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Master's Degree in International Relations

Chair of Comparative Public Law

THE RIGHTS OF DEAF PEOPLE AND SIGN LANGUAGE IN COMPARATIVE PERSPECTIVE

The Lack of effective rights' protection in Italy and in France

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INTRODUCTION

‘There are 466 million people in the world with disabling hearing loss. This is over the 5% of the world’s population; 34 million of these people are children. Unless action is taken, by 2030 there will be nearly 630 million people with disabling hearing loss’,[1] since they will not be assured the proper treatments and facilities necessary to lead a normal life.

Deafness or hearing loss is regarded to as an invisible disability since it is not immediately perceptible. Unlike a physical impairment, affecting for instance mobility of the limbs, a hearing impairment is not visible to the eye, or it is unknown until the deaf person discloses it. As a consequence, ‘with no visible markers, it is easy for [deafness and] hearing loss to go unnoticed’.[2]

By comparing the international legal framework to selected national case studies, notably Italy and France, the aim of the present analysis is to show the limited level of legislative protection ensured to deaf and hearing-impaired persons at domestic level. Despite being democracies founded on the concept of equality in general, and despite showing adherence to the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities and in the European legislative initiatives on disability and deafness, the two countries lack the necessary tools ensuring recognition of the rights of the deaf. Specifically, they lack the constitutional and legislative recognition of sign language, although emerging among the first countries to have experienced its development. The Constitutional and the legislative recognition of sign language - in France and in Italy respectively -,would ease the struggle encountered by deaf people in all fields of community life – social relations, education, employment, information – by providing the necessary facilities to ensure the use of sign language – SL interpreters, school programs, proper employment measures.

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[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.

After a first introductory chapter deepening the concept of equality, the definition of disability and the earliest historical documents concerning the rights of persons with disabilities, the thesis features four chapters. The second chapter provides an explanation of deafness, exposing its causes and its impact on the life of the person affected. Furthermore, it focuses on sign language, by presenting its features as a fully-fledged language, the history of its education, and a brief description of Italian Sign Language. The third chapter offers an overview of the initiatives adopted in favor of the deaf community at the international level. Specifically, it explores the World Deaf Organization and the United Nations Convention on the Rights of Persons with Disabilities. The fourth chapter narrows the field of interest by providing an overview of the legislative measures on disability and deafness adopted by the European Union. First, it provides an overview of European disability law in general; second, it explores the legal initiatives carried out by the European Union in favor of deaf persons, represented by the European Union of the Deaf. Finally, the fifth chapter addresses the case of Italy. It focuses on the Ente Nazionale Sordi and on the laws enacted at the national level in favor of disabled persons, mentioning the deaf, which however do not provide for the full respect of their rights as a constitutional or legal recognition of sign language would. In conclusion, the chapter presents the case of France, lacking the constitutional recognition of its national sign language as well.

1. THE PRINCIPLE OF EQUALITY AND THE RIGHTS OF PERSONS WITH DISABILITIES

"Democracy arises out of the notion that those who are equal in any respect are equal in all respects; because men are equally free, they claim to be absolutely equal." Aristotle

Equality is one of the most important concepts advocated in philosophy, and according to Aristotle, one of the founding principles of a well-functioning and just democracy. However, its meaning remains contested. Therefore, despite its significance, such principle often is not effectively complied with.

1.1. DEFINING THE CONCEPT OF EQUALITY

The term 'equality' presupposes a qualitative relationship and it has to be first distinguished from both the concepts of 'identity' and 'similarity'. In fact, while equality stands between elements, subjects or objects, which share one particular feature, on the one hand identity presupposes sameness in all aspects between the elements at issue, and on the other hand similarity implies approximate correspondence. Although differing from these two concepts, equality seems to be close to that of similarity. However, it requires a deeper definition.

In what respect is it necessary to define equality? Equality presupposes a comparative relation between two or more elements and one or more characteristic. "Every comparison presumes a *tertium comparationis*, a concrete attribute defining the respect in which the equality applies — equality thus referring to a common sharing of this comparison-determining attribute".[3] However, this attribute varies from case to case. Therefore, the concept of equality is complex, and it might be subject to multiple interpretations. Hence, "it helps to think of the idea of equality, understood as an issue of social justice,

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[3] *Equality,* Stanford Encyclopedia of Philosophy, First published Tue Mar 27, 2001; substantive revision Wed Jun 27, 2007; p.2, in http://plato.stanford.edu.

not as a single principle, but as a complex group of principles forming the basic core of today's egalitarianism".[4]

1.1.1. Equality and Justice

According to the Merriam-Webster Dictionary, egalitarianism has a two-fold definition. First, it is defined as "a belief in human equality especially with respect to social, political, and economic affairs".[5] Second, it is also specified as "a social philosophy advocating the removal of inequalities among people".[6] However, in modern times the latter definition seems to have gained more support. In fact, modern egalitarianism focuses on the aim of providing equal life conditions to people all over the world, hence removing inequalities and obstacles to such objective. In this respect, the concept of equality has its roots in that of morality and justice, and more specifically in the concept of distributive justice.

The concept of justice has been properly addressed by John Rawls, one of the most influential philosophers in the liberal tradition, in his work intitled "A Theory of Justice". According to John Rawls, justice is fairness, namely "the quality of treating people equally or in a way that is right or reasonable",[7] and such quality has been agreed upon by the founding parties to society. The main idea of Rawls' theory of justice is that "the principles of justice for the basic structure of society are the object of the original agreement."[8] Thus, stemming from the theory of the social contract, elaborated by John Locke, Kant and Rousseau, the theory of justice presupposes that the original agreement at the foundation of a society refers to the principles of justice rather than to the entrance conditions or to the features of government. "They are the principles that free and rational persons concerned to further their own interests would

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[4] Equality, Stanford Encyclopedia of Philosophy, First published Tue Mar 27, 2001; substantive revision Wed Jun 27, 2007; p.2, in http://plato.stanford.edu.

[5] *Egalitarianism*, in http://www.merriam-webster.com/dictionary/egalitarianism.

[6] Ibidem.

[7] *Fairness,* in http://dictionary.cambridge.org/dictionary/english/fair.

[8] Rawls J. (1971), A Theory of Justice, Revised Edition, Cambridge, Massachusetts, Harvard University Press, p. 10.

accept in an initial position of equality as defining the fundamental terms of their association."[9] As a consequence, such principles regulate all future agreements and institutions, which serve as the parameter for the recognition of what is just and what is unjust. The conception of justice as fairness presupposes that the individuals firstly defining such conception stand in an original position of equality, moved by disinterest and rationality. Therefore, justice derives from equality and, at the same time, enhances equality.

1.1.1.a. Types of Equality

Through its connection with justice, equality has been subject to many interpretations. The role of equality in a theory of justice derives from specific principles and measures adopted. Specifically, on the basis of four principles, philosophers have pointed out the concepts of formal equality, proportional equality, moral equality and presumption of equality.

I. Formal Equality

A first definition of formal equality was delivered by Aristotle in his *Ethica Nichomachea*, the first treaty on ethics as a philosophical topic. Here, Aristotle stated that "things that are alike should be treated alike". The main assumption at the basis of such statement is that people's physical characteristics are not to be considered in defining whether they are entitled to some rights and social benefits. Thus, as individual features are ignored, supporters of formal equality rely on the principle of merit. "The liberal argument sets out that formal equality is necessary if the principle of merit is to be maintained in a democratic society".[10] According to libertarians, such type of equality also "disfavors arbitrary decision-making processes – as when policies or people selectively

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[9] Rawls J. (1971), A Theory of Justice, Revised Edition, Cambridge, Massachusetts, Harvard University Press, p. 10.

[10] Declaration of Principles on Equality (2008), in http://equalrightstrust.org/content/declaration/-principles-equality.

disadvantage others due to a particular irrelevant trait".[11] However, since modern society is complex and rich, the application of formal equality turns out to be oversimplified.

II. Proportional Equality

"Proportional equality further specifies formal equality; it is the more precise and detailed, hence actually the more comprehensive formulation of formal equality. It indicates what produces an adequate equality".[12]

The concept of proportional equality has been treated by Aristotle as opposed to numerical equality. He stated: "Equality is of two kinds, numerical and proportional; by the first I mean sameness of equality in number or size; by the second, equality of ratios".[13] While the first presupposes that people are indistinguishable, hence being entitled to receiving identical treatments or amount of goods per capita, proportional equality takes into account each people's due, hence their rightful needs.

Such concept not only fits into egalitarian theories, but it is also incorporated into inegalitarian and hierarchical ones. In fact, supporters of inegalitarian theories state that "persons should be assessed according to their differing deserts, understood by them in the broad sense of fulfillment of some relevant criterion. And they believe that reward and punishment, benefits, and burdens, should be proportional to such deserts".[14]

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[11] Brest P. (1976), In Defense of the Antidiscrimination Principle, Vol. 90, Harvard Law Review, p.1.

[12] Equality, Stanford Encyclopedia of Philosophy, First published Tue Mar 27, 2001; substantive revision Wed Jun 27, 2007; p.5, in http://plato.stanford.edu.

[13] Everson S. (1996), Aristotele. The Politics and the Constitution of Athens, Cambridge University Press, p.121.

[14] Equality, Stanford Encyclopedia of Philosophy, First published Tue Mar 27, 2001; substantive revision Wed Jun 27, 2007; p.5, in http://plato.stanford.edu.

III. Moral Equality

Since the 18th Century, the idea of the existence of a universal and moral equality has gained a foothold. Until then, the common conception was that all human beings were different, hence unequal.

Moral equality relies on the idea of equality of natural order between all human beings, therefore on the assumption that people are naturally entitled to specific rights, in the same way. Equality in the substantive sense presupposes the identical amount of respect and dignity for all human beings. However, it is far from presupposing human beings as identical themselves. On the contrary, it postulates the existence of relevant specified respects, beyond the different features characterizing each person, based on which human beings are considered to be alike.

According to philosophers, such as Immanuel Kant and Jean-Jacques Rousseau, who believed that people are born equal and free, "we are morally equal just by virtue of being human, regardless of our physical, intellectual, and cultural differences".[15] They believed that natural equality derives from human rationality, a quality equally present in every person and unique to humans. In contrast, other philosophers presented a different interpretation of moral equality. For instance, Spinoza rejected the belief that moral equality is naturally defined, pointing out that it is "'artificially' imposed in the structure of civil law, stem[ming] from a collective agreement that it is right that we think of one another as moral equals, rather than on core beliefs about human nature".[16]

Although being subject to different interpretations, equality in the sense of equal treatment, is the common moral standard of contemporary theories. Nevertheless, it remains an abstract concept, which, not only has to be made concrete in order for it to define a clear and accepted moral standard, but also struggles in providing a true conception of just equality.

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[15] Lord B., Are we morally Equal by Nature? (2016) in http://blogs.lse.ac.uk/theforum/are-we-morally-equal-by-nature/.

[16] Ibidem.

IV. Presumption of Equality

Presumption of equality is the prima facie principle of distributive justice. It presupposes that, despite individual differences, all human beings should receive the same treatment and the identical amount of social goods. Such concept perfectly applies to the domain of political justice. In fact, in a political and social community, all members are required to decide upon a fair distribution of goods. A fair distribution and also the realization of social goods, has to be assured on the basis of an impartial justification. "Everyone, regardless of differences, should get an equal share in the distribution unless certain types of differences are relevant and justify, through universally acceptable reasons, unequal distribution".[17] Hence, equality is presumed between individuals when lack of a concrete evidence of equality or inequality stands, as long as no justification of unequal distribution arises and is universally accepted.

Presumption of equality provides a valuable foundation for the construction of a theory of distributive justice. It puts forward a series of questions, whose answers result into a clear principle of justice. Such questions regard first, the object of distribution- "which goods shall be distributed?"; second, the categories in which such goods are divided and recognized, which are necessary, since unequal treatment on the basis of particular justifications might stand for one area, but not for the other. "In order to reconstruct our understanding of contemporary liberal, democratic welfare states, four categories seem essential: 1. civil liberties, 2. opportunities for political participation, 3. social positions and opportunities, 4. economic rewards".[18] Moreover, such questions are aimed at recognizing the justifications to an equal and fair distribution and the inequalities which might be justified. As put forward in the Stanford Encyclopedia of Philosophy, an unequal distribution of goods might be justified by existing rights, for instance private property; different abilities in performing social services; compensations for direct or indirect discriminations; efficiency and, finally, natural disadvantages, namely disabilities.

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[17] *Equality*, Stanford Encyclopedia of Philosophy, First published Tue Mar 27, 2001; substantive revision Wed Jun 27, 2007; p.8, in http://plato.stanford.edu.

[18] Ibidem, p. 10.

For the following analysis, presumption of equality comes to play a decisive role, especially with regard to the concept that all human beings are equally worthy of social assistance and social goods. More specifically, when it comes to taking into account disabilities, hence natural disadvantages which limit certain individuals in their social life, presumption of equality provides a justification for unequal treatment in favor of disabled persons, thus not only claiming for a basic equal treatment, but also presuming a further special treatment for such human beings. However, as I will further discuss, people suffering from a disability are often abandoned by their own state, as in the case of Italy. In fact, while many European countries have adopted and assured specific measures aimed at providing the necessary assistance to such persons in their everyday lives, Italy still seems to be a step backwards, despite having fully embraced the principle of equality in its own constitution.

1.2. DISABILITY AND THEORETICAL MODELS

The term 'disability' has been exposed to many interpretations; thus, it has acquired different connotations. Traditionally, in western cultures, it was used to define exclusively a medical issue or an impaired physical condition, such as blindness, lameness, chronic illness, mental illness, and deafness. However, since the 1960s, such 'medical model' of disability has been gradually set aside in favor of the social model, in order to encompass differentiated realities and conditions. While, under the former the concept of disability is limited to defining a health condition, under the latter it acquires more facets. In fact, according to the World Health Organization, which evidently embraces the views of the social model, "disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. (…) Disability is thus not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives".[19]

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[19] *Disabilities*, in https://www.afro.who.int/health-topics/disabilities.

Medical and social models have also seen the development of the human rights model and of the capabilities approach. However, the first model to have seen the light has been the moral or religious one. Further models to have been exposed are also the identity model, the cultural model, the charity model and finally, the economy model.

1.2.1. The Moral/Religious Model of Disability

The moral/religious model of disability is the most ancient one advocated in many religious traditions. One of its strains of thought puts forward the belief that "disability should be regarded as a punishment from God for a particular sin or sins that may have been committed by the person with disability".[20] Moreover, it claims that a particular form of impaired physical condition is not always consequence of the disabled person's immoral behavior, but, in some cases, also, the result of his or her parents' or ancestors' sins. This conception may lead to disastrous consequences, not only for the individual affected by disability, but also for his or her own family, such as social exclusion and unfair treatment of any kind whatsoever. If, on the one hand, such beliefs dominated premodern societies, on the other hand they still are deeply grounded in those present cultures founded on magical thoughts or a religious way of life.

Furthermore, the moral or religious model of disability lies on the assumption that a disabled person has been chosen by God, for the purpose of redeeming him/herself from his/her sins. The disability is considered as a salvific test. In order to pass the latter, the individual should show some sort of physical improvement. "If the person does not experience the physical healing of their disability, he or she is regarded as having a lack of faith in God".[21]

A further form of the moral/religious model regards disability as a sort of God's blessing. In this view, the disabled persons have been blessed by God and chosen in order to overcome their limits and develop particular strengths and

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[20] Retief M. & Letsosa R. (2018*), Models of Disability: A Brief Overview*, HTS Theological Studies, p.2.

[21] Ibidem.

virtues, for instance courage and patience. In fact, the latter are more easily acquirable in unusual circumstances and conditions.

Despite a positive connotation recognized by some particular stances of the religious model, disability assumes a negative conception on a general basis. In fact, it is often linked to shame projected onto the disabled person and his/her family, resulting in social marginalization.

1.2.2. The Medical Model of Disability

A negative connotation of disability has been embraced also by the medical model, which, from the 1980s has taken hold thanks to remarkable developments and insights in medical science. "The medical model of disability focuses on the health status or biological characteristics of the individual and on the attempts to 'cure' the functional limitations of the disabled person in question, in order to bring the individual in line with the non-disabled norm".[22] In his description of the medical model, Olkin (1999) has stated that "disability is seen as a (…) defect in or failure of a bodily system and as such is inherently abnormal and pathological."[23] Disability is regarded to as a personal tragedy, for the individual himself, as well as for his family. In fact, terms defining the disabled person in a deeply negative way, for instance 'retarded' or 'spastic', have all emerged by dint of the medical model. As a consequence, the latter has fueled a sort of dualism within the society between the disabled people and the able-bodied one, referring to the former as inferior to the latter. Hence, the sole objective driving the medical approach is to cure the disabled person in order for her to be reinserted into the social environment. According to Thomas & Woods (2003), "medical professionals who subscribe to the medical model tend to treat people as problems to be solved, often failing to take into account the various aspects related to the person's life as a whole".[24] Thus, the medical model takes into

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[22] Broderick A & Ferri D. (2019), International and European Disability Law and Policy, Text Cases and Materials, Cambridge University Press, p.19

[23] Olkin R. (1999) What Psychotherapists should know about Disability, New York, Guilford Press, in Retief M. & Letsosa R. (2018), Models of Disability: A Brief Overview, HTS Theological Studies.

[24] Thomas D. & Woods H. (2003), Working with People with Learning Disabilities: Theory and Practice, London, Jessica Kingsley Publishers.

account only the medical aspect of the problem, whilst setting aside social and structural inequalities. In fact, the latter are not considered as possible causes of the condition of disablement. Hence, between the disabled individual and society, it is the former which requires to be cured or fixed, not the latter.

1.2.3. The Social Model of Disability

While, on the one hand, the medical model focuses on the biological and physical aspect of disability, on the other hand, the social model addresses the social features of the problem.

The social model has been developed in the 1970s in order to deepen the studies on impairment by considering the social context and the limitations that society imposes upon disabled people. In particular, "the social model of disability was first articulated in the mid-1970s by the Union of Physically Impaired People Against Segregation (UPIAS), a British organization advocating for the rights of people with physical disabilities",[25] which has collected its ideas in its manifesto document intitled *Fundamental Principles of Disability* (1976). The core assumption at the basis of UPIAS' action is that disability is constructed by society itself. According to UPIAS, "disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from society. Disabled people are therefore an oppressed group".[26] Hence, "society disables people with impairments (…) [through] societal barriers (in the form of environmental, attitudinal and legislative obstacles".[27] Andrea Broderick and Delia Ferri, have provided examples of societal barriers: for instance media stigmatization; inaccessible transport, housing; lack of autonomy and inclusion; multiple discrimination; social and political structures; segregated education and, finally, prejudicial attitudes. Thanks to the UPIAS, 'disability' acquires a whole new value. In fact, in contrast

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

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

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

with previous studies which had defined disability as a consequence of the sole impairment, UPIAS provides a distinction between the two. On the one hand it has defined 'impairment' as "lacking part or all of a limb, or having a defective limb or mechanism of the body", while, on the other hand, defining 'disability' as '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".[28] Hence, while 'impairment' assumes exclusively a biological and physical meaning, 'disability' takes on a social political significance. As a consequence, disability ceases to be regarded to as being a 'personal tragedy', implying a shift in the responsibility of the disability itself, from the impaired individual to the national governments. Hence, the latter become accountable for imposing limitations upon people with impairments -physical, cognitive or sensory-, thus for causing them disability. Therefore, "the social model essentially maintains that responsibility lies with national governments and society as a whole to remedy the disadvantage and inequalities faced by persons with disabilities".[29] A possible way for overcoming such inequalities could be to include disabled people into the policymaking processes, by giving them voice or by giving expression to their needs through the participation of representative organizations in policymaking negotiations.

1.2.4. The Identity Model of Disability

The identity model of disability is linked to the social model by the common conception that disability results from society, rather than from a physical impaired condition. However, the former differs from the latter for the positive approach to disability. In fact, the identity model recognizes disability as a positive identity. Brewer et al. (2012) have stated that "[W]hile the identity model owes much to the social model, it is less interested in the ways

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

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

environments, policies, and institutions disable people, and more interested in forging a positive definition of disability identity based on experiences and circumstances that have created a recognizable minority group called 'people with disabilities".[30] Thus, the latter are recognized as outsiders, but still in a positive and proactive way, as being part of a group with particular traits to show with pride.

1.2.5. The Cultural Model of Disability

Although being closely related to the social model of disability, the cultural model differs from the latter by considering a multitude of cultural factors, rather than one only. "The cultural approach does not seek to define disability in any specific way but rather focuses on how different notions of disability and non-disability operate in the context of a specific culture".[31] With regard to the link between culture and disability, it is necessary to specify two different concepts: disability as a specific culture itself and disability as defined in the various cultures. The first understanding of disability refers to the way disabled people view themselves, as being part of a larger community, characterized by specific 'cultural' traits. For instance, the Deaf culture is recognized by particular features, such as its own language, cultural locations or activities, and its own rules. Hence, deaf people accept their traits since there are culturally recognizable. On the contrary, the second conception of cultural disability, which refers to the attitude of cultures towards disabled persons, is not as positive as the former. In fact, many cultures still show prejudices towards disabled individuals and their families. However, stigmas and misconceptions are slowly changing thanks to awareness campaigns and organizations.

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[30] Brewer, E., Brueggemann, B., Hetrick, N. & Yergeau, M., 2012, *Introduction, background, and history*, in B. Brueggemann (ed.), *Arts and humanities*, pp. 1–62, Sage, Thousand Oaks, CA, in *Models of Disability: a Brief Overview*; p.5.

[31] Retief M. & Letsosa R. (2018*), Models of Disability: A Brief Overview*, HTS Theological Studies, p. 6.

1.2.6. The Charity Model of Disability

As the cultural model of disability, the charity model shares particular misconceptions on disabled people. The core stigma by the charity model is the belief that persons with disabilities are desperately in need of assistance-physical, economic, social. If, on the one hand, such assumption triggers purposeful action and measures, on the other hand it favors a deeply negative perspective on disabled people. Although encouraging humane treatment, the provision of specific services and the creation of appropriate institutions, at the same time it encourages the idea that disabled individuals are dependent on other people. Hence, it fosters the prejudice that disabled people are needy, desperate and helpless, thus risking undermining their independence and rights.

1.2.7. The Economic Model of Disability

The economic model of disability takes into account the limits that disabled people encounter in employment and labor. Although advocating civil rights and accommodations for such individuals, at the same time it defines disability only in terms of costs and benefits. Thus, it levels down all the rights of PWDs to their sole ability to contribute to the economy by working. As a consequence, disabled people are dehumanized and considered as lacking bodily parts which are necessary to work.

1.2.8. The Human Rights Model

“The human rights model focuses on the inherent dignity of the human being and subsequently, but only if necessary, on the person’s medical characteristics. It places the individual centerstage in all decisions affecting him/her and, most importantly, locates the main “problem” outside the person and in society”. [32]

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[32] Quinn G. & Degener T. (2012), *Human Rights and Disability: The Current Use and Future Potential of the United Nations Human Rights Instruments in the Context of Disability*, United Nations p.14.

Thus, “the human rights model recognizes disability as a ‘social construct’ but it also acknowledges the relevance of impairment”.[33] It supports respect for all human beings, despite diversities and disabilities; and it addresses states to take on the responsibility to ensure inclusiveness and respect for the rights of all individuals on an equal basis. This by tackling all socially built obstacles to such achievement.

The human rights model is thus closely related to the social model of disability. However, “while the social model underpins mainly an anti-discrimination policy, the human rights model of disability is wide-ranging, because it embraces the whole spectrum of human rights – civil and political, as well as economic, social and cultural rights”.[34] Moreover, the human rights model takes into account the heterogeneity of the whole group of PWDs and the multidimensional feature of disability.

1.2.9. The Capabilities Approach

The Capabilities Approach has emerged as a new theoretical framework within political and moral philosophy, thanks to the economist Amartya Sen. It regards justice and human development, and it has been further explored by the philosopher Marta Nussbaum and other relevant economists. The approach stands on the distinction between ‘functionings’ and ‘capabilities’. “Functionings are ‘beings and doings’, that is, various states of human beings and activities that a person can undertake”.[35] The Stanford Encyclopedia of Philosophy puts forward various examples of both categories. For instance, while the ‘beings’ might be being illiterate, being educated, being depressed, the ‘doings’ might be travelling, donating money to charity, voting or also killing

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[33] CRPD Comittee, S.C. v. Brazil, Communication No. 10/2013, UN Doc. CRPD/C/12/D/10/2013, para. 6.3. In Broderick A. & Ferri D. (2019), *International and European Disability Law and Policy, Text, Cases and Materials*; p.24.

[34] CRPD Committee, General Comment No. 6, 26 April 2018, UN Doc. CRPD/C/GC/6, paras. 9 and 73(b), In Broderick A. & Ferri D. (2019), *International and European Disability Law and Policy, Text, Cases and Materials*; p.25.

[35] *The Capability Approach,* Stanford Encyclopedia of Philosophy, Section 2; 2.1, in https://plato.stanford.edu/entries/capability-approach/.

animals, taking drugs, consuming fuel and so on. On the contrary, “capabilities represent the innate potential of each human being”,[36] which provide them opportunities and possibilities to achieve the ‘beings’ and the ‘doings’. Hence, it is clearly understandable how the capability approach fits into the framework of disability. In fact, one of the main concepts of interest is human diversity, taking into account religions, ethnicity, gender, cultures, but also disabilities. Hence, “human diversity is stressed in the capability approach by the explicit focus on personal and socio-environmental conversion factors that make possible the conversion of commodities and other resources into functioning, and on the social, institutional, and environmental context that affects the conversion factors and the capability set directly”[37]. Finally, “the capability framework incorporates the idea of ‘equality of capabilities’ in a wide range of areas that are deemed to be of central importance to the quality of human life”.[38]

1.3. THE RIGHTS OF PEOPLE WITH DISABILITIES

Disability, in all its forms, described and supported by the models mentioned above, although imposing some sort of limitation on the persons affected, rather physical, social, economic and so on, shouldn’t further limit people concerned from enjoying the same rights recognized to those who are able-bodied. Disability shouldn’t be treated as a valid ground for discrimination. Hence, people with disabilities should be entitled to all rights and freedoms universally granted, on the basis of inherent dignity and equality.

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[36] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press, p.26.

[37] *The Capability Approach;* Stanford Encyclopedia of Philosophy, Section 2, 2.5, in https://plato.stanford.edu/entries/capability-approach/.

[38] Broderick A & Ferri D. (2019*), International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press, p.26.

1.3.1. The Universal Declaration of Human Rights and the Declaration of Principles on Equality

The principle of equality and the recognition of an inherent human dignity, have been entrenched in many international legal documents, thus accepted, and fostered by many countries.

The very first document to have promoted the former principle has been the United Nations Universal Declaration of Human Rights, adopted by the United Nations General Assembly in Paris on December 10, 1948 on the basis of Resolution n° 217. It has been voted by 48 countries all over the world and, for the first time, it has set out universally accepted fundamental human rights, in its 30 articles, which have then become the foundations of the International Bill of Human Rights of 1976.

Equality assumes a significant role in the declaration, since it is mentioned from its Preamble onwards. The Declaration starts by reading "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (…)"[39], and it proceeds by stating, in Art I, that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".[40] From its very beginning, the Universal Declaration of Human Rights refers to all human beings, indistinctively. Hence, it ensures the rights set forth in the Document to everyone, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[41]

Although being highlighted in the Universal Declaration of Human Rights, the concept of equality assumes a much deeper significance in the Declaration of Principles on Equality.

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[39] United Nations Universal Declaration of Human Rights, Preamble, in https://www.un.org/en/universal-declaration-human-rights/.

[40] Ibidem., Art. I.

[41] Ibid., Art II.

"The Principles on Equality were agreed by a group of experts at a conference entitled Principles on Equality and the Development of Legal Standards on Equality, organized by The Equal Rights Trust on 3 - 5 April 2008 in London".[42] The final Declaration was originally signed by the 128 attendees to the conference- among them human rights activists and experts from all over the world- and later on it gained the support and the signature by a larger number of law practitioners and academics. Thus, the Declaration of Principles on Equality has resulted from a wide professional consensus on the objective of developing the right of equality. In fact, despite being major topic of international and national legal instruments, thus being deeply promoted on a formal level, equality still remains poorly implemented on a practical level. Therefore, major goal of this Declaration was -and is- ensure the realization of the right to equality. 'The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts. They are intended to assist efforts of legislators, the judiciary, civil society organizations and anyone else involved in combating discrimination and promoting equality'.[43]

The Declaration of Principles on Equality consists of six parts, respectively concerning Equality, Non-discrimination, Scope and Right-holders, Obligations, Enforcement and Prohibitions. The first two sections require particular attention in the framework of the present study.

The Declaration starts by putting forward the right to equality: 'The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law'.[44] It follows by promoting the Principles of Equal Treatment and Positive Action. With regard to the first, it reads as follows: 'Equal treatment, as an aspect of equality, is not equivalent to identical treatment. To realize full and effective equality it is necessary to treat people

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[42] Declaration of Principles on Equality (2008), in http://equalrightstrust.org/content/declaration/-principles-equality.

[43] Ibidem., p.2.

[44] Ibidem, p.5

differently according to their different circumstances, to assert their equal worth and to enhance their capabilities to participate in society as equals'.[45]

With regard to the second, the Declaration states that positive action is necessary in order to ensure an effective right to equality. It also clarifies the concept, by defining positive action as 'a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups'.[46] Part II focuses on Non-discrimination. First, it promotes the right to non-discrimination, recognizing it as free-standing and fundamental one. Second, it provides an exhaustive definition of discrimination.

As in the case of the Universal Declaration of Human Rights, here discrimination is condemned 'where it is on grounds of race, color, ethnicity, descent, sex, pregnancy, maternity, civil, family or career status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds'. [47] However, differently from the Universal Declaration of Human Rights, the Declaration of Principles on Equality provides a greater number of grounds, and, most importantly, it recognizes disability as one of these.

1.3.2. The recognition of disability: towards the United Nations Convention on the Rights of Persons with Disabilities

The most significant accomplishment in the path of recognizing the rights of people with disability from the perspective of equality, has been the adoption of the CRPD (United Nations Convention on the Rights of Persons with

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[45] Ibid.

[46] *Declaration of Principles on Equality* (2008), in http://equalrightstrust.org/content/declaration/-principles-equality.

