

The legal recognition of sign languages in an intersectional perspective

Lucia Busatta*

Abstract: Sign language is a key instrument of communication for the deaf community. For this reason, it is important that sign language finds recognition at a legislative level and is promoted as an inclusive means let people to use it, to communicate and to receive information.

This article presents the increasing importance of sign languages with a special focus on the recent legislative acknowledgement in the Italian legal context. After the presentation of the theoretical framework in which sign languages are considered, the article proposes a model to describe and analyse the various level of recognition and protection that sign languages could have in different legal systems, with a particular focus on European states. This brings to the presentation and the critical assessment of the recent recognition of Italian Sign Language (LIS) in Italy. Conclusions suggest the preferable way for sign languages recognition and promotion, with the aim of guarantee the effective right to use it to all, irrespective of their individual conditions.

Sign Languages; Italian sign language; linguistic diversity; disability rights; social inclusion.

Summary: 1. Introduction: sign language(s) and the law. – 2. The intersectional approach promoted by the international deaf community. – 3. The shift of paradigm: from protection to promotion, through empowerment. – 4. The Legal recognition of sign languages: which models?. – 5. The recognition of Italian Sign Language: so much promise, so little delivery?. – 6. To draw some conclusions: the desirable model and sign languages for all.

Sign language is a dance with words,
to be enjoyed from babyhood through childhood to adulthood...
(Marylin Daniels, *Dancing With Words: Signing for Hearing Children's Literacy*,
Praeger Pub Text, 2000)

1. Introduction: sign language(s) and the law

With the expression “sign language”, we commonly refer to “any means of communication through bodily movements, especially of the hands and arms, used when spoken communication is impossible or not desirable”¹.

Even though it could be confused with casual or conventional gestures, it should be firstly pointed out that sign language is actually a complete and full-fledged language, with grammar, lexicon, structure, shades of sense and every aspect that could contribute to the formal definition of language. It is probably one of the oldest forms of communication for the human being, and some authors consider it even older than spoken language.

* Assistant Professor in constitutional law, University of Trento (I). All websites cited in the present article have been checked on 9th January 2022.

¹ Encyclopaedia Britannica, *Sign language*, 12 Nov. 2020, <https://www.britannica.com/topic/sign-language>. Accessed 9 January 2022.

Commonly, it is known as the language for the deaf community, but this is only a limited and partial assumption: as highlighted above, sign language is not *per se* related with a hearing disability. Sign languages are adopted *also* by the deaf community but could be used by everyone in any sort of circumstance. For example, in recent years, it has been gaining circulation the so-called baby-sign language, a set of basic signs that can help a toddler to acquire familiarity with communication tools and to express herself, even before being able to communicate.

Differently from what could be commonly thought, moreover, sign language is not unique and universal: there are actually several sign languages; they do not properly correspond to national languages, even if we could basically organize them into linguistic groups².

If from a linguistic and ethnographic viewpoint there are many aspects of interests concerning the essence and development of sign languages, even the legal dimension presents some relevant aspects of interest. We recalled the ancient origin of sign languages and its theoretically wide application, being it a language not only for the deaf community. Nevertheless, the most important steps for its legal recognition and its promotion both by the international community and by national legal orders has to be ascribed to the commitment by the World Federation of the Deaf (WFD), by its national or continental articulations and by specific national associations. It is thanks to these bodies if today we can celebrate an International Day of Sign Languages³ on September 23rd and if several constitutions and legislation recognise the importance of sign language for social inclusion and adopt concrete instruments to promote its diffusion and accessibility for all⁴.

Given these premises, the aim of this article is to present and discuss the different models for the legal recognition of sign language, with a specific focus on European countries and on the recent legislative acknowledgement of Italian Sign Language⁵. Before doing so, it is necessary to depart from an overview of international instruments for the promotion of Sign Languages and their degree of implementation by other legal systems, both at a constitutional and at a legislative level. This will bring us to present the constitutional framework of language rights in the Italian Constitutions and the approaches that the law-maker could adopt, by mixing the long-standing protection of linguistic rights that is entrenched in the Italian legal system and the particular level of promotion of disability rights that stems from several constitutional principles and laws. Finally, a comparison between some regional experiences and the recent national legislative intervention will drive to some conclusions concerning the future perspectives of concrete and effective promotion of Italian Sign Language (LIS).

2. The intersectional approach promoted by the international deaf community

At an international level, as mentioned above, the central role for the promotion and legal recognition of Sign Languages has been played in the last years by the World Federation of the Deaf (WFD), a global organization devoted to the promotion of inclusion and equality for the community of deaf people and of persons with hearing disabilities. The WFD, established in Rome, on 23 September 1951, as to today counts representatives of 125 countries and has a consultative status at the United Nations, as it usually collaborates with the UN and its Agencies advocating for the development and the improvement of human rights' recognition for deaf people and for the accessibility of services for all.

² J. HOSEMANN, M. STEINBACH (eds.), *Atlas of Sign Language Structures*, SIGN-HUB project, 2021, available at <https://www.sign-hub.eu/atlas>.

³ United Nations General Assembly Resolution A/C.3/72/L.36/Rev.1 recognising 23rd September as the International Day of Sign Languages as part of the International Week of the Deaf. The document has been adopted on 14 November 2017 and is available here: <https://undocs.org/A/C.3/72/L.36/Rev.1>

⁴ For some more details on the World Federation of the Deaf and on its commitment for the promotion of deaf community's rights, see: https://sog.luiss.it/sites/sog.luiss.it/files/WP66_The%20Rights%20of%20deaf%20people%20and%20Sign%20language_V3.pdf, p. 10.

⁵ In the following paragraphs, we will come with more details on the legislative recognition of Italian Sign Language, that has been realized by means of Article 64-ter of Law no. 60/2021, which converted with modifications law-decree no. 41/2021.

