

The Rights of deaf people and Sign language: the importance of the explicit recognition of sign language in Italy and in France.

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Table of contents

1. Introduction: deafness and sign language	5
2. The rights of deaf people: the world federation of the deaf	9
3. An overview of the united nations convention on the rights of persons with disabilities (uncrpd)	12
3.1 Deafness: Main Articles	14
4. Italy and italian sign language: the lack of a legislative recognition	17
4.1 The implicit recognition of Italian Sign Language	17
4.1.1 The Italian Constitution: the deaf community as a linguistic minority?	18
4.1.2 The Framework Law n. 104/1992 on Assistance, Social Integration and the Rights of Handicapped Persons	20
4.1.3 Law n. 95/2006: the deaf person in the framework of civil invalidity	22
4.1.4 The Framework Law n. 4679 on the Citizenship Rights of Deaf Persons, with Hearing Impairments in general, and Deaf-blind	23
5. A comparison: the french national case	27
5.1 The French National Federation of the Deaf (FNSF): some partial achievements	27
5.2 The lack of a Constitutional Recognition of French Sign Language	31
6. Conclusions: the benefit of the explicit recognition of sign language	34
About Luiss School of Government	36
Submission Guidelines	37

Abstract

There are 466 million people in the world with disabling hearing loss - over the 5% of the world's population. Unless action is taken, by 2030 there will be nearly 630 million people with disabling hearing loss¹ since they will not be assured the proper treatments and facilities necessary to lead a normal life. Deafness is regarded to as an invisible disability since it is not immediately perceptible. Consequently, 'with no visible markers, it is easy for such disability to go unnoticed'.² This article shows the limited level of legislative protection ensured to deaf and hearing-impaired persons in Italy and in France in comparative perspective. Despite having formally adhered to the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities, the two democracies lack the legislative tools ensuring the rights of the deaf the proper recognition.

¹ Deafness, in <https://www.who.int/news-room/facts-in-pictures/detail/deafness>.

² Dr. Li-Korotky, As an invisible disability, Hearing loss often goes ignored, 2018, in <https://pnwaudiology.com/blog/as-an-invisible-disability-hearing-loss-often-goes-ignored/#:~:text=Hearing%20loss%20is%20also%20called,signals%20that%20they%20need%20treatment>.

The Rights of deaf people and Sign language: the importance of the explicit recognition of sign language in Italy and in France.

1. Introduction: deafness and sign language

Deafness and hearing loss are regarded to as both an impairment and a disability. According to the Union of Physically Impaired People Against Segregation (UPIAS)³, the term ‘impairment’ refers to “lacking part or all of a limb, or having a defective limb or mechanism of the body”, while the word ‘disability’ identifies ‘the disadvantage of restriction of activity caused by a contemporary social organization which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities’.⁴ ‘Disability is the result of a complex relation between impairments, limitations to activities, restrictions to participation and environmental barriers’.⁵ Hence, while ‘impairment’ assumes exclusively a biological and physical meaning, ‘disability’ takes on a social political significance, implying a shift in the responsibility of the disability itself, from the impaired individual to the national governments. The latter become accountable for imposing limitations upon people with impairments - physical, cognitive or sensory-, thus for causing them disability. ‘As people move through the activities of daily living at home, at work, and in social or business situations, basic auditory abilities take on functional significance.’⁶ Audition plays a central role in every person’s daily life, and hearing impairments are more complex than one might imagine. ‘The ability of an individual to carry out auditory tasks in the real world is influenced not only by his or her hearing abilities, but also by a multitude of situational factors, such as background noise, competing signals, room acoustics, and familiarity with the situation. Such factors are important regardless of whether one has a hearing loss, but the effects are magnified when hearing is impaired.’⁷ For instance, a person will be able to engage in a conversation in a room which is quiet and allows good visibility of the interlocutor’s face and lips; on the contrary, the same person will have to make a great effort to communicate and to handle a conversation successfully in a noisy environment. Likewise, people with hearing loss will be able to communicate effortlessly in the former situation, and unable to communicate at all in the latter. Deaf or hard-of-hearing people, compared to hearing-abled ones, are asked to face harder challenges, coming to affect the quality of their everyday lives in several respects. The physical limitation has implications at the functional, social, emotional and economic levels.

³ A British organization advocating for the rights of people with physical disabilities.

⁴ UPIAS, *Fundamental Principles of Disability*, p.4 In Nick Watson & Simo Vehmas (2019), *Routledge Handbook of Disability Studies*, London, Routledge, p.16.

⁵ Masci F., La tutela costituzionale della persona disabile, p. 28, in <https://www.federalismi.it/ApiOpenFilePDF.cfm?artid=40836&dpath=document&dfile=07012020044505.pdf&content=La%2Btutela%2Bcostituzionale%2Bdella%2Bpersona%2Bdisabile%2B%2D%2Bstato%2B%2D%2Bdottrina%2B%2D%2B>

⁶ National Research Council (US) Committee on Disability Determination for Individuals with Hearing Impairments (2004), *Hearing Loss: Determining Eligibility for Social Security Benefits*, Ed. Robert A. Dobie and Susan Van Hemel, Washington (DC): National Academies Press (US); Chapter 6.

⁷ Ibidem.

‘One of the main impacts of hearing loss is on the individual’s ability to communicate with others.’⁸ Since communication is required in almost all daily-life circumstances, hearing loss affects one individual’s performance in the community life, in school and in the workplace.

The impact of hearing loss is slightly different between people who experience hearing loss as children and people who become hard-of-hearing later in life. In the first case, people who acquire hearing loss before the age of 2, thus prelingually – ‘occurring before an individual has developed the use of language’⁹ - suffer a deficit in the correct development of communication skills. Hence, deaf persons experience a deficient development of spoken language, of reading abilities, and consequent impact on educational learning, also on employability. These persons resort to sign language to communicate.

In the second case, people who incur hearing loss after the development of spoken language, as a result of aging, have earlier acquired and developed cognitive skills. Therefore, the impact on educational and on employability is mild; however, it still is very important to consider. In fact, hard-of-hearing people must resort to hearing aids and rearrange their habits according to their disability. This might have deep detrimental effects on self-esteem and confidence in many situations.

The impact of hearing loss on communication skills, thus on the ability of successfully engaging in conversations, might have serious emotional and psychological repercussions. People who experience hearing loss as children, hence before developing the use of language, should overcome the absence of spoken language by acquiring knowledge in sign language. The knowledge in an alternative language partly compensates the inability of a person to speak, by giving her the possibility to communicate with others and to feel accepted. However, the communication remains limited, since sign language is unknown to many. Moreover, since sign language is naturally linked to deafness, hence to disability, the deaf child might still develop an inferiority complex, or he might be teased and isolated by other children, in school or in sports groups.

The impact of hearing loss might be even more debilitating and frustrating for people who become hard-of-hearing in their teens or in old age. Since hearing loss impacts interpersonal communication, hard-of-hearing people are required to make great effort to engage in conversations and to maintain gratifying ones. Therefore, they tend to avoid social situations which seem too challenging. They are led to re-evaluate and reorganize their habits and interests, thus, to renounce dinners with friends, sports, or also going to the cinema or to the theatre. Hence, they isolate themselves and they become lonely.

Several are the emotional implications of hearing loss for such people in the social environment. ‘For example, some express embarrassment and self-criticism when they have difficulty understanding others or when they make perceptual errors. Others have difficulty accepting

⁸ Deafness and Hearing Loss (2020), in <https://www.who.int/news-room/fact-sheets/detail/deafness-and-hearing-loss>.

⁹ Prelingual, in <https://www.merriam-webster.com/medical/prelingual>.

their hearing loss and are unwilling to admit their hearing problems to others.’¹⁰ Embarrassment, guilt and frustration are common negative reactions to hearing loss.

Hearing loss and deafness have also considerable economic implications. ‘The WHO estimates that unaddressed hearing loss poses an annual global cost of US\$ 750 billion. This includes health sector costs (excluding the cost of hearing devices), costs of educational support, loss of productivity, and societal costs.’¹¹ ‘Individuals with hearing loss can perform as well as their counterparts without hearing loss when equitable educational and employment opportunities are provided.’¹² However, due to the demanding high costs of assistance for deaf or hard-of-hearing people, especially in developing countries, it is very hard to provide schooling to children and employment to adults with hearing problems. In the educational sector, services needed to ease the limitations children with hearing loss face and to ensure integration, to include specific educational programs, the presence of competent school personnel, assistive listening devices, particular computers and other accommodations. These necessities require a significant financial investment, that very few countries can face.

Regarding the labor market, the highest unemployment rate is registered among hearing-impaired adults. Among those who are employed, a high number of deaf or hard-of-hearing people remain at the lower levels of employment, in comparison with hearing workers. The provision of a comprehensive educational service and vocational rehabilitation services will successfully ensure the inclusion of hearing-impaired people in the labor market, thus decrease the unemployment rate considerably.