[47] Ibidem.

Disabilities), in 2006. Since this document will be deepened further, it is important herein to understand the process that has led to its creation.

Before 2006, disabled persons have never enjoyed a protected status in law, differently from other minorities, such as particular ethnic, religious or cultural groups. Disability was not considered a possible ground of discrimination; rather, on the basis of a medical approach, outlined above, it was viewed as a physical condition requiring treatment through particular means, such as rehabilitation, welfare and so on. People with disabilities were treated as patients, solely in need of medical care instead of protection from the law.

Slowly, the medical approach began to allow room to the human rights model of disability. The latter started to gain a foothold in the workings of the United Nations regarding disabled persons, to the extent that 'disability is now viewed from the vantage point of non-discrimination, equality and human dignity'.[48]

1.3.2.a. The Decade of Disabled Persons and the Standard Rules

The first greatest legal achievement welcomed by the United Nations, was the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, in 1993. This document, adopted by the UN General Assembly on 20 December, with Resolution 48/96 Annex, [49] signed the conclusion of the so-called Decade of Disabled Persons.

The Decade of Disabled Persons, corresponding to the period 1983-1992, was announced by the General Assembly with the intent of providing a specific time frame during which time frame 'during which Governments and organizations could implement the activities recommended in the World Program of Action'.[50]

The World Program of Action Concerning Disabled Persons (WPA) was adopted in December 1982, and it 'proclaimed 1981 the International Year of

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[48] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press, p. 37.

[49] Standard Rules on the Equalization of Opportunities for Persons with Disabilities, General Assembly Res. A/RES/48/96, https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html.

[50] Ibidem.

Disabled Persons, a key theme of which was full participation and equality'.[51] The importance of such document relies on the addressing of three main themes: prevention, rehabilitation and equalization of opportunities. In particular, according to Quinn and Degener in 'Human Rights and Disability: The current Use and Future Potential of the United Nations Human Rights Instruments in the Context of Disability', 'the inclusion of equality of opportunities in the discourse on disability, provided evidence of the slow but sure shift towards a human rights model in the UN'.[52] In fact, for the very first time, social and environmental barriers were taken into account as an obstacle to the fulfillment of disabled persons' rights to equal treatment and participation. The United Nations' website, in the section dedicated to the World Program of Action, clarifies that 'Equalization of opportunities" is a central theme of the WPA and its guiding philosophy for the achievement of full participation of persons with disabilities in all aspects of social and economic life. An important principle underlying this theme is that issues concerning persons with disabilities should not be treated in isolation, but within the context of normal community services'.[53] In fact, the WPA presents the definition of 'handicap' by providing the distinction made by the World Health Organization between the latter, impairment and disability. Thus, a handicap is 'a function of the relationship between disabled persons and their environment. It occurs when they encounter cultural, physical or social barriers which prevent their access to the various systems of society that are available to other citizens. Thus, handicap is the loss or-limitation of opportunities to take part in the life of the community on an equal level with others'.[54]

Equalization of opportunities plays the most important role in ensuring full participation and equality to disabled people, where rehabilitation measures – 'early detection, diagnosis and intervention; medical care and treatment; social,

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

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

[53] *World Programme of Action Concerning Persons with Disabilities* in https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html.

[54] Ibidem.

psychological and other types of counselling and assistance (…)'[55]- lack effectiveness. Rehabilitation services are useful only insofar they provide development and maturation programs to disabled children and supportive ones for their families. In fact, since it is the environment which mainly affects disabled persons' possibility to fully enjoy society services and opportunities, the intervention of Governments is essential for the realization of such possibility. In fact, 'it is the duty of every Government to ensure that the benefits of development programs also reach disabled citizens'.[56] Governments should provide extra services and incorporate them 'into the general planning process and the administrative structure of every society'.[57] As a matter of fact, the human rights approach to disability, embedded in the WPA, stands on the idea that all individuals are of equal importance, that their needs have equal weight and therefore, they are worth of equal treatment. 'These needs must be made the basis for the planning of societies, and that all resources must be employed in such a way as to ensure, for every individual, equal opportunity for participation. Disability policies should ensure the access of the disabled to all community services'.[58]

At the end of the Decade of Disabled Persons, and after the adoption of the World Program of Action Concerning Disabled Persons, with regard to such particular sphere of action, in 1993 the World Conference on Human Rights, organized on 25 June, adopted the Vienna Declaration and Program of Action. The Declaration, at paragraph 22, states that 'special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society'.[59] Most importantly, the Declaration reserves a short section, including three principles, to the rights of the disabled person. It clarifies that, since 'every person is born equal and has the same rights to life and welfare,

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[55] *World Programme of Action Concerning Persons with Disabilities* in https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html.

[56] Ibidem.

[57] Ibidem.

[58] Ibid.

[59] *Vienna Declaration and Programme of Action,* in https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx.

education and work, living independently and active participation in all aspects of society',[60] 'persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society'.[61]

Few years after the adoption of the Vienna Declaration, in 1998, the United Nations Commission on Human Rights (UNCHR) adopted the Resolution 'Human Rights of Persons with Disabilities', thus 'aknowledg[ing] general responsibility for people with disabilities under its mandate'.[62]

The most important document signed by the UN bodies at closure of the Decade of Disabled Persons, still remains the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, mentioned above. This non-binding instrument represents one of the two milestones of the UN's efforts in giving expression to disabled people and to their needs, together with the following CRPD.

The Standard Rules comprehend 22 rules, which provide a summary of the World Program of Action's tenets, divided among four chapters, respectively intitled preconditions for equal participation, target areas for equal participation, implementation measures, and the monitoring mechanism. As in the case of the World Program of Action, the main goal grounding the Standard rules is equalization of opportunities. The latter is defined as 'the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities'.[63] Hence, as the CRPD, the Standard Rules embody the human rights approach of disability, by taking into account discriminatory barriers and

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[60] *Vienna Declaration and Programme of Action,* para. 63, in https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx.

[61] Vienna Declaration and Programme of Action, in https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx., para 64.

[62] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials,* Cambridge University Press; p.40.

[63] *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, General Assembly Res. A/RES/48/96, p. 8, para. 24., in https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html.

limitations to the enjoyment of such societal systems by disabled people. It also addresses governments to intervene in eradicating those barriers. Moreover, the Standard Rules highlight the relevance of accessibility.

Part II is intitled 'Target Areas for Equal Participation' and it opens with Rule 5 on Accessibility, by stating that 'States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programs of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication'.[64] Thus, as explained further in Rule 5, accessibility should be granted to disabled persons through measures aimed at removing physical obstacles to such people's movement, and through legislation enacted 'to ensure accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments'.[65] Furthermore, accessibility should be granted not only to full information on diagnosis, rights and available services and programs, at all stages'[66], but also to information services, documentation and education. For the purpose of such analysis, it is crucial to highlight that Rule 5(b) addresses the importance of ensuring access to information to 'persons with auditory impairments'.[67] Most importantly, at point 7 it refers to the use of sign language, by stating that 'consideration should be given to the use of sign language in the

education of deaf children, in their families and communities. Sign language interpretation services should also be provided to facilitate the communication between deaf persons and others'.[68]

Despite the attempt of the Standard Rules to symbolize a 'strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities',[69] as any other UN document, they

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[64] *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, General Assembly Res. A/RES/48/96, https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html, p. 14, II, Rule 5.

[65] Ibidem, p. 14, II, Rule 5(a)1.

[66] Ibid. p.14, II, Rule 5(b)5.

[65] Ibid., Introduction, p. 15, Rule 5(b)6.

[68] Ibidem, p.15, Rule 5(b)7.

[69] Ibidem, p.6, para. 14.

constitute a non-binding instrument. Therefore, on 12 March 2000, the Declaration on the Rights of People with Disabilities in the New Century was adopted during the World NGO Summit on Disability, in Bejing, China.[70] The Declaration addressed the need of the adoption of a binding convention on the rights of disabled persons, and it highlighted the main areas of intervention, namely 'Improvement of the overall quality of life of people with disabilities (…); Elimination of discriminatory attitudes and practices as well as information, legal and infrastructural barriers; Education, training, remunerative work, and participation in decision-making; Increased allocation of resources to ensure the equal participation of people with disabilities'.[71]

1.3.2.b. The World Health Organization

After the adoption of the Standard Rules, the United Nations continued to reserve a peculiar attention to the theme of disability. In particular, through the World Health Organization (WHO), one of its specialized agencies, it committed even further to the objective of safeguarding and promoting the rights of disabled persons.

The WHO, 'as the directing and coordinating authority on international health within the United Nations system',[72] has drawn up pivotal documents for the understanding of disability, thus for the recognition of the rights and the needs of people in such condition. Especially, two of these documents have paved the way for the formulation of the United Nations Convention on the Rights of Persons with Disabilities: 'The International Classification of Impairments, Disabilities and Handicaps', and 'The International Classification of Functioning, Disability and Health'.

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[70] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials,* Cambridge University Press; p.42.

[71] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials,* Cambridge University Press; p.42, Figure 2.2.

[72] *Our Values, Our DNA,* in https://www.who.int/about/who-we-are/our-values.

I. The International Classification of Impairments, Disabilities and Handicaps

Even prior to the adoption of the Standard Rules, in 1980, the United Nations made a notable contribution to the struggle for the recognition of disabled persons' rights. Its specialized agency, the WHO, drew up 'The International Classification of Impairments, Disabilities and Handicaps' (ICIDH). 'That document provide[d] a conceptual framework for the description of health and health-related conditions, such as disease, injury or congenital condition'.[73] However, despite its relevance in helping approaching disability, such document mainly focused on the medical aspect of the latter. In fact, it specifies the three dimensions related to the consequences of diseases, namely impairment, disability and handicap; but, although taking into account environmental factors as possible causes of disability, the document does not examine them further. Since the social approach to disability was not envisaged by the ICIDH, the World Health Organization started to make the appropriate changes to the document.

II. The International Classification of Functioning, Disability and Health

The ICIDH was revised by the WHO, and renamed as 'The International Classification of Functioning, Disability and Health' (ICF). The amended document 'adopt[ed] the *bio-psychological model of disability,* according to which disability is a product of the interaction between the characteristic of the person (impairment) and environmental factors (social, physical, attitudinal etc.)'.[74] Thus, differently from the previous document, the ICF addresses contextual factors -environmental and personal- listing them explicitly, hence recognizing them as affecting an individual's disease or injury.

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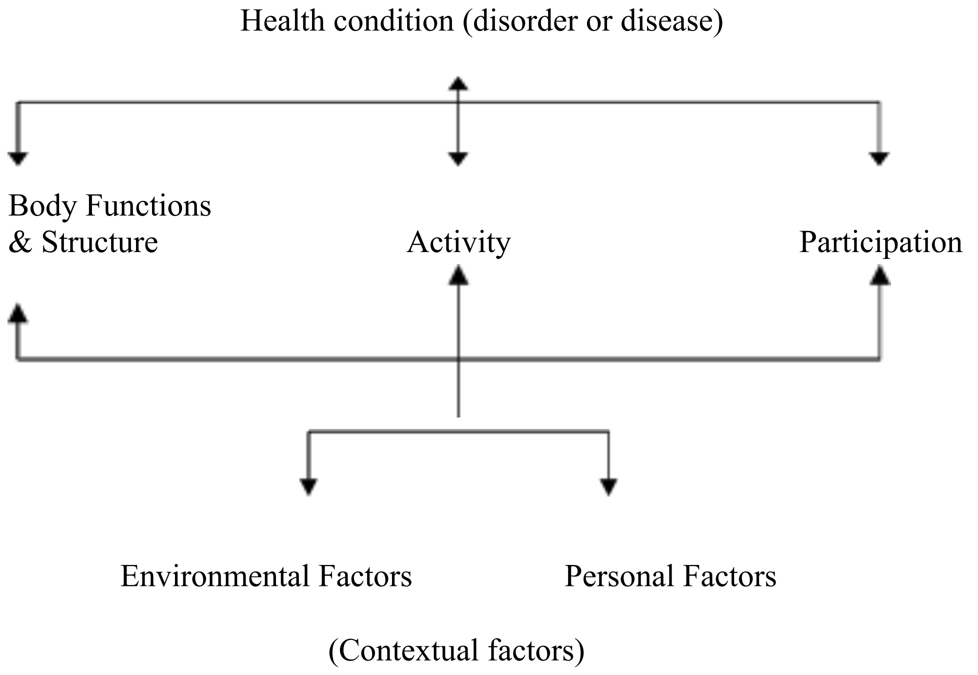
[73] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials,* Cambridge University Press; p. 48.

[74] Ibidem., p. 49.

‘The following diagram is one representation of the model of disability that is the basis for ICF’.[75]



Despite presenting an evident shift of focus from medical aspects of disability to contextual ones, the ICF is considered to still being promoting a medical approach. ‘In fact, in the negotiations of the CRPD, the International Disability Caucus (IDC) – which is the network of global, regional and national organizations of persons with disabilities – vehemently opposed reference to the IFC’,[76] viewing it as ‘part of the human rights problem faced by persons with disabilities’.[77] Since the definition of disability enhanced by the IFC is still considered as being controversial, in the most representative document of the promotion of the rights of disabled persons – the CRPD – such definition, nor any other definition of disability has been included.

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[75] *Towards a Common Language for Functioning, Disability and Health, ICF,* World Health Organization, Geneva 2002, in https://www.who.int/classifications/icf/icfbeginnersguide.pdf.

[76] *Towards a Common Language for Functioning, Disability and Health, ICF,* World Health Organization, Geneva 2002, in https://www.who.int/classifications/icf/icfbeginnersguide.pdf. p. 50.

[77] Ibidem.

2. A SPECIFIC FORM OF DISABILITY: DEAFNESS

The term 'disability', simply defined 'as a condition or function judged to be significantly impaired relative to the usual standard of an individual or group',[78] refers to many types of impairments. Setting temporarily aside the social study of disability, hence ignoring the social and environmental aspects of the latter and addressing disability from a medical point of view, 'the term is used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment mental illness, and various types of chronic disease'.[79] Among such types of impairments, and more specifically, among physical and sensory ones, features deafness.

2.1. EXPLAINING DEAFNESS

Deafness and hearing loss are thoroughly explained by the World Health Organization's website, since the WHO is deeply devoted to health topics and more particularly, to disability.

According to the WHO, first of all, a person is said to be affected by hearing loss if she 'is not able to hear as well as someone with normal hearing – hearing thresholds of 25 dB or better in both ears'.[80] Such loss may occur in varying degrees. In fact, 'hearing loss may be mild, moderate, severe, or profound. [Moreover] It can affect one ear or both ears (…)'.[81]

Hearing loss is the common trait bringing together 'hard of hearing' and 'deaf' people. However, while the formers suffer from a hearing loss which ranges from mild to severe, the latter are affected by a profound hearing loss, 'which implies very little or no hearing at all'.[82] Moreover, the different degree of hearing loss implies different ways to communicate and to partially alleviate

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[78] *Disabilities: Definition, Types and Models of Disability*, in https://www.disabled-world.com/disability/types/.

[79] *Disabilities: Definition, Types and Models of Disability*, in https://www.disabled-world.com/disability/types/.

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

[81] Ibidem.

[82] Ibid.

the problem. In fact, hard of hearing people often resort to hearing aids or, in the case of a more profound loss, to cochlear implants, to compensate such loss, and they may be also able to communicate through spoken language. On the contrary, deaf people may benefit truly little from such aids. The loss is so severe that it does not allow any minimum remedy. Thus, deaf people are not able to talk properly, unless they have become deaf in a late stage of life. They can only communicate through sign language.

2.1.1. Causes and types of hearing loss and deafness

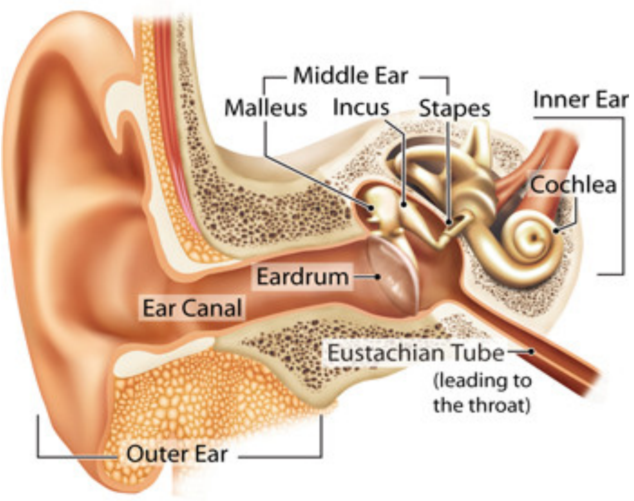
Hearing loss may occur gradually, as a consequence of ageing, or it may happen unexpectedly, also at a tender age, as a result of particular diseases or traumas. Deafness – the inability to hear sound at all- as well may be caused by a specific incident. However, it is more likely to appear as a congenital issue.

The causes triggering hearing loss are numerous, and depending on their particular nature, they may lead to different types of loss. Not only the loss may be partial or total- deafness- but it also may affect specific parts of the hearing system.

2.1.1.a. The auditory system

In order to better understand the complexity and the severity of hearing loss, it is necessary to provide here a brief medical description of the hearing canal and of the causes that may lead to the impairment of the latter.

The hearing system is a truly complex one, as it is composed of many visible, and also small invisible parts. First of all, the human ear consists of three specific ‘ears’: the outer ear, the middle ear and the inner ear. Each of these three ears itself consists of other particular components. The outer ear presents a ‘concha’, or ‘pinna’, the outer ear canal, and the tympanic membrane. In its turn, the middle ear is composed of the middle ear cavity with three ossicles – [tiny bones]- the malleus, the incus, and the stapes. Finally, the inner ear features the cochlea, ‘connected to the three semicircular canals by the vestibule, which provides the sense of balance’.[83]



(Image from ‘The Hearing Lab.co.uk’)

Each ‘ear’, with its extraordinary small constituents, has a specific function.

The outer ear, which is the visible part of the hearing system, presents a shape aimed at collecting sound waves; and the ear canal, with a tubular shape, leads the sound into the eardrum.

The middle ear, separated from the outer ear by the eardrum,[84] with its three tiny bones – among the tiniest of human body’s bones – amplifies the movement of the eardrum, caused by sound waves. As the image above shows, the middle ear also includes the Eustachian tube. This ‘connects the middle ear to the back of the throat and helps to equalize air pressure’.[85]

In the inner ear, the cochlea -spiral-shaped- ‘translates’ the vibrations produced by the sound waves into a message, expressed in electrical impulses, to then send it to the brain, through the cochlear nerve.

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[83] Kollmeier B. (2009), *Anatomy, Physiology and Function of the Auditory System, in Handbook of Signal Processing in Acoustics*, Ed. Havelock D., (pp.147-158).

[84] *Deafness: A Range of Causes*, in https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/deafness-a-range-of-causes.

[85] Ibidem.

2.1.1.b. Types of hearing loss

According to the specific part which comes to be damaged by the occurrence of a particular circumstance, hearing loss may be conductive or sensorineural.

Conductive hearing loss affects the transmission of sound from the outer ear to the inner ear and it may be caused by different factors. Among the latter: impacted earwax in the ear canal; incapability of the ossicles to transmit the sound waves to the inner ear; 'failure of the eardrum to vibrate in response to sound waves. A build-up of fluid in the middle ear, for example, could dampen the movement of the eardrum'. [86] Conductive hearing loss, in many cases, may be treated and solved, differently from sensorineural hearing loss.

Sensorineural hearing loss regards the inner ear. More specifically, it is due to a damaged cochlea, which is uncapable of transmitting the electrical impulses to the brain, while bones and eardrum still work. This type of hearing loss may be caused by diseases or traumas, and it is mostly irreversible.

Therefore, hearing loss may be temporary or unrecoverable, and the causes leading to both are numerous.

2.1.1.c. Causes of Hearing Loss

Causes of hearing loss can be divided into two specific types: congenital and acquired, which in their turn can lead to temporary or irreversible hearing impairment.

First of all, 'congenital causes may lead to hearing loss being present at or acquired soon after birth. Hearing loss can be caused by hereditary and non-hereditary genetic factors or by certain complications during pregnancy and childbirth.'[87] The WHO website provides a list of causes of this type:

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[86] *Deafness: A Range of Causes*, in https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/deafness-a-range-of-causes.

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

- maternal rubella, syphilis or certain other infections during pregnancy;
- low birth weight;
- birth asphyxia (a lack of oxygen at the time of birth);
- inappropriate use of particular drugs during pregnancy, such as aminoglycosides, cytotoxic drugs, antimalarial drugs, and diuretics;
- severe jaundice in the neonatal period, which can damage the hearing nerve in a newborn infant.

This type of causes is likely to lead to permanent hearing problems.

On the contrary, the second type of causes – acquired – may lead to hearing loss at any age, and in some rare instances to a temporary, thus recoverable impairment. Hereafter, a list of such causes specified by the WHO:

- infectious diseases including meningitis, measles and mumps;
- chronic ear infections;
- collection of fluid in the ear (*otitis media*);
- use of certain medicines, such as those used in the treatment of neonatal infections, malaria, drug-resistant tuberculosis, and cancers;
- injury to the head or ear;
- excessive noise, including occupational noise such as that from machinery and explosions;
- recreational exposure to loud sounds such as that from use of personal audio devices at high volumes and for prolonged periods of time and regular attendance at concerts, nightclubs, bars and sporting events;
- ageing, in particular due to degeneration of sensory cells; and
- wax or foreign bodies blocking the ear canal.

Among these, *otitis media,* injuries to head or ears, presence in the ear canal of wax or other bodies, may often lead to temporary hearing problems.

2.1.2. Impacts of deafness and hearing loss

On the basis of a detailed description of the auditory apparatus, submitted in part above, it is possible to assess the complexity not only of the auditory system itself, but also of hearing impairments in general, which involve many other different difficult circumstances.

‘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.’[88] Audition plays a central role in every person’s daily life. As already assessed above, 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.’[89] 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 people, are asked to face harder challenges, which come to affect the quality of their everyday lives in several respects. Thus, the physical limitation reveals itself also at the functional, social, emotional and economic levels.

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[88] 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.

[89] 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.

2.1.2.a. Functional Impact

'One of the main impacts of hearing loss is on the individual's ability to communicate with others.'[90] Therefore, 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.

It is here necessary to highlight the difference between the occurrence of hearing loss at an early stage and the insurgence of the issue in old age. In fact, 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'[91]- suffer a deficit in the correct development of communication skills. Hence, deaf persons, as defined in this instance, experience a deficient development of spoken language, of reading abilities, and consequent impact on educational learning and 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, in particular 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 take into consideration. In fact, hard-of-hearing people have to resort to hearing aids and also rearrange their habits according to their disability. This might have deep detrimental effects on self-esteem and confidence in many situations.

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

[91] *Prelingual,* in https://www.merriam-webster.com/medical/prelingual.

2.1.2.b. Social and Emotional Impact

The impact of hearing loss on communication skills, hence 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. As a consequence, they tend to avoid social situations which seem too challenging. They are led to reevaluate and reorganize their habits and interests, thus, to renounce dinners with friends, sports, or also going to the cinema or to the theater. 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 their hearing loss and are unwilling to admit their hearing problems to others.'[92] Embarrassment, guilt and frustration are common negative reactions to hearing loss.

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[92] 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.

2.1.2.c. Economic Impact

Hearing loss and deafness have also considerable economic implications.

'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.'[93]

'Individuals with hearing loss can perform as well as their counterparts without hearing loss when equitable educational and employment opportunities are provided.'[94] 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 are able to face.

With regard to the labor market, the highest unemployment rate is registered among hearing-impaired adults. Moreover, 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 of vocational rehabilitation services will successfully ensure the inclusion of hearing-impaired people in the labor market, and thus decrease the unemployment rate considerably.

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

[94] Schroedel & Geyer, (2000), in *'Hearing Loss: Determining Eligibility for Social Security Benefits*.

2.2. SIGN LANGUAGE

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 the so-called sign language.

People who are born deaf or lose their hearing at a tender age are commonly defined as ‘deaf and dumb’ or ‘deaf-mute’. In fact, they lack the use of spoken language since they are uncapable of hearing words and replicating sounds. Although non-performing, due to particular issues, their phono articulatory apparatus is physically intact, together with their language ability. The language ability ensures the capability to learn a language to which one is exposed, implying the possibility to hear that language and to communicate with it. Therefore, ‘the hearing capacity is crucial to learning a language’.[95]

Although lacking the hearing capacity, deaf people have proved able to communicate by resorting to their own special language. ‘Language, [is] a system of conventional spoken, manual (signed), or written symbols by means of which human beings, as members of a social group and participants in its culture, express themselves. The functions of language include communication, the expression of identity, play, imaginative expression, and emotional release.’[96] Thus, the hearing capacity seems to be now marginal in the acquisition of a language, since the latter might entail only signs and gestures. The language of the deaf has proved not only to satisfy a human community’s cognitive, communicative and expressive needs, but also to own all fundamental language properties.

As a consequence, the term ‘deaf and dumb’, or ‘deaf-mute’, has been set aside in favor of the single word ‘deaf’. In fact, not only deaf people are able to communicate through sign language, but they also might be capable of understanding and replicating the spoken language, through specific teaching, methods and aids.

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[95] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p.1.

[96] *Language*, in https://www.britannica.com/topic/language.

2.2.1. History: Education for the deaf and the role of sign language

Since ancient times, deaf people and their peculiarities, especially regarding communication, have been object of interest and curiosity.

The term ‘deaf and dumb’ is relatively recent. However, it is possible to trace deafness and muteness back to ancient times, even to the time of Jesus. Passages of the Old Testament refer to the deaf as people accepted by society, since they were considered as part of the creation made by God, therefore worthy of respect. However, it was also affirmed that deaf people were vulnerable and incomplete, thus in need of God’s mercy.

Deafness and muteness are mentioned in the passage of the Exodus 4:11: ‘The Lord said to him, ‘Who gave human being their mouths? Who makes them deaf or mute? Who gives them site or makes them blind? Is it not I, the Lord?’. However, at that times the relationship between the two was still not clear. Deafness in particular was considered as being caused by a knot to the tongue, which only God could have untied.

The unawareness concerning deafness and muteness persisted in Roman times. Deaf people were considered to be uncapable of taking care of themselves. Their inability to verbally express their opinion as hearing people affected their legal standing and led to exclusion from civilian life. ‘For instance, in roman law, curatorship was prepared not only for individuals lacking normal psychic and cognitive capacities, but also for deaf people, considered as unable to provide for themselves’.[97] The roman Emperor Giustiniano, in his *Corpus iuris civilis* of 534 AD, laid down some legal limitations to deaf people, such as the prohibition to make will and to enter into contracts, or the impossibility of inheritance. Moreover, the *Corpus* made a distinction between deaf and mute people, by establishing the ability to write as the minimum criterium for enjoying full civil rights, without the need of a curator’s assistance. And deaf people obviously lacked such ability.

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[97] Marziale B. & Volterra V (2016), *Lingua dei segni, società e diritti*, Roma, Carocci Faber; p. 20.

Although clear evidence of deafness and muteness dates back to Roman history, - as in the case of Quinto Pedio, a deaf young man and talented painter of the Augustan era - one can argue that the romans failed to consider and to understand the relationship between the two. In fact, such relationship was later addressed by Rodolfo Agricola, doctor and philosopher (1443-1485), during the Renaissance. In his *De inventione dialectica,* he provides a first trace of the possibility of teaching the word to the deaf, by describing a deaf man since his early years of life writing perfectly.

In the wake of Rodolfo Agricola's findings, during the 16th century, many religious men and scientists started to resort to different methods of education of the deaf based on writing as a means of communication. The first to embark on a program of education of the deaf was Pedro Ponce de León, a Benedictine monk of the Monastery of San Salvador de Ona, in Spain. He used a particular method based on a manual alphabet, through which he succeeded in educating many children from noble families. For instance, 'at the end of the 16th century, he educated Francisco and Pedro de Velasco, deaf brothers from the house of Castile.'[98] Although his method remains even nowadays undefined, it is possible to state that his teachings regarded speech, writing and reading; he also educated his students to prayer, he taught them to participate to mass and to go to confession through the use of speech. 'Undoubtedly, at the time of Pedro Ponce de León, the education of the deaf became an urgent necessity, in the case of deaf people from rich families who handled the power and whose heirs had to be educated […] in order to be considered legally capable'.[99]

The Velasco family is known for having hired many teachers in order to ensure an education not only to the brothers mentioned above, but also to other deaf members of the family. First, they asked Ramirez de Carrion to educate Luis, Bernardino Hernando de Velasco's brother; second, they later hired Juan Pablo Bonet, a philologist and a soldier at their service, to take an interest in the family's deafness. Therefore, in 1620, Juan Pablo Bonet published a famous

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[98] Caselli M.C., Maragna S. & Volterra V. (2006), Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione, Bologna, Il Mulino; p. 24.

[99] Ibidem.

essay presenting the methods of education for people with hearing disability. Here, he ‘proposed that deaf people learn to pronounce words and progressively construct meaningful phrases’.[100] His teaching method was based on a demonstrative alphabet, expressed through the use of the right hand, which represented the different letters by making shapes. Deaf students would have then been taught to link each letter to a specific sound. ‘Bonet’s approach combined oralism—using sounds to communicate—with sign language’.[101] At that time, all teachers were particularly jealous of their methods, enough to not release them and to keep them for themselves. As a consequence, education for the deaf was individual and private, reserved to the members of rich families. However, in the 18th century, unlike the majority of his colleagues, the French Catholic priest Charles-Michel De l’Épée was never jealous about his findings regarding education and deafness.[102] On the contrary, he started to promote his method and to provide a more comprehensive education for the deaf. In fact, in 1760, he came to establish the first public school for deaf children in Paris, the National Institute for Deaf-Mutes. The school was open to all, without any distinction between social classes. Charles-Michel De l’Épée started approaching education or the deaf late in life, at the age of 60, by getting in touch with two deaf sisters and starting to educate them upon request of their mother.

On the basis of John Locke’s principle, according to which ideas and sounds expressing them are linked through an arbitrary relationship, as in the case of ideas and written signs, De l’Épée developed a first recognizable type of sign language.[103] This conventional sign language was elaborated on the basis of the signs used by his students to communicate with at home, to which the priest added new ones. By adding his manual alphabet, it became a complete language, with signs expressing grammar elements, such as prepositions, grammatical tenses, conjunctions, the subject of verbs, names and articles. The method De

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[100] Dayas I.A. (2019), *How monks helped invent sign language,* in https://www.nationalgeographic.com/history/magazine/2019/05-06/creation-of-sign-language/.