Among the vast number of its activities, it is worth mentioning its advocacy for the development and approval of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted by the UN General Assembly in 2006 and in force since 2008⁶. As we will discuss more in detail later, moreover, it has been strongly involved in taking actions and initiatives against the isolation and social marginalization of deaf people during the pandemic emergency, worldwide. To make an example, it is definitely thanks to the WFD and to national deaf associations if almost any press conference or institutional communication during the Covid 19 pandemic has been accompanied by a sign language interpreter. As it is easily understandable, this has an immeasurable impact for the visibility of the needs of the deaf community and for the possibility to make all levels of information and communication really accessible to all.

A crucial step for the advancement in the international level of promotion of sign languages is the WFD Charter on Sign Language Rights for All, a soft law instrument, adopted in 2019, and open to the signature by governments, institutions, organisations or other relevant stakeholders committed to the enhancement of human rights of deaf people. The WFD Charter adopts a very inclusive definition of Sign Language and of its addressees. In fact, in the first articles of the WFD Charter we can read that Sign Language is “the key to the inclusion of deaf people in society” and that “Sign Language Rights for All includes the rights of deaf people, deaf children, deaf youth, deaf women, deaf elders, deaf LGBTQIA+, deaf migrants, deafblind people, families of deaf children, children of deaf adults (CODA), and all other people using sign language to benefit from full and effective access to the community, including the Deaf Community and mainstream services through the use of sign language”⁷.

Central to the promotion of deaf community’s human rights is the recognition of their intersectionality. More generally, intersectionality is a key concept for the understanding of contemporary society, as it encompasses the inherent pluralism of current social groups, which on the one hand call for an identity recognition and, on the other hand demand inclusion⁸. A brief focus on the concept of intersectionality is functional to the understanding of the complexities subtended to the claims of groups that demand recognition of their identity to avoid social marginalization. The term intersectionality was introduced during the 80s by Kimberlé Williams Crenshaw in feminist studies, mainly with reference to the multiple discrimination suffered by African women. The concept was then quickly and successfully applied to other areas and social groups, such as migrants or people with disabilities and LGBTQ+.

From a legal viewpoint, Crenshaw’s theories are extremely important for the discussion and the development of antidiscrimination laws and studies, as they clearly contributed to point out that the legal approach tends to address only one ground of discrimination at a time, whereas most commonly

⁶ On the role of these bodies for the promotion of fundamental rights of persons with disabilities see J. McVEIGH, M. MACLACHLAN, D. FERRI, H. MANNAN, *Strengthening the Participation of Organisations of Persons with Disabilities in the Decision-Making of National Government and the United Nations: Further Analyses of the International Disability Alliance Global Survey*, in *Disabilities*, 1(3), 2021; 202-217.

⁷ World Federation of the Deaf, Charter on Sign Language Rights for All, available at <https://wfdeaf.org/news/resources/wfd-charter-on-sign-language-rights-for-all/>.

⁸ The term intersectionality was firstly used in K. CRENSHAW, *Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics*, in *University of Chicago Legal Forum*, 1989, 139. In Crenshaw’s words, intersection concerns contexts characterised by multiple grounds of discrimination and need to be addressed under an intersectional perspective: “Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Thus, for feminist theory and antiracist policy discourse to embrace the experiences and concerns of Black women, the entire framework that has been used as a basis for translating “women’s experience” or “the Black experience” into concrete policy demands must be rethought and recast” (K. CRENSHAW, *Demarginalizing*, cit., 140).

the grounds for discrimination are interrelated and it is possible to detect and address one level of discrimination by putting it in relationship with another⁹.

This quick digression on intersectionality is extremely functional to the deep understanding of the revolutionary range that characterizes the WFD Charter on Sign Language Rights for All, as it qualifies the deaf communities as a “part of a unique intersectionality of rights, belonging to both linguistic and cultural groups, and the disability movement” (Article 2.3).

This is a key point of the WFD Charter, because it finally makes evident and clear that, when discussing on the legal recognition of sign languages, the choice to exclusively adopt the perspective of disability rights is terribly limited and scarcely inclusive. On the contrary, the intersectionality approach teaches us that sign language is a matter of culture not only for the deaf community but for the whole society that acknowledges its importance, on several grounds. First of all, it has to be considered combining the disability rights approach and the linguistic rights dimension, because it is also a “means of promoting, protecting and preserving the diversity of languages and cultures globally” (Art. 2.3). Moreover, it must be considered not only an instrument for the deaf community, but rather a communication bridge in the society as a whole.

3. The shift of paradigm: from to protection to promotion, through empowerment

The widely positive evaluation of the WFD Charter could be easily confirmed by a glance at its further contents. They space from the claim for the fundamental right of deaf children to bilingual education both in the national sign language and in the written language, to the need to train the wide social community to communicate in sign language. This is considered as the way to ensure completely inclusive language environments and to promote the use of sign language and inclusive languages also in technologies (i.e. televisions, website, etc.).

The strong promotional approach adopted in the Charter on Sign Language Rights for All is very much in line with other international documents and conventions endorsing and advocating for inclusive human rights, such as the 1989 United Nations Convention on the Rights of the Child, the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the 2006 United Nations Convention on the Rights of Persons with Disabilities, just to name few.

In perfect syntony with these international documents, the WFD Charter insists significantly on the concept of *empowerment*, which clearly embraces an important paradigm shift in fundamental rights’ acknowledgement and recognition, from a paternalistic model to a promotional one. This means that the role of institutional bodies is not more to ascertain the existence of right also for “disadvantaged” groups or for minorities, but rather that people claim for the recognition of their rights and institutional bodies have the duty to effectively grant them¹⁰. In brief, it means that addressees and beneficiaries of rights just take action or initiative to claim those rights and to make them effective, breaking the subordination paradigm, in which the recognition of rights depends on the decision by actors in power. This has become a crucial concept in legal studies on antidiscrimination policies or – using Crenshaw’s words – in intersectional legal studies.