Deaf people from birth or hard-of-hearing people, from two years of age, hence before the acquisition of the use of spoken language, are expected to learn sign language - a language that uses a system of manual, facial, and other body movements as the means of communication. Since it is expressed through gestures and hand movements, it has been hardly regarded to as a full-fledged language, as many consider the latter to be exclusively vocal and spoken. Nevertheless, sign language is a natural linguistic system, complying with a grammar unrelated to spoken language. It performs the natural communication tasks of all other languages and it seems to be sharing with the latter the same linguistic organizational aspects. The fundamental contrasting element lies in the mimic-gestural modality of transmission.

The first to ever assess that sign languages are real languages, and that, as spoken ones, they present precise syntactical characteristics, was William Stokoe, an American linguist. In 1960, he published the book *Sign Language Structure: An Outline of the Visual Communication Systems of the American Deaf*. He assessed the communicative aims of sign language and presented the characters representing these languages as communicative tools for a community of people. It is common belief that there exists a universal and unique sign language. However, each national deaf community, has developed its own mimic-gestural linguistic system. Hence, one can refer to the *Lingua dei Segni Italiana (LIS)*, the *American Sign Language (ASL)*, the *Lingue des Signes Française (LSF)*, the *British Sign Language (BSL)*, and so on. Each language, as in the case of

¹⁰ National Research Council (US) Committee on Disability Determination for Individuals with Hearing Impairments (2004), *Hearing Loss: Determining Eligibility for Social Security Benefits*, Ed. Robert A. Dobie and Susan Van Hemel, Washington (DC): National Academies Press (US); Chapter 6.

¹¹ *Deafness and Hearing Loss* (2020), in <https://www.who.int/news-room/fact-sheets/detail/deafness-and-hearing-loss>.

¹² Schroedel & Geyer, (2000), in ‘Hearing Loss: Determining Eligibility for Social Security Benefits’.

spoken languages, has its own peculiarities. The signs constituting each one resulted from the specific cultural traits of each community. Therefore, one sign used in two different languages may have two different meanings; or one image, concept or object may be expressed by different signs in more languages.

The International Commission of experts of the World Federation of the Deaf (WFD), tried to create an international sign language, however with little success. In fact, the volume intitled “Gestuno. International Sign Language of the Deaf – Langage Gestuel International des Sourds” published in 1975 and containing 1.500 signs, selected as the most spontaneous and used ones by the deaf of many countries, was presented and then discarded. The Gestuno struggled in asserting itself as a full- fledged universal sign language, shared by all deaf communities. Each sign language remains peculiar and independent. However, it is conceivable that one language might be used as the official sign language for conferences, and that, as in the case of spoken languages, the American sign language might be chosen above the others.

Sign languages are not merely gestures, nor holistic icons. They can be regarded as full-fledged languages, presenting especially three distinctive traits: three-dimensionality, polarity and tropes. Three-dimensionality refers to the combination of configuration, position and movement, which distinguishes sign languages from the two- dimensional expression of written and spoken linguistic systems, of a linear and systemic nature. Polarity refers to ‘the fact that so many signs can be turned into their own antonyms by simply reversing the direction of their motion: by uncrossing instead of crossing, by converging instead of diverging, by moving the active hand toward the audience instead of away from the audience’.¹³ Finally, tropes are the elements expressing abstract concepts, which are essential characters of sign languages, due to its figurative and visual nature. For instance, in ASL ‘slavery is represented by symbolic manacling of one’s wrist; freedom by symbolic breaking of these manacles; wrath by symbolic rending of one’s clothes; kindness, by one hand winding bandages, as it were, around the other’.¹⁴

Apart from such common traits, sign languages present their own specific grammatical structures and rules, which make them understandable only to the related deaf community.

¹³ Bergman E. (1972), *Autonomous and Unique Features of American Sign Language*, in *American Annals of the Deaf*, Vol. 117, No. 1, (pp. 20-24), Gallaudet University Press; p. 20.

¹⁴ *Ibidem*, p.21.

2. The rights of deaf people: the world federation of the deaf

Despite the existence of a considerable number of deaf people and the expansion this type of disability has reached, ignorance and misconception about deafness are still profoundly embedded in societies, in some more than in others. Due to its invisibility, deafness is not fully understood in the limitations and unease it implies. Consequently, many countries - among these Italy and France - still struggle in addressing such issue, hence in providing satisfying assistance and full access to everyday-life enjoyments and services to the deaf to the same extent as to hearing-abled people. Therefore, deaf people have joined in a common fight for the recognition of their rights and their value as human beings on an equal footing with people with full auditory ability.

Since the foundation of the first school for deaf people - the National Institute for Deaf-mutes, founded in 1760 in Paris by the French Catholic priest Charles-Michel De l'Épée - the latter have slowly come to form a real and recognizable community. According to the World Federation of the Deaf, one of the first organizations established in representation of the deaf at the international level, 'there are approximately 72 million deaf people worldwide, with more than 80% living in developing countries'.¹⁵ Nowadays, this significant number represents a well-defined set of people. By acknowledging their special disability, deaf people all over the world have come together to form a large community and to adhere to a particular culture.

The term 'Deaf culture' was coined in the 1960s by Carl Croneberg, a Deaf linguist and graduated from the Gallaudet University. After having cooperated with William C. Stokoe in the recognition of American Sign Language as a fully- fledged language, Carl Croneberg wrote the Dictionary of American Sign Language on its linguistic principles, together with the same Stokoe. In his contribution, he depicted the global group of deaf people in sociological and ethnographic terms, recognizing their cultural traits and presenting analogies between deaf and hearing cultures. According to C. Croneberg, just as the hearing community, the deaf one has its own culture, consisting of 'language, behavior, customs, traditions, beliefs and the way [it] communicate[s]'.¹⁶ Although deaf people share specific behavioral patterns, values and beliefs, traditions and arts, also reliance on technology, the main trait defining them is sign language.

Since constituting a distinguishable community, deaf people advocate the recognition and protection of their rights, on the same level of the ones granted to the hearing community. As in the case of hearing-abled individuals, the deaf demand respect, and support, at the social,

¹⁵ United Nations Convention on the Rights of Persons with Disabilities, in <https://www.nad.org/resources/international-advocacy/un-convention-on-the-rights-of-persons-with-disabilities/>.

¹⁶ Abushaira M. (2014), Deaf Community Components and its Relation to Hearing Culture, in Life Science Journal.

economic, educational and working levels. Especially, their attention focuses on sign language and the urge to acknowledge it as an official language, since being the most important means of communication of such a wide deaf community. Hence, in order to promote the Human Rights of Deaf People at the international level, the deaf community has merged into the World Federation of the Deaf (WFD).

‘The World Federation of the Deaf is one of the oldest international organizations of persons with disabilities in the world’¹⁷, established in Rome, in 1951, on the 23rd of September. Its foundation took place during the 1st World Deaf Congress, under the direction of the Italian Ente Nazionale Sordomuti (ENS). In fact, Professor Vittoria Ieralla, at that time president of the ENS, was also appointed president of the World Federation of the Deaf.

The WFD was established within the framework of the United Nations, in order to promote the realization of deaf people’s human rights all over the world, with a particular focus on sign language and on the advocacy of its use and recognition at the national level. The WFD Charter on Sign Language Rights for All, in its Introduction, declares that its signatories ‘reaffirm [their] strong commitment to take all necessary steps to safeguard the inclusion of deaf people in society, recognition of their needs, dignity and human rights as provided for [especially] in the Universal Declaration of Human Rights [and] in the UN Convention on the Rights of Persons with Disabilities (CRPD) (...)’.¹⁸ Furthermore, it states that ‘[They] strive to ensure that deaf people have equal access in society, public and private life by using sign languages, without discrimination, to ensure the full enjoyment of their human, civil, cultural and political rights (...)’.¹⁹

The WFD claims the significance and the necessity of sign languages for deaf children and adults, by considering their features as fully-fledged languages, comparable to spoken languages. Furthermore, it asserts the importance of sign languages by considering their peculiarities, and by recognizing sign languages as the representative element of the deaf community and its culture. According to the WFD, ‘Deaf people have their own identity, mainly tied to national sign languages and social connections built on the shared experience of the use of these languages’. It also asserts that ‘Sign language and deaf culture strengthens multilingualism and are means of promoting, protecting and preserving the diversity of languages and cultures globally’. Finally, it declares that ‘Deaf people are found among all cultural, linguistic, and ethnic minorities, and the deaf community is a diverse and intersectional community’.²⁰

The WFD’s commitment to the promotion of deaf people’s rights and sign language has been crucial for the spread of awareness towards the deaf community and their needs. Nevertheless, nowadays, many countries, also members of the World Federation itself, still struggle in acknowledging the limitations deaf people encounter in all fields of community life. Especially, they fail to understand the significance of sign language for the deaf and to adopt legislative initiatives providing for its full recognition. Italy and France emerge among those members of the World Federation of the Deaf failing to carry out its key objectives. As democracies Italy and

¹⁷ Who we are, Our story, in <https://wfdeaf.org/who-we-are/our-story/>.

¹⁸ The World Federation of the Deaf Charter on Sign Language Rights for All, p. 1, in <https://wfdeaf.org/charter/>.

¹⁹ Ibidem, p.1, 1.4.