[101] Ibidem.

[102] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p. 25.

[103] Ibidem.

l'Épée used to teach his students the language, consisted firstly in associating the signs with concrete events or objects; secondly, he showed a picture of the event or object represented by the sign, and finally, he linked the sign and the picture to the related French written word. In the case of abstract concepts, he moved backwards. Since it was impossible to associate a concrete referent to the concept, he started by writing the related word and continued by showing the corresponding sign, together with other associated signs. Thanks to such method, the priest taught his 70 students, in 1785, French, Latin, Italian and Spanish.

Later on, Charles-Michel De l'Épée was succeeded by the priest Sicard, who became headmaster of the Parisian National Institute for Deaf-Mutes. Sicard made possible the spread of De l'Épée's sign language and educational method in the United States, thanks to Thomas Hopkins Gallaudet, a religious American man from Connecticut. Gallaudet had been financed by one of his deaf students' father in order for him to go to Europe and to learn here the methods of education for the deaf, with the final aim of founding an institute. Gallaudet and Sicard had the possibility to meet each other in Paris, where the former learnt De L'Épée's teaching programs for people with hearing disability. On his way back to the US, Thomas Gallaudet was joined by a former student of the National Institute and at that time, teacher of sign language, Laurent Clerc, who taught him how to communicate through signs. The first school for deaf people in the United States was founded at Hartford, in Connecticut, on April 15th, 1817, where the American Sign Language was developed, as a combination of De l'Épée's signs and those of French Sign Language.

In addition to the remarkable contributions made by De l'Épée, Sicard, Galladuet and Laurent Clerc, it is also worth mentioning the notable support given by Jean Marc Itard to the educational programs for the deaf. Doctor at the Deaf-Mute Institute in Paris, in 1800, and at first supporter of the oral method over sign language, he developed a unique re-educational program for retarded children and hearing-impaired people, consisting of two phases. In the first one, the program envisaged a number of exercises aimed at educating the individual to hearing sounds, in their specific order and intensity. In the second phase, the program became more articulated, including a high number of different sounds, ranging from the most differing to the most similar ones, from simple to more complex.

One can argue that Itard became the precursor of many re-educational techniques for retarded children, also embraced by Maria Montessori. Moreover, he invented the first auditory prosthesis, a double ear trumpet, with the aim of helping his students to articulate their voice. Although being originally a strong supporter of the oral method, he then became advocate of sign language, stating that it 'could have been a means of communication for encouraging the intellectual growth of deaf children, anticipating the current of thought that nowadays considers signs as the instrument for avoiding that a retardation of learning adds up to the hearing impairment'.[104]

2.2.1.a. History of the education of the deaf in Italy

The education of the deaf in Italy, although developed from a series of casual circumstances, played a decisive role in the overall evolution of the re-educational project for hearing-impaired people.

The French method of education for the deaf gradually draw attention from every European country, including Italy. Here, Tommaso Silvestri, an Italian priest, was 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. 'Silvestri's school was open to all the illustrious visitors and to those who wanted to follow the teaching of deaf-mutes for the foundation of their schools in the Italian states of the time. Among these, the famous priest Benedetto Cozzolino sent by the King of the Two Sicilies, Father Lorenzo Hervas from Spain and Father Salvatore Sapiano sent by the Bishop of Malta, were prepared for the art of teaching the deaf-mutes by Silvestri'. [105]

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[104] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p. 29.

[105] Rusciano C. (2010), *Evoluzione Storica dell'Educazione dei Sordi*, Università degli Studi di Bari – Facoltà di Lingue e Letterature Straniere, p.236.

Staying true to De l'Épée's method, he resorted to signs as the primary means of communication, integrating them with lipreading and lip movements. He promoted such method in numerous writings, which however remained unpublished, due to his premature death.

Nevertheless, Tommaso Silvestri gave the initial impetus to the foundation of numerous institutes for deaf-mutes in the states of the Italian Peninsula. Between the end of the 18th century and the end of the following one, the majority of institutes was built in the territories of the Austro-Hungarian Kingdom of Lombardy-Venetia, of the Reign of Sardinia, of the northern and eastern part of the Papal States. Precisely, between 1784 and 1885, in total were edified 19 schools. Among these, it is worth to mention the Roman Institute, the Institute for the Re-Education of the deaf-mute in Naples, the National Institute of Deaf-mute in Genoa, and the Royal Institute of Milan.

The first Italian institute to have ever been established was in Rome. Following the death of Tommaso Silvestri, and after the closure of the school he had opened in Pasquale di Pietro's house, Pope Leone 12th decided to charge his nuns to take over the school. In 1842, the school was then managed by the State, under the papacy of Gregory 16th, and established at the Baths of Diocletian in the hospice of Sant Mary of the Angels. In 1858, the Institute was called *Regio Istituto Sordomuti* in Rome, and recognized by the Italian State. Today, the headquarter remains in Street Nomentana, 54, and it was built in 1889.

The building of the Roman Institute was followed by the edification of the Governmental Institute for the Re-education of the Deaf-mute in Naples, in 1788. The latter was created in the place of an already existing private school for the deaf, thanks to Abbot Benedetto Cozzolino, then dean of the Institute, on the basis of the decree issued by the King of the Two Sicilies, Ferdinando the 1st. In fact, the King was frustrated due to the high number of deaf-mutes lacking the possibility to access education and begging in the streets of the city. Therefore, Ferdinando the 1st overcame in part the deep problem of civilization afflicting such people. The method used by the teachers at the Institute was mimic-gestural, modelled on the one promoted by Tommaso Silvestri. In 1925, the

Institute became an equalized public school, in the wake of the law making education mandatory for the deaf-mute.

In 1802, the hearing-impaired and mute people from Genoa were given the chance to obtain a full education. In fact, on May 11th, the Abbot Ottavio Assarotti opened here the first school for the deaf-mute, on the basis of the desire to help not only a deaf man who often followed the mass in the Church of Sant'Andrea, but also all people of his condition. 'The experience the abbot was having with the education of the deaf was positive, however the means were limited. Therefore, Napoleon, upon request of Assarotti's highly placed acquaintances, with a decree on July 4, 1805, granted public recognition to the Institute for Deaf-mutes, assigning it funds for maintaining twelve students'.[106] The method Abbot Assarotti used to teach his students was mimic-gestural, characterized by images, gestures, signs and the manual alphabet. In 1927, Assarotti's school was recognized as public, on the basis of a Regal decree.

Finally, the Institute for the deaf-mute in Genoa gave the input for the edification of the first Institute in Milan, three years later, in 1805. In 1800, Milan had been the home of the International Congress on the improvement of the deaf-mute's fate, regarding not only the Italian peninsula, but many other European countries. The Congress promoted, and imposed, the 'oral' or 'German' method of education of the deaf, in the place of the mimic-gestural one. Nevertheless, the majority of teachers from all Italian schools, including those from the Regal Institute for deaf-mute in Milan, continued to teach their students the sign language.

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[106] Rusciano C. (2010), *Evoluzione Storica dell'Educazione dei Sordi*, Università degli Studi di Bari – Facoltà di Lingue e Letterature Straniere, p.242.

2.2.2. Sign Language: a particular language

Sign language has been at the basis of deaf education since the first openings of private school, then public Institutes, for the hearing-impaired. It has been promoted on the basis of signs that deaf people naturally resorted to privately at home, and later developed through the addition of the alphabet and of grammatical and syntactical rules.

Although the International Congress of Milan, held in 1805, had assessed the importance of the oral method of education, over the mimic-gestural one, for the deaf, thus forbidding teachers to resort to using sign language, the latter continued to be considered as the most satisfactory means of communication within the deaf community.

Sign language is defined as:
'1. A language that uses a system of manual, facial, and other body movements as the means of communication, especially among deaf people.
2. A method of communication, as between speakers of different languages, that uses hand movements and other gestures'.[107]

Since it is expressed through gestures and hand movements, it has been hardly regarded as a full-fledged language, as many consider the latter to be exclusively vocal and spoken. Nevertheless, the term brings together two diverging concepts – sign and language – in the creation of a peculiar, but still complete and satisfactory linguistic system. 'In many ways, sign languages are like spoken languages: they are natural languages that arise spontaneously wherever there is a community of communicators; they effectively fulfill all the social and mental functions of spoken languages; and they're acquired without instruction by children, given normal exposure and interaction'.[108] However, they present their own specific characteristics.

The main difference between spoken and gestural linguistic systems remains in the 'modality' they are transmitted in. In fact, on the one hand, spoken

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[107] *Sign Language*, in https://www.thefreedictionary.com/sign+language.

[108] Sandler W. (2006), *Sign Language: An Overview*, University of Haifa, in Encyclopedia of Language and Linguistics Second Edition, (p. 328-338); p. 1.

languages feature the vocal-auditory modality of transmission; on the other hand, sign languages are characterized by a manual-visual way of expression. The different modalities imply another discrepancy between the two languages. Spoken language and sign language, although abiding by grammatical and syntactical rules, diverge in the 'physical' structure of sentences, thus in the unfolding of concepts. For instance, one sign may represent a complex notion or a sequence of actions.

Despite slight differences, sign languages are natural linguistic systems, each complying with a grammar unrelated to spoken language. They perform the natural communication tasks of all other languages and they seem to be sharing more or less the same linguistic organizational aspects. The fundamental contrasting element lies in the mimic-gestural modality of transmission.

2.2.2.a. Sign Language and the human brain

Sign languages present motorial and sensorial features that vocal-auditory languages partly lack. They are perceived exclusively through eyesight, implying particular perceptive and mental skills, in all participants to the moment of communication. The manual and gestural peculiarity of sign languages has significant implications on how the brain responds to and pictures these linguistic systems.

Sign language plays a unique role in the understanding of the interaction between language and the brain. Mimic-gestural linguistic capabilities have '(…) extremely important consequences at the level of neuro-psychological acquaintances, for instance for what concerns the interhemispheric dominance, the mnemonic processes and so on'.109 According to studies carried out first by the Salk Institute for Biological Studies, in California, especially by Helen J. Neville, director of the Laboratory of Neuropsychology at the same Institute, most spoken languages activate the left hemisphere of the brain. On the contrary, 'much of visuo-spatial cognition involves areas of the right cerebral

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[109] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p. 47.

hemisphere'.[110] Hence, sign language, as spoken languages, is determined by the left side of the brain; but, concurrently, the right hemisphere is involved in the comprehension of certain spatial aspects of sign language. Karen Emmorey, Director of the Laboratory for Language and Cognitive Neuroscience, at the San Diego State University, has assessed that the involvement of the right cerebral hemisphere is driven especially by topographic aspects of sign language regarding the classifier constructions which imply the processing of words through concrete referents. 'It seems likely, therefore, that it is the specialized requirements of language processing itself, including, for instance, compositionality, syntax, and the requirements of mapping coherent concepts onto a communicable form, that determine the final form of the specialized language circuits in the brain'.[111]

An interesting study has regarded the mnemonical ability of deaf individuals, in comparison with hearing-able ones. Since sign language requires the development of mnemonic, visual and manual capabilities, it seems that signing persons resort to specific brain functions that speakers don't foster. Allegra Cattani, Senior research fellow in the Faculty of psychology at the University of Plymouth, on the basis of mnemonic exercises regarding localization of objects and abstract forms given to four groups of people - deaf, signers and non-signers, and hearing individuals, signers and non-signers – has made some particular discoveries. Deaf people – signers and non-signers – have proven to be more precise than hearing-able subjects; at the same time, also signers – deaf or hearing – have been more accurate than non-signers. 'Moreover, in exercises of localization of objects, all four groups present an involvement of the right hemisphere, but in the memory of localization of abstract shapes only the deaf (signers and non-signers) show a stronger involvement of the left hemisphere, while both groups of hearing people don't show any involvement, or an involvement of the right hemisphere'.[112] Therefore, it has been acknowledged

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[110] Sandler W. (2006), *Sign Language: An Overview*, University of Haifa, in Encyclopedia of Language and Linguistics Second Edition, (p. 328-338); p. 12.

[111] Campbell R., MacSweeney M. & Waters D. (2007), *Sign Language and the Brain: A Review*, University College London, in *Journal of Deaf Studies and Deaf Education*; p. 17.

[112] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p. 53.

that deaf and signing individuals develop a stronger mnemonic ability in exercises of detection and localization. Furthermore, also deaf – but not signing-subjects show a sharper spatial memory, for linguistic aims, regarding lip-reading.

In conclusion, one can argue that deaf people encounter a sort of rearrangement of cerebral functions. Differently from hearing individuals, deaf -signers and non-signers – develop a stronger visual memory for linguistic purposes, thus determining more engagement of the left hemisphere, in the place of the right one (which is normally involved in such type of memory in hearing individuals). In signers, the visual memory is even more developed.

2.2.3. A plethora of sign languages and their features as full-fledged languages

It is common belief that there exists a universal and unique sign language. However, each country, and its related deaf community, has developed his own particular mimic-gestural linguistic system. Hence, one can refer to the *Lingua dei Segni Italiana* (LIS), the American Sign Language (ASL), the *Langue des Signes Française (LSF),* the British Sign Language (BSL), and so on. Each language, as in the case of 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.

An attempt to creating an international sign language was made by the International Commission of experts of the World Federation of the Deaf (WFD), 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 more or less 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.

Although maintaining their own distinctive features, all sign languages adhere to common syntactical, grammatical and morphological guidelines. The first to ever assess that sign languages are real languages, and that, as in the case of spoken languages, 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,* in which he assessed the communicative aims of sign language and presented the characters representing these languages as communicative tools for a community of people.

First of all, William Stokoe started his comparison between spoken languages and sign languages by researching phonemes. According to the Cambridge Dictionary, a phoneme is 'one of the smallest units of speech that make one word different from another word'. Driven by the intent of finding out if such units were proper not only of vocal-auditory linguistic systems but also of mimic-gestural ones, W. Stokoe traced a number of minimal units lacking meaning also in the latter. However, in sign language, phonemes are called 'cheremes', or 'the four functional parameters'. While phonemes are composed of one sound, which shapes one word and its relative meaning, cheremes comprise four components: configuration, position, movement and orientation.

The first parameter – configuration – implies the shape of the hand, which might represent a letter, a number, an object and so on.

The second one – position – refers to the location in the space where the hand creates a particular shape.

The third component – movement – relates to the movement that the hand makes in performing the sign.

Finally, the fourth parameter – orientation – refers to the direction the hand moves in.

The four functional parameters determine the meaning of a word, which might shift by reason of the variation of only one of them. Moreover, specifically in the Italian Sign Language, the meaning of a word is also dependent upon a fifth parameter, to be added to the former four. This parameter is crucial in many signs, but not in all of them, and it is called ‘Non-manual components’. In fact, it does not encompass the movements of the hands, but instead, those of the head, of the forehead and eyebrows, of the eyes, of the nose and of the shoulders. Furthermore, many signs involve the mobility of the mouth, tongue and teeth.

In addition to proving the existence of minimal units lacking meaning in sign languages, as in the case of spoken ones, William Stokoe was interested in exploring their possible morphological and syntactical aspects. He came to a positive conclusion, declaring that as spoken languages, also mimic-gestural ones have a morphology and a syntax.

With regards to the morphological aspects of sign languages, for instance ‘verbs in sign languages modify the orientation of the movement in order to indicate the person who performs the action, on the basis of constant and precise rules, just as spoken languages use verb conjugation’.[113]

As far as syntax is concerned, W. Stokoe acknowledged that although it is proper of sign languages as well as of spoken languages, it presents some differences between the two. In fact, in certain instances, the order of the signs in a sentence doesn’t coincide with the order followed by words when pronounced. The structure of a phrase in sign languages differs from that of spoken ones. For instance, in Italian Sign Language, the negation is set at the end of the sentence, while in Italian it precedes the verb.

In essence, sign languages are not merely gestures, nor holistic icons. According to specific features, also traceable in spoken languages, sign languages represent a means of communications, expressed in the mimic-gestural modality rather than in the vocal-auditory one. They can be regarded as full-fledged languages, presenting especially three distinctive traits:

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[113] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p. 43.

- Three-dimensionality: 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. To such features, William Stokoe added also the parameter of orientation of the hand. Thus, it is more proper to refer to the distinctive features of sign languages as the 'Four Functional Parameters';
- Polarity: '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';[114]
- Tropes: 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'.[115]

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

Differences and similarities among sign languages are determined by historical influences, and also by geographical circumstances. 'For instance, the ASL is quite similar to the French Sign Language, and the reason of such resemblance is to be sought in the historical events that led Clerc, deaf teacher of the Parisienne Institute, in America with Gallaudet (…)'.[116] The French Sign Language had great influence over the development of the ASL, as a

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[114] 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.

[115] Ibidem., p. 21.

[116] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p. 40.

consequence of the foundation of the first institute for the deaf at Hartford, in Connecticut, by Laurent Clerc and Gallaudet.

With regard to differences among sign languages, these occur also within the same linguistic system, due to the dialects and languages spoken in a same country. For instance, in Italian Sign Language one can trace as many variations in signs as the dialects spoken all over the Italian Peninsula.

2.2.3.a. Italian Sign Language

The term Italian Sign Language has recently been established as representing that already established complex and particular linguistic system and means of communication resorted to by the Italian deaf community. In fact, prior to the 1980s, the Italian signing system was not yet labeled. Hence, it remained unknown to many – deaf and hearing people – until 1981.

The scientific interest for the deaf signing system started to develop in Italy between the late 1970s and the start of the 1980s.

In the wake of William Stokoe's studies and discoveries concerning the American communication gestures of the deaf, a young Sicilian researcher, Elena Pizzuto started to explore the latter after travelling to Boston for her linguistic studies.

Later, in 1979, a group of linguists at the Salk Institute in California carried out a study on sign language, which resulted in the book intitled *The Signs of Language.* This study gained attention also in Italy, where in the same year, William Stokoe held a conference at the Psychology Institute of the CNR (Cognitive Science and Technology Institute) in Rome.

The interesting discoveries made on the American sign language led Italian linguistic researchers to deepening their knowledge on the way deaf Italian people communicated with each other. In 1981, the World Federation of the Deaf, in cooperation with the Italian *Ente Nazionale Sordi,* held a Conference in Rome, which gave impulse to the development of the studies on the deaf community and their way of communicating. In particular, such studies were successfully conducted by Virginia Volterra, an Italian philosopher and language and sign language researcher, and Serena Corazza, leader of the ENS and of the WFD from 1980 to 2015 and deaf herself.

The researches were based on filming deaf people, and on presenting to such people some pictures or images, in order for them to describe these in signs. The aim was to compare their way of signing, to finally detect the peculiar characters of their communication system. The latter turned out to be more complex and structured than it seemed. The researchers were able to recognize the existence of features proper of a veritable language. Just as William Stokoe had discovered for the American signing way of communication, Virginia Volterra and Serena Corazza acknowledged that the Italian signing system could have been regarded as a fully-fledged language. In fact, it presented minimal units lacking meaning, organized in a systematic articulation, similar to the phonological one of spoken languages; a grammar and syntactical rules. Moreover, as in the case of vocal-auditory linguistic systems, the signing one featured a restricted number of 'formational' parameters, which could be combined one with the other to form a plethora of signs and sentences.

Prior to the Conference held in Rome in 1981, the signing way of communication resorted to by the deaf, lacked a precise name. It was essentially used privately, in homes or in the meeting places of the community, not suitable for public circumstances, and the deaf used to refer to it simply as 'gestures'. From their part, hearing people considered it a disorganized set of hand movements, calling it 'language of gestures' or 'mimic-gestural language'.

Finally, in the wake of the discoveries made, the Italian language researchers decided to label the complex communication method of the deaf by naming it *Lingua dei Segni Italiana (LIS).* This choice was made on the basis of three reasons: first, the term *Lingua dei Segni Italiana* maintained a continuity with, and its own distinction from the names of the other foreign languages, such as American Sign Language, British Sign Language and Langue de Signes Française; second, the term has been chosen in order to clearly distinguish sign language as a fully-fledged language from the mere set of gestures used by hearing people as support to their words; third, the term had already appeared 'in a very interesting text of 1858, written by an Italian deaf, Giacomo

Carbonieri, against the statements of a doctor who had claimed that the deaf didn't have to use signs'. [117]

The Italian Sign Language became later subject of analysis and further insights in numerous conferences. For instance, in 1983, the Third International Symposium on the Research on Sign Language was organized in Rome. It represented a significant moment for the studies conducted in this field and a first meeting of sign languages from all over the world, since 'participants came from more than twenty countries and the presentations were translated simultaneously in ten different sign languages: Italian, American, British, Finnish, Danish, Swedish, Norwegian, French, Flemish and Thai'.[118]

The Symposium was followed by numerous congresses and meetings on the importance of Sign Language and its use in education and in the social sphere. The interest towards the *LIS* started to grow not only among deaf people, but also hearing ones. The first book to have ever been written on Italian Sign Language is *La Lingua dei Segni Italiana,* published in 1987. It provided a thorough description of the *LIS* and its features as a full-fledged language.

Meetings and books, presenting the successful results of the studies of Italian sign language, paved the way for significant changes in the attitude towards the deaf and their way of communicating in many fields. For instance, 'the *Ente Nazional Sordi* has activated *LIS* courses over, more or less, all the national territory. In many parts of Italy many associations and cooperatives for the spread of the *LIS,* first among them, in Rome, the *Gruppo per lo Studio e l'Informazione sulla LIS (SILIS)* and the *Mason Perkins Deafness Fund'.*[119] Italian Sign Language started to be used in the educational field, but also in the working environment. In schools, it started to be taught and included as a language for deaf and also hearing people. In the working sector, the *LIS* slowly began its appearance. For instance, in journalism, the news was translated in sign

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[117] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p. 58.

[118] Ibidem, p. 59.

[119] Caselli M.C., Maragna S. & Volterra V. (2006), *Linguaggio e sordità. Gesti, segni e parole nello sviluppo e nell'educazione*, Bologna, Il Mulino; p.61.

language. Moreover, *LIS* interpreters were engaged in more and more press conferences, or official and public meetings.

Despite the spread of awareness towards the deaf community, their language and their needs, in educational, social and working field, there still hasn't been reached a level of consciousness and respect such as to ensure deaf people the full enjoyment of rights in all aspects of life. Prejudice towards the deaf and sign language remains latent in many societies, and it is expressed in social, educational and working limitations for such people. This led the affected people to unite and stand up for the recognition of their rights equally to healthy and able-bodied people's entitlements. Therefore, deaf rights movements have emerged in order to obtain a position of equal respect, as well as special assistance, through the provision of financial aid or special hearing devices, and the recognition of sign language as an official language comparable to the other national spoken languages.

The deaf rights movement operated and achieved partially successful outcomes at the International, European and National levels.

3. THE INTERNATIONAL PERSPECTIVE

Deafness is an invisible disability. In fact, deaf people are mainly unrecognizable, unless they wear evident auditory implants, such as cochlear implants - which emerge from their hair, and that aren't even accessible to everyone- or they clearly specify their inability to engage in a conversation. Hence, deafness remains nowadays a misunderstood discomfort.

Since the effective physical limitation, which many other limitations at the social, educational and working levels result from, isn't immediately apparent, very little efforts, especially nation-wide, are made to provide support in this respect. Deaf people experience discomfort in all circumstances implying hearing and communication, such as social relationships, educational contexts and in the working environment, with serious psychosocial, intellectual and economic consequences. The latter are then amplified by the lack of aid given to alleviate communication problems and to provide full access to information, for instance through sign interpreters, subtitles, the provision of courses on sign language in schools.

The prejudices regarding deafness are still today deeply rooted in the society, and they are particularly embedded in the labor market. The educational preparation received as children has a great impact on an adult's professional future, and even more on a deaf person's employment opportunities. 'For those individuals with early onset of hearing loss, the challenges for acquisition of spoken language, development of reading skills, and educational achievement result in limited job opportunities'.[120] Hence, the assistance provided by a nation in the educational field for deaf people, resulting in the provision of auditory implants, the presence of support teachers and of sign language interpreters in schools, specific hearing technological devices for computers and so on, is key factor in deaf people's opportunity to obtain employment and to achieve a successful job status. However, limitations and difficulties in such respect are

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[120] 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.

also encountered by the deaf who have gained an effective education and preparation to the 'hearing-abled' world at an early age, or simply by those people who have a slight deafness or have become hearing-impaired later in life and wear hearing aids. 'Those few who succeed in obtaining a job that enables them to fully express their competences and potentialities are often object of discrimination and marginalized or, on the contrary, they are overwhelmed with work and responsibilities that they are unable to carry out'.[121] Moreover, for instance in Italy a particular example is given by the *Legge di Invalidità Civile.*[122] In fact, many deaf, or more generally, disabled people who decide to benefit from the facilities -economic and non-economic – guaranteed by such law, are judged by the abled employees who consider the latter as a privilege and not as an opportunity. Furthermore, many employers refuse to accept deaf people enjoying such 'privilege' since hiring them would require excessive insurance costs. The Italian law on invalidity will be further discussed in the section regarding Italy.

3.1. THE INTERNATIONAL DEAF COMMUNITY

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 entails. As a consequence, many countries 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.

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[121] Marziale B. & Volterra V (2016), *Lingua dei segni, società e diritti*, Roma, Carocci Faber; p. 130.

[122] L. 5 February 1992, n. 104, Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate, in https://www.gazzettaufficiale.it/eli/id/1992/02/17/092G0108/sg.

Since the foundation of the first school for deaf people, the latter have slowly come to unify and 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’.[123] 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.

In general, culture has various meanings. First of all, it is defined as ‘the customary beliefs, social forms, and material traits of a racial, religious, or social group. Also: the characteristic features of everyday existence (such as diversions or a way of life) shared by people in a place or time’.[124] Furthermore, culture is recognized as ‘the set of shared attitudes, values, goals, and practices that characterizes an institution or organization a corporate culture focused on the bottom line [and as] the set of values, conventions, or social practices associated with a particular field, activity, or societal characteristic’.[125] Thus, deaf culture as well can be defined as a set of beliefs and attitudes which are influenced by deafness and which rely on sign language as their characterizing way of expression and communication.

The term ‘Deaf culture’ has been 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 writed the *Dictionary of American Sign Language on its linguistic principles,* together with the same Stokoe and Casterline. 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. Thus, according to

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[123] *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/.

[124] *Culture,* in https://www.merriam-webster.com/dictionary/culture.

[125] Ibid.

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]'.[126] Although deaf people share specific behavioral patterns, values and beliefs, traditions and arts, and also reliance on technology, the main trait that defines 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 people's community. As in the case of hearing-abled individuals, the deaf demand respect, and also support, at the social, economic, educational and working levels. In particular, their focal point of attention remains 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).

3.1.1. The World Federation of the Deaf (WFD): The Charter on Sign Language Rights for All

'The World Federation of the Deaf is one of the oldest international organizations of persons with disabilities in the world'. [127] In particular, it is 'an International Non-Governmental Organisation in official liaison with ECOSOC, UNESCO, ILO, WHO and the Council of Europe'.[128] It was 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.

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

[127] *Who we are, Our story,* in https://wfdeaf.org/who-we-are/our-story/.

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

The latter was established within the framework of the United Nations, with the aim of promoting 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 levels. The WFD Charter on Sign Language Rights for All, in its Introduction, at point 1.1, 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 the Universal Declaration of Human Rights, the United Nations Convention on the Rights of the Child (CRC), the UN Convention on the Rights of Persons with Disabilities (CRPD), the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the 2030 Agenda for Sustainable Development and its Sustainable Developments goals and all other International Human Rights Treaties'.[129] Furthermore, at point 1.3, it states that '[They] strive to ensure that deaf people have equal access in society, public and private life through the use of sign languages, without discrimination, to ensure the full enjoyment of their human, civil, cultural and political rights (…)'.[130]

Sign language is the core issue of the World Federation of the Deaf's work and Charter. In fact, the latter is entitled in tribute to sign languages rights and it dedicates two full sessions- sessions 2 & 3 - to such topic. At point 2.2. it declares that '[the WFD] recognize[s] national sign languages as the key to the inclusion of deaf people in society'. It goes on by supporting the nature of national sign languages as 'full, complex natural languages with the same linguistic properties of spoken languages, including phonetic, phonemic, syllabic, morphological, syntactic, discourse and pragmatic levels of organization'.[131] Moreover, the Charter states that '[sign languages] are the mother tongue and the natural languages of deaf children. [Hence] they are the vector of the inclusion of deaf children both in deaf communities and in society, fostering the building of their

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[129] The World Federation of the Deaf Charter on Sign Language Rights for All; 1. Introduction, p.1, 1.1, in https://wfdeaf.org/charter/.

[130] Ibidem. p.1, 1.4.

[131] Ibid. 2. Sign Languages, p.1-2, 2.2.

own identities and communities'.[132] Thus, the WFD claims the significance and the necessity of sign languages for deaf children and adults, by taking into account their features as fully-fledged languages, comparable to spoken languages. Furthermore, it asserts the importance of sign languages by taking into account their peculiarities, and by recognizing sign languages as the representative element of the deaf community and its culture. In fact, at point 2.3, the Charter states that '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 continues by stating 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'.[133]

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. In particular, in order to enhance the latter even more, in 1958 the WFD launched the International Weak of the Deaf in Rome. The celebration takes place annually through activities involving the deaf communities worldwide, and they 'call for participation and involvements of various stakeholders including families, peers, Governmental bodies, professional sign language interpreters and Organizations of persons with disabilities'.[134] This week of events was first organized with the aim of developing interest towards the deaf community's requests and needs. Each year, the activities organized and carried out in these seven days focus on a specific topic regarding the deaf community and their rights, for instance deaf education, accessibility to information and communication, equality, and most importantly, sign language.

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[132] Ibid.

[133] The World Federation of the Deaf Charter on Sign Language Rights for All; 1. Introduction, p.2, 2.3, in https://wfdeaf.org/charter/.

[134] *International Week of the Deaf*, in https://wfdeaf.org/get-involved/wfd-events/international-week-deaf/.