⁹ For more references see VV.AA., *Reach everyone on the planet: Kimberlé Crenshaw and intersectionality. Texts by and for Kimberlé Crenshaw*, Berlin, 2019, available online at https://www.boell.de/sites/default/files/crenshaw_-_reach_everyone_on_the_planet_en.pdf; O. HANKIVSKY, J.S. JORDAN-ZACHERY (eds.), *The Palgrave Handbook of Intersectionality in Public Policy*, Cham, 2019; S. ATREY, *Intersectionality and Comparative Antidiscrimination Law*, Leiden, 2020.

See, on critical race theories, K. CRENSHAW, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, in *Harvard Law Review*, 101(7), 1988, 1331–1387.

¹⁰ On this respect, see how the concept of empowerment could be applied to minority rights: T.H. MALLOY, *National Minorities between Protection and Empowerment: Towards a Theory of Empowerment*, in *Journal on Ethnopolitics and Minority Issues in Europe*, 13(2), 2014, 11-29.

As we have seen, empowerment could have multiple meanings and could be applied to different contexts. For the purposes of the present analysis, the concept of empowerment we are referring to is pretty much related to the idea of mobilization of marginalized group, which succeed in overturning the cause for their marginalization from a factor of weakness to a point of strength.

In these terms, empowerment has gained increasing importance in legal studies, mainly in connection with the claim for social distributive justice, in a Rawlsian sense¹¹. Some even refer to an autonomous concept of “legal empowerment, as distinct from other fields, such as economics or management, that has to be understood “strengthening the capacity of all people to exercise their rights, either as individuals or as members of a community. It’s about grassroots justice – about ensuring that law is not confined to books or courtrooms, but rather is comprehensible and available to ordinary people”¹².

More specifically, when making reference to empowerment in the perspective of human rights recognition, it is necessary to recall the capabilities approach theory, connecting human development and human rights¹³. Under the capabilities approach theory, we should not consider only how equality is granted, because actually it often happens through the supply of additional goods or services (substantial equality or, in Rawls’s words, distributive justice). Capabilities tell us something more, because they could show us how people behave with the resources received and how they make them flourish. In sum, the importance of capabilities approach is that it focuses on individual specificity and heterogeneity¹⁴.

For this reason, it found broad success in many intersectional fields of research, such as disabilities studies, gender studies or minority rights. Coming back to Sign Languages, through the lenses of the capabilities approach we can really understand not only the value of empowerment and inclusion that these languages bring with them, but also their potential as real and effective communication bridges in the society.

Therefore, a fundamental way to ensure empowerment is through employment. Recalling the UN Convention on the Rights of Persons with Disabilities (CRPD), the WFD Charter affirms that “deaf people must be given the opportunity to thrive in an accessible and inclusive working environment” (art. 4.1). This is attainable through sign language, which permits them to fully express their potential and contribution to society. Sign languages, therefore, must be not only accessible, but commonly known. In terms of empowerment, it is worth highlighting the fully promotional nature of the right to work and employment as expressed in Article 27 CRPD, whereby access to employment for persons with disability is described in terms of promotion of opportunities for vocational training programs, for career advancement, for continuing training but also promotion of self-employment¹⁵.

Employment and work are crucial to human enhancement, to social inclusion and, definitely, to free an individual from the chains of dependency. It is not coincidence that it is strongly reaffirmed in

¹¹ The reference is obviously to J. RAWLS, *Theory of Justice*, 1971.

¹² Open Society - Justice initiative, *Legal Empowerment: An integrated approach to justice and development*, 21 March 2012, available at <https://www.justiceinitiative.org/uploads/149596ab-d845-4882-935d-04e99021642c/lep-working-paper-20120701.pdf>

¹³ It is well known that the capabilities approach theory has been developed, with some differences, by Amartya Sen and Martha Nussbaum. See, in particular, A.K. SEN, *Commodities and Capabilities*, Amsterdam, 1985; A.K. SEN, *Well-being, agency and freedom*, in *The Journal of Philosophy*, LXXII(4), 1985, 169-221; M. NUSSBAUM, *Women and equality: the capabilities approach*, in *International Labour law Review*, 138(3), 1999, 227.

¹⁴ Martha Nussbaum further developed the capabilities approach described by Sen, by applying it to women rights and to disability studies. See for example, M. NUSSBAUM, *Women and Human Development: The Capabilities Approach*, Cambridge, 2000; M. NUSSBAUM, *Capabilities and social justice*, in *International Studies Review*, 4 (2), 2002, 123-135; M. NUSSBAUM, *Capabilities as Fundamental Entitlements: Sen And Social Justice*, in *Feminist Economics*, 9(2-3), 2003, 33-59; M. NUSSBAUM, *Women's Bodies: Violence, Security, Capabilities*, in *Journal of Human Development*, 6(2), 2005, 167-183. On disability rights see M. NUSSBAUM, *Frontiers of Justice: Disability, Nationality, Species*, Cambridge, MA, 2006.

¹⁵ See, for example, K. VORNHOLT ET AL., *Disability and employment – overview and highlights*, in *European Journal of Work and Organizational Psychology*, 27(1), 2018, 40-55.

contemporary constitutionalism, as the key to human dignity. Besides being promoted in international charter, not only in connection with disability rights, but as a fundamental right for all, the right to work and accessibility of employment is recalled also in the Charter of Fundamental Rights of the European Union¹⁶ and in a multitude of European Constitutions. Among them, seminal is the example of the Italian Constitution, which makes work the fundamental principle of the Republic¹⁷.

In the following paragraphs, we will discuss more in depth the level of recognition of sign languages in Europe and, more specifically, in the Italian legal order. To this end, we will take as a privileged perspective an intersectional view, in which the recognition of sign languages is a means for social inclusion, irrespective of the context in which it is applied to promoted. In other words, the discourse on sign languages promotion will not be considered exclusively as an expression of disability rights recognition but, more broadly, as an important advancement also for linguistic pluralisms and for development of alternative means of communication. This will lead us, in the conclusion, to assess the most recent recognition of Italian Sign Language by law and to highlight which further steps are needed.

4. *The Legal recognition of sign languages: which models?*

To complete the panorama on the multiple aspects of interest that characterise sign languages, the presentation of the various possibilities concerning their legal recognition proves to be necessary and functional to a full understanding of the Italian legal framework.