²⁰ Ibid. 1. Introduction, p.2, 2.3.

The Rights of deaf people and Sign language: the importance of the explicit recognition of sign language in Italy and in France.

France prove to be unsuccessful, mainly in ensuring deaf persons protection of their fundamental rights on an equal basis with the 'abled part' of the population, notwithstanding their adherence to the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), the cornerstone of international law on disability – and on deafness.

3. An overview of the united nations convention on the rights of persons with disabilities (uncrpd)

‘The Convention on the Rights of Persons with Disabilities [the UN CRPD] and its Optional Protocol (A/RES/61/106) was adopted on 13 December 2006 at the United Nations Headquarters in New York, (...)’.²¹ It entered into force on May 3, 2008, after being signed by 82 parties. According to the then UN Secretary-General Kofi Annan, the CRPD is ‘the first human rights treaty to be adopted in the 21st century [and] the most rapidly negotiated human rights treaty in the history of international law (...)’.

By considering persons with disabilities as subjects worthy of respect and as independent individuals capable of claiming their rights and of making decisions for themselves, the CRPD marks a shift in the popular approach to disability. In fact, differently from the previous documents addressing the issue – for instance the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in 1993, ‘The International Classification of Impairments, Disabilities and Handicaps’, and ‘The International Classification of Functioning, Disability and Health’, adopted by the World Health Organization (WHO) in 1980 - promoting a medical model of disability, the Convention focuses on disabled persons’ needs in a human rights perspective.

According to prior human rights treaties, human rights are fundamental and inherent entitlements, acquired at birth and impossible to eradicate from the real essence of an individual. Human rights are also universal and unconditional. Hence, they are -or should be – enjoyed by every human being equally and without distinction of any kind – of gender, race, religion, status, and so on. For individuals to fully enjoy their rights, it is not required a particular health status or specific physical abilities. Thus, disability, and deafness specifically, do not prevent an impaired, or hearing-impaired, person from being treated as worthy of respect and protection in her rights and needs.

‘(...) The universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination’²² are reaffirmed by the state parties to the Convention in its Preamble. In fact, the states recall the principles of the Charter of the UN recognizing ‘the equal and inalienable rights of all members of the human family as the foundation of freedom, justice

²¹ United Nations Convention on the Rights of Person with Disabilities (CRPD) in <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

²² United Nations Convention on the Rights of Person with Disabilities (CRPD), Preamble, (c), in <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

and peace of the world'²³, and they promote 'the need for persons with disabilities to be guaranteed their full enjoyment without discrimination'.²⁴

²³ Ibidem, (a).

²⁴ Ibid., (c).

3.1 Deafness: Main Articles

'The CRPD has made disability a human rights issue and is, in itself, a core human rights treaty'²⁵- binding upon State parties - setting forward a wide range of rights -civil and political, also economic, social and cultural – in recognition of disabled people's legal capacity and enjoyment of full participation in society.

According to Art.1 CRPD, 'the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'. The article in question also offers a definition of persons with disabilities, stating that these 'include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

Art. 5 addresses equality and non- discrimination, the main issues of the Convention. It recites that 'in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided'.²⁶

Linked to Article 5, Article 9 addresses the issue of accessibility and it requires States to adopt the 'appropriate measures to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas'.²⁷States Parties to the CRPD are asked to take targeted actions in aid of disabled people's access to society.

Art. 9(2)(e) is worth mentioning, since it reads: 'States Parties shall also take appropriate measures: (...) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public; (...)'. Point (e) mentions professional sign language interpreters. However, although being asked to provide sign language interpreters' assistance to deaf and hard- of-hearing people, many States parties to the Convention struggle to effectively comply with such request. As a consequence, deaf people experience difficulty in accessing information and communication, despite the requirement spelt out not only at point (e) but also at the following point (f) ('(...) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;').²⁸

One of the most important articles referring to the promotion of equal rights for the deaf, is Article 21. Just as Art. 9, the 21st addresses the topic of accessibility, however with specific reference to information, together with freedom of expression and opinion. States Parties are

²⁵ Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press; p. 60.

²⁶ United Nations Convention on the Rights of Person with Disabilities (CRPD) In <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

²⁷ Ibidem.

²⁸ Ibid., Art. 9(2)(f).

required to ensure that disabled persons satisfactorily receive information, in order for them to develop a critical independent thought and to express their opinions.

The article indirectly refers to blind or deaf people, who have trouble in watching or hearing the news. In fact, specifically, Art. 21(b) calls upon States to promote all forms of communication, including 'sign languages, Braille, augmentative and alternative communication (...)'. These communicative approaches are asked to be adopted in 'official interactions', also by 'private entities that provide services to the general public, including through the Internet'²⁹, and by mass media. Moreover, the final point (e) stresses the requirement for States to 'recogniz[e] and promot[e] the use of sign language',³⁰ which, however, as already stated, remains unanswered in numerous national cases, for instance in Italy and in France.

Disability, and especially deafness cause limitations and discomfort to affected people in many circumstances, for instance in the education field and in the work world. The CRPD is aimed at easing disabled people's disadvantages in such contexts by setting out the provisions contained in Art. 24 and Art. 27.

Art. 24 addresses the issue of education. States Parties are asked to provide an inclusive educational system, with the aim of promoting the right of education on the basis of non-discrimination and equality of opportunity. The educational system that States shall ensure at all levels should be directed to 'the full development of human potential and sense of dignity and self-worth, (...) and to 'the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential'.³¹

Moreover, the education provided should be aimed at ensuring the full participation of disabled persons to society, through the granting of tools proper to effective social inclusion.

Art. 24(2) indirectly stresses the principle of non-discrimination, stating that people with disabilities shall be granted education programs on an equal basis with healthy and abled persons. Not only disabled individuals shall enjoy the right of receiving a comprehensive, '(...) inclusive, quality and free primary education and secondary education',³² without discrimination, but they also shall be supported with the measures necessary to facilitating and maximizing their academic development. Specifically, Art. 24(3)(b) and (c) specifies the support measures to be adopted in the educational field in favor of the deaf community: Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community; Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development'.

Art. 25 applies the principles of equality and non-discrimination to work and employment. States Parties are encouraged to ensure disabled, and deaf people access to the work world on an equal basis with healthy, and hearing people. Art. 25 does not mention deafness. However deaf

²⁹ Ibid., Art. 21 (c)

³⁰ Ibid., Art. 21 (e).

³¹ Ibid., Art. 24, l. (a) e (b).

³² Ibid., Art. 24(2)(b).

people, together with blind ones, are the most limited individuals when it comes to deal with employment. Not only because employers are skeptical in hiring people with hearing impairment, thus causing high levels of unemployment among the deaf, but also for the challenging tasks that a job requires and that deaf people would be required to carry out.

‘People with hearing loss can feel isolated at work, which prevents them from fulfilling their potential – and can even force them to leave employment altogether. This could have an impact on the productivity of a business; employers could lose valuable and skilled employees and be left with the costs of recruiting and training new members of staff’.³³ It is common belief that deaf people or people with hearing loss may decrease the effectiveness and success of an activity. However, by hiring such persons and by giving them the right support, they will be encouraged, and the benefit will be experienced by both the employed and the employers.

Deaf people experience discomfort in both applying for jobs and in the work environment. ‘Many people with hearing loss say they prefer not to declare their hearing loss on application forms as they fear not being shortlisted for interview if they do’.³⁴ Hard-of-hearing or deaf people believe their job opportunities to be limited if they explicit their disability. Moreover, within the job environment, many people with hearing impairment might be limited in expressing their full potential; many others might feel isolated and might also be excluded or not fully integrated in the work staff. Due to such uneasiness, deaf people tend to not apply for jobs in the first place, or to retire early.

Art. 25 CRPD requires States Parties not only to ‘Prohibit discrimination on the basis of disability with regard to all matters concerning each form of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions (...)’³⁵, but also to ensure that employers and managers make physical and practical adjustments to the working place (‘(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;’³⁶). Furthermore, States are asked to encourage employment opportunities of disabled and - among them - deaf people, and to enhance career advancements in their favor.

³³ Professor Sue Hill, Chief Scientific Officer for England, Roger Wicks, Director of Policy and Campaigns, Action on Hearing Loss, Laura Cook, Senior Research & Policy Officer, Action on Hearing Loss, Cathy Regan, Associate Consultant, Primary Care Commissioning, Sonia Fleming, Project Lead – System-wide projects, NHS England, Sharon Hards, Project Manager Hearing Loss, NHS England (2017), What works: Hearing Loss and Employment, A guide for Employers to Support People with Hearing Loss in the Workplace, in <https://www.england.nhs.uk/wp-content/uploads/2017/09/hearing-loss-what-works-guide-employment.pdf>, 3, p.7.

³⁴ Ibidem, 3.1, p.7.

³⁵ UN Convention on the Rights of Persons with Disabilities, Art. 25(a), in <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

³⁶ Ibidem, Art. 25(i).