In 2012, and from 2015 to 2019, the International Week of the Deaf has focused on sign language. In conformity with such initiatives, the United Nations has proclaimed the 23rd of September as the *International Day of Sign Languages,* starting from 2018, issuing the Resolution A/C.3/72/L.36/Rev.1 of November 14, 2017. According to the UN Secretary-General António Guterres, ‘This international day recognizes the importance of sign languages for achieving the Sustainable Development Goals and fulfilling its core promise of leaving no one behind. It also offers an opportunity to support and protect the linguistic identity and cultural diversity of all sign language users’.

The Resolution is fully supported by the World Federation of the Deaf, and, above all, it promotes the ‘legal recognition of national sign languages as official languages, equal to national spoken and written languages’.[135]

Firstly, it declares that the General Assembly affirms the promotion of the full realization of human rights for deaf people, regarding language and basic freedoms. Secondly, it states that the UN GA recognizes sign languages as fully fledged natural languages, distinct from spoken languages but also in coexistence alongside the latter. Thirdly, it reads that the Assembly acknowledges the vitality of quality education available in sign language to the development of the deaf, and that it fosters international agreements over deaf education development goals. Finally, the Resolution recognizes the preservation of sign languages as vital to the maintenance of linguistic and cultural diversity. On the basis of such statements, the General Assembly:

‘1. Proclaims 23 September as the International Day of Sign Languages, to be observed each year beginning in 2018, in order to raise awareness of the importance of sign language in the full realization of the human rights of people who are deaf;

2. Invites all Member States, relevant organizations of the United Nations system, other international organizations and civil society, including non-governmental organizations and the private sector, to observe the International

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[135] The World Federation of the Deaf Charter on Sign Language Rights for All; 1. Introduction, pp.1-3, 2.1, in https://wfdeaf.org/charter/.

Day of Sign Languages in an appropriate manner, in order to raise public awareness of sign languages;

3. Encourages Member States to take measures to raise awareness of sign languages throughout society;

4. Requests the Secretary-General to bring the present resolution to the attention of all Member States and organizations of the United Nations system;

5. Stresses that the cost of all activities that may arise from the implementation of the present resolution regarding the International Day of Sign Languages should be met from voluntary contributions'.[136]

The UN GA Res. A/C.3/72/L.36/Rev.1 is one of the main recognitions achieved in the framework of the United Nations, regarding the promotion of deaf people's rights and especially the fostering of sign languages and their use. However, the cornerstone of the United Nations' engagement in such field, and more generally in the field of the rights of disabled people, is represented by the former UN Convention on the Rights of Persons with Disabilities.

3.2. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

'The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007'.[137] In compliance with Art 45(1) CRPD, the Convention entered into force on May 3, 2008, after being signed by 82 parties. The latter is a historic number, since it is the highest of signatories to a UN Convention on its opening day ever. According to the then UN Secretary-General Kofi Annan, the CRPD is 'the first human rights treaty to be adopted in the 21st century; the most rapidly negotiated human rights treaty in the history of international law; and the first to emerge

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[136] UN General Assembly Res. A/C.3/72/L.36/Rev., in https://undocs.org/A/C.3/72/L.36/Rev.1.

[137] 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.

from lobbying conducted extensively through the internet […]’.[138] Moreover, it is ‘the first to be acceded by a regional integration organization [and] the first group focused treaty with a national monitoring mechanism’.[139] More importantly, he claimed that ‘this Convention is a remarkable and forward-looking document’, and that its adoption has marked the end of a period of discrimination for disabled people worldwide.

‘The Convention follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities’.[140] By taking into account 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, promoting a medical model of disability, the Convention focuses on disabled persons’ needs in a human rights perspective.

‘The human rights model focuses on the inherent dignity of the human being and subsequently, but only if necessary, on the person’s medical characteristics. It places the individual center stage in all decisions affecting him/her and, most importantly, locates the main ‘problem’ outside the person and in society’.[141]

In *Human Rights and Disability,* Theresia Degener provides an exhaustive description of such model, and she firmly supports it in the place of models of disability promoted until the adoption of the CRPD, first of all by stating that ‘impairment does not hinder human rights capacity’. 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

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[138] www.un.org/press/en/2006.

[139] Degener T. (2014), *A Human Rights Model of Disability*, in https://www.researchgate.net/publication/283713863_A_human_rights_model_of_disability, p.1.

[140] 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.

[141] Bruce A, Quinn G., Degener T., Burke C., Quinlivan S., Castellino J., Kenna P. & Kilkelly U. (2002), *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, Geneva: United Nations Press, p. 14.

be – enjoyed by every human being equally and without distinction of any kind – of gender, race, religion, status, and so on. Moreover, in order 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'142 are reaffirmed by the state parties to the Convention in the preamble of the latter. 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 and peace of the world'143, and they promote 'the need for persons with disabilities to be guaranteed their full enjoyment without discrimination'.[144]

The Human Rights model of disability, as described by Theresia Degener, comprises first and second generations of human rights. Hence, it envisages civil, political, economic, social and cultural rights. In fact, it is wider and more comprehensive than the models of disability supported prior to the ratification of the Convention. For instance, the social model only 'supports anti-discrimination policy civil rights reforms',[145] advocating anti-discrimination legislative initiatives. However, striving for a society without limitations for disabled persons and discrimination against them represents a limited battle. Fighting to make disabled, and deaf individuals feel as fully embedded in the society, and especially to ensure that they are treated as such, should not only entail the removal of barriers, but also, and mainly, the provision of rights and

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[142] 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.

[143] Ibidem, (a).

[144] Ibid., (c).

[145] Degener T. (2014), *A Human Rights Model of Disability*, p. 8, in https://www.researchgate.net/publication/283713863_A_human_rights_model_of_disability.

duties. Disabled people, as normal and healthy ones, should be empowered as human beings and citizens, hence entitled to social, economic and cultural rights. Thus, the human rights model of disability entails both negative and positive liberties. The two sets of fundamental rights -political and civil, economic and cultural rights –laid down during the Cold War era in two distinct covenants, are fully embedded in the CRPD, as put forward in its Preamble at point (b). The particularity of such rights in the case of the Convention is represented by their interdependence and interrelatedness. While the two covenants clearly distinguish and separate human rights in two baskets, the CRPD unifies them. For instance, ART. 12 CRPD deals with the right of a disabled individual to be regarded as a person before the law, which is commonly referred to as a civil right. However, in the same article, also support measures necessary for disabled people to exercise their legal capacity are entailed. And these support measures are provided by social services, which are part of the economic, social and cultural sphere.

Differently from the medical and the social models of disability, the human rights model refers to disability, and promotes it, as part of human diversity. 'Whereas the social model of disability neglects the fact that disabled persons might have to deal with pain, deterioration of quality of life and early death due to impairment, and dependency, the human rights model of disability acknowledges these life circumstances and demands them to be considered when social justice theories are developed'.[146] In particular, the CRPD does not mention the negative impacts of disabilities on an individual's life. On the contrary, the Convention stresses the importance of 'respect for the inherent dignity (…) of persons' and of 'respect for difference and acceptance of persons with disabilities as part of human diversity and humanity'.[147] According to the Convention, 'impairment is not to be regarded as a deficit or as a factor that can

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[146] Degener T. (2014), *A Human Rights Model of Disability*, p. 13, in https://www.researchgate.net/publication/283713863_A_human_rights_model_of_disability

[147] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art. 3(a);(d), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

be detrimental to human dignity'[148]. On the contrary, it should be valued, and it is in the CRPD, as part of it and of human diversity. Hence, the impaired individual is a rights-bearer, just as a healthy person. Therefore, it should be respected and recognized by society.

'The CRPD has made disability a human rights issue and is, in itself, a core human rights treaty'[149], setting forward a wide range of rights -civil and political, but also economic, social and cultural – in recognition of disabled people's legal capacity and enjoyment of full participation in society.

3.2.1. The CRPD, Disability and Deafness: Main Articles

3.2.1.a. The Structure of the Convention

The structure of the UN Convention on the Rights of Persons with Disabilities entails a Preamble comprising 25 paragraphs, and a body counting 50 articles.

The Preamble is useful to understand the general and particular interests and aims of the Convention, further developed in the following articles. This makes the CRPD close to previous human rights treaties. However, the list of articles presents a peculiarity: each article is prefaced by a title explaining the article itself and facilitating its comprehension.

The Convention is also accompanied by an Optional Protocol (OP-CRPD), entailing 18 articles and providing an appeal mechanism to any individual of a State party to the convention whose rights have been violated.

The articles of the CRPD can be distinguished into five clusters, on the basis of their features and aims:

- Articles 1-2
- Articles 3-9
- Articles 10-30
- Articles 31-40

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[148] Degener T. (2014), *A Human Rights Model of Disability*, p. 15, in https://www.researchgate.net/publication/283713863_A_human_rights_model_of_disability

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

- Articles 40-50.[150]

The two opening articles of the Convention define respectively the purpose of the latter and the definitions of important terms contained in it.

According to Art.1 CRPD, ‘the purpose of the present 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. 2 provides the definition of the most important terms presented throughout the text of the convention, namely communication, language, discrimination on the basis of disability, reasonable accommodation and universal design. Hence, the first two articles of the CRPD have an interpretive character.[151]

The second group comprehends articles having feature of provisions of general application. Art. 3 is one of the most significant articles introducing the convention, since it sets forward its principles:

‘(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
(b) Non-discrimination;
(c) Full and effective participation and inclusion in society;
(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
(e) Equality of opportunity;
(f) Accessibility;
(g) Equality between men and women;

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[150] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press; p. 63.

[151] Kayess R. & French P. (2008), *Out of the Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities, in Human Rights Law Review*, p. 26, Volume 8, Issue 1, (pp. 1–34), https://doi.org/10.1093/hrlr/ngm044.

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities'.[152]

Art. 4 is important as well since it clarifies the CRPD's general obligations. Specifically, it refers to the duties each State Party has to undertake in order to comply with the Convention's nature and scope. Since being signatories to a treaty of a binding nature, States are obliged to carry out specific measures – legislative, administrative and others – 'to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability'.[153]

Art. 5 is linked to the former one and it addresses equality and non-discrimination, which represent 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'.[154]

Art. 6 and 7 respectively take into account women and children with disabilities, clarifying that 'States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women (…) and that they 'shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children'.[155]

For the purpose of such study, especially articles 8 and 9 are crucial. They respectively address the issues of Awareness-raising and Accessibility. Art. 8 refers to States Parties' engagement in raising awareness throughout society. In fact, as laid down in the article, States Parties shall adopt effective measures to promote awareness regarding disability and disabled people's needs and capabilities, which include:

(a) 'Initiating and maintaining effective public awareness campaigns (…);

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[152] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art. 3, in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[153] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art. 4(1), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[154]Ibidem., Art. 5(3).

[155] Ibid., Art. 6(2); Art. 7(1).

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programs regarding persons with disabilities and the rights of persons with disabilities'.[156]

Despite having agreed on such provision, States Parties often fail to respect it. Hence, disabilities, and among these, mostly deafness, still struggle to gain the proper attention to ensure affected people respect and full enjoyment of their rights.

Together with Art. 8 also the following one poses a challenging commitment to States Parties. In fact, Art. 9 addresses the issue of accessibility and it requires States to adopt the 'appropriate measures to ensure to 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'.[157] Art. 9 spells out the various spheres in which States shall engage in taking steps to 'identif[y] and eliminat[e] obstacles and barriers to accessibility (…)'.[158] Namely,

'(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services'.

More specifically, within such areas, States Parties to the CRPD shall take targeted actions in aid of disabled people's access to society. For the purpose of such study, it is worth mentioning Art. 9(2)(e), that reads:

'2. States Parties shall also take appropriate measures:

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[156] Ibid., Art. 8.

[157] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art. 9(1), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[158] Ibidem.

(…) (e) 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; (…)'. In fact, 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 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;').[159]

Closely related to Art. 9, is Art. 21, included in the third group of articles which sets forward substantive rights and obligations. 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 required to ensure that disabled persons receive information in a satisfying way, 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'[160], 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',[161] which, however, as already stated, remains unanswered in numerous national cases, for instance in Italy.

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[159] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art. 9(2)(f), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[160] Ibidem., Art. 21 (c).

[161] Ibid. Art. 21 (e).

As mentioned previously, disability, and especially deafness cause limitations and discomfort to affected people in many circumstances, for instance in education and in the work world. The CRPD aims to ease disabled people's disadvantages in such fields through the provisions contained in Art. 24 and Art. 27.

Art. 24 addresses the issue of education. The latter is recognized by the Convention as a fundamental right to be ensured to people with disabilities. Hence, States Parties are asked to provide an inclusive educational system, with the aim of promoting this right 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'.[162] 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',[163] without discrimination, but they also shall be supported with the measures necessary to facilitating and maximizing their academic development. Such support measures are set forward in Art. 24(3)(a), (b) and (c). Namely:

'(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

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[162] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art. 24, 1. (a) e (b), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[163] Ibidem, Art. 24(2)(b).

(c) 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'.

These points are crucial for the study proposed, since they refer to sign language and the deaf community. The educational system is one of the main areas of interest in the promotion of the deaf community's rights, and in particular in the encouragement of the use and recognition of sign language as an official language. The acknowledgment of the importance of the latter for deaf people in the educational field made by the CRPD is one of the main recognitions at the international level obtained by the deaf community. The UN Convention officially recognizes the deaf as possessing an identity, especially defined by their peculiar way of communication. Hence, it requires States Parties to recognize and promote it as well. To ensure the full realization and development of the identity of the deaf, in the educational system States shall take practical steps in this sense, which imply, among other measures, the 'employ[ment] [of] teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and [the training of] professionals and staff who work at all levels of education'.[164] Thus, States not only are asked to take measures in an abstract sense, for instance by raising awareness through campaigns or by promoting non-discrimination and equality, but they are also urged to make concrete efforts, even involving financial commitments. In fact, the latter are required in the case of the employment of teachers competent in sign languages and professionals. However, partly for such reason, negligence is often shown in such cases at the national level. For instance, despite having ratified and accessed the CRPD, on May 15, 2009, Italy lacks a legislative recognition of sign language and struggles in providing successful educational systems, entailing courses and teachers, to deaf children and adults.

Closely related to Art. 24, is the following one. Art. 25 applies the principles of equality and non-discrimination to work and employment. Just as in the case

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[164] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art 24(4), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

of education, 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 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'.[165] 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.

The attitude towards employment is detrimental on the part of both deaf people and 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'.[166] 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

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[165] 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.

[166] Ibidem, 3.1, p.7.

uneasiness, deaf people tend to not apply for jobs in the first place, or to retire early.

On the part of employers, the attitude shown is based on

- ‘a lack of confidence to hire people with hearing loss;
- a perceived lack of information and advice available on employing people with hearing loss; and
- lack of preparation to address the issue of the ageing workforce;’.167

Furthermore, such lack of confidence is driven by numerous prejudices built on the deaf and their ability to work, regarding the costs of maintaining a disabled employee, thought to be too high, and their inability to successfully carry out their tasks.

The costs of keeping a deaf employee regard the physical adjustments that employers are required to make in the workplace. For instance:

- ‘Adjusting the layout of a meeting room and using good lighting to help the person with hearing loss see everybody clearly - this is important for lipreading.
- Modifying a job to take the needs of a person with hearing loss into account.
- Moving a person with hearing loss to an office with good acoustics - where sound is transmitted well.
- Providing communication support for meetings, such as speech-to-text reporters.
- Installing equipment for employees with hearing loss, such as amplified telephones and flashing-light fire alarms.

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[167] 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, 3.3, p. 8.

- Providing a portable hearing loop, or other listening device, for employees with hearing loss to use during a training course away from the office'.[168]

The high costs that employers have to face when hiring deaf people, are however counterbalanced through tax benefits reserved to businesses who have employees with any disability whatsoever, as for instance in the case of Italy and the US, that will be further discussed.

Art. 25 CRPD requires States Parties not only to '(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions (…)'[169], but also to ensure that employers and managers make physical and practical adjustments to the working place as mentioned above ('(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;'[170]). Furthermore, States are asked to encourage employment opportunities of disabled, and among them deaf people, and to enhance career advancements for the latter.

In conclusion, a further article of the Convention worth mentioning in the framework of the present analysis is Art. 30. It is the closing article of the set of articles entailing substantive rights and obligations, and it addresses the issue of participation in cultural life, recreation, leisure and sports. Art. 30 dictates that States Parties ensure participation of disabled persons to the cultural life of the nation and make possible for them to develop their creativity.

According to Art. 30, 4 CRPD 'Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural

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[168] 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, 4, p. 9.

[169] 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.

[170] Ibidem, Art. 25(i).

and linguistic identity, including sign languages and deaf culture'. Thus, this point, as others in the Convention, mentions deafness and most importantly, it recognizes the deaf community as possessing its own cultural and linguistic identity, worthy of respect and protection.

The last two set of articles – 31-40 and 40-50 – set forward respectively provisions on implementation and monitoring, and provisions on accession and entry into force. In the context of this analysis, the implementation of the CRPD provisions at the national level represents the main subject of interest.

3.2.2. The CRPD and its Implementation by States Parties

The United Nations Convention on the Rights of Persons with Disabilities represents the most outstanding success achieved by States at the international level in the field of the recognition of human rights regarding disabled individuals.

The Convention, which entered into force on May 3, 2008, in accordance with Art. 45(1)171, currently counts 182 States Parties, who have ratified it and adopted its provisions at the national level. It is 'a landmark human rights treaty. It obliges State Parties to promote, protect and ensure the full and equal enjoyment of all human rights by all persons with disabilities. Equal rights – not just charity, is the message'.[172]

The CRPD is a real treaty, or 'a binding formal agreement, contract, or written instrument that establishes obligations between two or more subjects of international law'.[173] Thus, as a binding document, it obliges, or strongly requires States to uphold and implement its provisions at the national level, by concretely embedding the provisions in the national legal system and

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[171] UN CRPD, Art. 45 'Entry into force': '1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession'.

[172] Thomas Hammarberg, 'Foreword', in Mental Disability Advocacy Center (MDAC), *Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities (2011),* in Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy, Text, Cases and Materials*; p. 55.

[173] Shaw M., *Treaty*, in https://www.britannica.com/topic/treaty.

consequently respecting them in the first place and ensuring that they are respected by others.

'Treaties are expected to be executed in good faith, in keeping with the principle of pacta sunt servanda (Latin: "agreements must be kept"), arguably the oldest principle of international law. Without this principle, which is explicitly mentioned in many agreements, treaties would be neither binding nor enforceable'.[174] In order to ensure that such principle is respected, each human rights treaty envisages the establishment of a treaty body, an international committee of independent experts who are invested with the responsibility of monitoring States' respect and implementation of the treaty to which they are party.

Articles 31-40 of the Convention on the Rights of Persons with Disabilities concern its implementation and monitoring. Art. 31 has an instrumental nature: it obliges States to collect extensive statistic data regarding disability. The aim is to use such data for better formulating disability policies, thus for successfully implementing them. Moreover, data are intended to be made publicly available, in order to raise awareness, and for other organizations -international, European and national – to design policies regarding disabilities and to positively realize them. Such provision has been built on the example of Rule 13 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Rule 13, Part III, entitled 'Information and Research' recites: 'States assume the ultimate responsibility for the collection and dissemination of information on the living conditions of persons with disabilities and promote comprehensive research on all aspects, including obstacles that affect the lives of persons with disabilities. Since 'to date, the availability of reliable and comparable data on the lives of people with disabilities has been both fragmentary and inconsistent',[175] in 2001, the United Nations published the Guidelines and Principles for the Development of Disability Statistics, together with the joint project of the WHO and the UN Economic and Social Commission for Asia and the Pacific

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[174] Shaw M., *Treaty*, in https://www.britannica.com/topic/treaty.

[175] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials, Cambridge University Press*; p. 76.

(ESCAP). Its purpose was to facilitate and improve data collection on disabilities and disabled persons' needs.

Art. 32 stresses the importance of international cooperation when it comes to implementing the CRPD's provisions on disability. It declares that States promote cooperation among the parties to the Convention '(…) in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities.'[176] The CRPD is the only human right treaty – together with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Convention on the Rights of the Child (CRC) – to have ever addressed the significance of international cooperation in support of national efforts to implement its provisions. Therefore, 'Article 32 has a profoundly innovative value in international human rights law'.[177]

3.2.2.a. Art. 33-34 CRPD and Implementation at the National Level

As a human rights treaty, agreed upon and signed by States, the UN Convention on the Rights of Persons with Disabilities requires the implementation of its provisions not only at the international level, but also at the national one.

Articles 33 and 34 of the Convention lay down the requirements regarding implementation and monitoring - respectively in the national and international systems - of the same provisions contained therein.

First of all, Art. 34 CRPD establishes the Committee on the Rights of Persons with Disabilities, a specific body designed for monitoring the realization of the Convention, and it spells out its main features and tasks in 13 points. The Committee currently counts 18 members, which are independent experts.

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[176] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art 32(1), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[177] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press; p. 77.

According to Art. 34(2), at the time of its formation, it consisted of 12 components, which increased by six after the realization of sixty ratifications and accessions to the convention, as determined by the same article. The experts 'shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention'.[178] Therefore, the members of the Committee do not represent States Parties, despite being nominated by the latter, on the basis of an 'equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities'.[179] Moreover, the members of the Committee are selected from a list of experts chosen by the States Parties among nationals and during the Conference of States Parties' meetings. The Committee established its own Rules of Procedure in 2010, in accordance with Art. 34(10). The latter invested the Committee of tasks proper of both a monitoring body, and a quasi-judicial one.

Art. 35(1) CRPD recites: 'Each State Party shall submit to the Committee, through the Secretary- General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard (…)'. Thus, the Committee is tasked with monitoring the domestic implementation of the Convention by States Parties, on the basis of regular reports submitted by the latter to the Committee itself. It is consequently in charge of examining the reports, and to make suggestions or general recommendations on such reports, as set out in Art. 36.

Finally, the Convention strongly encourages the cooperation between the Committee and the States Parties. On the one hand, States Parties are asked to assist the members of the Committee in the realization of their mandate; on the other, the Committee is required to 'give due consideration to ways and means

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[178] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art 34(3), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[179] Ibidem, Art. 34(4).

of enhancing national capacities for the implementation of the present Convention, including through international cooperation'.[180]

The Committee is not only recognized as a proper monitoring body, but it is also invested with tasks relatable to a quasi-judicial one. The Optional Protocol to the Convention (GA resolution A/RES/61/106), which entered into force together with the latter, refers to two additional mandates of the Committee: 'the receipt and examination of individual complaints; the undertaking of inquiries in the case of reliable evidence of grave and systematic violations of the Convention'.[181] Hence, the Committee has the aim of supervising the implementation of the Convention at the domestic level by States Parties through the establishment of an individual complaint procedure. This enables citizens of a State Party to *communicate* to the Committee the violation of one or more rights enshrined in the Convention by their own State. After having examined the communications, the Committee makes recommendations and makes them public. Moreover, the Optional Protocol sets up an inquiry procedure. Art. 6 OP-CRPD establishes that, 'if the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the Convention's provisions, the Committee can launch the inquiry procedure. The Committee invites the State Party concerned to submit observations on the information that it has collected regarding the systematic violations alleged against the State Party'.[182] Thus, in conclusion, the Committee on the Rights of Persons with Disabilities ensures the implementation of the provisions enshrined in the Convention through determined monitoring mechanisms, at the international level. However, in order to achieve the realization of the rights of persons with disabilities, such mechanisms require to be complemented with structures and measures put in place at the national level.

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[180] United Nations Convention on the Rights of Person with Disabilities (CRPD), Art 37(2), in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[181] United Nations Convention on the Rights of Persons with Disabilities, Questions and Answers, in https://www.ohchr.org/EN/HRBodies/CRPD/Pages/QuestionsAnswers.aspx.

[182] Broderick A & Ferri D. (2019), International and European Disability Law and Policy, Text Cases and Materials, Cambridge University Press; p. 81.

Art. 33 CRPD refers to National implementation and monitoring. It entails three points, each setting forth specific requirements:

1. The Focal points and the Coordination Mechanism
2. The Framework
3. The Involvement of Civil Society.

According to Art. 33(1), each State Party is required to set up one or more focal points within their governmental system, in order to ensure the full implementation of the Convention in line with domestic legal measures.

Focal points refer to ministries who take on administrative responsibility regarding persons with disabilities. Generally, governments provide for focal points regarding action in favor of vulnerable groups, in their public administration system. However, for the very first time, such requirement is spelt out into an international human rights treaty. 'The purpose is to appoint a governmental department for handling matters relating to the implementation of CRPD'.[183] The main tasks of the focal points are four: to produce a CRPD implementation action; to establish contact with DPOs and involve them; to provide technical guidance and promote statistical data collection; finally, to promote specific actions in order to support the human rights approach.[184]

Furthermore, States Parties are called to create a coordination mechanism with the aim of facilitating the organization of interventions at the different levels and in the various spheres of action. Although such requirement is regarded to as an optional, not as an obligation as in the case of the establishment of focal points, setting up a coordination mechanism is strongly advised for enhancing cooperation among different ministries and the adoption of interrelated measures by policymakers. For instance, many States of the European Union, and among them Italy, have established a coordination

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[183] United Nations Human Rights Office of the High Commissioner, Europe Regional Office, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe*, p. 4, in https://nhri.ohchr.org/EN/ICC/GeneralMeeting/25/Meeting%20Documents/Study%20on%20the%20Implementation%20of%20Article%2033%20of%20CRPD.pdf.

[184] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials, Cambridge University Press*; p. 84.

mechanism, and in the majority of cases, the coordination mechanisms coincide with the focal points.

Art. 33(2) CRPD states as follows: ‘States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights’. Each State Party to the Convention in required to create a framework with the objective of protecting and monitoring the implementation of the provisions contained therein. Such framework entails *one or more independent mechanisms* ‘in line with the principles relating to the status and functioning of national institutions for protection and promotion of human rights, which are commonly called the Paris Principles. The Paris Principles outline the responsibilities, composition and working methods of national human rights institutions (NHRIs)’.[185] They also highlight two fundamental principles: independence and pluralism. NHRIs shall not be affected by governmental influence and control; concurrently, they shall involve the civil society and promote dialogue with it.

The framework is set up by States parties with the tasks of promoting the implementation of the CRPD, hence providing information and carrying out awareness-raising activities, promoting implementation tool and informing persons with disabilities about their rights. Moreover, the framework should carry out the task of protection, by providing a complaints mechanism and mediation, and by establishing programs of prevention. Finally, the framework

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[185] United Nations Human Rights Office of the High Commissioner, Europe Regional Office, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe*, p. 6, in https://nhri.ohchr.org/EN/ICC/GeneralMeeting/25/Meeting%20Documents/Study%20on%20the%20Implementation%20of%20Article%2033%20of%20CRPD.pdf.

is aimed at monitoring the implementation of the Convention, by assessing the extent to which such implementation has taken place.[186]

Art. 33(3) is quite worth of emphasis. It addresses the involvement of civil society in the monitoring process of the Convention. Civil society entails persons with disabilities and their representative organizations, who are encouraged to participate fully to the implementation of the CRPD.

Art. 33(3) is closely related to Art. 4 which sets out the general obligations of the States parties to the Convention. In particular, Art. 4(3) recites: 'In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations'. These provisions perfectly entail the slogan 'Nothing About Us Without Us', claimed by disabled persons in the course of the negotiations for the CRPD. The inclusion of persons with disabilities in the monitoring of the implementation of the Convention is crucial for ensuring the success of the latter since the rights entailed therein relate to such persons and their personal experiences.

States are thus faced with significant challenges: not only they are required to ensure the full accessibility of disabled individuals to educational, working and social environments, as demanded by the CRPD, but they are also obliged to guarantee their participation to the monitoring of the implementation of such accessibility requirements. Disabled persons are involved individually and via their representative organizations, through participatory mechanisms selected by each State. States parties have a margin of discretion in determining which mechanism of participation is best in line with their governmental systems: they might decide to involve disabled persons directly in the coordination mechanism, or to correlate the coordination mechanism with their representative organizations. The latter are spelt out not in Art. 4(3), nor in Art. 33(3), but in the General Comment No. 7, published in November 2018, and in the Guidelines

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[186] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials, Cambridge University Press*; p. 86.

on the Participation of Disabled Persons Organizations (DPOs) and Civil Society Organizations in the Work of the Committee. The documents in question outline the main features of such organizations. In particular, the General Comment No. 7 (11), states that ‘they employ, are represented by, entrust or specifically nominate/appoint persons with disabilities themselves’. Moreover, General Comment No. 7 (12) establishes that ‘among the different types of organizations of persons with disabilities that the Committee has identified are: (a) umbrella organizations of persons with disabilities, which are coalitions of representative organizations of persons with disabilities (…); (b) Cross-disability organizations, which are composed of persons representing all or some of the wide diversity of impairments (…); (c) Self-advocacy organizations representing persons with disabilities in different, often loosely and/or locally formed, networks and platforms (…); (d) Organizations including family members and/or relatives of persons with disabilities (…); (e) Organizations of women and girls with disabilities (…); (f) Organizations and initiatives of children and young persons with disabilities (…)’.

3.2.2.b. Italy’s implementation of the CRPD

For the purpose of the current analysis, it is worth tackling Italy’s position towards the principles enshrined in the Convention on the Rights of Persons with Disabilities, and the features of its implementation.

Italy signed the CRPD and the Optional Protocol CRPD on March 30, 2007 and ratified them on May 15, 2009, and, in accordance with Art. 33, it set up a focal point, independent mechanisms and entailed the involvement of civil society in the monitoring mechanism of the implementation of the Convention.

In line with Art. 33(1), Italy established the Directorate- General for Inclusion, Social Rights and Social Responsibility of the Ministry of Labour and Social Policies, as focal point of the rights of persons with disabilities and their implementation. Despite the presence of regions and their level of independence in carrying out governmental tasks, Italy’s hasn’t set up regional focal points.

Moreover, as required by Art. 33(1), it provided a coordination mechanism, guided by the Directorate-General itself.