As already mentioned, the intersectional nature of sign languages implies that it should be connected not only to the protection and promotion of disability rights, but that it has also be recalled when dealing with language rights and linguistic pluralism. Furthermore, it should not even be forgotten that the legal status of sign languages might also be completed by sectorial legislation, such as legal provisions of education, on accessibility of public services, laws on media and on communication as well as the guarantee of the right to an interpreter in judicial proceedings.

Therefore, this confused scenario deserves to be organized into models, which present the advantage to offer an efficient way of presenting different levels of guarantee and promotion of sign languages. This methodology also permits to highlight the potential paths of legal intervention that could contribute to flatten the gaps in legal protection, to grant more equality and to achieve a higher level of inclusion in the contemporary legal discourse¹⁸. From this point of view, in fact, sign language could also be considered as a good paradigm of civil society empowerment and a positive example of taking action to promote a common good and to contribute to the development of the whole society.

Coming to the possible models concerning the legal recognition of sign languages, a traditional approach distinguishes between five different levels of acknowledgement, which are: (a) constitutional recognition; (b) general language legislation; (c) dedicated sign language act; (d) sign language and other forms of communication act; (e) legislation on the functioning of the national language council¹⁹. Even if this model portrays in a precise way different possibilities that can stem from the legal solutions adopted by national legislators, for the purposes of the present analysis it seems more appropriate to focus on a simpler categorization, which also takes into account non-legislative recognition and the lack of legislation.

Therefore, in order to present the main legal solutions concerning sign languages recognition, we will make reference to (a) dedicated legislation; (b) sectorial legislation; (c) mere administrative acts or

¹⁶ See, in particular, Articles 15 (Freedom to choose an occupation and right to engage in work), 26 (Integration of persons with disabilities) and 31 (Fair and just working conditions).

¹⁷ Article 1 of the Italian Constitution affirms that "Italy is a democratic Republic founded on labour".

¹⁸ On legal comparison see E.J. EBERLE, *The Method and Role of Comparative Law*, in *Washington University Global Studies Law Review*, 8, 2009, 451; J. HUSA, *Methodology of comparative law today: from paradoxes to flexibility?*, in *Revue internationale de droit compare*, 58(4), 2006, 1095; P.G. MONATERI (ed.), *Methods of Comparative Law*, Cheltenham, 2012.

¹⁹ This model has been proposed by M. DE MEULDER, *The Legal Recognition of Sign Languages*, in *Sign Language Studies*, 15(4), 2015, 498–506.

lack of legislation. This approach seems to be more functional to highlight the level of protection that sign languages encounters in different legal orders; it is worth mentioning that the focus will be mainly pointed on the European context, even though across the world there are several extremely interesting solutions adopted in South America, Africa or Australia²⁰.

Before describing the essence of each of the proposed models, though, it is necessary to make a reference to the constitutional recognition of sign languages, which have been entrenched in several recent fundamental laws around the world. As it is easily perceivable, a constitutional acknowledgement of sign language either in promotional terms or even in pair with the proclamation of the official language of the state is fascinating for its implications, above of all in terms of inclusion, pluralism and equality²¹. Nevertheless, it is worth underlining that, despite its strong symbolic nature, a constitutional promotion of sign languages does not implicate *per se* a solid legal status for the right of persons who use this language. In other words, the constitutional acknowledgement does not make the legal status of the national sign language effective, because in any case dedicated or, at least, sectorial legislative provisions are always necessary.

Among the most significant examples of constitutional recognition of sign languages, however, a very noteworthy example in the European panorama is represented by Section 17.3 of the Constitution of Finland (on the Right to one's language and culture), which since 1995 provides that "...The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act"²². Despite the fact that nowadays this formulation might seem quite limited, in the light of the considerations that have been developed in the previous paragraphs, it cannot be underestimated the fact that this represents one of the first constitutional recognitions of a sign language²³. Therefore, despite the fact that it does not make reference to the national sign language (but refers generally to sign language), it constitutes an important achievement for the deaf international community. It was not until 2015, however, that Finland adopted a dedicated legislation on sign language²⁴, which replaced the several sectorial provisions that were spread in other pieces of legislation.

²⁰ Just to make a few examples, Art. 20.1 of the Constitution of Kenya, since 2010, recognises Kenyan Sign Language as an official language of Parliament; Mexican Sign Language was declared a "national language" in 2003, and it began use in public deaf education; in 2006 New Zealand Sign Language became the country's third official language, joining English and Māori. For some more examples see M. WHEATLEY, A. PABSCH, *Sign Language Legislation in the European Union, European Union of the Deaf*, Brussels, 2012; M. DE MEULDER, *The Legal Recognition of Sign Languages*, cit.; M. DE MEULDER, J.J. MURRAY, R.L. MCKEE, *The Legal Recognition of Sign languages: Advocacy and Outcomes Around the World* Bristol, 2019.

²¹ For some reflections on the legal recognition of pluralism in Constitutions, see R. TONIATTI, *Minorities and Protected Minorities: Constitutional Models Compared*, T. BONAZZI, M. DUNNE (eds.), *Citizenship and Rights in Multicultural Societies*, Keele, 1995, 45-81.

²² The English official version of the Finnish Constitution is available on the website of the Ministry of Justice and from the portal of national legislation, following this link: <https://finlex.fi/en/laki/kaannokset/1999/en19990731>.

²³ In the same year, Uganda introduced the recognition of sign language among the cultural objectives (Art. XXIV), of its 1995 constitution: the State shall "promote the development of a sign language for the deaf". The text of the Constitution of Uganda is accessible here: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>.

²⁴ This is the Finnish Sign Language Act, no.359/2015.

To complete the European panorama, besides Finland, sign languages nowadays find constitutional recognition also in Portugal²⁵, Austria²⁶ and Hungary²⁷. What is interesting to notice concerns the shift of paradigm that the constitutional recognition of sign languages has gained from the Nineties to the twenty-first century: if before it was a linguistic right connected to other rights, such as culture or education, it later obtained an autonomous status.