4. Italy and Italian sign language: the lack of a legislative recognition

Italy is one of the first States to have approved the United Nations Convention on the Rights of Persons with Disabilities. By ratifying the Convention on May 15, 2009, with Law 3 March 2009 n. 18, it took on the responsibility of ensuring the recognition and protection of the rights of people affected by any disability whatsoever. Concerning deafness, Italy has emerged among the first countries – with France and the US – to have experienced the development of the status of deaf persons regarding the right to education and to the use of sign language.

In the wake of the birth of French Sign Language and American Sign Language, the Italian deaf community began to rise. Italian deaf persons started fighting to obtain the recognition of their full enjoyment of rights on an equal basis with the hearing-abled, in the fields of education and employment, together with the recognition of the use of sign language.

The legal recognition of Italian Sign Language is primary objective of the Italian Deaf community, which acquired a conscious voice through the Ente Nazionale Sordi (ENS), founded on the basis of the Pact of Padua signed in 1932 between the numerous associations of deaf people and two national federations representative of the deaf, the Federazione Italiana delle Associazioni fra i Sordomuti (FIAS) and the Unione Sordomuti Italiani.

The LIS (Lingua dei Segni Italiana) is among the first ones to have emerged and developed as a means of communication resorted to by the deaf. Nevertheless, it still lacks an official recognition as a full-fledged language worthy of the treatment provided to the Italian spoken language and its users. Thus, the struggle to obtain the legal recognition of sign language is not yet complete and it is still led by the Ente Nazionale Sordi.

4.1 The implicit recognition of Italian Sign Language

The implicit recognition of sign language by a State consists in the plain acknowledgment of the existence of a national sign language – or of multiple sign languages – used by the national deaf community as a means of communication. Symbolic recognition does not imply the adoption of a legal measure, the explication of a constitutional provision, hence a written appreciation of sign language. Therefore, it does not imply the recognition of specific benefits or improvements in the lives of sign-language users. And this is the case of Italy.

4.1.1 The Italian Constitution: the deaf community as a linguistic minority?

The UN CRPD promotes sign language in recognition of the linguistic identity of the deaf community (Art. 24(3)(b)). Hence, one can argue that the group of deaf people worldwide, resorting to sign language as a means of communication, can be regarded to as a linguistic minority.

“The term Minority represents a collectivity with common features – religious, and/or ethnical, and/or cultural, and/or linguistic, and/or political etc. – in a non-dominant and inferiorly numerical position compared to the rest of the population of a State, which shares a sense of belonging with the other members of the group, together with the willingness to preserve the specificity and the collective identity of the same group’.³⁷ Hence, specifically, a linguistic minority is a restricted group of people sharing the same language.

Deaf people worldwide constitute a ‘community’, a social group where individuals communicating through sign language are traditionally drawn together through experiences, events and sharing news. The definition of the deaf community as a linguistic minority relies on the deep significance and necessity of sign language for such community, since being the sole and particular means of communication which deaf people may use.

The deaf community enjoys a unique culture and identity, drawn upon sign language – as a distinctive feature - and its history. However, doubts concerning deaf people’s identity, as a disabled community, on the one hand, or as a linguistic group on the other, persist, thus coming to underline the rough legislative process undertaken in order to obtain explicit recognition of Italian sign language.

Generally speaking, the Italian Constitution ensures disabled people protection - stemming from the guarantee of inviolable rights and the promotion of human dignity – which tends to the inclusion of individuals and is preordained to the removal of obstacles to the full development of the person.³⁸ Hence, specifically, it provides – in part - a basis for the recognition of the LIS. In fact, it addresses the issue of language and the recognition of the rights of minorities characterized by a specific linguistic system. Article 2 indirectly regards linguistic minorities. It asserts the personalistic principle by which ‘the Republic recognizes and guarantees the individual’s inviolable rights, both as a single and as member of social groups where his personality unfolds’, and social groups may also include linguistic minorities.

Article 3, concerning formal and substantial equality, promotes the negative protection of linguistic minorities. It prohibits unjustified discrimination towards people members of such groups. Moreover, Art. 3(2) states that the Republic has the task of removing all situations potentially leading to discriminatory circumstances. It promotes substantial equality, thus the positive protection of linguistic minorities, in addition to the negative protection recognized by

³⁷ Marziale B., Sordità: una disabilità in diverse prospettive. La lingua dei segni come strumento di cittadinanza, in https://www.questionegiustizia.it/rivista/articolo/sordita-una-disabilita-in-diverse-prospettive-la-lingua-dei-segni-come-strumento-di-cittadinanza_559.php.

³⁸ Masci F., La tutela costituzionale della persona disabile, p. 7, in <https://www.federalismi.it/AppiOpenFilePDF.cfm?artid=40836&dpath=document&dfile=07012020044505.pdf&content=La%2Btutela%2Bcostituzionale%2Bdella%2Bpersona%2Bdisabile%2B%2D%2Bstato%2B%2D%2Bdottrina%2B%2D%2B>.

the previous subparagraph. Positive protection implies the adoption of specific measures by the Republic, aimed at preserving the linguistic identity of the groups.

In respect of deaf people, discrimination might be linked to their hearing deficit. However, according to the social model of disability promoted in the 1970s, discrimination is related to physically impaired people's rights and freedoms, which society itself imposes obstacles to. 'Society disables people with impairments (...) [through] societal barriers (in the form of environmental, attitudinal and legislative obstacles'.³⁹ Hence, deaf people are discriminated on the basis of their hearing 'disability', stemming not from the physical impairment alone, but from their inability to fully enjoy their right to expression, by freely and easily resorting to sign language in all societal contexts, due to society's lack of legislative recognition in this regard.

'In Art. 6, the Constituent resorts to the linguistic parameter as the identifying element of state-protected minorities, calling on the legislator to adopt measures and to promote rights additional to those generally guaranteed to the majority [of the population]'.⁴⁰

Article 21(1) addresses the issue of linguistic protection only implicitly. It promotes freedom of thought through words, writing and through any other means of expression. Thus, one can argue that it also promotes freedom of expression through any language whatsoever, including sign language.

Despite mentioning linguistic minorities, the Italian Constitution does not provide a clear definition of the term. Thus, the concept of protection of linguistic minorities has been reconstructed by legislators on the basis of the principle of territoriality. Law n. 482/1999 "is the first general law enacting Art.6 [..]',⁴¹ providing the protection of linguistic minorities based on the area in which the groups reside. However, the law fails to entail all linguistic realities existing on the Italian territory, coming to exclude immigrants and Rom populations. 'The main reason for their exclusion lays on the lack of the principle of autochthony, since being minority groups characterized by the widespread presence on the territory'.⁴² The same concept may apply to the deaf, who, despite their recognition as a community featuring its own language, are not gathered in one specific geographical area. However, if on the one hand, the principle of autochthony makes it easier to identify a linguistic minority, on the other, there seems to be no legitimate reason for the exclusion tout court from protection of linguistic communities lacking the feature of permanence.⁴³ The European Charter for Regional or Minority Languages⁴⁴ is illustrative in this sense: 'it allows the application of its discipline, mutata mutandis and with a certain degree of flexibility, also to non-territorial languages, traditionally spoken by State nationals, although not confined to limited territories (Art.1(c), 7(5))'.⁴⁵

³⁹ Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press, p.20.

⁴⁰ Marziale B., *Sordità: una disabilità in diverse prospettive. La lingua dei segni come strumento di cittadinanza*, in https://www.questionegiustizia.it/rivista/articolo/sordita-una-disabilita-in-diverse-prospettive-la-lingua-dei-segni-come-strumento-di-cittadinanza_559.php.

⁴¹ Piergigli V. (2015), *Le minoranze linguistiche storiche nell'ordinamento italiano: quale futuro di fronte alle politiche per l'immigrazione e l'internazionalizzazione?*, p.12, in https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=29301&content=&content_author=.

⁴² *Ibidem*, p. 25.

⁴³ *Ibidem*.

⁴⁴ *European Charter for Regional or Minority Languages*, in <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680695175>.

⁴⁵ Piergigli V. (2015), *Le minoranze linguistiche storiche nell'ordinamento italiano: quale futuro di fronte alle politiche per l'immigrazione e l'internazionalizzazione?*, p. 13, in https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=29301&content=&content_author=.

Since the common perception towards the deaf proves to be heterogeneous and given the undefined meaning of the term 'linguistic minority', the Italian Constitution fails to guarantee protection to the deaf community on the basis of the linguistic criterion.

'Nowadays, the LIS is recognized as non-territorial language proper of the deaf community, however achieving its recognition as a minority language would make its use possible in many fields, in relation with the public administrations and the local agencies, but also in the judicial civil and penal proceedings'.⁴⁶

4.1.2 The Framework Law n. 104/1992 on Assistance, Social Integration and the Rights of Handicapped Persons

The Framework Law n. 104/1992 was published on the Official Gazette of the Italian Republic on 17 February 1992, and later modified with Law 8 March 2000. The so-called 'Law 104' promotes the full integration in the social environment and the autonomy of the disabled persons, by advocating the removal of the disabling barriers and the provision of specific benefits and facilities.