Art. 33(2) askes the States Parties to establish one or more independent mechanisms, in order to 'promote, protect and monitor implementation' of the CRPD. Italy met such requirement by establishing the National Observatory on the Situation of Persons with Disabilities. This independent mechanism was established by 'Article 3 of Law No. 18 of 03 March 2009 and is governed by Inter-ministerial Decree No 167 of 06 July 2010'.[187] The National Observatory is tasked with coordinating the actions of ministries and DPOs and facilitating their cooperation. Furthermore, it is required to promote the principles of the Convention; to elaborate an action plan of a two-years range; and to collect data and support research regarding disability and the people affected. Moreover, 'a scientific committee was established by Decree no. 167 of 06 July 2010 to provide technical advice to the National Observatory on the Situation of Persons with Disabilities'.[188]

In line with Art. 33(3) and the requirement of the involvement of civil society in monitoring the implementation of the CRPD entailed therein, Italy included 14 representatives of organizations of disabled persons in the National Observatory, namely: 'FAND (Federazione Associazioni Nazionali Disabili), UIC (Unione Italiana Ciechi), ENS (Ente Nazionale Sordi), ANMIL (Associazione Nazionale Mutilati e Invalidi Lavoro), UNMS (Unione Nazionale Mutilati per Servizio), ANMIC (Associazione Nazionale Mutilati e Invalidi Civili), FISH (Federazione Italiana Superamento Handicap), FAIP (Federazione Associazioni Italiane Para-Tetraplegici), EDF (European Disability Forum), DPI (Disabled Peoples'International), FIADDA (Famiglie Italiane Associate per la Difesa dei Diritti degli Audiolesi), ANFFAS (Associazione Nazionale di Famiglie di Persone con Disabilità Intellettiva e/o Relazionale), Autismo Italia, FIABA (Fondo Italiano Abbattimento Barriere Architettoniche), COORDOWN,

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[187] United Nations Human Rights Office of the High Commissioner, Europe Regional Office, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe*, p. 27, in https://nhri.ohchr.org/EN/ICC/GeneralMeeting/25/Meeting%20Documents/Study%20on%20the%20Implementation%20of%20Article%2033%20of%20CRPD.pdf.

[188] Ibid., p. 28.

UNIAMO F.I.M.R. Onlus (Federazione Italiana Malattie Rare) and Gli Amici di Luca)'.Furthermore, Italy established the *Consiglio Nazionale sulla Disabilità (CND)* representing 36 Italian organizations, and acting as the umbrella organization for the latter.

Despite being depicted as a prominent player in the protection of the rights of persons with disabilities, Italy still struggles with providing disabled, and especially deaf people proper accommodations, with particular reference to their linguistic identity. In fact, Italy is one of the few countries worldwide and within the European Union lacking a legislative recognition of sign language. Although it has ratified the CRPD and welcomed its principles within the domestic system, especially those promoting deaf culture and the use of sign language – Articles 1, 2, 3, 9, 21, 24, 30 – the Italian government still hasn't passed a law recognizing the linguistic identity of the deaf and sign language as an official language, worthy of respect and accommodations proper of national languages. The lack of such law not only affects deaf people in the educational field, but also in the working environment, thus setting limitations and causing discomfort. This topic will be further discussed in the appropriate venue.

4. THE EUROPEAN UNION FRAMEWORK

In order to fully acknowledge the legal framework concerning disability, moving from a global picture to a more particular vision of the issue, it is necessary to address the European Union's legal initiatives regarding disability and, more specifically, deafness.

The European Union made notable efforts in favor of disabled persons, starting from a body of disability law and policy built on the social model of disability, in the 1970s, and concluding with the ratification of the United Nations Convention on the Rights of Persons with Disabilities, in 2010.

The EU acts as a supranational body in the adoption of legislative initiatives addressing disabilities. However, it requires the practical intervention of States Members in order to fully implement the provisions entailed therein at the national level.

4.1. EUROPEAN UNION DISABILITY LAW AND POLICY

4.1.1. The EU's early initiatives on disability

The European Union began to be involved in the protection of disabled persons' rights in the 1970s. The first measures to be adopted by the EU arose as part of soft law. In fact, these initiatives were characterized by a non-binding nature. Their aim was to 'enhance the exchange of information between EU Member States, and they were confined to the areas of employment and vocational training'.[189]

In the 1980s, the EU fostered its action in favor of disabled people's rights in the wake of the development of the United Nations' disability policy. In 1975, the UN had adopted the Declaration on the Rights of Disabled Persons; in 1981, it had established the International Year of Disabled Persons. Thus, the EU's disability agenda began to extend beyond its original narrow scope, first through

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[189] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials, Cambridge University Press*; p. 299.

the adoption of the *Recommendation on the Employment of Disabled People in the European Community,* in 1986. This recommendation enhanced fair opportunities for disabled persons within the EU labor market; thus, it promoted non-discrimination in the European employment framework. However, although representing the first European step in the protection of disability rights, it was still far from constituting a concrete initiative in this respect. In the 1980s, the EU's engagement in favor of persons with disabilities was still limited to policy debate, and it was still linked to the medical model of disability.

In the 1990s, the European Union's disability law and policy encountered a shift from the medical model to the human rights model of disability. In the wake of the adoption of the Standard Rules for the Equalization on Opportunities of Persons with Disabilities by the United Nations, in 1993, the European Union laid down the first comprehensive disability policy plan, named *'New Community Disability Strategy'.* The *1996 Strategy* focused on the principle of equality of opportunities and promoted human diversity, on the basis of the social model of disability. However, it maintained a vague purpose and, once again it referred to the role of the EU as supporter of the cooperation among its Member States. The latter were still regarded to as the main actors in promoting disabled persons' rights and in implementing policies aimed at removing barriers and discrimination.

A year later, in 1997, the European Union also launched the European Disability Forum (EDF). It consists of an independent non-governmental organization, acting as an umbrella organization for all the ones representative of disabled persons in Europe. It was created with the intent of ensuring that decisions made for persons with disabilities are taken with but also by the same disabled individuals. In fact, the European Disability Forum is 'run by persons with disabilities and their families'.[190] Moreover, the main purpose of the EDF 'is to ensure persons with disabilities full inclusion in society and access to our human rights through our active involvement in policy development, implementation and monitoring of the UN Convention on the Rights of Persons

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[190] European Disability Forum, *About Us,* in http://www.edf-feph.org/about-us.

with Disabilities in Europe'.[191] The European Disability Forum has been efficient in promoting paths aimed at generating a true shift in the common approach to disability. For instance, it promoted the campaign for achieving the inclusion of a reference to disability in the European founding documents. It was concluded in 1999, thanks to the insertion of Art. 13 in the Amsterdam Treaty. The latter has been the first article referring to disability as a field for the battle against discrimination.

4.1.2. The Amsterdam Treaty and the Emergence of the EU Disability Law

The Amsterdam Treaty entered into force on May 1, 1999. Together with the novelties introduced in the fields of freedom, security, and justice, and also in political and judicial cooperation in criminal matters, the Treaty brought remarkable changes in the framework of the European disability law. It marked a watershed in the European Union's engagement in the protection of disabled persons' rights by laying down Art. 13. In fact, the latter conferred upon the EU – the former European Community – the power to 'take appropriate action to combat discrimination based on (…) disability (…)'.[192] Thus, it recognized to the Council a sound competence in eliminating discrimination towards disabled people – 'acting unanimously on a proposal from the Commission, and after consulting the European Parliament'.[193]

The Amsterdam Treaty was accompanied by a Declaration calling for the involvement of disabled persons in the development of measures under Article 95 TEC, today Art. 114 TFEU.[194]

In the wake of the entry into force of the Amsterdam Treaty, the European Union took an advanced and remarkable step in the protection of disabled people's rights. On November 27, 2000 it issued the *Employment Equality*

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[191] European Disability Forum, *About Us,* in http://www.edf-feph.org/about-us.

[192] Treaty of Amsterdam, Art. 13 (now Art. 19 TFEU), in https://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf.

[193] Ibidem.

[194] For an insight of Art. 114 TFEU, see https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E114.

Directive (Directive 2000/78/EC), which represented the very first European legislative initiative addressing discrimination in the field of disability. The Directive advocated equal treatment in the employment and occupation world, thus rejecting all kinds of discrimination – direct or indirect. On the one hand, by 'direct discrimination' it is meant 'differential treatment based on a specific characteristic'[195]; on the other hand, 'indirect discrimination' refers to 'any provision, criterion or practice which is apparently neutral, but is liable to adversely affect one or more specific individuals or incite discrimination'.[196] The Employment Equality Directive requires States to intervene further in the protection against discrimination on the grounds of disability, by imposing higher national legal measures in such respect.

For the purpose of the following analysis, it is worth mentioning Art. 5 of Directive 2000/78/EC. This article provides for reasonable accommodation for disabled persons. It states that '(…) employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'.[197] Hence, for instance, during a job interview a deaf person shall be ensured of any kind of accommodation needed to enable her to successfully carry out such interview. For example, a hearing-impaired individual shall be given the possibility to answer to questions in the written modality. These questions should be written down as well. As stated in the article, such measures should not require an exaggerated cost for the employer, although it is quite clear that the examples of accommodations provided above do not implicate any cost whatsoever. This provision acquires a strong meaning in the framework of disability, and in particular in relation to deafness and to all its implications in the workplace. The same provision will be later enshrined in the UN Convention on the Rights of Persons with Disabilities, as already stated previously.

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[195] Favalli S. & Ferri D. (2016), *Defining Disability in the EU Non-Discrimination Legislation: Judicial Activism and Legislative Restraints*, European Public Law, Vol. 22 (3), p. 9.

[196] Ibidem.

[197] Council Directive 2000/78/EC of 27 November 2000 Establishing a general framework for equal treatment in employment and occupation, Art. 5, in https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0078&from=EN.

However, the European Directive had a narrower scope compared to the UN CRPD. While the UN Convention later required States Parties to 'ensure that a wide array of social actors, including employers, schools, healthcare providers and suppliers of services, accommodate persons with disabilities',[198] the Employment Equality Directive covers the field of occupation, by setting out four specific areas of employment. Art. 3(1) defines the material scope of the directive, by covering: conditions for access to employment; access to all types and levels of vocational guidance, vocational training and practical wok experience; employment and working conditions; membership of an organization of workers or employers. Hence, the European Directive provides for minimum harmonization only. For such reason, 'EU Member States have extended the scope of the Directive to other areas beyond the field of employment'.[199]

Despite its narrow scope, and the adoption of further legal measures in the context of disability, the Employment Equality Directive still represents the cornerstone of the European Union's legislative engagement with respect to disability and the protection of disabled persons' rights. The Directive gave boost to the EU's work in the latter field.

4.1.3. The EU Charter of Fundamental Rights

The European Union Charter of Fundamental Rights was adopted in 2000 in Nice. It acquired the nature of a binding document upon the adoption of the Treaty of Lisbon in 2009; thus, it became directly applicable in the national legal system of its signatory States.

The Charter was proclaimed in the wake of the adoption of the Employment Equality Directive in order to ensure the protection of a wide range of human rights, not only regarding employment and occupation, also proper of disabled

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[198] Waddington L. & Broderick A. (2016), *Disability Law and the Duty to Reasonably Accommodate Beyond Employment, A Legal Analysis of the Situation in EU Member States*, Brussels, European Commission, note 11, p.48.

[199] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press, p. 343.

persons. ‘The EU CFR (…) gave a renewed focus to the rights of people with disabilities’[200], by laying down many provisions directly or indirectly referring to disability. It entails fifty-four articles, divided into seven chapters, six of which are substantive and worthy to be mentioned. The latter respectively address: Dignity (Articles 1-5), Freedoms (Articles 6-19), Equality (Articles 20-26), Solidarity (Articles 27-38), Citizens’ Rights (Articles 39-46), Justice (Articles 47-50). The seventh chapter refers to modalities of interpretation and application of the Charter.

The chapter regarding Equality is worthy of attention within the scope of such thesis, since it entails many provisions referring to disability, in a direct or indirect manner. Specifically, Articles 21(1) and 26 explicitly mention disability. Art. 21(1) recites: ‘Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited’.[201] It promotes non-discrimination; thus, within the framework of European disability law, the EU Charter of Fundamental Rights is the second document condemning discrimination on the grounds of disability, after the abovementioned Directive 2000/78/EC. The article refers to all spheres of EU action, not applying to a specific context or to the enjoyment of the rights ensured by the Convention. Art. 26 directly addresses disability. Particularly, it promotes the integration of disabled people, by stating that ‘The Union recognizes and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community’.[202] The article clearly reflects the social model of disability, which the whole EU CFR is built on. Thus, it implicitly sets out the need to provide accommodations proper to ensure the full inclusion of disabled persons in the society and all the spheres entailed therein. However, Art. 26 has been

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[200] Broderick A & Ferri D. (2019), *International and European Disability Law and Policy, Text Cases and Materials*, Cambridge University Press, p. 302.

[201] *Charter of Fundamental Rights of the European Union,* in https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

[202] Ibidem.

classified as a principle, rather than a right. Therefore, it does not impose an obligation upon the States parties. It requires them to respect and observe the principle enshrined by the article, but it does not impose them to apply it regardless within the national legal system. Thus, it is not directly enforceable.

The EU Charter of Fundamental Rights does not explicitly mention deafness. However, some of its provisions may be indirectly linked to deafness and the rights of deaf people. One can argue that not only Articles 21(1) and 26 implicitly entail deafness by addressing disability in promoting non-discrimination on the one hand, and in promoting the full accessibility and participation in society on the other, but that also Articles 11 and 14 may refer to it.

Art. 11(1) EU CFR states that 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The article recognizes both the right to freedom of expressing opinions and to obtain information in a successful way. The principle implicitly extends to all subjects entitled to rights, hence including disabled individuals. In particular, by promoting full access to information, Art. 11(1) EU CFR tacitly urges the elimination of all barriers to the reception of the latter, and also encourages the adoption of measures aimed at ensuring that all the components of a society satisfactorily obtain all information. Thus, since deaf people require the provision of specific measures in order to obtain full accessibility to information, they implicitly fall under the protection of Art. 11(1).

Art. 14 EU CFR promotes the right to education. Although not explicitly requiring ensuring education to disabled persons, and to deaf ones, one can argue that this article tacitly recalls disabled - and deaf – people's right to receive education and 'vocational and continuing training'.

4.1.4. The EU Disability Action Plan

The entrance into force of the Treaty of Amsterdam and the adoption of the Charter of Fundamental Rights gave a remarkable boost to the European Union's engagement in the protection of disabled peoples' rights. The European Union decided to deepen its action in the latter respect by launching the *Disability Action Plan,* in 2003.

The Disability Action Plan was proposed as a challenging long-term policy plan, first extended over the 2003-2010 period of time. It was originally set out to give a further effectiveness to the New Community Disability Strategy previously adopted in 1996. As the 1996 Strategy, the EU DAP was developed on the basis of the social model of disability. Hence, it advocated full inclusion of disabled persons in society, by fostering the elimination of barriers to the full achievement of such integration. It also was built on the principle of equality of opportunities, and it fostered the implementation of the Employment Equality Directive.

Differently from the Disability Strategy of 1996, the EU Disability Action Plan presented a precise structure and it proposed specific areas of intervention. Such areas were specifically identified by the Commission every two years. For instance, in 2006-2007, the Commission determined four areas for EU action, namely: 'inclusion of people with disabilities in the labor market; quality support and care services; accessibility of mainstream goods and services; and increasing the EU's analytical capacity in order to promote independent living'.[203] The same areas are also addressed by the current EU DAP 2010-2020, enacted in order to ensure implementation of the UN Convention on the Rights of Persons with Disabilities.

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[203] Commission Communication of 28 November 2005, *Situation of Disabled People in the Enlarged European Union: The European Action Plan 2006-2007*, COM (2005), in https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0604:FIN:EN:HTML.

4.1.4.a. The EU DAP 2010-2020 and the ratification of the UN CRPD

The European Union Disability Action Plan 2010-2020 was launched with the aim of giving full effectiveness to the UN Convention on the Rights of Persons with Disabilities.

The UN CRPD was signed by the European Union Commission on March 30, 2007, after years of doubts towards the binding nature of the document, and the consequent negotiations started in 2004. The signature of the UN CRPD was followed by the adoption by the Council of the decision on the conclusion of the Convention in November 2009 (Council Decision 2010/48/EC).[204] By ratifying the UN CRPD, the European Union became the very first regional organization to have ratified a human rights treaty. Moreover, the Convention is the first human rights treaty signed and accepted by the EU, and still the only one. 'The CRPD is now part of the EU's legal framework, and it has acquired a sub-constitutional status: it is situated below the Treaties (and the Charter) and above EU secondary law (i.e. European legislation)'.[205] In compliance with Art. 33(1) of the Convention[206], the EU has recognized its focal point in the Commission. Furthermore, the EU complied with Art. 33(2)[207], by setting up a framework to promote, protect and monitor the implementation of the Convention, in 2013. The framework entails the European Parliament's Petitions Committee, the

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[204] Broderick A & Ferri D. (2019), International and European Disability Law and Policy, Text Cases and Materials, Cambridge University Press, p. 317.

[205] Ibidem, p. 311.

[206] UN CRPD, Article 33(1): 'States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention', in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[207] UN CRPD, Article 33(2): 'States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights', in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

European Ombudsman and the EU Agency for Fundamental Rights (FRA), and it complements the national frameworks of the EU Member States.

'By concluding the UN Convention, the EU is committed to ensure and promote the full realization of all human rights for all persons with disabilities through the adoption of new legislation, policies and programs and the review of existing measures'.[208] In order to fully comply with the provisions set out by the Convention, and to successfully carry out the objectives outlined therein, the EU launched the European Disability Strategy 2010-2020. The latter focused, and still focuses nowadays on the issue of accessibility, regarded to as the priority issue of EU disability law and policy.

The EDP 2010-2020, in agreement with the CRPD, defines accessibility as a 'precondition for participation in society and in the economy'[209], and it promotes accessibility for disabled persons on an equal basis with abled individuals in the physical environment - including transportation - in education, in information and communication technologies and systems, and in other services. Within the framework of the EDP 2010-2020, with regard to the issue of accessibility, the European Union adopted the EU *Disability Card* and the *European Accessibility Act (Directive 2019/882).*

The project for the adoption of the EU Disability Card was launched in order 'to ensure equal access to benefits across borders for people with disabilities in the areas of culture, transport, and leisure, given the lack of a system of mutual recognition of disability status between Member States'.[210] The term 'benefits' refers to tariff concessions and discounts, and also assistance and support to the access to particular opportunities. This special card should be adopted by the adherent States on the basis of homogeneous criteria, and it should be the same in each country. The project has been embraced by 8 European States: Finland, Estonia, Belgium, Cyprus, Malta, Slovenia, Romania, and also Italy. In

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[208] *The European Union has ratified the Convention. What does this mean?,* in http://www.edf-feph.org/eu-has-ratified-convention-what-does-mean.

[209] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2010), *European Disability Strategy 2010-2020; A Renewed Commitment to a Barrier-free Europe,* Brussels, note 2. In https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF.

[210] *European Parliament Calls for a New Ambitious Disability Strategy*, in https://eulawlive.com/european-parliament-calls-for-a-new-ambitious-disability-strategy/.

particular, in Italy the implementation of the project is monitored and carried out by the FISH (‘*Federazione Italiana per il Superamento dell’Handicap*’), in partnership with the FAND (‘*Federazione Associazioni Nazionali Persone con Disabilità*’).

The European Accessibility Act was adopted by the EU on the basis of Directive 2019/882, which set out accessibility requirements for products and services. ‘The purpose of this Directive is to contribute to the proper functioning of the internal market by approximating laws, regulations and administrative provisions of the Member States as regards accessibility requirements for certain products and services by, in particular, eliminating and preventing barriers to the free movement of certain accessible products and services arising from divergent accessibility requirements in the Member States’.[211] In addition to the general provision, the Directive sets out a more specific one regarding disabled people. It states that ‘the demand for accessible products and services is high and the number of persons with disabilities is projected to increase significantly’.[212] Therefore, it assesses that promoting and ensuring accessibility to products and services ‘allows for a more inclusive society and facilitates independent living for persons with disabilities’.[213] The Directive not only refers to persons with disabilities – term defined in line with the UN Convention on the Rights of Persons with Disabilities – but also to ‘persons with functional limitations’. As As defined by the Directive, the latter include ‘persons who have any physical, mental, intellectual or sensory impairments, age related impairments, or other human body performance related causes, permanent or temporary, which, in interaction with various barriers, result in their reduced access to products and services’.[214] One can argue that among these persons with functional limitations feature also deaf people.

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[211] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (Text with EEA relevance), (1), in https://eur-lex.europa.eu/eli/dir/2019/882/oj.

[212] Ibidem, (2).

[213] Ibid.

[214] Ibid., (4).

4.2. ACCESSIBILITY AND DEAFNESS IN EUROPEAN UNION DISABILITY LAW

Accessibility was, and still is the prior issue grounding European Union Disability Law and Policy. The question of accessibility is linked to the issue of disability, and in this respect, it emerges in a wide range of circumstances. It concerns the physical environment, transportation, education, the work world, information and communication, the family context and the circle of friends. Hence, accessibility refers to the social environment as a whole, and it is primary requirement of an inclusive and integrated society ensuring disabled persons full participation and opportunities on an equal basis with abled subjects.

For the purpose of the current analysis, it is necessary to address the issue of accessibility with regard to deafness. As stated previously, deaf people deal with a wide range of limitations to their full enjoyment of social services and environments, obviously if such limitations are not eased by society itself. The barriers that deaf people encounter, arise as functional, emotional and social, and economic discomforts, which highly affect the quality of their everyday lives. Addressing the issue of accessibility with regard to deafness requires a particular focus on the sector of employment, education, and of information and communication technologies. In fact, these are the sectors in which deaf people have to face the greatest part of their every-day life hardships.

The main element ensuring accessibility, thus enjoyment of all services provided in the fields of employment, education and information to persons affected by deafness and hearing-impairments is sign language.

4.2.1. The European Deaf Community and the Right to Sign Language

4.2.1.a. The European Union of the Deaf

The deaf community as entailing all deaf people living the States Members of the European Union finds the possibility to raise its voice thanks to the European

Union of the Deaf. ‘In Europe, 10% of the total population (52 million people) self-reports to experiencing hearing loss (…)’,[215] and the European Union of the Deaf was born precisely for the purpose of representing such large number of deaf and hearing-impaired persons, and for ensuring the protection of their rights. The European Union of the Deaf (EUD) is a not-for-profit non-governmental organization, entailing National Associations of the Deaf (NADs). It was established in 1985 and it has its headquarter in Brussels. ‘It is the only supranational organization representing Deaf sign language users at European level and is one of the few ENGOs representing associations in all 27 EU Member States, including Iceland, Norway, and Switzerland’.[216] The core aim of the EUD is to protect the rights of deaf people in the European Union, as human beings, and more particularly, as citizens to all intents and purposes, by ensuring equality in both public and private life.

‘The European Union of the Deaf has laid down three main long-term objectives:
1. Recognition of the right to use an indigenous sign language;
2. Empowerment through communication and information; and
3. Equality in education and employment’.[217] Thus, the EUD’s core mission is to promote and ensure the recognition of sign language as a basic human right in all the EU member States. It advocates that sign language is not only a basic human right in itself, but it is also the prerequisite for the enjoyment of other fundamental rights. Specifically, sign language is essential for ensuring deaf people equality in the fields of employment, education, information, also jurisprudence, guaranteeing a fair trial. Such claim is reflected not only in the EUD’s initiatives, but also in its same physical composition. In fact, it comprises Deaf persons and sign users, together with hearing members who are required to know at least one national sign language.

The European Union of the Deaf has engaged in a remarkable work regarding the promotion of the rights of the deaf and sign language, and thanks to its

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[215] The European Coalition on Hearing Loss and Disability, *Manifesto on Hearing Loss and Disability*, p. 1, in https://www.ehima.com/wp-content/uploads/2017/11/Manifesto-Hearing-Loss-and-Disability-1711-Final.pdf.
[216] The European Union of the Deaf, *Impact Report 2011*, p. 4, in https://www.eud.eu/impact-reports/impact-report-2011/.
[217] Ibidem.

involvement and dedication the rights and need of deaf people have acquired considerable attention by the EU institutions. After having carried out advocacy work toward the EU institutions for many years, the EUD has raised the voice of deaf people and fostered their representation at the European level. In fact, it made possible the appointment of deaf members in the European Parliament. The first deaf person to ever become MEP was Dr Ádám Kósa, in 2009. He was a Hungarian lawyer and President of the Association of Hungarian Deaf, also member of the EUD. 'Being a pioneer, he struggled with the lack of awareness of sign languages and with the insufficient provision of professional sign language interpretation as a reasonable accommodation measure'.[218] Hence, he committed to giving sign language the proper attention within the EU institutional framework. In 2010, he made the signing of the *Brussels Declaration on Sign Languages in the European Union* possible, by promoting and hosting the conference entitled 'Implementation of Sign Language Legislation'.

Ádám Kósa's appointment as member of the European Parliament was followed by the election of a second deaf MEP, Ms Helga Stevens, in 2014. She is a Belgian politician of the New Flemish Alliance (N-VA), well-known for taking part to the battle for the recognition of disabled and deaf peoples' rights. Among her achievements in the latter respect, she organized 'the conference 'Multilingualism and equal rights in the European Union: the role of sign languages' that showed the linguistic diversity by providing interpretation into all 31 sign languages used in the EU and 24 official spoken languages'.[219] This Conference, together with Ádám Kósa's previous achievements, paved the way for the adoption of a Resolution on sign languages and professional sign language interpreters by the European Parliament in 2016, following the first two resolutions adopted in 1988.

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[218] Kósa (2014); p. 86-87.

[219] Tupi E. (2019), *Sign Language Rights in the Framework of the Council of Europe and its Member States*, Ministry of Foreign Affairs of Finland, p. 22.

4.2.2. The EU Institutional Framework: The European Parliament and its achievements on Sign Languages

The European Union of the Deaf carries out its commitments in promoting the interests of the deaf and sign language users at the European level by working in close contact with the European Parliament. As the only directly elected European organ, the EP is a notable representative of the people, in particular with respect to the rights of the deaf and to sign language. Therefore, the EUD enhances its cooperation with the EP, by taking part to Committee meetings, attending hearings and directly working together with its members.

The liaison between the European Union of the Deaf and the European Parliament in fostering the rights of deaf people and the right to sign language has been, and still is, remarkable, and it led to the adoption of numerous legal initiatives in such sense. Namely, for instance, the Resolutions on Sign Language for Deaf People (1988 and 1998) the Parliamentary Assembly Recommendation 1598 (2003), the Brussels Declaration (2010) and the Parliament Resolution on Sign Languages and Professional Sign Language Interpreters (2016).

4.2.2.a. The European Parliament Resolution on Sign Languages for Deaf People (1988)

The European Parliament has been the most active organ in the promotion of the right to sign language at the European level. After having underwent several pressures by the deaf community throughout the years following the establishment of the European Deaf Union, the European Parliament committed itself to promoting the adoption of a Resolution concerning the official recognition of national sign languages.

The first Resolution of the European Parliament on Sign Languages was adopted on 17 June 1988. It addressed 7 specific issues regarding the deaf community and sign language. Namely: Recognition of and Right to use a Sign Language; Sign Language Interpretation; Sign Language and Television;

Teaching Sign Language to the Hearing; Sign Language Dictionaries; Sign Language Exchanges; Institutional and Funding Aspects.

First of all, through the Resolution the EP 'call[ed] on the Commission to make a proposal to the Council concerning official recognition of the sign language used by deaf people in each Member State'.[220] Secondly, it 'call[ed] upon the Member States to abolish any remaining obstacles to the use of sign language'.[221] Moreover, the European Parliament Resolution called for the recognition of sign language interpretation as a profession. It stressed the importance of 'establishing a full-time sign language interpreter training and employment programs in each Member State under the responsibility of the national associations for the deaf'.[222]

Sign language ensures accessibility to deaf people in the fields of information and entertainment. In fact, the Resolution 'call[ed] upon broadcasting authorities to include translation into sign language, or at least subtitles, of television news programs, those of political interest and, to the extent possible, of a selection of cultural ad general interest programs (…)'.[223]

Sign language is also promoted to be taught to the hearing. Through its Resolutions the European Parliament 'call[ed] upon Member States, in cooperation with the Commission, to support pilot projects aimed at teaching sign language to hearing children and adults, using deaf people trained for the purpose and to back research in this area'. Moreover, the Resolution fosters research not only in the area of television services for the deaf and in training projects, but also into dictionaries of the respective national sign languages, in order for up-to-date dictionaries to be published and made available for sign language upgrading.

Finally, the European Parliament called for the involvement of the same deaf people 'in determining policy for the non-hearing at national and Community

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[220] European Parliament Resolution on Sign Languages (1988), p. 2, in http://www.policy.hu/flora/ressign2.htm.

[221] European Parliament Resolution on Sign Languages (1988), p. 3, in http://www.policy.hu/flora/ressign2.htm.

[222] Ibidem, p. 4.

[223] Ibid., p. 7.

level, notably through the European Regional Secretariat of the WFD',[224] together with the provision of a more generous funding under the Community Budget in support of the material needs of and the development of devices for the deaf in Member States.

The European Parliament Resolution adopted in 1988 maintains its validity in many areas. The issues addressed therein still gain a considerable attention nowadays. Since the progresses regarding such issues were very few after the first resolution, pressure by the deaf community started to mount and led the European Parliament to adopt a new resolution ten years later, in 1998.

4.2.2.b. The European Parliament Resolution on Sign languages for the Deaf (1998)

The adoption of a new resolution on sign languages and professional sign language interpreters was promoted by the European Parliament ten years after the adoption of the first resolution, in order to stress the issues addressed previously and to obtain concrete progresses regarding the right to the use of sign language.

The European Parliament Resolution on Sign Languages adopted on 7 December 1998 more or less resembled the first resolution announced in 1988. Taking into account the facts that: the number of deaf people registered in the European Union is increasing and that they necessitate resorting to sign language in order to communicate; that '(…) only four of the 15 European Union Member States give official recognition to sign language; (…) the results of the European Sign Language project highlighted the significant lack of qualified sign language interpreters in the European Union; (…) there is no recognition or consideration given in EU funding programs to the need and use by deaf participants of sign language interpreters (…)'[225]; and furthermore, that information services and television still do not provide visual means that guarantee full access to deaf

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[224] Ibid., p. 13.

[225] European Parliament Resolution on Sign Languages (1998), Official Journal C 379, 07/12/1998 P. 0066, C, D, E, in https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51998IP0985:EN:HTML.

people, the European Parliament ‘Calls on the Commission to make a proposal to the Council concerning official recognition of the sign language used by deaf people in each Member State (…)’.[226] Thus, in recognition of the failure of the previous resolution, the European Parliament newly asks the Commission to provide funding programs for education and employment training including training of sign language interpreters.