Coming now to the legislative regulation of sign languages, as mentioned above, we can distinguish three main categories, that range from a dedicated legislation to sectorial provisions. The model is completed by the category of lack of legislation, that might be compensated by administrative acts or similar interventions.

More precisely, the first group, on dedicated legislation, may include both a piece of legislation expressly dedicated to the national sign language and the legislation on national language, which also includes provisions on sign language. This is the most relevant level of guarantee and promotion of sign language, which finds its proper recognition in the legal order and which tends to be regulated in several spheres and areas. Another positive aspect of this category is that it often mixes linguistic and disability rights, abandoning a perspective purely based on the inclusion of people with a hearing disability which, as we have extensively discussed above, is too limited and decisively disrespectful of the inherent versatility of sign languages.

On this respect, a very significant example of the comprehensive features of sign languages could be found in the 2011 Icelandic Sign Language²⁸. After having proclaimed that Icelandic is the national language of Iceland and that everyone living in Iceland must be given the possibility to learn the language, its Art. 3 states that: “1. Icelandic sign language is the first language of those who must rely on it for expression and communication, and of their children. It must be fostered and supported by public authorities. 2. All persons who have a need for sign language must be given the opportunity to learn Icelandic sign language and to use it from the beginning of their language acquisition, or as soon as deafness, hearing impairment or deaf-blindness has been diagnosed. Their immediate family members shall have the same right”²⁹.

The law makes the national sign language a means for people who want to use it, irrespective of their status of relationship. This is the most inclusive way to address the regulation of sign languages, because it splits the promotion of sign language from the lexicon of disability rights and makes its use a pure personal choice, irrespective of the features of the individual that uses such language. This approach is perfectly in line with the contemporary understanding of the multi-layered universe of disability, the so-called bio-psycho-social model.

Another significant example of dedicated legislation is the Swedish Language Act, passed in 2009, which sums the need for the recognition of national linguistic minorities, with the state’s duty to protect and promote the Swedish Sign Language³⁰.

²⁵ Art. 74.1.h of the 1997 Portuguese Constitution is dedicated to education and states that “Protecting and developing Portuguese sign language, as an expression of culture and an instrument for access to education and equal opportunities”.

²⁶ Art. 8.3 of the 2005 Austrian Constitution on the national official language and on linguistic and cultural pluralism recognizes sign language in these terms: “The Austrian sign language is recognized as independent language. Details are regulated by the laws”.

²⁷ Similarly to Austria, the controversial Hungarian Constitution of 2011 provides that “Hungary shall protect Hungarian Sign Language as a part of Hungarian culture” (art. H.3, on the national official language).

²⁸ Law no. 61/2011, Act on the Status of the Icelandic Language and Icelandic Sign Language.

²⁹ The English text of the law is available on the website of the Icelandic government: <https://www.government.is/media/menntamalaraduneyti-media/media/frettir2015/Thyding-log-um-stodu-islenskrar-tungu-og-islensks-taknimals-desember-2015.pdf>.

³⁰ Art. 9 of the Swedish Language Act, no. 600/2009 provides that “The public sector has a particular responsibility to protect and promote Swedish sign language”. An English translation of the act is available here: <https://www.regeringen.se/contentassets/9e56b0c78cb5447b968a29dd14a68358/spraklag-pa-engelska>. On

As mentioned above, examples of dedicated legislation may also include acts that are focused only on sign language, such as the 2015 Finnish Sign Language Act, which finally gave effectiveness to the constitutional provisions³¹. The law has a strong promotional imprinting and a significant aspect concerns the provision of services directly in sign language, through an updating of sectorial relevant legislation. The structure of the law proves also to be inclusive, in the terms we have been discussing above, because it leaves apart the strict link with the deaf community and makes references only to “sign language users” as persons “whose own language is sign language” (art. 1). An aspect that probably would have deserved more space concern resources needed to ensure effective access to services in sign language and the actual availability of interpreters when needed: rights need resources to be effective and sometime s the law-maker just provides to the legal recognition of a right, without providing the necessary resources for its effective guarantee.

Coming to the second category, by sectorial legislation we refer to those countries in which sign languages do not have an autonomous recognition (yet), but in which the presence of a sign language interpreter or the possibility to use sign language is recognized in specific fields of legislation. In these cases, sign language, unfortunately, does not have an autonomous legal status but its presence in the legal order is connected to the regulation of other rights, approach which makes the use and the development of sign language rather limited and definitely sectorial. An example might be the legislation on educational services, that could affirm the right to use sign language in school or the recognition of the right to a sign language interpreter in legal proceedings. The most relevant flow of such legislation is that they are quite anachronistic, depicting social needs as organized in categories and groups. In this kind of model, sectorial legislation reflects a sectorial way of addressing problem which, despite being rather pragmatic and probable quite effective, has the limit of seeing social phenomena in a flat perspective.

To make an example of sectorial legislation, we can refer to Ireland, where a comprehensive legislation on sign languages was adopted in 2017³². Before the recent entry into force of such law, the Irish legal order was sprinkled with dedicated provisions on the use of sign language in sectorial legislation, such as with reference to criminal proceedings, educational services, health services and the like³³.

Similarly, also Germany refers to sign languages only in the Equality for Persons with Disabilities Act, where it is provided that persons with a hearing disability must be granted the right to have a, interpreter at no costs³⁴.

In any case, by now this seems to be a residual model which is destined to disappear, given the increasing recognition of dedicated sign language legislation in most countries. As already mentioned, the most critical aspect of this model concerns its heterogeneous and dispersive nature, because sectorial provisions on access to sign language is specific services find legal acknowledgement in different times and period and, therefore, are scarcely coherent. On the other side, though, sectorial provisions might be anyway effective, despite their anachronistic nature, provided that the legislator allocates resources to ensure the accessibility of services.

the law and its implementation see M. LANDQVIST, J. SPETZ, *Ten years with the Swedish Language Act*, in *Current Issues in Language Planning*, 21(5), 2020, 532-547.

