new decision date – has been strengthened. In such a case or if also the new deadline elapses without result, the law construes the requested benefit as approved. Hence, claims for cost reimbursement can no longer be countered by objections that the self-procured benefit is unnecessary or uneconomic.

If and to the extent that other rehabilitation providers are not responsible for the social benefits in question, these tasks shall in future accrue to “integration assistance” as an individual safety net previously forming part of “social assistance” (cf. SGB XII: §§ 53 et seqq.; BTHGa: §§ 90 et seqq.). As opposed to the patriarchal-paternalistic focus under the former welfare system, the amended provisions henceforth serve to enable persons with disabilities to lead a self-determined life. This is also expressed by the fact that the introductory Section 90 lays down the complete version of Article 1(2) of the UN CRPD including ‘full and effective participation’. What remains unchanged is that integration assistance benefits are ‘subordinate’ – and thus, according to the classic subsidiarity principle, subordinate also to the personal efforts and resources of the claimants and of those obliged to support them. That is why a “contribution” to integration assistance benefits must in principle be made (BTHGa: § 92). Compared to the regulations under social assistance law, however, application cases have been drastically reduced and exemption limits considerably extended. Consequently, no contribution is required for eight benefits stipulated in the areas of health, education and employment (cf. BTHGa: § 138(1)). The spouses or life partners of persons with disabilities are exempt from the normally existing financial commitments, ensuring that partnership is not obstructed by any economic barriers. Income from personal employment is largely privileged in recognition of the work performed.

A non-financial contribution that could perhaps be labeled ‘organizational’ may be demanded on grounds of cost containment for benefits concerning, among others, personal assistance, curative pedagogy, promotion of communication, or transportation, in that such benefits – more or less affecting independence – are awarded not on an individual basis, but by one provider to several beneficiaries jointly (cf. BTHGa: § 116(2)). This collective form of benefit – disparagingly dubbed ‘forced pooling’ by advocacy associations – is restricted by the statutory limit of its ‘reasonableness’ for beneficiaries. Whereas in the case of financial contributions the law itself (and quite liberally at that) determines what is reasonable in concrete euro amounts, the non-financial concretization of the undefined legal term of reasonableness is left to the administration and, in case of dispute, to the courts; the outcome is open.

6. National Action Plans 1.0 and 2.0

For the organization of private and public life, not only laws are important but also political measures. To that end, the German federal government launched the first National Action Plan (NAP) in 2011 to alter the situation of persons with disabilities in light of the UN CRPD (cf. NAP 2011). The plan's more than 200 measures were also to make clear that the sphere of activity by far transcends social policy and must from the outset find its place in all portfolios as a cross-cutting task in the sense of disability mainstreaming. Accordingly, the activities reflecting areas of life were structured matrix-like: into twelve fields of action – inter alia employment, education, health, family, women, older persons, housing, mobility, culture/leisure, social participation and personal rights; as well as into seven cross-sectional subjects – assistance needs, accessibility, gender mainstreaming, equal opportunities, migration, self-determined living and diversity in disability. The NAP was not to be understood as a closed document, but as a dynamic, interactive disability-policy program whose processes and content were to be regularly evaluated and further developed. The findings of the evaluation on the implementation of the plan and its measures as well as conclusions on the functioning and effects of the processes subsequently flowed into the revised NAP 2.0 in 2015/2016. The thus amended plan, comprising 175 additional measures, was adopted by the federal government on 28 June 2016 (cf. NAP 2016). All federal ministries contributed measures to this new plan, thereby reinforcing the cross-policy approach. 'Awareness-raising' was introduced as a novel field of action. While the first NAP focused on closing gaps between the legal framework and practice, NAP 2.0 is devoted also to new legislative proposals to improve participation opportunities for persons with disabilities and their possibilities for leading a self-determined life. The diverse measures are to be flanked at the forefront by model projects and project grants as well as by evaluations and studies.

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