Just as the previous Resolution (1988), the EP Resolution of 1998 highlights the concept of accessibility. In fact, the European Parliament through its resolutions ‘Call[ed] on the Commission to ensure all EU programs are accessible to deaf people and recognition is given to the need for sign language interpretation’.[227] Furthermore, it ‘call[ed] on the Commission and the Member States to ensure that public meetings organized by EU institutions are accessible to deaf people by providing a sign language interpretation service on request’.[228] Finally, accessibility for deaf people through sign language is also addressed in the Resolution with regard to public service television, telecommunications and multimedia.

The Resolution of 1998 represented an important step in the European Parliament’s engagement in raising awareness towards deaf people’s rights. After the Resolution adopted ten years before, it gave major boost to the European Union’s interest and commitment in a legislative sense towards the deaf and the recognition of sign language. The Resolution 1998 paved the way for the adoption of other legal measures by the European Parliament, due to further pressure it continued to suffer by the deaf community, and most importantly thanks to the cooperation of the European Union of the Deaf.

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[226] Ibidem.

[227] European Parliament Resolution on Sign Languages (1998), Official Journal C 379, 07/12/1998 P. 0066, 6, in https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51998IP0985:EN:HTML.

[228] Ibidem, 8.

4.2.2.c. The 2010 Brussels Declaration on Sign Languages in the European Union

In November 2010, the European Parliament in close cooperation with the European Union of the Deaf made possible the preparation and adoption of the so-called *Brussels Declaration on Sign Languages in the European Union.* The Declaration was adopted upon completion of the Conference entitled *Implementation of Sign Language Legislation,* promoted by the European Parliament and hosted by Ádám Kósa, member of the EP and of the EUD. One can argue that the Brussels Declaration stands as the most representative document of the recognition of the right to sign language at the European level. As set out in its Preamble, the declaration was embraced by 'the representatives of the National Associations of the Deaf of the Member States of the European Union and the affiliated members, Iceland, Norway, and Switzerland' in the belief of and in striving for equal rights to the Deaf and Hard-of-hearing sign users. 'It demands the recognition of the national sign languages at an equal footing with spoken languages to ensure Deaf people can become equal and full citizens'.[229] In fact, after having outlined the 7 principles on which the declaration is founded, the latter sets out specific requirements with respect to sign languages. First of all, it recites that the members of the European Union of the Deaf, together with the Member States of the European Union, Iceland, Norway and Switzerland, 'call upon the European Union and its Member States to take all legal measures necessary to secure that in consultation with the Deaf Community'[230], national sign languages acquire respect and recognition on an equal basis with the respective spoken languages in each State. Moreover, the Declaration asks Members States to ensure the use of sign languages without restriction to signing communities; that they provide a sign language tuition to family members of the deaf, in order to guarantee full participation in family life

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[229] The European Union of the Deaf, *Impact Report 2011*, p. 11, in https://www.eud.eu/impact-reports/impact-report-2011/.

[230] *2010 Brussels Declaration on Sign Languages in the European Union*, p.1, in https://www.eud.eu/files/8514/5803/7674/brussels_declaration_FINAL.pdf.

to deaf children. Furthermore, and most importantly, the Brussels Declaration calls upon States to secure equal opportunities and accessibility in public services, in education and in employment. Deaf people must be guaranteed access to public services in their national sign language; they must be provided of accessible educational options, also through the training of teachers; and they must be entitled to being employed on an equal basis with hearing people. In particular, accessibility in the educational field is deeply advocated by the signatories of the Declaration. In fact, '[they] *especially urge* the Member States of the European Union to secure equal opportunities by providing accessible educational options for sign language users. Teachers must be trained to become fully bilingual, while native sign language users should be preferred. This is necessary to ensure appropriate education for each deaf or Hard of Hearing child'.

Finally, the signatories of the Brussels Declaration call upon the Member States of the EU to ensure that national sign languages are protected and promoted, and to provide sign language interpretation services, including the financing and training of sign language interpreters.

As stated above, the Brussels Declaration represents one of the most significant legislative initiatives adopted with regard to the right to sign language at the European level. By recalling the UN Convention on the Rights of Persons with Disabilities and the Recommendation 1598 (2003) on the Protection of Sign Languages in the Member States of the Council of Europe, it provides a more-in-depth legislative treatment on sign languages. It stands as a remarkable legal instrument for the deaf community and their rights, as it expressly calls upon States to enact the legislative recognition of sign languages.

4.2.2.d. The Parliamentary Assembly Recommendation 1598 (2003)

The Brussels Declaration was partly built on the principles and requirements laid down in the *Parliamentary Assembly Recommendation 1598 (2003).* The latter was adopted by the Parliamentary Assembly of the Council of Europe on 1 April

2003, with regard to the protection of sign languages in the member States. By recalling its previous Recommendation 1492 (2001) on the rights of national minorities, with particular regard to paragraph 12.xiii concerning sign languages, the Parliamentary Assembly of the Council of Europe decided to provide a more detailed insight on sign languages and on the measures to adopt in order to ensure full recognition of the former.

The parliamentary Assembly recognized sign languages as 'the expression of Europe's cultural wealth' and as the 'future of Europe's linguistic and cultural heritage'.[231] It recognized sign languages as full-fledged linguistic systems, hence as 'a complete and natural means of communication for deaf people'.[232] Most importantly, the Assembly advocated that the 'official recognition of these languages will help deaf people to become integrated into society and gain access to justice, education and employment'.[233] Therefore, the Parliamentary Assembly called upon the Committee of Ministers to 'devise a specific legal instrument on the rights of sign language users'[234], by involving national experts and representatives of the deaf community in order to clearly set out the issues regarding the protection of the use of sign languages and subjects of the legal instrument. Furthermore, among the ten recommendations listed in the document, the Assembly recommends the Committee of Ministers 'to train sign language interpreters and sign language tutors; to give education in sign languages to deaf people; to train teachers, in preparation for working with deaf and hearing-impaired children, in sign languages; to broadcast television programs in sign languages, and make sign language subtitling of programs transmitted in spoken language a general practice; (…)'.[235]

As in the case of the Parliamentary Resolutions dealt with above, the issue and request highlighted in the Recommendation 1598 (2003) is the official - legislative – recognition of sign languages. According to the European

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[231] Parliamentary Assembly Recommendation 1598 (2003) on Protection of Sign Languages in the member States of the Council of Europe, 3, in https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17093&lang=en

[232] Ibidem, 4.

[233] Ibid., 5.

[234] Ibid., 9.

[235] Ibid., 10.2-10.5.

Parliament first, and to the Parliamentary Assembly, the legal recognition of sign languages as fully-fledged languages, hence official and worthy of the same treatment as spoken national languages, will ensure deaf people full access to society and its services. By recognizing in legislation sign languages on language status and language rights, people will be provided of all proper accommodations to fully enjoy rights in employment, education, information, on an equal basis with hearing people.

4.2.2.e. The European Parliament Resolution on Sign Languages and Professional Sign Language Interpreters (2016)

Ensuring deaf people full accessibility to education, employment and information services through the legislative recognition of sign languages as official means of communication, continues to stand as the most pressing issue in European Disability Law. After the adoption of many resolutions and recommendations by the European Institutions, which remained partly unmet at the national level, the European Parliament committed to further improving its action with regard to the protection and recognition of deaf people's rights and of sign languages.

On 23 November 2016, the European Parliament has adopted the *Resolution on Sign Languages and Professional Sign Language Interpreters.* Having regard to many legal instruments previously embraced at the European level which simply mention or address more thoroughly the issue of the recognition of sign language - for instance the Treaties (TFEU and TEU), the Charter of Fundamental Rights of the EU, the two EP Resolutions adopted in 1988 and in 1998, also the UN Convention on the Rights of Persons with Disabilities entered into force in 2011 – the European Union Parliament has stressed the concept of accessibility even further. Acknowledging that 'accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society'[236], and that accessibility shall be ensured not only with regard

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[236] European Parliament resolution of 23 November 2016 on sign languages and professional sign language interpreters (2016/2952(RSP)), G., in https://www.europarl.europa.eu/doceo/document/TA-8-2016-0442_EN.html.

to the physical environment but also in information and communication, hence ensuring the provision of content in sign language, the EP '[has] stresse[d] that deaf, deafblind and hard-of-hearing citizens must have access to the same information and communication as their peers in the form of sign language interpretation, subtitling, speech-to-text and/or alternative forms of communication, including oral interpreters'.[237] The provision of sign language and oral interpreters is primary condition for ensuring deaf people full access not only to information services, but also, and most importantly to the fields of employment and education. Hence, in its final Recommendation, the EP has emphasized the need for qualified and professional sign language interpreters, which can be satisfied only by obtaining the official recognition of national and regional sign languages in Member States and within the European Union.

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[237] European Parliament resolution of 23 November 2016 on sign languages and professional sign language interpreters (2016/2952(RSP)), G., 9, in https://www.europarl.europa.eu/doceo/document/TA-8-2016-0442_EN.html.

5. THE NATIONAL CASE: ITALY

Italy is one of the first countries, together with France and the United States, to have developed the use of sign language. Thanks to many outstanding figures in the field of sign language teaching and education, namely, for instance, Tommaso Silvestri, Abbot Benedetto Cozzolino, Abbot Ottavio Assaroti, Italy became the scene of the edification of numerous institutes for the education of the deaf. In fact, between the end of the 18th century and the beginning of the 19th century, in total were built 19 schools, which, despite the International Congress on Deaf-mutes held in Milan in 1880, gave a remarkable contribution to the development of the Italian deaf culture and of the fight for the protection of the rights of the deaf and to sign language.

5.1. EARLY DEVELOPMENTS IN THE EDUCATION OF THE ITALIAN DEAF

Before the Unification of the Italian peninsula, many institutes were founded in order to provide education to deaf-mutes. The teaching method resorted to by all hearing teachers was the French one, promoted earlier in the 1750s by the French Abbot Charles-Michel de l'Épée and envisaging 'methodical signs' for deaf education and communication.

After Italy's unification in 1860, De l'Épée's signing method was maintained and it was taught in many other institutes for the deaf edified between the 18th and the 19th century. Hence, education of the deaf remained unchanged. The *Legge Casati,* the first legal document regarding public education to be adopted in Italy in 1859, lacked focus on the deaf and their training.[238] Thus, the majority of the existing institutes continued operating as private; on the contrary, other institutes became royal or government institutes, under the public management of the Government.

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[238] Marziale B. & Volterra V (2016), *Lingua dei segni, società e diritti*, Roma, Carocci Faber, p. 25.

In 1880, the teaching method used in Italian schools for the deaf was called into question at the International Congress for the improvement of deaf-mutes' fortune, held in Milan by education experts from Italy and from many other European Countries. The Congress sanctioned the end of the 'bilingual' teaching method – oral and mimic-gestural method – and imposed the oral method as the exclusive one to be used in schools. Although the greatest number of teachers around the world embraced the latter method, many others continued to use and develop sign language, regarded to as the most useful means of education and communication among hearing-impaired people. For instance, Thomas Hopkins Gallaudet, American teacher and founder of the *Gallaudet University* in Washington DC, USA, refused to embrace the oral method imposed by the Milan Congress, and continued to teach his students the American Sign Language and through the signing method.

In Italy, despite the orders set out by the Congress, deaf students once concluded their studies gave birth to forms of associations, both religious and secular. These groups of highly educated hearing-impaired individuals were created with the aim of further spreading the use of sign language and advocating improvements for the deaf in education, employment and in society in general. The activity of such associations, cooperating with each other, led to numerous achievements in the first years of the 20th century. In 1911, the International Congress of the Deaf-mutes was held in Rome, followed by the National Convention of the Deaf-mutes, eleven years later (1922), in the same city. The latter proposed remarkable objectives: the legal recognition of compulsory education for the deaf and the Reform of Article 340 of the Civil Code, in order to ensure the full enjoyment of social and civil rights to the deaf. Compulsory education for the deaf was first recognized with the *Riforma Gentile* of 1923, which extended the obligation from 6 to 16 years of age. Obtaining the recognition of elementary schooling required 10 years, which entailed a 2-years preparatory course, a 4-years inferior elementary course and a 4-years superior elementary course.

In 1932, all Italian associations of deaf people were unified under the Pact of Padua, adopted at the end of a convention held from the 24th to the 26th of

September.[239] The Pact of Padua sanctioned the creation of the *Ente Nazionale per la Protezione e l'Assistenza dei Sordomuti adulti (ENS),* representative of all Italian hearing-impaired persons. The ENS required the public recognition by the Government, but it obtained it only in 1942, with *Law 12 May 1942 n. 889.* However, in the meantime, today's *Ente Nazionale Sordi* committed to achieving significant goals in favor of the deaf. For instance, in 1938 its effort led to the abrogation of the Civil Code dispositions which invalidated the hearing-impaired persons. The latter were granted full legal capacity, hence the possibility of enjoying civil rights on an equal basis with the hearing-abled citizens. The ENS also engaged in the attempt of demonstrating that deaf people were able not only to successfully close their elementary education, but also to deepen their instruction by continuing their studies, by creating schools owned by the same *Ente Nazionale Sordi.*

In the wake of the proclamation of the Italian Republic, in 1948, education for the deaf registered a minimum change: institutes for the deaf became state-owned. Later, between 1949 and 1953 many special schools and 'differential' classrooms for the deaf were established. Such special classrooms were created also in middle schools after 1962, when compulsory middle-schooling was recognized to the deaf.[240]

Finally, in 1977, the Italian Government enacted a significant law: the so-called *Legge Basaglia* (*Law 4 August 1977, n. 517).*[241] It marked a watershed in the provision of education to the deaf, since it granted the latter the possibility to choose to attend school in special classrooms or in ordinary ones, in public elementary and middles schools. Despite the integration and the concept of equality between 'normal' and deaf students promoted by the *Legge Basaglia,* the Italian society in general started to embrace an opposite trend. At the end of the 20th century, the medical approach to disability and to the field of rehabilitation gained footing and support. The attempt to recover deaf people's speech capacity first made by the same teachers in schools, was then recognized

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[239] *Due passi nella storia (*2011) in https://www.ens.it/chi-siamo/storia.

[240] Marziale B. & Volterra V (2016), *Lingua dei segni, società e diritti*, Roma, Carocci Faber, p. 28.

[241] Ibidem, p. 29.

to doctors and experts in speech therapy. The *Law 23 December 1978, n. 833* instituted the *Servizio Sanitario Nazionale (SSN)* and appointed the latter to take care of the deaf and of their logopedic issues. This newly created a gap between the abled and the disabled persons since the latter were viewed exclusively in light of their medical issues.

Meanwhile, the interest in sign language and the mimic-gestural modality of communication continued to develop and it increasingly gained strength.

5.2. THE *ENTE NAZIONALE PER LA PROTEZIONE E L'ASSISTENZA DEI SORDI (ENS)*

5.2.1. Brief History and Legislation

The *Ente Nazionale per la Protezione e l'Assistenza dei Sordi (ENS)* – formerly *Ente Nazionale per la Protezione e l'Assistenza dei Sordomuti Adulti* - was founded on the basis of the Pact of Padua, signed in the wake of the Congress held in Padua on 24-26 September 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.* Despite their divergences on the concept of deaf-mutism and specifically on the implementation of the law regarding compulsory schooling for the deaf, due to which some associations constituting the FIAS abandoned it and created the second independent institution, the two federations agreed upon their fusion into a single national agency representative of the whole Italian deaf community.

In 1942, the *Ente Nazionale Sordomuti* acquired the official recognition by the Italian State, and it was later recognized its legal personality under public law, with *Law 21 August 1950 n.698,* thanks to its representative and protections aims carried out in favor of the deaf. In 1977, it was transformed into a moral agency under private law, in the wake of the *Decree n. 616* on administrative decentralization. However, it maintained its role of representation and promotion of deaf people's rights thanks to a new decree of 1979.

Since its foundation, the ENS has experienced numerous changes at the structural and organizational level, but not in its aims. Nowadays, the national institution operates through 103 Provincial Sections, 21 Regional Councils and more than 50 inter-communal representations,[242] and thanks to *Law 20 February 2006 n.95,* which officially substituted the word 'deaf-mute' with 'deaf' in all legal provisions in force, its former name *Ente Nazionale Sordomuti* finally became *Ente Nazionale per la Protezione e l'Assistenza dei Sordi - ONLUS.*

5.2.2. Mission and Principles

The *Ente Nazionale Sordi* carries out its objectives in representation of the Italian deaf community on the basis of its Statute, approved at the XXV National Congress held by the same ENS, on 4 June 2015. After the adoption of its Statute, the *Assemblea Nazionale ENS* approved the General Rules of Procedure during the session held on 24-25 May 2016.

While Art. 1 of the Statute regards the Constitution and the location of the ENS, together with its legal recognitions, Articles 2 and 3 respectively address the issues of representation and protection, and the ENS' scopes. Art. 2 recites: 'the *Ente Nazionale per la Protezione e l'Assistenza dei Sordi* carries out functions of representation and protection of the moral, civil, cultural and economic interests of the Italian deaf, recognized by the law, also through its representatives appointed in the cases determined by the law'. Art. 3 of the Statute first of all states that the scope of the *Ente Nazionale Sordi* is the full inclusion of the deaf in the society. Secondly, it states that 'the ENS protects, represents, promotes and values the dignity and the autonomy of the deaf person, her full rights to citizenship in all fields of life, auto determination, accessibility and information, education, formation and scholastic inclusion, also post scholastic, professional and social, the full realization of the right to employment of the deaf, fostering their working placement and the professional activity in individual and cooperative forms, sign language, the full communication and

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[242] *Due passi nella storia (*2011) in https://www.ens.it/chi-siamo/storia.

bilingualism, rehabilitation, culture, sport, free time and the recreational activities'. Together with the right to sign language, the ENS promotes bilingualism and the right of deaf people to freedom of choosing their means of communication – mimic-gestural or oral. Moreover, it strongly refuses all kinds of discrimination hindering the dignity of the deaf individual.

Importantly, Art. 5 of the ENS Statute cites the documents and the principles which the ENS' mission is inspired to. Namely, the Italian Constitution, the Declaration of Salamanca of 1984 with regard to education, the Declaration of Madrid on Discrimination of 2002, the Conference of Salonika of 2003 on the equal opportunities of disabled persons in the employment world, the European Parliament Resolutions of 17 June 1988 and of 18 November 1998 and, finally, the United Nations Convention on the Rights of Persons with Disabilities.

5.3. ITALY AND THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The United Nation Convention on the Rights of Persons with disability was adopted by the UN General Assembly in 2006, ratified by 132 countries, and later by the European Union, in January 2011. 'It protects the rights of all persons with disabilities "who have long-term physical, mental, intellectual or sensory impairments" and thus marks a turning point in international cooperation policies as well'.[243]

Italy appeared among the first signatories of the UN CRPD and it ratified it with *Law 3 March 2009 n. 18.* Most importantly, in order to implement the CRPD at the national level, it emerged as the first State to set out Guidelines on Disability and a Disability Action Plan, in line with the international principles outlined in the Convention.

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[243] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 9, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

5.3.1. The Italian Development Cooperation Disability Action Plan

'The "Italian Development Cooperation Disability Action Plan" is a document issued by the Italian Ministry of Foreign Affairs, Directorate-General for Development Cooperation (MFA-DGCS)',[244] which 'resulted from a consultation process launched on Sept. 5th, 2011 when the then Minister of Foreign Affairs, Franco Frattini, met with the representatives of the Italian Disability and Development Network, sanctioning the creation of a "RIDS and MAECI/DGCS Working Table" in the press conference held on 11 October 2011'.[245] The Working Table, consisting of representatives of various institutions active in the field of disability at both the national and international level, finally drew up the *PdA (Italian Development Cooperation Disability Action Plan),* 'establish[ing] the disability principle inclusion at every stage of development policies and practices and includes all the actions aimed at promoting equal opportunities for people with disabilities'.[246]

The Italian Disability Action Plan is built on the aim of carrying out action and achieving results in 5 areas:

1. Policies and strategies. National disability policy planning and monitoring tools
2. Inclusive project planning & design
3. Accessible and usable environments, goods and services
4. Humanitarian aid and emergency situations including persons with disabilities
5. Leveraging the experience and skills acquired by civil society and companies in the area of disability.

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[244] I DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 2, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

[245] Griffo G., Lomuscio M. & Ortali F. (2015*), Inclusion, Disability, International Cooperation. The Italian Development Cooperation Experience 2009-2014,* GuaraldiLAB, p. 33.

[246] Ibidem, p. 35.

‘Within 3 months of the submission of the Action Plan to the Steering Committee of DGCS, the Panel (set up in 2011) and the MFA members of the Working Groups will develop, among others, the timeline for implementing the above activities, in contact with the MFA offices concerned’.[247]

The Implementation of the Disability Action Plan is entrusted to the *National Observatory on the Status of Persons with Disabilities.* It was established by the same UN CRPD ratifying resolution (cf. Art. 3 of Law No. 18 of 3 March 2009)[248] with the intent of assigning it the following tasks: promoting the implementation of the Convention, preparing a two-year action plan for the promotion of the rights of persons with disabilities under national legislation, promoting the illustration of statistics regarding disability and, finally, promoting the development of studies in the field of disability in order to build more precise action programs and targeted interventions. The National Observatory became part of the Italian Development Cooperation Disability Action Plan and cited at *Guideline 7 – International Cooperation* of the *2-year Action Program for the Promotion of the Rights and Inclusion of People with Disabilities.* The latter became a Decree of the President of the Republic.

5.3.1.a. The PdA’s implementation: Policies and Tools

Disability, in all its forms and kinds, is determined by social and environmental factors. Physical impairments in their selves do not determine an individual’s disability. The latter is dependent upon the limitations that the physically impaired persons encounters in the society. Such limitations and barriers emerge at the economic, educational, employment, information level, and so on, and they influence the accessibility of disabled people to services generally provided in the society.

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[247] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 10, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

[248] Griffo G., Lomuscio M. & Ortali F. (2015*), Inclusion, Disability, International Cooperation. The Italian Development Cooperation Experience 2009-2014,* GuaraldiLAB, p. 35.

The CRPD stands up for the importance of ensuring people with disabilities full access to all services and enjoyment of all policies on an equal basis with all other citizens. In line with the Convention, 'it is thus crucial to intensify efforts with a view to encouraging policies that mainstream disability by removing hindrances, barriers and discrimination'.[249] Policies and strategies aiming at mainstreaming disability first of all entail raising awareness towards disability and the rights and need of the disabled persons.

Raising awareness towards disability is one of the main principles founding the Italian Disability Action Plan, in line with Art. 8 CRPD advocating awareness-raising. In order 'to promote the dissemination of an inclusive culture based on new development paradigms; to combat stereotypes and prejudices [and] to promote awareness of the capabilities of persons with disabilities and of their contribution to society',[250] the launch of an awareness campaign is the primary action to carry out. Such campaign shall involve the diffusion of direct and indirect messages regarding disability through meetings and seminars but also posters and booklets.

The policies aiming at raising awareness about disability shall be accompanied by the use of specific tools ensuring the correct and successful realization of such policies. The main tool resorted to for carrying out the awareness-raising objectives and all other policies concerning the protection of the rights of peoples with disabilities is the setting up of a monitoring system. The latter shall regard the collection, the processing and the reporting of data concerning the activities of the Minister of Foreign Affairs Directorate-General for Development Cooperation (MFA-DGCS).

As stated above, the monitoring body created and tasked with monitoring the implementation of policies on disability carried out by the MFA-DGCS in line with the UN CRPD is the *National Committee on the Status of Persons with Disabilities*, established with *Law 18/2009* determining Italy's ratification of the

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[249] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 13, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

[250] Ibidem.

UN Convention. The main task assigned to such body was and currently is the preparation of the report regarding the implementation of the UN CRPD, which finally has to be submitted to the UN Committee on the Persons with Disabilities. The final report regards the action that the MFA-DGCS and the Institutions involved in the Disability Action Plan carry out with concern towards:

- Acquisition of new knowledge regarding disability and the status of disabled persons
- Participation to society and the services provided therein, on the basis of a participatory and democratic approach
- Self-determination
- Sustainability.

The practices realized with regard to such aspects are required to be in line with the principles of the UN Convention on the Rights of Persons with Disabilities. Thus, the National Committee is entrusted with the responsibility of ensuring the respect of such requirement at the national level, a responsibility that is ultimately recognized to UN Committee.

5.3.1.b. The PdA's Implementation: Inclusive Project Planning and Design

In order to ensure the full implementation of the Disability Action Plan, thus the respect of the Principles entailed in the UN CRPD, the same Disability Action Plan expects the realization of an inclusive project planning and design. 'Supporting initiatives and projects for persons with disabilities requires adequate planning & design capabilities, permitting to integrate disability concerns into the projects funded by MFA, while respecting the human rights enshrined in the CRPD and keeping the focus on international initiatives, instruments, tools and standards'.[251] Specifically, project and design capabilities required are two-faced and regard, on the one hand, the carrying out of context

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[251] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 29, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

analysis – collection of information and statistics on disability; on the other, the planning and design of participatory projects, hence involving people with disabilities. In line with the requirements set out in Art.4(3)[252] UN CRPD, the most effective way to design policies regarding disability and the rights of disabled persons is not only to foster the 'acquisition or finetuning of skills and capabilities of action by the local DPOs'[253] (Disabled Persons Organizations), but also, and most importantly, to involve the same disabled persons and their families in the decision-making process carried out by their representative organizations and directly concerning them and their needs.

Policies and projects concerning disabled people and the promotion and protection of their rights, are planned and designed also with regard to the field of education. The theme of inclusive education is one of the most supported among those addressed by the UN CRPD[254], however, 'Italy is the only country in the world where persons with disabilities participate in mainstream education & training'.[255]

5.3.1.c. The PdA's Implementation: Accessible and usable environments, goods, and services

Accessibility stands out as the most urging issue when it comes to addressing disability and the recognition of disabled people's rights. As already stated, disability derives partly from the physical impairment affecting the individual,

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[252] United Nations Convention on the Rights of Persons with Disabilities, Art. 4(3): 'In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations', in https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[253] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 30, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

[254] See *United Nations Convention on the Rights of Persons with Disabilities, Art. 24*

[255] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 30, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

and mostly from the barriers and limitations build up in the society. These barriers, first of all determined by a lack of awareness towards disability, but also by negligence and inaction, hinder the disabled person's possibility to participate to social life's circumstances and to fully enjoy good, services and rights. Accessibility should be ensured not only in the physical environment, but also in the fields of education, employment and information. However, even the adoption of special measures in favor of disabled persons might lead to segregation and to failure in the attempt of creating an inclusive and participatory community.

Even at the international level, the issue of accessibility is often neglected. For instance, in the wake of natural disasters, projects of reconstruction rarely take into account the needs of persons with physical impairments, thus neglecting to provide the proper facilities to ensure the disabled full access to societal services.

The first action planned in order to carry out the Disability Action Plan with regard to accessibility to environments, goods and services, in compliance with the principles of the CRPD, is establishing a working group gathering MFA representatives and experts in disability of all kinds. The working group is tasked with analyzing national and international legislation in order to issue technical rules on accessibility regulating projects of reconstruction or of provision of facilities. The technical rules are finally collected into a document – technical regulation – to be submitted to the MFA, and eventually approved by the latter.

Despite Italy's engagement in ensuring disabled persons full accessibility to the services provided for in the society, in particular through the issuing of the Disability Action Plan, it still lacks a full effectiveness in such sense. 'The Italian legislation lays down specific provisions on removal of architectural and sensory barriers in the foreign posts of MFA, but no specific regulations exist for projects: here, consideration should be given to the economic, social and cultural 35 aspects of the target country settings, also relying on the experiences of other cooperation agencies'.[256] Moreover, although 'Requiring, pursuant to Law

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[256] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies

4/2004, that the websites meet international and national ICT accessibility standards, [and requiring the] planning [of] the production of texts/documents in a format easy-to-read and understand, with a view to ensuring ICT accessibility for all'[257], Italy's implementation of such requirement remains unsatisfactory. In this regard, for instance, in the case of the particular disability of deafness, Italy lacks a law regulating the right to the use of sign language in recognition of the latter as a full-fledged and official language. Thus, full accessibility for deaf people is hindered in many fields, and, among the latter, in the context of information and technology.

5.3.1.d. The PdA's Implementation: Humanitarian Aid and Emergency Situations

Art. 11 of the UN Convention on the Rights of Persons with Disabilities requires Member States to adopt '(…) all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters ... in accordance with their obligations under international law, including international humanitarian law and international human rights law".
Thanks to such provision, the former superficial attention towards disabled persons in the case of natural or man-made disasters has been deepened at the international and national level. In particular, Italy has been effective in such respect. In 2007, in the framework of the European Parliament *Resolution 4 September 2007* on natural disasters, it approved the *Verona Charter on the Rescue of Persons with Disabilities,* regarding the emergency actions to be carried out in order to save, protect, support disabled persons during and after a catastrophe.

The implementation of the Disability Action Plan with respect to the protection of disabled persons in the wake of a natural disaster entails first the

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and Activities of the Italian Cooperation, Final Editing 2013, p. 34, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

[257] Ibidem, p.37.

involvement of the same disabled persons in planning activities; the adoption of specific measures in refugee camps ensuring disabled persons the easy reach of services and facilities, both physical – accessible bathrooms, adequate ramps – and rehabilitative – motor and psychological. Furthermore, ‘In post-emergency actions, [it is required] favoring the participation of disabled people in the labor force, also by undertaking actions of orientation and support for the acquisition of skills and involving the business community in humanitarian aid programs’.[258]

Deaf people’s rights fall under the protection of the Disability Action Plan also in the case of emergency circumstances. Hearing-impairment can be recognized as a ‘sensory, mental or intellectual/relational disabilit[y]’.[259]

5.3.1.e. The PdA’s Implementation: Leveraging the experience and skills acquired by civil society and companies in the area of disability

In order to give the projects planned in favor of the rights of persons with disabilities full effectiveness and to ensure their sustainability, cooperation at the international and communitarian level is required.