³¹ The law is entitled Sign Language Act, no 359/2015. For a comment see M. DE MEULDER, *Promotion in times of endangerment: the Sign Language Act in Finland*, in *Language Policy*, 16, 2017, 189–208.

³² Irish Sign Language Act 2017, commenced in 2020. See <https://www.gov.ie/en/press-release/50472-minister-rabbitte-announces-commencement-of-the-irish-sign-language-act-2017/>.

³³ For example, there was an express provision for interviews in criminal proceeding in art. 12(8)(a) of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations. 1987; S.I. No. 119 of 1987. Section 7 of the Education Act of 1998 provides that appropriate support shall be granted to pupils with disabilities and the Disability Act 2005 sets out requirements relating to access to buildings, services and information.

³⁴ Equality for Persons with Disabilities Act (BGG), 2002, § 6, 9 para. 1. On the topic see M. KOCK, *Disability Law in Germany: An Overview of Employment, Education and Access Rights*, in *German Law Journal*, 5(11), 2004, 1373-1392.

Finally, there are still countries in which sign languages are unrecognized and do not find legislative any normative protection. Nevertheless, even without legislative interventions, in some cases the effective possibility to use sign language and to have sign language interpreters has been provided either through secondary legislation or administrative acts. In these cases, often it happens that the legislation is under discussion, but the representative body has not yet found an agreement on the typology of legal recognition. The most significant example of this kind of approach is, probably, the case of the United Kingdom, where a Statement by the Department of Work and Pensions in 2003 named the British Sign Language as a language in its own right, but where there is no explicit legal protection of any kind³⁵.

The categorization through models is very useful to confront the approaches adopted in different countries and can concretely highlight which could be the positive or the critical aspects of the solutions adopted. Before analysing the recent recognition of Italian Sign Language (LIS), it has to be pointed out that the acknowledgement of sign languages is, of course, a political matter belonging to the representative assembly. Nevertheless, the law-maker is quite bound to give positive recognition and effective implementation to the language due to several international documents on its promotion and protection: above all the CRPD. A profile that deserves due consideration in the final part of this short essay concerns the choice to recognise it into a general law on national languages or by means of a special law dedicated exclusively to sign language. As we will see, this is quite a crucial choice, in the light of the theoretical framework we depicted in the previous paragraphs.

5. The recognition of Italian Sign Language: so much promise, so little delivery?

Finally, Italy has given legislative recognition to Italian sign language, by mean of Art. 43-ter of law-decree no. 41/2021, converted by law no. 69/2021, on urgent supports for economic operators, in connection to Covid-19 emergency³⁶.

First of all, it has to be pointed out that this recognition, which has been anyway positively welcomed by the community of persons using the Italian Sign Language, does not properly belong to none of the previously described models. Trying to trace some lines, we could ascribe it to the second category, on sectorial legislation, even though it seems that Italy has still a long way to go on the matter. The problem is that just one article of a heterogeneous law-decree providing for several measures connected to the recovery and to the instruments to overcome the pandemic emergency has been dedicated to LIS. Consciously or not, the Italian law-maker missed the important opportunity to distinguish in the European panorama through the approval of a comprehensive, dedicated and inclusive law, written with a contemporary intersectional language with references also to other forms of communication and with a strong technological commitment.

This, of course, would have been the privileged option to encounter the proposals that the deaf community has been advocating for several years. Unfortunately, this has not been the case; actually, the legislative activity of the Italian parliament, for too long a time, is flattened on emergency issues and the two chambers of the Parliament have basically lost any innovative energy, occupying most of their time in the discussion of governmental projects and proposals, often based on urgent provisions. Without entering too much in the dynamics of the political dialogue, it is worth pointing out that there are several fields of law in which a legislative intervention is long awaited and the two branches of the Parliament are in severe delay in providing appropriate regulation³⁷.

³⁵ See M. DE MEULDER, *The Legal Recognition of Sign Languages*, cit., 504. More precisely, this is the current British situation. At the moment, a bill is being discussed in Parliament as the British Sign Language Bill. For more details see <https://bills.parliament.uk/bills/2915>. In Scotland, since 2015, there is the British Sign Language (Scotland) Act 2015, which promotes the British sign language (for more details see <https://www.legislation.gov.uk/asp/2015/11/contents>).

³⁶ The Italian text of the law-decree is available on the website of the Italian Official Gazette, here: <https://www.gazzettaufficiale.it/eli/id/2021/05/21/21A03181/sg>.

³⁷ Just to make a few seminal examples, the Parliament is currently discussing some legislative proposals on assisted suicide, whereas already in 2018, the Constitutional Court urged the Parliament to regulate the matter. Similarly, with regards to assisted reproduction technologies, after some significant decisions by the

The law also fails to adopt a wider perspective on Sign Language, abandoning it from a mere disability rights approach and giving value to its inclusive nature, as a means of communication. The first paragraph of Art. 34-ter, in fact, recalls the relevant constitutional and EU law principles on non-discrimination (Artt. 2 and 3 of the Italian Constitution and Art. 21 of the Charter of Fundamental Rights of the European Union), and on disability rights (Art. 26 of the EU Charter and relevant provisions of the CRPD). This means that the recognition of LIS is strongly related to a disability rights model of guarantee, whether it could have been considered as a language *per se*, to be promoted and protected.