The objective of Law 104 is in line with Article 3 of the Italian Constitution, promoting equality of citizens regardless of their health condition and status, and calling on institutions to remove all barriers not allowing the individual to fully realize his personality in the social, educational, and working environment. Law 104 sets its primary purposes in Article 1. Namely: the full realization of human dignity and autonomy of the handicapped person together with her full integration in the social environment; the removal of all barriers disabling the individual in the full realization of its personality and its civil and political rights; furthermore, the insurance of functional recovery of the disabled person –with physical, psychic and sensory handicap - together with prevention and cure services, and finally, the removal of any form of social marginalization. Law 104 is truly inclusive, since it includes disabled people and their families, also foreigners, stateless persons, residents and strangers having stable residence on the national territory.

According to Article 4, the first step to be taken in order to apply the law and to provide the services and facilities set out therein, is to ascertain the presence of the disability. The assessment must be carried out by the local health units, through the medical commissions defined by Law 15 October 1990, n. 295, and integrated by a social operator and an expert in the various disabilities.

Art. 3 Law 104/1992 defines the specific features of the disability affecting the individual, proper to ensuring the latter the benefits provided by the law. Art. 3(1) states that a person is considered disabled when she presents a physical, psychic or sensory disability, stable or progressive, which causes struggles in learning, in relationships or limits her working integration,

⁴⁶ Marcoldi M. (2017), La legge per riconoscere la lingua ufficiale dei segni: 'Dare piena cittadinanza ai non udenti', in <https://www.fanpage.it/politica/la-legge-per-riconoscere-la-lingua-ufficiale-dei-segni-dare-piena-cittadinanza-ai-non-udenti/>.

and it leads to social disadvantage or marginalization. Thus, Art.3 implicitly also regards deafness.

Deafness, especially acquired in the prelingual phase, thus before the acquisition of language and speech skills, deeply affects the personality of the deaf subject and causes significant limitations in their social, educational and working life. Hence, the deaf person results deeply limited in its personal autonomy, which becomes even more constrained if the person is not provided with the facilities and services proper to the full development of her capabilities. According to Art.3(3), if disability reduces the personal autonomy of the affected subject so as to require a permanent, continuative and global caregiving intervention, in the individual and in the relational fields, the disability is to be considered as severe. The assessment of the gravity of deafness is dependent upon the capability of the deaf person to carry out her everyday-life activities. Thus, deafness falls within the severe disabilities object of the Law 104/1992, for which the latter provides benefits to the people affected. In fact, deaf people require a constant assistance service in the relational sphere, such as interpretation services, auditory devices, subtitles. Such assistance is permanent, continuative and global, since it is resorted to throughout all the deaf person's existence, since it is necessary in every relational aspect of her life, and because it applies to the whole sphere of communication. Art. 33 sets out the facilities ensured to severely disabled persons, to their families and caregivers. Generally speaking, the benefits and facilities ensured by Law 104/1992 to disabled people and the caregivers are: fiscal and economic assistance; cures and rehabilitation; full access and integration in the educational environment, through the adoption of specific measures on the basis of the type of disability; right to employment and integration in the working field; elimination of architectonic barriers, facilities regarding public and private transport; the right to vote.

Law 104 does not mention deafness – briefly only in Art.13 -, but remains vague, by setting out provisions in favor of severely disabled persons. First of all, Articles 12 and 13 respectively regard the right to education and scholastic integration. While Art. 12 promotes the right of disabled persons to enter all levels of education, going from preschool and kindergarten to university classes, Art. 13 sets out the modalities in which such right should be ensured. Scholastic integration of disabled persons should be realized through schooling programs, in coordination with medical, social, cultural, recreational and sports schedules, aimed at integrating scholastic and curricular activities with extracurricular ones. In addition to such programs, the integration of disabled children or adults in the educational environment is realizable through the provision of technical aids and facilities in schools and universities, through the organization of university measures suitable for the single disabled person and her educational path. Art.13(4) specifically regards the educational necessities of deaf people. It requires the assignment of professional teaching roles to sign language interpreters in Universities, to encourage the presence of deaf people in schools and universities, and to facilitate their learning. Sign language interpreters 'must be skilled in communication strategies for use with deaf people and have a certain degree of knowledge of LIS'.⁴⁷

⁴⁷ The status of sign languages in Europe, Report drawn up by Ms Nina Timmermans Consultant in co-operation with the Committee on the Rehabilitation and Integration of People with disabilities (CD-P-RR), Council of Europe, 2005; p.55.

Articles 17, 18 and 19 regard the working environment. They regulate professional formation of disabled persons, working integration and the requirements to be met in order for disabled persons to enjoy the right to mandatory job placement, respectively. In such articles, deaf people are not mentioned. However, Art. 19 and the right for disabled persons to mandatory employment ought to be mentioned. Article 19 Law 104/1992 is integrated with Comment n.19, stating that 'Law n. 482/1968 sets out norms regarding the 'General framework of mandatory employments in public administration and private agencies'. Article 1 of Law 482/1968 defines the subjects entitled to enjoy the right to mandatory employment, namely the military and civil war invalids, invalids due to service or work, the civil invalids, blind persons, the deaf-mutes, orphans and widows of the war dead, or of the dead for service or work, and refugees.

Law 482/1968 specifically mentions deaf people and recognizes their right to employment, not only in Art.1 but also in Art.7. It states that the provisions set out by Law 482 are applicable to deaf-mutes - individuals who have been deaf since birth or have become deaf before the language acquisition. The law obliges private companies and public bodies – respectively specified in Articles 11 and 12 – to hire specific categories of people, and, among these, deaf persons, however excluding those who have become deaf later in life.

Despite its limited application in the case of deaf people, Law n. 482/1968 represents a significant recognition for the latter, since ensuring them the right to employment and full integration in the working environment. Consequently, a deaf person employed by a public or private institution should be provided with all facilities necessary to ensure her full working abilities, such as technological auditory systems and tools, and sign language interpreters if required.

4.1.3 Law n. 95/2006: the deaf person in the framework of civil invalidity

Although civil invalids are protected by Law n. 482/1968, and more generally by Law n. 104/1992, there are substantial differences between the recognition of Civil Invalidity and Law 104.

The Italian Republic, in order to ensure and protect the maintenance and assistance of those individuals who are partially or completely unable to successfully carry out their job, due to diseases or physical or sensory disabilities, provides such categories of persons – “civil invalids” - and their families, with facilities and benefits of an economic and non-economic nature – respectively, pensions and subsidies, medical assistance and work permissions laid down in Law 104/1992.

The concept of “Civil invalid” differs from that of handicapped or disabled persons, object of Law n. 104/1992. On the one hand, a handicapped or disabled person lives disadvantaged social circumstances, due to her physical or sensory impairments which limit her in the social, educational, and working environment. On the other hand, a civil invalid is affected by a disease or disability which reduces his working ability by more than one-third. However, it is possible for

a person to be recognized as both handicapped and civil invalid, hence entitled to enjoy benefits of both kinds.

Civil invalidity, consisting of a set of economic and non-economic facilities, is recognized to:

The mutilated and civil invalids with congenital or acquired disabilities whose ability to work has been reduced by 33% (excluding the war, or service or work invalids to whom other benefits are recognized).

The civil blinds, affected by total blindness or with a remaining visual capacity superior to one-twentieth in both eyes, due to congenital factors and independent from wars and accidents at work.

The deaf (deaf-mutes), namely persons affected by congenital deafness or deafness acquired before the twelve years of age, which impeded them to develop the use of spoken language.⁴⁸

The Italian Law n. 95 of 20 February 2006 defines the parameters necessary to consider a person as deaf in the framework of civil invalidity, hence as entitled to receive the invalidity pension and other benefits offered to civil invalids, at Article 1(2). It recognizes the deaf person as a hearing-impaired person affected by congenital deafness or acquired during the developmental age – before the twelfth year of age- which has compromised her acquisition of the use of spoken language, insofar as deafness lacks a psychic nature or has not been caused by war or work. A person is affected by hearing loss if she presents a significant reduction of her hearing capacity; however, for the purposes of the civil invalidity, in order for a person with hearing loss to enjoy the benefits linked to the former she shall present the characteristics defined by Article 1(2) of the Law in question. Law 95 of 20 February 2006 has officially substituted the word 'deaf-mute' with the term 'deaf', in recognition of the fact that persons with a hearing disability, more or less severe, are not mute, since they are able to communicate through the use of sign language.

4.1.4 The Framework Law n. 4679 on the Citizenship Rights of Deaf Persons, with Hearing Impairments in general, and Deaf-blind

The Italian Framework Law on the Citizenship rights of persons affected by deafness, auditory impairments in general and deaf blindness, is one of the most significant Italian parliamentary initiatives concerning the rights of deaf people and the right to the use of sign language. The Framework law n. 4679 initiated its process in 2013, and it was transmitted to the Italian Chamber on 4 October 2017, in the wake of its approval by the Senate, as the result of the unification of the parliamentary bills n. 302, 1019, 1151, 1789, and 1907.⁴⁹ It 'presents provisions aimed at promoting the full participation to community life for persons affected by deafness, auditory impairments and deaf blindness, by promoting instruments aimed at

⁴⁸ Tutto quello che c'è da sapere sull'invalidità civile, in <https://www.pensionielavoro.it/site/home/wikiprevidenza/cosa-si-ottiene/prestazioni-assistenziali/tutto-quello-che-ce-da-sapere-su-invalidita-civile.html>.