Italy’s inclusive legislation, together with the knowledge and skills acquired by its experts in the field of disability, for instance with regard to education, employment, provision of services, ‘should be harnessed and transferred to partner countries, relying on the support of local public institutions and civil-society organizations’.[260] Thus, entrepreneurial and technical knowledge, proper of Italian experts in building up high professional plans for the rights of people with disabilities, should be offered in aid of cooperative disability action plans. Italian Cooperation projects rely especially on the role of civil society, in Italy

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[258] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 41, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

[259] Ibidem, p.40.

[260] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 43, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

and in partner countries. Therefore, the MFA-DGCS has the role of enhancing coordination among the various civil societies, with the aim of fostering the exchange of information and good practices regarding the disabled.

The sustainability and effectiveness of the UN Convention depend upon the strength of the role of civil society's organizations, and specifically upon the consciousness of those representing disabled persons. Consciousness, strength and respect of Disabled People Organizations are necessary requirements of a full inclusive civil society. In fact, through DPOs disabled persons have a voice in the community and also in the setting of projects regarding their needs and rights. The success of the implementation of disability projects, and of the same UN CRPD is thus determined by empowering and recognizing the proper role to the local DPOs, to the same disabled persons and to their families; fostering coordination among the DPOs in Italy and in the partner countries location of the Italian Cooperation, on the basis of the exchange of knowledge and experience through the financial support of the Italian NGOs. Moreover, by raising awareness on disability and the protection of rights of DPs by organizing campaigns through all available means of communication, and also by including experts in the field of disability in the project working groups, together with experts from the DPOs.

The field of employment is one of the main areas of Italy's legislative commitment and action with regard to the recognition of disabled people's rights. Thus, in order to promote full cooperation in the context of disability, the introduction of the provisions on inclusion of disabled persons in the working environment, in the Italian Cooperation projects is strongly encouraged. Due to the fact that 'the methodology of inclusion of persons with disabilities in the mainstream labor force is a practice that is not very widespread in partner countries',[261] the Disability Action Plan defines measures also aimed at promoting such practice.

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[261] DGCS (2010), Italian Development Cooperation Disability Action Plan, Document prepared in compliance with the Guidelines for the Introduction of the Disability issue within the Policies and Activities of the Italian Cooperation, Final Editing 2013, p. 47, in https://www.esteri.it/mae/resource/doc/2016/07/b_01_piano_azione_eng.pdf.

5.4. DEAFNESS AND SIGN LANGUAGE: THE LACK OF A LEGISLATIVE RECOGNITION

Italy has been one of the first States signatories of the United Nations Convention on the Rights of Persons with Disabilities. By ratifying the Convention in 2009, it took on the responsibility of ensuring the recognition and protection of the rights of people affected by any disability whatsoever. With specific regard to the disability of 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 and recognition of the French Sign Language and the American Sign Language, the Italian deaf community began to rise. Italian deaf persons gathered in the fight 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 has been - and still is – the primary objective of the Italian Deaf community, which acquired a conscious voice through the *Ente Nazionale Sordi (ENS)*. Although the *LIS (Lingua dei Segni Italiana)* is among the first to have emerged and developed as a means of communication resorted to by the deaf, still lacks an official recognition - at the national legislative level – 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.*

5.4.1. The Explicit Recognition of Sign Language

The official recognition of sign languages is an issue always advocated - and still demanded in many national cases – by the deaf community worldwide. The term ‘recognition’ stands for ‘the according of legal status to sign language in legislation on language status and/or language rights',[262] which might happen in various modalities. Specifically, explicit legal recognition of sign languages, regarded to as guaranteeing an improvement in the lives of the deaf and sign-language users, can be achieved in 5 ways: at the constitutional level, through general language legislation, by means of a law or act concerning sign language particularly, through a sign language law or act also regarding other means of communication, and finally via legislation on the functioning of the national language council.

The diversity among such categories does not imply a hierarchy nor particular benefits linked to one type of recognition or another. It is especially dependent upon various factors present in national contexts, linked to the features of the legal system - for instance, some countries lack a constitution or a law regulating languages –, to a country's attitude towards linguistic diversity and linguistic/cultural minorities, to the presence of a conscious deaf community and deaf organizations.

5.4.1.a. The Constitutional Recognition

Among the 31 countries which have given explicit recognition to sign language, thus acknowledging the fully-fledged-language nature of the latter and according to it the legal status proper of national spoken languages, 11 have achieved such result via constitution. Uganda, Finland, South Africa, Austria, New Zealand, Kenya, Zimbabwe, and Hungary[263] have included in their constitutions an article regulating languages and/or culture in general and mentioning sign language. Among these, only in New Zealand the recognized sign language is also an official language. In addition to these eleven countries, Portugal has officially recognized sign language in its constitution specifically in the section

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[262] De Meulder M. (2015), *The Legal Recognition of Sign Languages, in Sign Language Studies*, Vol. 15, No. 4, Special Issue: Language Planning and Sign Language Rights, (pp. 498-506), Gallaudet University Press, p. 498.

[263] De Meulder M. (2015), *The Legal Recognition of Sign Languages, in Sign Language Studies*, Vol. 15, No. 4, Special Issue: Language Planning and Sign Language Rights, (pp. 498-506), Gallaudet University Press, p. 500.

concerning education, while Venezuela and Ecuador have given recognition to sign language in the constitutional section regarding disability.

Despite being regarded to as the most prestigious form of recognition, the constitutional recognition of sign language does not necessarily entail exceptional benefits or more rights for deaf people or sign language users than the other types of recognition.

5.4.1.b. Recognition of Sign Language through General Language Legislation

Recognition of national sign language by means of a set of provisions concerning the linguistic national heritage in general, has been achieved by 4 countries, namely Estonia, Latvia, Iceland, and Sweden. Their general legislation regulating the status of languages at the national level also regulates and claims the promotion of the development and the use of sign language.

For instance, among the four countries abovementioned, Iceland presents the most comprehensive example of recognition of sign language by means of general language legislation. Its *2011 Act on the Status of the Icelandic Language and Icelandic Sign Language (ISL)* recognizes the ISL as the first language for deaf people and for those who are required to communicate with the latter, such as parents and relatives of hearing-impaired persons. Particularly, Art. 5 of the 2011 Act states that ‘the Icelandic State and local governments shall promote the development, study, teaching and spread of ISL and shall otherwise support culture, schooling and education for the deaf, the hearing-impaired and the deaf-blind’. The promotion of the development of sign language in every social context is well carried out by the State thanks to the Icelandic Sign Language Council, ‘which is charged with advising the authorities on all matters related to ISL, as well as promoting the strengthening of ISL and its use in society’.[264] Finally, Art. 13 of the Act on the Status of the Icelandic Language

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[264] De Meulder M. (2015), *The Legal Recognition of Sign Languages, in Sign Language Studies*, Vol. 15, No. 4, Special Issue: Language Planning and Sign Language Rights, (pp. 498-506), Gallaudet University Press, p. 502.

and ISL calls on the State and on the local governments to ensure the provision of services in ISL to all subjects requiring them.

5.4.1.c. The Recognition of Sign Language via a Specific Sign Language Law or Act

In some countries, the explicit recognition of sign language has been carried out through the adoption of a specific law or act regarding the national sign language – or the multiple national sign languages – singularly. A law or act was adopted and implemented with the specific aim of promoting and recognizing the use of sign language by 12 countries. Namely, Slovakia, Uruguay, Brazil, Slovenia, Belgium, Wallonia, Cyprus, Bosnia and Herzegovina, Macedonia, Catalonia, Finland and Serbia.

5.4.1.d. The Recognition of Sign Language by means of a Law or Act on Sign language and other means of Communication

Some countries, such as Colombia, the Czech Republic, Spain, Poland and also Italy, have explicitly recognized the sign language resorted to by their national deaf community by adopting a Law or Act concerning not only sign language but also other means of communication. 'In some cases, this inclusion is a result of the watering down of legislative proposals, as in Spain and Italy'.[265]

5.4.1.e. The Recognition of Sign Language via Legislation on the Functioning of the National Language Council

This type of recognition has been carried out only by 2 countries. Norway and Denmark have included the recognition of their national sign language in the legislation on the functioning of their National Language Council respectively in 2009 and 2014.

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[265] De Meulder M. (2015), *The Legal Recognition of Sign Languages, in Sign Language Studies*, Vol. 15, No. 4, Special Issue: Language Planning and Sign Language Rights, (pp. 498-506), Gallaudet University Press, p. 504.

5.4.1.f. The Implicit Recognition of Sign Language

The implicit recognition of sign language by a State consists in the plain and simple 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.

Recognition of sign language has been carried out by some countries by mentioning their national sign language only in legislation on education, equality or disability. For instance, France has mentioned the French Sign Language in educational legislation. In the United States, American Sign Language is not recognized at the federal level but only in some provincial legislations. Among the American States, 40 have recognized ASL as a fully-fledged language, while others have only regarded ASL as a foreign language for educational purposes. The French case will be deepened further on.

5.4.2. Italian Sign Language: The Lack of a Legislative Recognition

5.4.2.a. The ENS and the INSIGN EU Project

Within the institutional and organizational framework of the Italian National Agency for the Deaf (*Ente Nazionale Sordi – ENS),* emerges the *National Committee on Sign Language*. The latter was established by the same Italian National Agency with the aim of carrying out the *INSIGN Project* designed at the European Union level by the DG JUSTICE of the European Commission.

The INSIGN Project has been commissioned by the Directorate-General for Justice of the European Commission in December 2013. It consists of a twelve-month pilot project aimed at improving the communication between deaf and hard-of-hearing people and the European Union Institutions by eliminating the communication barriers that exist at the EU level. Thus, the project, led by the European Union of the Deaf, has been launched with the intent of empowering deaf persons to communicate with their political representatives, by taking into account national sign languages and real-time text communication. ‘As almost all people who work in the EU institutions, including administrators and Members of the European Parliament (MEPs), use oral languages, there is a need to involve sign language interpreters or to provide for real-time text solutions to enable the communication with citizens who are deaf or hard of hearing or sign language users in the EU institutions’.[266]

The INSIGN consortium was composed of 6 organizations representative of the deaf community at both the national and European levels. Namely, *Designit* (the Spanish ‘Global strategic design firm making innovation happen for the world's most ambitious companies’[267]); the French *IVéS;* ’Significan't (UK) Limited (trading as SignVideo, United Kingdom): British company acting as a VRS/VRI service provider at National level and complementing IVéS expertise’[268]; the *Herriot-Watt University* of UK; the non-for-profit NGO *European Forum of Sign Language Interpreters,* based in Belgium, representing sign-language interpreters at the European level; finally, the *European Union of the Deaf,* leading and monitoring the implementation of the project.

Since being a member of the European Union of the Deaf, and as party to the INSIGN Project, the Italian National Agency for the Deaf – ENS established a National Committee on Sign Languages. The aim underlining the creation of such entity was ensuring the respect and implementation of the EU project particularly, and, in a wider perspective, the respect and promotion of the rights of deaf people and sign-language users. The National Committee has worked intensively in order to present to the Italian Parliament bills for the official recognition of Italian Sign Language. Since 2001, the Committee has submitted 4 bills to the Parliament (Bills Nos. 4000, 5556, 3083 and 6637), which however have not yet passed and are still under examination. Each bill called for legal recognition of the *LIS* in the fields of education, employment and mass media.

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[266] *INSIGN Project,* in https://www.eud.eu/projects/past-projects/insign-project/.

[267] Ibidem.

[268] Ibid.

The recognition of sign language, if achieved at the legislative level, would guarantee deaf people the opportunity to use it in the educational, working and social environments without restrictions nor limitations.

5.4.2.b. The implicit recognition of Italian Sign Language

I. The Italian Constitution and Linguistic Minorities: the deaf community as a linguistic minority?

The UN Convention on the Rights of People with Disabilities at Article 24(3)(b) promotes sign language in recognition of the linguistic identity of the deaf community. Hence, one can argue that the deaf community, resorting to sign language as a means of communication, might 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'.[269] It is possible to apply the same definition to linguistic minorities, whose characterization however is still controversial due to the lack of agreement over the features defining it.

The concept of linguistic minority in the case of deaf people is even more controversial and remains under debate. The doubts concerning their 'identity', as disabled community or as a linguistic group, still underlines the rough legislative process undertaken in order to obtain explicit recognition of Italian sign language. The struggle experienced during such process is dependent upon the numerous views concerning deafness and the concept of linguistic minority in general.

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[269] 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.

The Italian Constitution addresses the issue of language and of the rights linked to the latter, which ought to be recognized to minorities characterized by a specific linguistic system. For instance, first of all, 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'. One can argue that such social groups also include linguistic minorities.

Article 3, concerning formal and substantial equality, at subparagraph 1 promotes the negative protection of linguistic minorities, thus it prohibits unjustified discrimination towards the 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. Hence, it promotes substantial equality, thus the positive protection of linguistic minorities, in addition to the negative protection recognized by the previous subparagraph. Positive protection implies the adoption of specific measures by the Republic, aimed at preserving the linguistic identity of the groups.

Furthermore, Art. 6 states that the Republic protects the linguistic minorities with specific norms. The latter imply the adoption of particular measures, different from the general provisions set out for the majority.

Finally, 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.

Although the Italian Constitution mentions linguistic minorities, it does not provide a clear definition of the term. Thus, the concept of protection of linguistic minorities has been reconstructed by legislators based on specific parameters. Namely, the principle of territoriality and the personality criterion. On the one hand, the principle of territoriality envisages that the rights guaranteed to a linguistic minority are dependent upon the precise geographical area in which the minority is settled. On the other hand, the personality criterion basis the protection of a linguistic minority exclusively on the use of the language. Specifically, in Italy, linguistic minorities are granted protection based on the first parameter. *Law n. 482 of 1999* provides the protection of linguistic minorities based on the area in which the group resides; moreover, it sets out a specific procedure aimed at defining the exact territory of settlement of the group. However, the law at stake does not guarantee an absolute protection of all linguistic minorities through the criterion of territoriality. In fact, the latter fails to entail all linguistic realities existing on the Italian territory. For instance, migrants or Rom populations, which are nomad and not concentrated in a defined area. The same concept applies for the deaf, who, despite being recognized as a community featuring its own language, are not gathered in one specific geographical area. Therefore, the deaf community lacks the features of a linguistic group protected based on the territoriality criterion.

Thus, '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'.[270]

In conclusion, since the reality of the deaf and the general perception regarding the latter prove to be heterogeneous, the Italian Constitution fails to provide an implicit protection to the deaf, if considering the linguistic criterion. In fact, the deaf ought to be defined not only based on the disability or the use of their own language, but also and most importantly on the basis of many other factors, such as their relational capabilities, their inclinations and attitudes, their educational path and so on.

II. 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. It was later modified with Law 8 March 2000. This law, commonly known as 'Law 104', promotes the full integration in

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[270] 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 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 the law is perfectly in line with Article 3 of the Italian Constitution. The latter promotes the equality of citizens regardless of their health condition and status, and it calls on the institutions to remove all barriers not allowing the individual to fully realize his personality in the social, educational, and working environment. The Article also refuses any kind of discrimination and exclusion. Hence, the Law 104 embraces the principle of equality enshrined in Art. 3 Cost., and it 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. Such objectives do not only regard the persons with disabilities, but it is also directed to the families of disabled people and to foreigners, stateless persons, residents and strangers having stable residence on the national territory, as set out by Art. 3(4). Hence, the Law 104 is truly inclusive, since it does not exclude anyone from its application, and it entails any individual with disability present on the Italian territory.

According to Article 4, the first step to be taken in order to apply the Law 104 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, 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, as well as the status of the person affected by the latter. With regard to deafness, the assessment of its gravity is dependent upon the capability of the deaf person to carry out her everyday-life activities. Hence, deafness should be regarded to as a severe disability, since 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, respectively 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. Therefore, deafness falls within the severe disabilities object of the Law 104/1992, for which the latter provides benefits to the people affected. Specifically, Art. 33 sets out the facilities ensured to severely disabled persons and to their families and caregivers: the working mom or the working dad alternatively, also adoptive, of the seriously disabled child, are entitled to extend the period of abstention from work up to 3 years; the abovementioned subjects are also entitled to request 2 paid daily leave hours until their child's 3rd birthday; moreover, parents and caregivers assisting the disabled child, may request 3 monthly days off from work, and they are also entitled to choose to work in the nearest job location to home. The latter possibility is recognized also to the severely disabled adult. In such cases they cannot be transferred to another location without their permission and consensus.

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.

Specifically, the Law 104 does not mention deafness – briefly only in Art.13 -, but remains vague, by setting out provisions in favor of severely disabled persons. As stated above, deaf people, since requiring permanent and global assistance, fall under the latter category, hence the benefits provided by the law are also applicable to their circumstance. First, Articles 12 and 13 respectively regard the right to education and the 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 the 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, integration of disabled children or adults in the educational environment is realizable trough the provision of technical aids and facilities in schools and universities, through the organization of university measures suitable for the individual 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, together with possessing certain teaching skills, 'must be skilled in communication strategies for use with deaf people and have a certain degree of knowledge of *LIS'*.[271]

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[271] 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. Respectively, 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. In such articles, deaf people are not mentioned. However, it is worthy to highlight Art. 19 and the right for disabled persons to mandatory employment. In fact, article 19 Law 104/1992 is integrated with Comment n.19, which states that 'the 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. Thus, Law 482/1968 specifically mentions deaf people and recognizes their right to employment, not only in Art.1 but also in Art.7. The latter states that the provisions set out by the law in question are applicable to deaf-mutes, specifically regarded to as those persons who have been deaf since birth or have become deaf before the language acquisition. Hence, 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 applying the provision only with regard to deaf individuals from birth or before the acquisition of language, thus excluding persons 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 it ensures 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.

III. Employment and Civil Invalidity

Although the civil invalids are mentioned in and 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 the latter law.

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 and their families with facilities and benefits of an economic and non-economic nature – respectively, pensions and subsidies, and medical assistance and work permissions laid down in Law 104/1992. These benefits fall under the term of 'Civil Invalidity' and are in fact ensured to those people considered as civil invalids. The latter concept 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.

The 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.[272]

III.a. Law n. 95 20 February 2006: the deaf person in the framework of civil invalidity

More specifically, the Italian Law n. 95 of 20 February 2006, with Article 1(2) 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.

Art 1(2) Law 95/2006 recognized 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. Thus, 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.

It is worth specifying that the 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.

5.4.2.c. The Lack of Explicit Recognition of Sign Language

The Italian Agency for the Deaf – the *Ente Nazionale Sordi* – emerges among the founders and members of the World Federation of the Deaf, established in

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[272] *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.

Rome in 1951, and since 1985 it has also been a member of the European Union of the Deaf, based in Brussels. Hence, Italy rises among the countries most committed to recognizing and protecting the rights of deaf people, at both the international and European level, and to promoting the recognition and use of sign language.

Furthermore, as previously stated, especially since being a member of the World Federation of the Deaf, Italy – specifically the *Ente Nazionale Sordi* - has embraced the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities. The latter upholds the rights of people with disabilities, and among these, the rights of deaf people from both the point of view of disability – Art. 1(2) refers to the sensory impairments which might unable the full and effective participation to society on an equal basis with others –, and from the point of view of linguistic and cultural identity – aspect addressed in particular by Art.24(3)(b) and Art.30(4) and closely linked to the legal recognition of sign languages.[273]

Art. 21(e) of the UN CRPD calls on the States parties to adopt measures necessary to ensure people with disabilities the possibility to enjoy their right to freedom of expression and thought, together with the right to freedom of requesting, receiving and communicating information and ideas on an equal basis with others by resorting to all preferred means of communication. Among the latter, Art.21(e) recognizes and promotes the use of sign language.

Despite embracing the principles enshrined in and the provisions set out by the CRPD, Italy is still struggling to adopt a law ensuring the explicit recognition of sign language and all the rights and benefits arising therefrom.

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[273] Marziale B. & Volterra V (2016), *Lingua dei segni, società e diritti*, Roma, Carocci Faber, p. 181.

I. 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. Such framework law n. 4679 has 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.[274] It ’presents provisions aimed at promoting the full participation to the community life for persons affected by deafness, auditory impairments and deaf blindness, by promoting the instruments aimed at prevention and cure of 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’.[275]

The framework law consists in 14 articles. Art. 1 sets out the purposes of the Law. It states 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.

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[274] 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/.

[275] 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.

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 ensuring the individual development and full inclusion in the society. The article calls on the States to ensure 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. Although not addressing sign language, it is significant from the point of view of the recognition of deaf persons' and their families' rights. In fact, it provides that the Italian Republic shall promote the use of instruments aimed at preventing or precociously identifying deafness and deaf blindness, namely the newborn screening or the pediatric audiological examination, together with any medical preventive or rehabilitative examination. Furthermore, Art. 3 requests the provision of psychological support interventions for both the affected children and their parents and family members. Finally, such article promotes the 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 - Art.4(1) - and accessibility to the physical environment – Art.4(2). 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.

Obviously, the concept of accessibility is advocated also in reference 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. Among these, it envisages 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. Furthermore, Art.5(2) requires the State, regional and local administration to consider the teaching requirements of the Italian Sign Language, especially by making financial and human resources available. Within 90 days from the adoption of the present law, a decree issued by the MIUR – the Italian Ministry of Education – envisages the definition of national standards of the educational paths of communication assistants and LIS interpreters, in order to make highly-skilled and expert teachers available for the teaching of Italian sign language. Article 6 is closely linked to the previous, since it 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 teaching to and use by students of Italian sign language and tactile sign language, 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 in question 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, which promotes 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.

In conclusion, the Framework Law n. 4679 recognizes the Italian Sign Language as the primary language and means of communication of the Italian deaf community, and it promotes its use in many fields of life, such as the educational environment, of both schools and universities, the social and medical fields, and in public administration. The importance of sign language for the deaf community is also recognized 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[276].

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. Obviously, 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. 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.[277] In fact, the Framework Law n.4679, still hasn't been adopted as effective law providing the explicit recognition of sign language.

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[276] 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/.

[277] Ibidem (*words of Francesco Russo, PD).*

II. Benefits of the Legal Recognition of Sign Language

The lack of a legislative - hence explicit - recognition of the sign language in Italy is dependent upon the existence of contrasting points of view concerning the same nature of the LIS, which struggle to find an agreement. In fact, some consider the Italian Sign Language as a minority language. Therefore, they request the adoption of a law recognizing the use of the LIS and all rights resulting from such recognition. On the contrary, many others refuse sign language, since believing that it might deepen the divide between deaf people and hearing-abled ones and even threaten learning and education of the former.[278] For instance, in 2012 the Italian Commission of Culture, Science and Education of the Chamber of Deputies issued a negative statement on the draft law n. 4207 'Dispositions for the promotion of the full participation of deaf people to the community life?'. It claimed that the recognition of the Italian sign language would have brought to the exclusion from society of deaf people, since it prevents them to communicate and express themselves through spoken national language.[279]

Despite the presence of many politicians and citizens denying the necessity of the explicit recognition of sign language, the latter, if achieved, would bring indisputable benefits for the deaf community. First of all, the absence of a law recognizing the importance of sign language is 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'. Therefore, since Italy has ratified the UN Convention on the Rights of Persons with Disabilities, hence accepting 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, to those standards regarding deaf people. Thus, Art. 117 of the Italian Constitution represents a valid legal basis for the adoption of a law recognizing the LIS.[280] The latter not only would comply with

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[278] Marziale B. & Volterra V (2016*), Lingua dei segni, società e diritti, Roma*, Carocci Faber, p. 182.

[279] Ibidem.

[280] Ibid.

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:

1. The presence of an inclusive educational and schooling system, ensuring the full participation of deaf – and deaf blind – 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;
2. 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;
3. The strengthening of the right to health and to social assistance through the possibility to benefit from services offered by offices and public structures.[281]

The recognition of sign language, in general, and specifically in Italy, would ensure the full development of the deaf person, under all personal, social, judicial aspects. Thus, it goes beyond individual beliefs, and it cannot be circumscribed to the linguistic or medical aspect of the issue of deafness. Instead, it applies to the human sphere and to fundamental human rights. Legal recognition of Italian sign language represents a significant and essential component of democracy,

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[281] Marziale B. & Volterra V (2016*), Lingua dei segni, società e diritti, Roma*, Carocci Faber, p. 183.

ensuring equality and fundamental civil and political rights proper of any Italian citizen. Therefore, it shall be achieved at all costs.

III. The Draft Law n. 462: 'Dispositions for the promotion of the full participation of deaf persons to the community life and the recognition of Italian Sign Language', and the final Draft Law n.2248

The Framework Law n. 4679 on the *Citizenship Rights of Deaf Persons, with Hearing Impairments in general, and Deaf blind* represents the cornerstone of deaf Italian law of the 17th legislature. Although its approval has not yet been achieved, the law it has paved the way for the proposal before the Parliament of other draft laws on the rights of deaf people and sign language. The pressure exerted by the Italian deaf community, by the *Ente Nazionale Sordi* and by the speaker of the former draft law, Francesco Russo – who stated that 'the law is not a law just concerning the LIS, and for such reason we wanted to remove the term from the title, but it wants to achieve the protection of the whole deaf world in Italy'[282] - led to the transmission to the Italian Parliament of the Draft Laws n. 462, 1198, 1695, 1923, 2248, throughout the 18th legislature.

The Draft Law n. 462 entitled 'Dispositions for the promotion of the full participation of deaf persons to the community life and the recognition of Italian Sign Language' was presented on 4 April 2018. It derived from the 'necessity of guaranteeing the full inclusion of deaf persons, persons with general hearing impairment and deaf blind in the social life, educational, university-based or professional, together with the re-establishment of the initial circumstances which represent the inalienable right of every citizen, as provided for in Article 3 of the Constitution'.[283]

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[282] 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/.

[283] Draft Law n. 462, *Disposizioni per la promozione della piena partecipazione delle persone sorde alla vita collettiva e riconoscimento della lingua dei segni italiana*, p. 1, in http://documenti.camera.it/leg18/dossier/pdf/AS0147.pdf?_1599310060544.

The Draft Law n. 462 is more concise than the Framework Law n. 4679 submitted to the Parliament during the previous legislature. It entails 6 articles. Article 1 sets out the rights of deaf persons, with hearing disability in general and deaf blind. It advocates the removal of linguistic barries and the recognition of sign language, highlighting the concept of accessibility. Article 2 addresses the freedom of choice and non-discrimination, by stating that deaf persons have the right to choose the means of communication, the educational paths and the aids aimed at the full development and inclusion of the individual. The choice must be allowed by ensuring that deaf or deaf blind persons can actually and freely use the LIS, the tactile LIS and other means of communication in both public and private areas. The choice of resorting to the LIS should not be discriminated nor subject to differential treatments. The use of the LIS is also promoted by the Draft Law in Art 3 in the educational, university, medical, cultural and sports fields. Art. 4 concerns the regulations necessary to adopt in order to implement the present law. Such regulations concern the modalities of early and rehabilitative diagnostic interventions for deaf, hearing disabled and deaf blind persons; regulate psychological interventions for deaf children and their families, together with the use of sign language proper to ensure full inclusion and access to information and communication in the educational, university and post-university fields, also thanks to the provision of expert personnel. The regulations also discipline accessibility for the deaf to television information and to cultural events; they also regulate accessibility to emergency services by promoting the provision of new technologies suited to the needs of the deaf. Finally, these regulations define the modalities for the verification of the implementation of the law. The draft law assigns the task of monitoring the status of deaf persons to the National Observatory on the Condition of Disabled Persons, while the Italian Government is tasked with monitoring the implementation of the law and transmitting to the Chambers a relation concerning the same implementation, every two years.

The Draft Law n.462 paved the way for the shaping and transmission to the Parliament of other draft laws concerning the rights of deaf people and the recognition of sign language. The latest one submitted to the Parliament is Draft

Law n. 2248 entitled '*Framework Law on the Citizenship Rights of Deaf Persons, Persons with Hearing Impairments in general and Deaf blind*'. It was presented on 11 November 2019, assigned to the 12th Social Affairs Committee, and it entered examination by the latter on 30 July 2020.

The Draft Law n. 2248 'resumes the unified text approved in the past legislature by the Senate and transmitted to the Chamber (Chamber Act n. 4679), whose process is not completed due to the expiration of the legislature'.[284] Hence, the Italian Deaf Community, which counts about 960.000 deaf persons, including both persons deaf from birth and persons who became due to a disease or an accident, is still waiting for the approval of the recognition of their rights and of the Italian sign language as an official language, despite such goal has been already achieved at the European level with the two Parliamentary Resolutions of 1988 and 1998.[285]

5.4.3. A comparison: France and the French Sign Language

France emerges as one of the first countries – together with the US and Italy - to have experienced the birth of sign language and the foundation of institutes devoted to the teaching of the deaf.

As briefly mentioned previously, in paragraph 2.2.1., the French sign language – the *Langue des Signes Française (LSF)* - is the result of an educational process begun in the half of the 18th century. In fact, 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. Hence, he elaborated a conventional sign language, resulting from the union of the gestures already used by the deaf and new ones added to represent objects, events and grammar structures of the French language.[286] De l'Épée's

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[284] Draft Law n. 2248, *Legge quadro sui Diritti di Cittadinanza delle Persone Sorde, con Disabilità Uditiva in genere e Sordocieche*, p. 1, in http://documenti.camera.it/Leg17/Dossier/Pdf/AS0348.pdf.

[285] 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/.

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

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 resulting official *Langue des Signes Française (LSF)* then became the source of the development of other sign languages, such as the American Sign Language – thanks to Thomas Hopkins Gallaudet – and the Italian Sign Language.

5.4.3.a. The French National Federation of the Deaf (FNSF)

On the occasion of the 122nd anniversary of Priest De l'Épée's birth, on the 30 November 1834, Ferdinand Berthier and Alfred Boquin – two of the most effective French deaf educators and intellectuals in the fight for the recognition of the rights of the deaf – organized the first quiet banquet in history.[287]

Despite the decision set out by the International Congress of Milan in 1800 imposing the oral method of education for the deaf, in the place of the signing method, in the course of the 19th century many French associations for the deaf started to emerge. In 1893, the existing French associations created the first grouping. Four years later, the Federation of the French Societies of the Deaf-mutes was declared to the Ministry of the Interior and reorganized in 1933. In 1937 it counted 265 member societies and it continued to gain support and to carry out its activities despite the creation of a second organization – the *Union Nationale des Amicales d'Antiens Pupiens des Institus de Sourds de France* - in the wake of the second World War. However, its mission came to an end in 1859, due to the lack of coordination and union. Four years later, the former National Coordinating Committee of the French and overseas quiet societies was renominated National Federation of the Associations of the Deaf of France. In 1966, the latter was incorporated in the *National Confederation of the Deaf of France*, together with the National Union of the Friends of the Institutions of the Deaf of France and the Sports Federation of the Deaf of France, established previously.[288]

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[287] *L' Histoire de la Fédération,* in http://www.fnsf.org/la-federation/notre-histoire/.