On the contrary, to references to language protection is recalled in the text of this (short) article, even though Italy has a long-standing and important tradition of language protection and promotion, given the presence of historical linguistic and ethnic minorities on its territory. Actually, this would have not be an easy aspect to deal with, as the acknowledgment of linguistic minorities is in itself a quite discussed topic in the Italian legal order: Art. 6 of the Constitution is dedicated to the protection of linguistic minorities and it was not until 1999 that a dedicated law was adopted (Law no. 482/1999)³⁸. Despite the long time needed for its approval, this law only addresses the topic of historical linguistic minorities, which are identified by a closed list provided by Art. 2 of the Law. It also adopts a strictly territorial approach, whereby linguistic right to minorities are recognised only in those territories in which minority have been historically located and not on a wider basis. These two elements (the closed list and the territorial principle) preclude *per se* the introduction of any useful reference to LIS in this law. It has also to be pointed out that this approach excludes not only LIS (and other similar forms of communication) but also the possibility to find any sort of protection for languages of relatively recent linguistic minorities, such as groups of migrants or the like. Even though this approach has been discussed also in the light of the need for its renewal, it seems that there are currently no paths for a deep and profound revision of principles concerning linguistic pluralism in Italy. Watched under a wider perspective, for a country which makes pluralism and its promotion one of its key constitutional features, it is a pity that a reconsideration on the approach towards the promotion of the official language of the State, as well as of *any* other language present and used in the country, is considered either in the political or in the institutional agenda³⁹.

From another perspective, the strong link with the legal framework on disability rights confirm the important and serious commitment that Italy has on the promotion of inclusive rights and on the dedication in trying to give to the composite universe of disabilities all possible means to grant effective equality⁴⁰. Even if this has, of course, to be considered under a positive light, the considerations we have been developing, especially on intersectionality and empowerment suggest that even when dealing with disability rights in general, it is time to abandon a sectorial approach.

Nevertheless, what could be definitely saved of this tempted recognition of LIS in the Italian legal order concerns the provision on the professional acknowledgement of interpreters and of the formative courses through which a person could be certified as a LIS interpreter. Even though it might seem rather bureaucratic and maybe a little too much formal, it is an important step for the recognition of professional commitment of persons who work hardly to grant information and communication accessibility and who, nevertheless, had no formal acknowledgement until this legislative intervention

Constitutional Court, which inflexibly intervened on the text of the 2004 law, no legal amendment was made. Furthermore, it was just in 2017 that a law on informed consent and advanced directives was adopted, after more than ten years of political debate and it was only in 2016, after the Strasbourg Court 's condemnation that a law on same-sex civil unions was adopted.

³⁸ On the legal protection of Italian linguistic minorities see S. PENASA, *From Protection to Empowerment through Participation: The Case of Trentino - A Laboratory for Small Groups*, in *Journal on Ethnopolitics and Minority Issues in Europe*, 13(2), 2014, 30-53.

³⁹ On these issues, see also C. GERACI, *Language Policy and Planning: The Case of Italian Sign Language*, in *Sign Language Studies*, 12(4), 2012, 494-518.

⁴⁰ On the link with disability rights legislation see also S. DARRETTA, *The Rights of deaf people and Sign language: the importance of the explicit recognition of sign language in Italy and in France*, in *Luiss School of Government, Working Paper Series*, SOG-WP66/2021.

in the Italian legal system. Finally, to make the legislative provision effective, the law-maker also provides for some economic resources addressed to the realisation of the objectives of the law.

Even if the recognition of LIS is a great and long-awaited result, we cannot do without noticing that the law-maker did the minimum possible for the legal acknowledgement of an important topic such as the diffusion of sign languages is⁴¹. More precisely, in the last years, there a multitude of public events (such as political debates or convention, for example) has been paired by a LIS interpreter; as already mentioned, moreover, every institutional press release during the pandemic emergency has seen the presence of a LIS interpreter. The widest diffusion of LIS in institutional and official contexts is a clear and positive indicator of the commitment of Italian institutions for a wider inclusion of persons who communicate with sign language. Nevertheless, the choice to adopt a “minimal” regulation of LIS is a huge missed opportunity for the Italian law-maker, who could have used this occasion to revise the approach towards linguistic rights and to renew its whole approach to language, in a historical era in which the expansive presence and use of English, as well as migration flows require to reconsider the concept of linguistic minorities, firstly in order to preserve and promote the value of the Italian language.

6. To draw some conclusions: the desirable model and sign languages for all

The opportunity to offer an insight on the several implications of the legal recognition of sign languages has been given by the recent acknowledgement of Italian Sign Language by law. Even if Italy came after several other European countries in which sign language has been recognised since several years and through very inclusive legal instruments, the decision to introduce a provision on this specific form of communication must be positively welcomed. The occasion to analyse this law has also given us the opportunity to focus on sign languages status in other countries where there are different and interesting levels of guarantee and promotion of sign languages.

Above all, what emerges as a first result of our analysis is the crosscutting nature of sign languages. In fact, our discussion proved that they are more than a mere instrument for people with hearing disabilities – that is the way in which they are commonly considered – but they are languages in a proper sense, with all the features and fragilities that any contemporary language has. This is the reason why they need legal recognition, which must include both protection and promotion. Sign languages shall be taught and learned, as this is the only way to make a language alive and to make it flourish and keep the pace with the natural evolutions of the society.

Another conclusive line to be drawn concerns the different levels of recognition of sign languages not only in Europe but widely around the world. On this respect it has been pointed out that since the mid-Nineties, sign languages started to meet the interest of law-makers and of legal orders. This is mainly thanks to the strong commitment that the WFD dedicated to the advocacy the recognition of sign language not as a mere instrument for people with disabilities, but more widely as an important resource for the whole humanity.

Among the different model of legislative recognition of sign languages, obviously, the most preferable is the one we have been referring to in terms of dedicated legislation, which showed an overall and comprehensive approach to the various needs of sign languages users. In particular, in this category we distinguished between the regulation through the general law on language and a specific sign language law. Both the two solutions present positive sides, but it has to be remarked that, in line with the intersectional approach we have been discussing, the recognition of sign language as one of the languages used in the country seems to be the solution more appropriate and more compliant with the prevalent contemporary discourse on linguistic and disabilities rights. In both fields, in fact, the “minoritarian” approach based on the need of recognition with the claim for substantial equality and the demand for diversity acknowledgement is progressively being abandoned. This approach, which opposes a majority to other minorities, is leaving the room to a more inclusive and egalitarian approach,

⁴¹ For a critical view see also A. MAZZOLA, *La lingua dei segni nell'alveo dell'art. 6 Cost.*, in *BioLaw Journal*, 3, 2021, 375.

where there's no juxtaposition between minorities and a majority but where there are multiple different situations and conditions that require attention from the legal order⁴². The intersectional approach tends to give relevance to the person per se rather to her features and, under a constitutional law perspective, seems to be more in line with the personalistic principle that characterises contemporary constitutionalism.