⁴⁹ Marcoaldi M. (2017), La legge per riconoscere la lingua ufficiale dei segni: 'Dare piena cittadinanza ai non udenti', in <https://www.fanpage.it/politica/la-legge-per-riconoscere-la-lingua-ufficiale-dei-segni-dare-piena-cittadinanza-ai-non-udenti/>.

preventing and curing deafness and deaf blindness, and, notwithstanding the teaching of the Italian spoken and written language, by recognizing and promoting the Italian Sign Language (LIS), also in the tactile form of LIS'.⁵⁰

The framework law consists in 14 articles. Art. 1 sets out the purposes of the Law, stating that the Italian Republic shall recognize the rights of persons with deafness, hearing impairments and deaf blindness, by promoting the removal of barriers to comprehension and communication affecting and limiting such people's development and full participation to community life. Such aims shall be achieved in line with Art. 2 and 3 of the Italian Constitution, Articles 21 and 26 of the European Charter of Fundamental Rights –respectively addressing non-discrimination and inclusion of disabled persons – and with the provisions enshrined in Law n.104/1992 - the Framework Law for the Assistance, Social Inclusion and the Rights of Disabled Persons.

Art. 2 promotes the recognition of deaf, hearing-impaired and deaf blind persons', and their families' freedom to choose the type of means of communication, the educational path and the aids proper to ensure development and full inclusion in the society. The article calls on the States to provide the possibility of resorting to the use of sign language, of tactile LIS and all means of support to communication in all private and public environments.

Article 3 of the Framework Law n. 4679 is also worth mentioning. It requires that the Italian Republic promote the use of instruments aimed at preventing or precociously identifying deafness and deaf blindness - the newborn screening or the pediatric audiological examination - together with any medical preventive or rehabilitative examination. Art. 3 also requests the provision of psychological support interventions for both the affected children and their parents and family members. Finally, it promotes accessibility of deaf and deaf blind persons in the community, by requiring the State to provide technical and technological instruments aimed at reducing the disadvantaged circumstances experienced by such people.

Article 4 represents one of the most significant articles of the Framework Law, since it promotes full accessibility in general and accessibility to the physical environment. Accessibility shall be guaranteed to deaf and deaf blind people through the elimination of barriers to communication and comprehension, hence through the provision of technological instruments in both indoor and outdoor areas.

Accessibility is also advocated referring to the educational and working environments. Article 5 calls on the States to provide services aimed at guaranteeing the full inclusion of the deaf or deaf blind student. Namely, the presence of a support teacher, of a communication assistant, of a sign language and tactile LIS interpreter, together with the provision of hearing technological aids and other resources ensuring effective participation to school activities. Art.5(2) requires the State, regional and local administration to consider the teaching requirements of Italian Sign Language, by making financial and human resources available. Within 90 days from the adoption of the present law, a decree issued by the Italian Ministry of Education envisages the definition of national standards of the educational paths of communication assistants and LIS interpreters,

⁵⁰ Camera dei Deputati, Servizio Studi, XVII Legislatura, Documentazione per l'esame di Progetti di Legge, Legge Quadro sui Diritti di Cittadinanza delle Persone Sorde, con Disabilità Uditiva in genere e Sordocieche, A.C. 4679, Dossier n. 645, Schede di Letture 6 Novembre 2017, p. 1.

in order to make highly skilled and expert teachers available for the teaching of Italian sign language.

Article 6 promotes full accessibility and inclusion for deaf and deaf blind persons in universities and in post-university education. In particular, its second subparagraph advocates the promotion of the use of Italian sign language and tactile sign language, and its teaching to students, in order to encourage communication by and with deaf and deaf blind people and students.

Article 7 of Framework Law n. 4679 applies the concept of accessibility and inclusion of deaf and deaf blind persons to the working field. It promotes 'the principle of the promotion of equal opportunities and accessibility to environments, workplaces, resources, formational and refresher courses, interviews, reunions, interactions with the leadership and colleagues, and to everything concerning the working life, through the use of the LIS and tactile LIS and all proper instruments and aids, as well as the new technologies, including applications, chats, e-mails and videoconferences'.

The Framework law 4679 also promotes accessibility for deaf and deaf blind persons in the fields of medical structures and assistance (Art. 8), of cultural and historical heritage, together with sports and tourism (Art.9), in the political field and in that of information (Art.10, promoting the provision of subtitle services and those of LIS interpretation during events and conferences). Finally, Article 12 promotes the role of the National Observatory on the Status of Persons with Disabilities – regulated by Art.3 Law n. 18/2009 - as the monitoring body of the condition of deaf or deaf blind people, with reference to the various territorial circumstances, tasked with the preparation of a report on the implementation status of the law.

Framework Law n. 4679 recognizes Italian Sign Language as the primary language and means of communication of the Italian deaf community, not only in the educational, social and public environment, but also in the field of justice. In fact, it is important to ensure deaf and deaf blind people the possibility of expressing themselves and communicating during a judicial process, in front of a judge or lawyer, by using sign language or resorting to the aid of a LIS interpreter. This would avoid possible episodes of injustice. The same applies to the medical field. The deaf or deaf blind person should be able to communicate clearly and correctly with doctors, in concern of the medication and treatments she might be subjected to.⁵¹

Regarding the educational environment, the Framework Law provides for the principle of freedom of choice. Deaf or deafblind students should be able to choose their educational path. Some students may prefer the learning method through sign language, while others may favor using hearing devices and learn via oral teaching. Schools and universities should assure both options, together with the presence of mixed classrooms and bilingual educational programs. In order to ensure a bilingual education or assistance in the learning process, schools and universities should hire expert and skilled sign language interpreters. The framework Law asks for the provision of high formative training courses for sign language teachers and interpreters.

⁵¹ Marcoaldi M. (2017), La legge per riconoscere la lingua ufficiale dei segni: 'Dare piena cittadinanza ai non udenti', in <https://www.fanpage.it/politica/la-legge-per-riconoscere-la-lingua-ufficiale-dei-segni-dare-piena-cittadinanza-ai-non-udenti/>.

The Rights of deaf people and Sign language: the importance of the explicit recognition of sign language in Italy and in France.

Nowadays, such courses are provided privately, in former institutes for the deaf or schools specifically created for the formation of LIS interpreters, but it is present goal to extend and provide courses at the state level.⁵² In fact, the Framework Law n.4679, still hasn't been adopted as effective law providing the explicit recognition of sign language.

⁵² Marcoaldi M. (2017), La legge per riconoscere la lingua ufficiale dei segni: 'Dare piena cittadinanza ai non udenti', in <https://www.fanpage.it/politica/la-legge-per-riconoscere-la-lingua-ufficiale-dei-segni-dare-piena-cittadinanza-ai-non-udenti/> (words of Francesco Russo, PD).

5. A comparison: the french national case

France is the first country – followed by Italy - to have experienced the birth of sign language and the foundation of institutes devoted to the teaching of the deaf.

The French sign language – the Langue des Signes Française (LSF) - resulted from an educational process begun in the half of the 18th century. In 1755, the French Catholic Priest Charles-Michel de l'Épée was hired as teacher of two deaf-mute sisters and developed his own mimic-gestural teaching method for the deaf. He elaborated a conventional sign language, resulting from the union of the gestures already used by the deaf and new ones he added, representing objects, events and grammar structures of the French language.⁵³ De l'Épée's method, based on the arbitrary relationship between objects or abstract events, signs and French written words, was later refined by the French Abbot Ambrois Sicard who became Principal of the Parisian National Institute for the Deaf. The final official Langue des Signes Française (LSF) became source of the development of other sign languages, such as the Italian Sign Language. The latter, in fact, was elaborated by Tommaso Silvestri, an Italian priest, commissioned by the Roman lawyer Pasquale di Pietro to visit Charles-Michel De l'Épée, in order to learn the French teaching methods and sign language. In 1784, after six months of stay, Tommaso Silvestri started educating eight students at the lawyer's house, which then became a recognized school for the deaf (the Regio Istituto Sordomuti, built - and still present - in Street Nomentana, 54, Rome).

5.1 The French National Federation of the Deaf (FNSF): some partial achievements

The French deaf community is represented by the Fédération Nationale des Sourdes de France, born in 1987. 'The Federation carries out its action in compliance with the principles enshrined in the Charter of the Rights of the Deaf, approved by the General Assembly on 9 May 1998 in Limoges, and ratified on 24 October 1998 in Montrouge (...)',⁵⁴ and in respect of the principles of the UN Universal Declaration of Human Rights of 1948.

As stated in its Charter of the Rights of the Deaf, 'the Federation aims at covering all the aspects of the life of the deaf community and of deaf citizens and their family members: economic and

⁵³ Caselli M.C., Maragna S. & Volterra V. (2006), Linguaggio e sordità. Gestì, segni e parole nello sviluppo e nell'educazione, Bologna, Il Mulino, p. 26.

⁵⁴ Notre position, in <http://www.fnsf.org/la-federation/notre-position/>

social life (employment and administration), community life, political life, civil life, justice, teaching, education, popular instruction, formation, health, culture, free time, sports, pensions, communication, information, security, protection'.⁵⁵ More specifically, starting from 2001, the Federation has created four sectors of targeted intervention, namely the 'Deaf' sector, 'Information and Communication', 'Cultural Heritage' and 'French Sign Language/Education'.

The French National Federation recognizes the French Sign Language as a natural language possessing the same linguistic features of spoken languages. It states that 'Sign language is the only means of communication truly suitable for the deaf, allowing them a cognitive and psychological development equal to that of a hearing-abled person who uses the spoken language'. Moreover, acknowledging that the maintenance of the different languages spoken by the citizens is key to ensuring a greater transparency, legitimacy and efficiency', the FNSF supports the access to the minority language being a national language for all the deaf citizens of the French Republic.⁵⁶ Therefore, the Federation claims the official recognition of the French Sign language in all Institutions of the Republic, demanding the provision of interpretation services as a means of guaranteeing deaf people a complete and equal access to all the fields of community life.

'On 20 February 2004, the Secretary General of the FNSF has presented the proposal on the official recognition of the French Sign Language to the President of the Senate, Serge Vincon, in Montargis (Loiret)'.⁵⁷ On 1 March, the proposal was voted by the Senate during the first lecture of the draft law on disabled persons. Finally, one year later, on 11 February 2005, 'the President of the French Republic, Jacques Chirac has promulgated the new Law n. 102/2005 on Equality of Rights and Opportunities, Participation and Citizenship of Disabled Persons. The law provided the definition of disability in the Code of Social Action and Families for the very first time in France. Art. L.114 stated - and still states - that shall be considered a disability any restriction of activity or restriction of participation to community life suffered in his environment by a person due to a substantial, durable or definitive alteration of one or more physical, sensory, mental, cognitive or psychic functions, or due to a multiple handicap or a disabling health disorder. Deafness emerges among the sensory disabilities. Hence, the law also advocates the official recognition of the French Sign Language, which however has not been yet achieved at the Constitutional level.

France has incorporated the recognition of French Sign Language in education legislation. 'The Law n. 102/2005 recognizes sign language as a full-fledged language in the Code of Education'⁵⁸, thus, the FNSF requires its teaching in schools and universities, together with support services and courses to the teaching and learning of the French spoken language for the deaf wearing hearing aids.

⁵⁵ Ibidem.

⁵⁶ Fédération Nationale Des Sourds De France (FNSF), PRISE DE POSITION – LANGUE DES SIGNES FRANCAISE, in <http://www.fnsf.org/wp-content/uploads/2019/09/PRISE-DE-POSITION-LSF.pdf>.

⁵⁷ L' Histoire de la Fédération, in <http://www.fnsf.org/la-federation/notre-histoire/>.

⁵⁸ Fédération Nationale Des Sourds De France (FNSF), PRISE DE POSITION – EDUCATION, p.1, pdf, <https://www.fnsf.org/la-federation/notre-position/>.

Bilingualism – the teaching and provision of courses in and of French sign language in schools and universities – is the main objective that the FNSF requires the French State to achieve, standing on four criteria:

- a. The French Sign Language shall be the teaching language, the learning language and the working language.
- b. The French Sign Language shall be used for the teaching of all school subjects.
- c. Teaching in sign language shall be carried out by bilingual experts, formed and graduated, with a C1 level of French Sign Language.
- d. The school shall be ordinary and the deaf and the hearing students shall learn to coexist.
- e. The environment shall provide numerous socio-cultural activities and it shall be inclusive.⁵⁹

Such criteria have also been set out in the Charter signed on 7 September 2007 and adjourned in May 2012 by the Superior Education and Research Ministry, the Ministry of Labor, of Social Relations and National Solidarity, and the Conference of the Presidents of Universities.⁶⁰ The Charter, entitled Guide de l'Accueil de l'Étudiant Handicapé à l'Université - Guide on the Support of the Disabled Student in Universities - promotes equal access and opportunities for all citizens in the field of education, focusing on the context of university. The guide sets out 3 objectives to be achieved by the French State in the university field within 5 years: hire more disabled personnel; promote training in the field of disability; continue to improve the accessibility to services and offices.⁶¹

According to official government statistics⁶², the guide has improved the quality of and the accessibility to superior education. The number of disabled students enrolled in universities has tripled in the last 15 years⁶³. In fact, it defines the system of support and welcoming for disabled students, by mentioning Art. 20 of the Law 11 February 2005, which states that 'the institutes of superior education enroll students with disabilities or with disabling health problems, in the framework of the provisions regulating their access on an equal basis with the other students, and provide their training enacting the necessary provisions for their circumstance in the organization, carrying out and support of their studies'.⁶⁴ Nevertheless, the French State ensures each universities independence in implementing the requirements set out in the guide specifically, and in education legislation in general. Thus, reception policies often fail to be enacted effectively. In such cases, the same Guide on the Support of the Disabled Student in Universities provides disabled students the possibility of redress, whenever they are subject to discriminatory treatment. After having acknowledged the discrimination – the disabled student is not allowed to have access to education contents on an equal basis with the other students –

⁵⁹ Ibidem, p.2.

⁶⁰ Secteur Etudiants, in <http://www.fnsf.org/secteur-etudiants/>.

⁶¹ Ibidem.

⁶² Ministère de l'Enseignement Supérieur de <https://www.enseignementsup-recherche.gouv.fr/>.

⁶³ Secteur Etudiants, in <http://www.fnsf.org/secteur-etudiants/>.

⁶⁴ Ibidem.

the student with disability in question must report it to the institute in which he is enrolled, which on its part is required to contact the hierarchical superior of the Handicap Mission Manager or the Handicap referent. If the latter persons do not successfully intervene, the student can ask the doctor of the university, or the representative of the students' body for support and intervention. Furthermore, the disabled student as a last resort might choose to involve actors external to the institute, such as the Defender of Rights.⁶⁵

Despite the adoption of the Guide de l'Accueil de l'Étudiant Handicapé à l'Université, and the adoption of the Law n. 102/2005 on education, the latter is still field of discrimination towards disabled children and teenagers. In the case of deafness, education programs provided by the French schools fail to be inclusive. The field of education is always been subject to debates: the discussions are based on the type of school, the language of communication and the systems of support used. Thousands of deaf students are currently deprived of access to sign language, hence of access to teaching in sign language. Despite the ratification of the UN CRPD on 18 February 2010 and the full acknowledgment of the requirements set out by the World Health Organization in its Report on Handicap (2012) - promoting the right to education for deaf children and persons – France currently struggles in ensuring a bilingual education to its deaf citizens.

Bilingualism has taken few steps in the field of employment. In 2003, the FNSF launched the start-up entitled Websourd, consisting in an 'interactive new website in sign language, and Elision, a remote communication service with sign language interpreters. This new type of technology was later adopted by 'about 20 local public services, city halls, and sectors such as insurance, banking and transit',⁶⁶ providing the possibility to deaf persons to have easier access to the internet and public services thanks to the aid of sign language interpreters. In 2012, the same start-up launched an initiative consisting in the new job search portal entitled Jobsourd, 'which collects job postings, CVs and sells services to recruiters'.⁶⁷ This job portal '[offers] a better accessibility and a greater autonomy to deaf persons in their job research'.⁶⁸ Taking into account that deaf people encounter important difficulties in entering the employment world, Jobsourd helps easing such struggles by providing job offers in both French and French Sign Language; by providing the possibility to apply to job postings in French, French Sign Language, or both; by offering a place for exchanging experiences, making questions and obtaining advices concerning the working sector. Such initiative is one of the most effective actions carried out in the field of deafness in general, with specific concern to employment. It fosters accessibility to the latter, as it represents a significant opportunity for the deaf to enhance their possibility of finding a job. On 28 September 2016, the French Senate passed the draft law on the République Numérique, then enacted on 7 October 2016 as Law n. 1321/2016. It concerned the modernization and digitalization of the public administration, and it promoted the strengthening of the protection of citizens in the digital field.⁶⁹ The law concerns three themes and objectives, respectively presented in the three Titles: Promotion of the circulation of data

⁶⁵ Ibid.

⁶⁶ Marcaillou L. The Little Start-up from Toulouse Giving a Voice to the Deaf, 2013 in <https://worldcrunch.com/culture-society/the-little-start-up-from-toulouse-giving-a-voice-to-the-deaf>.

⁶⁷ Ibidem.

⁶⁸ <http://www.jobsourd.fr>.

⁶⁹ Foltran F. (2016), Approvata in Francia la Legge sulla République Numérique, Journal Article in <http://www.medialaws.eu>.

and information; Control over the protection of individuals in the digital space; Provision of access to the digital space to anyone.