A final consideration concerns the fact that, at least in Europe, the countries in which sign languages have been recognised in the constitution or by legislative acts, with a strong level of protection are countries in which the theme of language acknowledgement is an important aspect of national identity, for example for the presence of different linguistic groups or due to the role of national language one of the elements of national identity or independence. We have seen that the first legal recognition of sign languages has been approved in Finland and that other Nordic countries, such as Sweden, are forerunners of an innovative approach to sign languages inclusion into the legal discourse. On these bases, once again, it seems that the Italian recent legislative recognition of sign languages cannot be considered a good exercise of legislative power, but rather a missed opportunity to qualify as a positive model of inclusion both for language and disability rights.

Bibliography

ATREY S., *Intersectionality and Comparative Antidiscrimination Law*, Leiden, 2020.

CRENSHAW K., *Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics*, in *University of Chicago Legal Forum*, 1989, p. 139.

CRENSHAW K., *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, in *Harvard Law Review*, 101(7), 1988, p. 1331.

DARRETTA S., *The Rights of deaf people and Sign language: the importance of the explicit recognition of sign language in Italy and in France*, in *Luiss School of Government, Working Paper Series*, SOG-WP66/2021.

DE MEULDER M., MURRAY J.J., MCKEE R.L., *The Legal Recognition of Sign languages: Advocacy and Outcomes Around the World* Bristol, 2019.

DE MEULDER M., *Promotion in times of endangerment: the Sign Language Act in Finland*, in *Language Policy*, 16, 2017, p. 189.

DE MEULDER M., *The Legal Recognition of Sign Languages*, in *Sign Language Studies*, 15(4), 2015, p. 498.

EBERLE E.J., *The Method and Role of Comparative Law*, in *Washington University Global Studies Law Review*, 8, 2009, p. 451.

GERACI C., *Language Policy and Planning: The Case of Italian Sign Language*, in *Sign Language Studies*, 12(4), 2012, p. 494.

HANKIVSKY O., JORDAN-ZACHERY J.S. (eds.), *The Palgrave Handbook of Intersectionality in Public Policy*, Cham, 2019.

HUSA J., *Methodology of comparative law today: from paradoxes to flexibility?*, in *Revue internationale de droit compare*, 58 (4), 2006, p. 109.

⁴² It is the essence of Crenshaw's intersectional theories: "By so doing, we may develop language which is critical of the dominant view, and which provides some basis for unifying activity. The goal of this activity should be to facilitate the inclusion of marginalized groups for whom it can be said: 'When they enter, we all enter'", K. CRENSHAW, *Demarginalizing*, cit., at 167.



- KOCK M., *Disability Law in Germany: An Overview of Employment, Education and Access Rights*, in *German Law Journal*, 5(11), 2004, p. 1373.
- LANDQVIST M., SPETZ J., *Ten years with the Swedish Language Act*, in *Current Issues in Language Planning*, 21(5), 2020, p. 532.
- MALLOY T.H., *National Minorities between Protection and Empowerment: Towards a Theory of Empowerment*, in *Journal on Ethnopolitics and Minority Issues in Europe*, 13(2), 2014, p. 11.
- MAZZOLA A., *La lingua dei segni nell'alveo dell'art. 6 Cost.*, in *BioLaw Journal*, 3, 2021, p. 375.
- MCVEIGH J., MACLACHLAN M., FERRI D., MANNAN H., *Strengthening the Participation of Organisations of Persons with Disabilities in the Decision-Making of National Government and the United Nations: Further Analyses of the International Disability Alliance Global Survey*, in *Disabilities*, 1(3), 2021, p. 202.
- MONATERI P.G. (ed.), *Methods of Comparative Law*, Cheltenham, 2012.
- NUSSBAUM M., *Capabilities and social justice*, in *International Studies Review*, 4 (2), 2002, p. 123.
- NUSSBAUM M., *Capabilities as Fundamental Entitlements: Sen And Social Justice*, in *Feminist Economics*, 9:2-3, 2003, p. 33.
- NUSSBAUM M., *Frontiers of Justice: Disability, Nationality, Species*, Cambridge, MA, 2006.
- NUSSBAUM M., *Women and equality: the capabilities approach*, in *International Labour law Review*, 138(3), 1999, p. 227.
- NUSSBAUM M., *Women and Human Development: The Capabilities Approach*, Cambridge, 2000.
- NUSSBAUM M., *Women's Bodies: Violence, Security, Capabilities*, in *Journal of Human Development*, 6:2, 2005, p. 167.
- PENASA S., *From Protection to Empowerment through Participation: The Case of Trentino - A Laboratory for Small Groups*, in *Journal on Ethnopolitics and Minority Issues in Europe*, 13(2), 2014, p. 30.
- SEN A. K., *Well-being, agency and freedom*, in *The Journal of Philosophy*, LXXXII(4), 1985, p. 169.
- SEN A.K., *Commodities and Capabilities*, Amsterdam, 1985.
- TONIATTI R., *Minorities and Protected Minorities: Constitutional Models Compared*, T. BONAZZI, M. DUNNE (eds.), *Citizenship and Rights in Multicultural Societies*, Keele, 1995, p. 45.
- VORNHOLT K. ET AL., *Disability and employment – overview and highlights*, in *European Journal of Work and Organizational Psychology*, 27(1), 2018, p. 40.
- VV.AA., *Reach everyone on the planet: Kimberlé Crenshaw and intersectionality. Texts by and for Kimberlé Crenshaw*, Berlin, 2019, available online at https://www.boell.de/sites/default/files/crenshaw_-_reach_everyone_on_the_planet_en.pdf.
- WHEATLEY M., PABSCH A., *Sign Language Legislation in the European Union*, *European Union of the Deaf*, Brussels, 2012.