The third title focuses on ensuring accessibility to information and digital public services (Articles 35-42), and on facilitating such access for persons with disabilities (Articles 43-44). Specifically, Art. 43 imposes to make telephone and public services, clients services of certain enterprises and technological communication services accessible to deaf and hearing-impaired persons. More generally, Art. 44 requires the improvement of the access conditions of disabled persons to public websites by strengthening the control over the respect of such obligations by the organisms concerned, together with the possibility of sanctioning the latter the in case of non-compliance.⁷⁰

5.2 The lack of a Constitutional Recognition of French Sign Language

The Constitutional recognition of French Sign Language implies the explicit reference to the latter as an official legal language in the Constitutional text. The introduction of an Article concerning the right to sign language and rights of deaf people in general in the French Constitution would finally bring the recognition and protection of citizenship rights of deaf people. On the one hand, it would provide greater visibility to the status of the deaf and enhance awareness towards the limitations encountered by the latter in countless circumstances of social life; on the other hand, most importantly, it is expected to entitle deaf persons to assert their rights before the courts, and before the Conseil Constitutionnel - the guardian of the principles enshrined in the French Constitution. Through the possibility to appeal to the courts and the Constitutional Council, the French deaf would be granted full protection and enjoyment of civil, political, and social rights. The right to resort to sign language to communicate would be ensured in any circumstance, not only in the field of education. Therefore, the facilities – partially - provided by Law n.102/2005 in schools and universities, would be ensured in all spheres of community life. The French deaf would be granted the opportunity to appeal to the courts whenever these facilities are not supplied, or their rights violated.

On 18 April 2019, Corinne Imbert, Senator of the Charente maritime within the group of Les Républicains, submitted a question to the State Secretary before the Prime Minister responsible for disabled persons, concerning the insertion of the recognition of French sign language in the Constitution. After stating that sign language is the natural language of the deaf, and after acknowledging the limited recognition of the latter ensured by Law n. 102/2005, the Senator asked for the Government to incorporate a more encompassing recognition of French sign language in the Constitution. In her view, such recognition 'will allow to clarify the legal status

⁷⁰ Law n. 1321/2016, in www.senat.fr/dossier-legislatif/pj115-325.html.

of the language, to consider the deaf as full- fledged citizens, to enable the deaf to enforce their right to use sign language'.⁷¹

On the 5 September 2019, the State Secretary before the Prime Minister presented his answer to the issue raised by the Senator C. Imbert. He acknowledged the recognition of the French sign language as a 'language of France', together with the spoken national language. He also mentioned the Law n. 102/2005 and the novelties it introduced in the field of education. Namely, the development of LSF programs, the creation of the certificate of proficiency in teaching to deaf students, the obligation to respect the linguistic program of deaf students. The State Secretary stated that the teaching of Sign language enables the latter to consolidate its role as language of France. Despite the innovations introduced in telephone national services, in television programs – by providing LSF interpretation services – in health structures – by allocating reception personnel prepared in French sign language, deaf persons still encounter numerous difficulties in communication in their everyday lives, due to the insufficient number of LSF interpreters. After acknowledging such reality, the State Secretary claimed the necessity of questioning the contribution of French sign language to the Constitution in order to ensure a progress in the recognition of such language. In his view, however it is difficult to determine the level of recognition of LSF and the extent of its use while in the European Continent national sign languages are recognized at different levels – constitutional or legislative -.⁷²

On 5 September 2019, the Senator of Haute-Vienne, from the Socialist group Marie-François Perol-Dumont requested the attention of the Ministry of Justice on the issue concerning the recognition of French sign language in the Constitution. Although the Law n.102/2005 – she stated –has recognized the status of French sign language as a language of the Republic, the National Federation of the Deaf of France believes that only the inclusion of LSF in the Constitution would ensure effective equality among the hearing and deaf French citizens, since the latter still experience numerous limitations in their daily lives, and in the educational, cultural, professional and medical fields. The FNSF demands the recognition of LSF at the Constitutional level since France signed the UN Convention on the Rights of Persons with Disabilities, requiring each State party to recognized and encourage the use of sign languages, at Art. 21.⁷³

The Ministry of Justice gave its response on 28 May 2020. It stated that the Constitutional Law of 25 June 1992, by determining the French language as the language of the Republic in Art. 2 of the Constitution, does not hinder the recognition of the use of other languages over the territory of the Republic. French sign language has in fact been recognized as full-fledged language in the field of education, providing deaf student the possibility of choosing oral or sign schooling programs; moreover, LSF interpretation services are provided in the judicial field, during trials. The Ministry of Justice also stated that the Constitutional Council recognized –

⁷¹ Reconnaissance dans la Constitution de la République française de la langue des signes, 15e législature, Question écrite n° 10084 de Mme Corinne Imbert (Charente-Maritime - Les Républicains), publiée dans le JO Sénat du 18/04/2019 – p. 2054, in <https://www.senat.fr/questions/base/2019/qSEQ190410084.html>.

⁷² Réponse du Secrétariat d'État auprès du Premier ministre, chargé des personnes handicapées, publiée dans le JO Sénat du 05/09/2019 – p. 4560, in <https://www.senat.fr/questions/base/2019/qSEQ190410084.html>.

⁷³ Question écrite n° 10286 de Mme Marie-Françoise Perol-Dumont (Haute-Vienne - SOCR), publiée dans le JO Sénat du 09/05/2019 – p. 2489 in <https://www.senat.fr/questions/base/2019/qSEQ190410084.html>.

through the principles laid down in the Preamble of the French Constitution of 1946 – the existence of constitutional requirements imposing on the legislator the adoption of measures aimed at ensuring égalité among disabled and abled persons.⁷⁴

Despite the request of recognition of French Sign Language in the Constitution has been recently raised before the Secretary of State and the Ministry of Justice, and has received responses by the latter, it has not been met yet. The insertion of an article recognizing LSF as a national language together with spoken French language in the Constitution remains key objective of the National Federation of the Deaf of France.

⁷⁴ Réponse du Ministère de la justice, publiée dans le JO Sénat du 28/05/2020 – p. 2438 in <https://www.senat.fr/questions/base/2019/qSEQ190410084.html>.

6. Conclusions: the benefit of the explicit recognition of sign language

Italy and France feature among the first countries to have experienced the birth of sign language and the creation of the two most ancient associations representing deaf communities. Namely, the Italian National Agency for the Protection and Assistance of the Deaf (Ente Nazionale Sordi – ENS), and the French National Federation of the Deaf (Fédération Nationale des Sourds de France – FNSF).

As members of the United Nations, Italy and France have adhered to the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities. In particular, to Art. 21(e) of Convention, requiring State parties to recognize and promote the use of sign languages, which they currently appear to be disregarding. In fact, they both lack a constitutional or legislative recognition of their national sign language - key aspiration of the ENS and the FSNF. In Italy, the absence of a law recognizing the importance of sign language may be regarded to as contrary to Article 117 of the Italian Constitution, according to which 'the legislative power is carried out by the State and the Regions in compliance with (...) international obligations.' Since Italy has ratified the UN CRPD – a treaty binding upon its ratifying members – and has accepted to implement its requirements at the national level, the legislator is asked to adapt the national legislation to the standards set by the Convention, and, among these, those standards regarding deaf people. Art. 117 of the Italian Constitution represents a valid legal basis for the adoption of a law recognizing the LIS,⁷⁵ which not only would comply with the requirements of the Italian Constitution, but it would ensure several benefits to deaf people. The Framework Law n. 4679 previously investigated specifies the rights that deaf people would enjoy if finally adopted by the Parliament. Generally speaking, the benefits that would result from the adoption of such law are:

The presence of an inclusive educational and schooling system, ensuring the full participation of deaf students, of both schools and universities, to academic programs and contents, on an equal basis with the 'abled' students. Inclusion would be achieved by resorting to 'the most appropriate languages (...) and means of communication for everyone', in line with Art. 24(3)(c) UN CRPD. Each school and university would ensure the presence of LIS interpreters and teaching assistants, hence the possibility for deaf students to choose to participate in class by means of LIS or spoken language. The profession of sign language interpreters and teachers would be therefore recognized at the state level and provided with the proper educational formation.

⁷⁵ Marziale B. & Volterra V. (2016), *Lingua dei segni, Società e Diritti*, Roma, Carocci Faber, p. 182.

The effective and full enjoyment of civil and political rights, the right to information, to culture and to freedom of expression of thought, also in sign language, the right to cultural products, television programs, political platforms.

The strengthening of the right to health and to social assistance through the possibility to benefit from services offered by offices and public structures.⁷⁶

In France, the Constitutional recognition of French Sign Language would ensure deaf people remarkable benefits as well. On the one hand, it would bring enhanced visibility to the status of the deaf community and it would increase awareness towards deafness and the limitations resulting from it. On the other hand, it is expected to ensure an effective protection to the rights of the deaf. By inserting an Article concerning these rights and sign language in the Constitution, the French deaf would be entitled to assert their rights before the courts, and especially before the Conseil Constitutionnel as guardian of the Constitution, whenever they are violated.

In conclusion, the explicit – legislative or constitutional - recognition of sign language would ensure the full development of the deaf person, under all personal, social, judicial aspects. It represents a significant and essential component of democracy. Therefore, it shall be achieved at all costs.

⁷⁶ Ibidem, p. 183.

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of the explicit recognition of sign language in Italy and in France.**

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