[288] Ibidem.

In 1982, the National Confederation of the Deaf of France gained the approval as recognized association of public utility, and five years later, it became the *French National Federation of the Deaf*, as we know it today. It represents the French deaf community, both individually and jointly, and it undertakes to obtain the recognition and implementation of the citizenship rights of deaf people, in all the fields of social life. ‘The Federation carries out its action in compliance with the principle 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 (…)’,[289] in respect of the principles of the UN Universal Declaration of Human Rights of 1948. The Charter of the Rights of the Deaf sets out the main purposes of the French National Federation, which are the obtainment of the recognition of the rights of the deaf in the fields of education and employment, and the recognition of French Sign language in such fields, together with the promotion of FSL interpretation services, also in the contexts of information and culture.

I. The position of the French National Federation of the Deaf on Sign Language and Education

In compliance with the principles of 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 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’.[290] 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’. However, the recognition of the use of French sign language remains the common thread of these sectors, with special focus on the area of education.

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[289] *Notre position,* in http://www.fnsf.org/la-federation/notre-position/.

[290] Ibidem.

The National Federation of the Deaf of France takes a strong stance in concern of sign language. As laid down in the document concerning the position adopted by the Federation regarding the French sign language, provided on the FNSF website, the French National Federation recognizes the French Sign Language as a natural language possessing the same linguistic features of spoken languages. The document 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'. Thus, the French National Federation of the Deaf admits and defends the characterization of sign language as a natural and official language. In line with the acknowledgment made at the European Union level, according to which 'the utilization of the different languages spoken by the citizens is an important factor for 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.[291] 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 brilliantly presented the proposal on the official recognition of the French Sign Language to the President of the Senate, Serge Vincon, in Montargis (Loiret)'.[292] 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

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[291] Fédération Nationale Des Sourds De France (FNSF), PRISE DE POSITION – LANGUE DES SIGNES FRANCAISE, pdf, in https://www.fnsf.org/la-federation/notre-position/.

[292] *L' Histoire de la Fédération,* in http://www.fnsf.org/la-federation/notre-histoire/.

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.[293] Hence, the law also advocates the official recognition of the French Sign Language, which however has not been yet achieved at the Constitutional level.

The French National Federation of the Deaf recognized – and still does – the significant role of sign language as a means of communication ensuring the full development of the deaf individual in all aspects of social and community life, especially in the field of education. In line with the principles enshrined in the *Salamanca Statement on Principles, Policy and Practice on Special Needs Education* - adopted by the World Conference on Special Needs Education, in Salamanca on 10 June 1994[294] - of which the National Federation of the Deaf of France is a signatory, the latter advocated an inclusive educational sector, claiming accessibility for deaf students by providing the choice of a bilingual education. Specifically, Art.21 of the Declaration recognizes the importance of sign language as a means of communication for the deaf.[295]

On 18 February 2010, France ratified the UN Convention on the Rights of Persons with Disabilities. Therefore, its National Federation of the Deaf required the implementation of the provisions regarding the rights of the deaf set out in the Convention, with particular focus on those concerning education and bilingualism. As previously presented – in the section concerning the implicit recognition of sign languages – France has incorporated the recognition of French Sign Language in education legislation. In fact, 'The Law n. 102/2005 recognizes the sign language as a full-fledged language in the Code of Education'[296], thus, the FNSF required its teaching in schools and universities, together with support services and courses to the teaching and learning of the

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[293] *Secteur Etudiants,* http://www.fnsf.org/secteur-etudiants/#loi-2005.

[294] United Nations Educational, Scientific and Cultural Organization Ministry of Education and Science Spain, *The Salamanca Statement and the Framework for Action on Special Needs, Education World Conference on Special Needs: Access and Quality*, Salamanca, Spain, 7- 10 June 1994.

[295] *Education Bilingue,* in http://www.fnsf.org/etre-sourd/education-bilingue/.

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

French spoken language for the deaf wearing hearing aids. 'The access to spoken French requires a long and onerous re-education and it has to be realized outside the scholastic program'.[297] Thus, bilingualism – the teaching and provision of courses in and of French sign language in schools and universities – was - and still is - the main objective that the FNSF requires the French State to achieve, since it considers it as an 'advantage in the present competitive world',[298] According to the Federation, bilingualism should stand on four criteria:

1. The French Sign Language shall be the teaching language, the learning language and the working language.
2. The French Sign Language shall be used for the teaching of all school subjects.
3. Teaching in sign language shall be carried out by bilingual experts, formed and graduated, with a C1 level of French Sign Language.
4. The school shall be ordinary and the deaf and the hearing students shall learn to coexist. The environment shall provide numerous socio-cultural activities and it shall be inclusive.[299]

Such criteria have been also 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.[300] 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 4 objectives to be achieved by the French State in the university field within 5 years:

- Improve the existing mechanisms which allow an increase in the number of students admitted;
- Hire more disabled personnel;

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

[298] Ibidem.

[299] Ibid., p.2.

[300] *Secteur Etudiant,* in http://www.fnsf.org/secteur-etudiants/.

- Promote training in the field of disability;
- Continue to improve the accessibility to services and offices.[301]

According to official government statistics[302], the guide has improved the quality of and the accessibility to superior education. Specifically, the number of disabled students enrolled in universities has tripled in the last 15 years[303]. 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'.[304] 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 – 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.[305]

Despite the adoption of the *Guide de l'Accueil de l'Étudiant Handicapé à l'Université,* and, more in general, the adoption of the Law n.102/2005 on

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[301] *Secteur Etudiant,* in http://www.fnsf.org/secteur-etudiants/.

[302] Ministère de l'Enseignement Supérieur de la Recherche et de l'Innovation: https://www.enseignementsup-recherche.gouv.fr/.

[303] *Secteur Etudiants,* in http://www.fnsf.org/secteur-etudiants/.

[304] Ibidem.

[305] Ibid.

education, the latter sector is still theatre of discrimination towards disabled children and teenagers. Especially 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’.[306] Despite the ratification of the UN CRPD - which promotes equality for and non-discrimination towards the deaf in the field of education, by requiring the States to ensure the right to the use of sign language – and despite 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.

5.4.3.b. France and the UN Convention on the Rights of Persons with disabilities

Art. 33 of the UN Convention on the Rights of Persons with Disabilities sets out the implementation mechanism to be carried out by States Parties in order to receive the provisions of the Convention in their respective national legal system and make them effective. Specifically, we shall remember that Art. 33 recites:
‘1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention (…);
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. (…);
3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process’.

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[306] *Secteur Etudiants*, in http://www.fnsf.org/secteur-etudiants/.

France ratified the UN CRPD and its Optional Protocol on 18 February 2010, in the wake of the adoption of Law 1791/2009 of 31 December 2009 *Autorisant la Ratification de la Convention Relative aux Droits des Personnes Handicapées* envisaging the same ratification.[307]

Many obligations set out by the CRPD already existed in French legislation before the ratification of the same Convention.[308] As stated previously, the Law n. 102/2005 of February 2005 promoted equal opportunities for and inclusion of persons with disabilities. More specifically, it concerned accessibility to education for deaf people by promoting the right to sign language.

Despite the adoption of a law featuring provisions promoting the citizenship rights of disabled persons, which went indeed beyond the provisions enshrined in the UN CRPD, and despite the ratification of the Convention, France moved at a slow pace in the implementation of the latter. 'Only in September 2012 did the Prime Minister first refer to the CRPD in a circular'.[309]

First of all, the designation of focal points – or points of contacts – required by Art.33(1) CRPD was not carried out immediately. Only in March 2014 it designated focal points in all French Ministries, whose precise list however remains unknown. This is a simple example of negligence shown by the French government – and by governments in general – in implementing the CRPD and the provisions concerning the rights of disabled – and specifically deaf – persons. In fact, focal points are strongly required in order 'to advise the Government when drafting legislation or regulations, policies, or action plans, and to assess their impact on people with disabilities. (…) The focal points will be tasked with developing (…) [disability] diagnostic sheets [and] They will represent civil society's points of contact for any questions regarding disability within the government administration that appointed them'.[310] The disability diagnostic sheets will integrate each new parliamentary bill concerning initiatives in favor of disabled persons' rights. Actually, France still lacks focal points within

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[307] http://www.legifrance.gouv.fr.

[308] Atwill N. (2010), *France: Ratification of the UN Convention on the Rights of Persons with Disabilities*, in https://www.loc.gov/law/foreign-news/article/france-ratification-of-the-un-convention-on-the-rights-of-persons-with-disabilities/.

[309] *France (Oct. 2019) – Art 33*, in www.euroblind.org/convention/article-33/france.

[310] Ibidem.

government matters relating to the implementation of the Convention. However, whenever their designation will be carried out successfully, these focal points will be coordinated by the Inter-ministerial Committee on Disability.

As stated previously, the *Guide de l'Accueil de l'Étudiant Handicapé à l'Université* laid down by the *Conférence des Présidents d'Université* provides disabled students the possibility to appeal to the Defender of Rights – as a last resort – if having experienced some kind of discrimination whatsoever. In fact, 'the *Défenseur the Droits* is an independent high authority tasked with ensuring respect for everyone's rights, combating discrimination and fighting for equality. (…) It must thus promote the CRPD, however its services and delegates are still insufficiently familiar with it'.[311] Private individuals may refer a case to such authority, which may make recommendations to the Government. These recommendations may be also published in the Official Journal. Furthermore, the Defender of Rights may intervene before a court to give an opinion on the case submitted to the court by the disabled person.[312]

The Defender of Rights is one of the members of the abovementioned French Committee – *Comité Interministériel du Handicap (CIH)* - tasked with the monitoring of the implementation UN CRPD at the national level. The committee, together with the *Défenseur the Droits,* comprises the *Conseil National Consultatif des Personnes Handicapées* – expressing opinions on acts or regulations concerning disability submitted to it by the Government prior to publication -, the General Secretary of the Inter-ministerial Committeee on Disability, the General Secretary of the National Consultative Commission on Human Rights.[313] Despite being designated to monitor, hence to ensure the implementation of the Convention on the Rights of Persons with Disabilities, the Committee seems to be ineffective in such sense.

Although Art. 33(2) of the UN CRPD requires States parties to the latter to set up a framework inclusive of one or more independent mechanisms to promote the implementation of the Convention, France failed to meet such requirement. The abovementioned Inter-ministerial Committee is yes tasked

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[311] *France (Oct. 2019) – Art 33,* in www.euroblind.org/convention/article-33/france.
[312] Ibidem.
[313] Ibid.

with the monitoring of the CRPD, and mainly with the coordination of the – eventually future – focal points, but it is not considered as an independent mechanism. 'The *Commission Nationale Consultative de Droits de l'Homme* [CNCPH] proposed (…) proposed that it be designated [as independent mechanism] together with the *Haute Autorité de Lutte contre les Discriminations et pour l'égalité (HALDE),* which is France's national equality body'.[314] However, the designation of the Commission and the Hight Authority together as the independent mechanism required by Art.33(2) CRPD has not taken place. On the contrary, the French Government has appointed the Ombudsman (DDD) as such, in cooperation with the National Human Rights Institution (CNCDH) and also the CNCPH.[315]

Art.33(3) promotes and requires the involvement of the civil society – specifically, of disabled persons and their representative organizations – in the monitoring process enacted by States parties at the national level. In 1976, France established the abovementioned *Conseil National Consultatif des Personnes Handicapées.* It takes on the role of consultative body, representing the voice of disabled persons. In fact, 'it consists of representatives of organizations of persons with disabilities, bodies financing social protection and research projects, social partners, professional organizations and parliamentarians'.[316] However, since France fails in implementing the CRPD, the monitoring process has a limited effectiveness. Hence, the Consultative National Council of Disabled Persons – and the organizations of people with disabilities involved therein – is given truly little importance.

In conclusion, despite being one of the States Parties to the UN Convention on the Rights of Persons with Disabilities, France has shown negligence in ensuring the implementation of the latter at the national level. It still has not yet nominated disability focal points within ministries, and 'it has not [even]

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[314] United Nations Human Rights Office of the High Commissioner, Europe Regional Office, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe,* p. 23, in https://nhri.ohchr.org/EN/ICC/GeneralMeeting/25/Meeting%20Documents/Study%20on%20the%20Implementation%20of%20Article%2033%20of%20CRPD.pdf.

[315] Ibidem.

[316] Ibid.

released financial resources for the implementation of the CRPD'.[317] Furthermore, 'France and its Courts do not give sufficient importance to the CRPD, which is not considered as a text whose scope prevails over French laws'.[318] However, 'in March 2016, France submitted its first State report to the Committee on the Rights of Persons with Disabilities',[319] which is currently under review.

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[317] *France (Oct. 2019) – Art 33*, in www.euroblind.org/convention/article-33/france.

[318] *France (Oct. 2019) – Art 33*, in www.euroblind.org/convention/article-33/france.

[319] *End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities*, Ms. Catalina Devendas-Aguilar, on her visit to France, Paris, 13 October 2017, in https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22245&LangID=E.

5.4.3.c. Some Initiatives in Favor of the French Deaf

France emerges as the first country to ever have experienced the birth of sign language as we consider it today – as a fully-fledged linguistic system, resorted to by the deaf as their main tool of communication. As such, it became theatre of many initiatives carried out in favor of the French deaf community and the promotion of their citizenship rights.

Bastion of the rights of the deaf – specifically, of the right to use sign language – is the French National Federation of the Deaf (FNSF), which gives voice to the needs of deaf persons not only at the national level, but also at both the international and European ones. In fact, the FNSF is a member of the World Federation of the Deaf (WFD) and of the European Union of the Deaf (EUD).

As a member of the World Federation of the Deaf, the French National Federation of the Deaf takes actively part to all the initiatives carried out by the latter. Specifically, the most significant initiative concerning the rights of deaf persons conceived by the WFD is the 'World Congress of the World Federation of the Deaf'. The first ever organized took place in Rome, Italy in 1951, and it gave birth to the same federation. 'The World Congresses of the WFD are designed to bring together delegates from member national associations, youth organizations and other participants who seek to partake in global exchange of information and furtherance of the WF vision, mission and goals'.[320] Recently, the XVIII World Congress took place in July 2019, in Paris, France. In fact, in 2015, during the World Congress of the WFD in Istanbul, the FNSF was appointed as the planner of the Congress which would be held four years later.[321] This nomination represented a source of great pride for the Federation itself, which chose the theme 'Sign Language Rights for All' as the common thread of the activities and conferences held during the five days of the XVIII Congress.

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[320] http://www.Wfdcongress2019.org/organisers/67.

[321] *L' Histoire de la Fédération,* in http://www.fnsf.org/la-federation/notre-histoire/.

The French National Federation of the Deaf has always represented the deaf and their needs at the European level by becoming member of the European Union of the Deaf since 1985.

More in general, France has embraced the principles and aims set out at the European Union level, concerning disabled persons, by ratifying the European Convention on Human Rights and other human rights treaties of the Council of Europe. 'France is [also] bound by the Disability Strategy 2017-2023 of the Council of Europe, as well as by the European Disability Strategy 2010-2020 of the European Union'.[322] Art. 55 of the French Constitution states that international conventions (…) have a supra legal status and can be directly applied by courts.[323]

At the national level, the French National Federation of the Deaf have carried out some significant initiatives in support of the deaf people's rights. Specifically, as mentioned previously, in 1998 it adopted the Charter of the Rights of the Deaf, aimed at obtaining full recognition of citizenship rights for the deaf in order to improve their everyday community life. In the same year, the FNSF created regional branches by launching the project 'PROVAS'.[324] Furthermore, in 2002, the Federation created 5 plans of action concerning the right to sign language and interpretation: operation 'Solidarity Deaf'; Total Free Interpretation; Action AEPH 2003; Deaf Foundation Project; LS Statistical Study and LS Charter.

In 2002, the National Federation of the Deaf of France created the sector 'LSF/Education', and in 2003, it launched the start-up entitled *Websourd*, consisting in an 'interactive new website in sign language, and Elision (also called Visio), a remote communication service with sign language interpreters. This new type of technology was later adopted by 'about 20 local public services,

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[322] *End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities*, Ms. Catalina Devendas-Aguilar, on her visit to France, Paris, 13 October 2017, in https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22245&LangID=E.

[323] Ibidem.

[324] *L' Histoire de la Fédération,* in http://www.fnsf.org/la-federation/notre-histoire/.

city halls, and sectors such as insurance, banking and transit',[325] providing the possibility to deaf persons to have easier access to the internet and public services thanks to the aid of sign language interpreters. Later on, 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'.[326] This job portal '[offers] a better accessibility and a greater autonomy to deaf persons in their job research'.[327] 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.

As already stated, in 2004 the Secretary General of the FNSF submitted a proposal on the official recognition of French Sign Language at the vice-president of the Senate, approved by the latter at first reading. The official – explicit – recognition of French Sign Language was later included in the Law n. 102/2005 regarding equal opportunities for people with disabilities, especially in the field of education, in 2005. In the same year, the Federation also adopted the 5th sector 'Deaf Students of France', during the General Assembly of the FNSF in Angouleme.[328]

In 2009, the FNSF guided 3000 citizens - deaf and hearing – in a march organized on the 26 September in occasion of the World Day of the Deaf. A march was later led in 2011, against the excessive earliness of the neo-natal

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[325] 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.

[326] Ibidem.

[327] www.jobsourd.fr.

[328] *L' Histoire de la Fédération,* in http://www.fnsf.org/la-federation/notre-histoire/.

screening for deafness. Such theme had been the subject of a long fight conducted by the Federation since May 2010.[329]

In 2012 was celebrated the centennial from Priest De l'Epée's birth. For such occasion, the French National Federation of the Deaf organized a National Congress, a World Day of the Deaf which saw the participation of more than 6000 citizens, an International Congress of a 3-day duration, and an international gala banquet.[330]

Finally, on 28 September 2016, thanks to the pressure from the FNSF, the French Senate definitely approved the draft law on the *République Numérique.* The law was 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.[331] Specifically, the law concerns three themes and objectives, respectively presented in the three Titles which the provisions are organized in:

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

In particular, the latter 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.[332]

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[329] *L' Histoire de la Fédération,* in http://www.fnsf.org/la-federation/notre-histoire/.

[330] Ibidem.

[331] Foltran F. (2016), *Approvata in Francia la Legge sulla République Numérique*, Journal Article in www.medialaws.eu.

[332] *Law n. 1321/2016*, in www.senat.fr/dossier-legislatif/pjl15-325.html.

5.4.3.d. The latest developments on the Constitutional Recognition of French Sign Language

The French Law n. 102/2005 on Equality of Rights and Opportunities, Participation and Citizenship of Disabled Persons, especially in its Code on Education, officially recognized the French sign Language as a fully-fledged legal language and as the main language of teaching of the French deaf. However, such recognition, and the rights resulting from it remain limited to the field of education and superior school. If, on the one hand, the law broadens the rights and possibilities for deaf people, on the other hand it limits the latter, by circumscribing their needs to the educational and university sectors. A true extension of opportunities for the deaf would result from the explicit 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*, has 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 has asked the Secretary if the Government is apt 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 of the language, to consider the deaf as full-fledged citizens, to enable the deaf to enforce their right to use sign language'.[333]

On the 5 September 2019, the State Secretary before the Prime Minister has presented his answer to the issue raised by the Senator C. Imbert. First of all, he has acknowledged the recognition of the French sign language as a 'language of France', together with the spoken national language. He has 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 has 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 has 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

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[333] *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.

Continent national sign languages are recognized at different levels – constitutional or legislative -.[334]

On the same day of the response given by the State Secretary to the Senator Corinne Imbert, the Senator of Haute-Vienne, from the Socialist group Marie-François Perol-Dumont has 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 has 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 demand the recognition of LSF at the Constitutional level also 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.[335]

The Ministry of Justice has given its response on 28 May 2020. It has 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 has also stated that the Constitutional Council has recognized – 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.[336]

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[334] *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.

[335] 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.

[336] *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.

In conclusion, 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.

6. CONCLUSIONS

The United Nations Convention on the Rights of Persons with Disabilities represents the cornerstone of disability law enacted at the International level, whilst the European Union Charter of Fundamental Rights represents the highest document promoting equality of rights, and among these the rights of disabled people, at the European level.

Italy and France, as members of the United Nations and of the European Union, have adhered to the principles set out in the documents concerning the protection of the rights of disabled persons adopted at both levels. However, they currently appear as disregarding such principles, especially those concerning the rights of deaf people and sign language.

Italy and France ratified the UN CRPD respectively on 15 May 2009 and 18 February 2010. Despite their willingness to embrace and implement the provisions enshrined therein at the national level, both countries lack proper effective measures to achieve such objective. Italy appears more directed to accomplish the implementation of the Convention at the national level since it has set up a focal point of the rights of persons with disabilities within the Government – in line with Art. 33(1) UN CRPD -, it has established an independent mechanism in order to 'promote, protect, and monitor the implementation' of the Convention – as requested by Art. 33(2) UN CRPD -, and finally, it has ensured full involvement of civil society in monitoring the implementation of the CRPD – in compliance with Art. 33(3) UN CRPD. In fact, the role of focal point is assigned to the Directorate-General for Inclusion, Social Rights and Social Responsibility of the Ministry of Labor and Social Policies; the task of promoting and monitoring the implementation of the Convention is given to the National Observatory on the Situation of Persons with Disabilities; and civil society – disabled people and their families – is involved in the monitoring process through the inclusion of 14 representatives of DPOs in the National Observatory.

On the contrary, France is found to be deficient on focal points. The latter have been designated in all French Ministries only in March 2014 – four years after the ratification of the UN CRPD. However, the precise list of the focal points established remains undefined and unknown. Furthermore, the independent mechanism required by Art. 33(2) has only been recently set up. After the long indecisiveness regarding the appointment of the *Commission Nationale Consultative de Droits de l'Homme* [CNCPH] and the *Haute Autorité de Lutte contre les Discriminations et pour l'égalité* (HALDE) together as the independent mechanism required by Art.33(2), the French Government has appointed the *Ombudsman* (DDD) as such, in cooperation with the National Human Rights Institution (CNCDH) and also the CNCPH. Finally, France has tasked the *Conseil National Consultatif des Personnes Handicapées* with representing disabled persons and their families in the monitoring process of the Convention. However, since the implementation of the CRPD appears feeble, the Council is given little importance.

Between Italy and France, the former has turned out to be more respectful of the provisions set out by the UN Convention on the Rights of Persons with Disabilities, since not only it has complied with the requirements of Art. 33 UN CRPD, but also because it has set out Guidelines on Disability and a Disability Action Plan, in line with the international principles outlined in the Convention. France lacks a Disability Action Plan. However, it seems to have been more effective than Italy in promoting the rights of deaf persons by means of more precise and defined legal initiatives, such as, for instance, Law n. 102/2005 on Equality of Rights and Opportunities, Participation and Citizenship of Disabled Persons, and its Code of Education, providing for recognition of the use of sign language in schools and universities, in compliance with Art. 21 of the UN CRPD. Nevertheless, one can argue that such promotion and respect is only apparent. In fact, the French deaf community is currently fighting to obtain a Constitutional recognition of the rights of the deaf.

Since Italy and France feature among the first countries to have experienced the birth of sign language as we know it today – in particular, the French Sign Language provided a basis for the development of American Sign Language first and Italian Sign Language later- they are home of the two most ancient associations representing deaf communities. Namely - and respectively – 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).

Art. 21(e) of the UN Convention on the Rights of Persons with Disabilities requires States parties to recognize and promote the use of sign languages. However, as previously stated, the implementation of the CRPD by Italy and France appears poor under many points of view, especially in relation to such article. In fact, they both currently lack a constitutional or legislative recognition of their national sign language, which remains key aspiration of the ENS and the FSNF.

Since the Framework Law n. 104/1992 on the Assistance, Social Integration, and the Rights of Handicapped Persons and Law n. 95 20 February 2006 regarding the deaf person in the framework of civil invalidity provided for a partial protection of the rights of deaf persons and the right to use sign language, the Italian Government has later drawn up the Framework Law n. 4679 on the Citizenship Rights of Deaf Persons, with Hearing Impairments in general, and Deaf blind. The latter has been later resumed by Draft Law n. 2248 in November 2019 and the relevant legislative procedure is still ongoing. Thus, Italy still lacks an explicit recognition of Italian sign language, which would ensure deaf people their full development in all fields of community life, by enjoying LIS services and facilities.

On the contrary, France has adopted the Law n. 102/2005 on Equality of Rights and Opportunities, Participation and Citizenship of Disabled Persons, followed by the *Guide de l'Accueil de l'Étudiant Handicapé à l'Université*. The present law and guide provide for the promotion of bilingualism – thus for full recognition of the use of French sign language – in the field of education and universities. In particular, the law envisages the provision of FSL interpretation services and programs at all levels of education. Furthermore, France has adopted Law n. 1321/2016 on the *République Numérique* promoting accessibility to information and digital public services for people with disabilities – and for deaf persons specifically. Such law is missing in the Italian set of laws. Notwithstanding the adoption of laws recognizing the right to French sign language, little has actually been achieved. In fact, the laws provide for a relative recognition of sign language, limited to the fields of education and communication. Hence, what is strongly required by the FNSF is the recognition of FSL at the Constitutional level - a request that has been recently submitted to the Secretary of State before the Prime Minister and the Ministry of Justice, and which is still unanswered.

The Constitutional recognition of French Sign Language is strongly advocated by the French deaf community since, on the one hand, it would bring enhanced visibility to the status of the latter and it would increase awareness towards deafness and the limitations resulting from it; on the other hand, it would be mainly expected to ensure an effective protection to the rights of the deaf. The FNSF believes that, 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, despite featuring among the first counties to have experienced the birth of sign language as we know it today, and notwithstanding the ratification of the UN CRPD – promoting the recognition of the use of sign language at Art. 21(e) - Italy and France still lack an effective – legal on the one hand, constitutional on the other – recognition of the right of deaf people to resort to sign language in all spheres of community life. The adoption of the Framework Law n. 104/1992 on the Assistance, Social Integration, and the Rights of Handicapped Persons and Law n. 95 20 February 2006 regarding the deaf person in the framework of civil invalidity in Italy, and the adoption of the more specific Law n. 102/2005 on Equality of Rights and Opportunities, Participation and Citizenship of Disabled Persons in France have provided deaf people with a partial enjoyment of their rights. Nevertheless, much is yet to be done in order to ensure Italian and French deaf and hearing-impaired persons inclusion in all fields of society on an equal basis with others.

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SUMMARY

INTRODUCTION

There are 466 million people in the world with disabling hearing loss. This is over the 5% of the world's population; 34 million of these people are children. Unless action is taken, by 2030 there will be nearly 630 million people with disabling hearing loss', since they will not be assured the proper treatments and facilities necessary to lead a normal life.

Deafness or hearing loss is regarded to as an invisible disability since it is not immediately perceptible. Unlike a physical impairment, affecting for instance mobility of the limbs, a hearing impairment is not visible to the eye, or it is unknown until the deaf person discloses it. As a consequence, with no visible markers, it is easy for deafness and hearing loss to go unnoticed.

By comparing the international legal framework to selected national case studies, notably Italy and France, the aim of the present analysis is to show the limited level of legislative protection ensured to deaf and hearing-impaired persons at domestic level. Despite being democracies founded on the concept of equality in general, and despite showing adherence to the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities and in the European legislative initiatives on disability and deafness, the two countries lack the necessary tools ensuring recognition of the rights of the deaf. Specifically, they lack the constitutional and legislative recognition of sign language, although emerging among the first countries to have experienced its development. The Constitutional and the legislative recognition of sign language - in France and in Italy respectively - would ease the struggle encountered by deaf people in all fields of community life – social relations, education, employment, information – by providing the necessary facilities to ensure the use of sign language – SL interpreters, school programs, proper employment measures.

1. THE PRINCIPLE OF EQUALITY AND THE RIGHTS OF PERSONS WITH DISABILITIES

Equality is one of the most important concepts advocated in philosophy, and according to Aristotle, one of the founding principles of a well-functioning and just democracy. However, its meaning remains contested. Therefore, despite its significance, such principle often is not effectively complied with.

Among the types of equality that philosophy proposes – formal, proportional, moral, presumption of equality – the latter comes to play a decisive role, especially with regard to the concept that all human beings are equally worthy of social assistance and social goods. More specifically, when it comes to taking into account disabilities, hence natural disadvantages which limit certain individuals in their social life, presumption of equality provides a justification for unequal treatment in favor of disabled persons, thus not only claiming for a basic equal treatment, but also presuming a further special treatment for such human beings.

However, people suffering from a disability are often abandoned by their own state, as in the case of Italy and France. In fact, while many European countries have adopted and assured specific measures aimed at providing the necessary assistance to such persons in their everyday lives, Italy and France still seem to be a step backwards, despite having fully embraced the principle of equality in their own constitutions.

The term 'disability' has been exposed to many interpretations; thus, it has acquired different connotations. Traditionally, in western cultures, it was used to define exclusively a medical issue or an impaired physical condition, such as blindness, lameness, chronic illness, mental illness, and deafness. However, since the 1960s, such 'medical model' of disability has been gradually set aside in favor of the social model, in order to encompass differentiated realities and conditions. While, under the former the concept of disability is limited to defining a health condition, under the latter it acquires more facets. In fact, according to the World Health Organization, which evidently embraces the views of the social model, "disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. Disability is thus not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives.

Medical and social models have also seen the development of the human rights model and of the capabilities approach. However, the first model to have seen the light has been the moral or religious one. Further models to have been exposed are also the identity model, the cultural model, the charity model and finally, the economy model.

Disability, in all its forms, although imposing some sort of limitation on the persons affected, rather physical, social, economic and so on, shouldn't further limit people concerned from enjoying the same rights recognized to those who are able-bodied. Disability shouldn't be treated as a valid ground for discrimination. Hence, people with disabilities should be entitled to all rights and freedoms universally granted, on the basis of inherent dignity and equality.

The principle of equality and the recognition of an inherent human dignity, have been entrenched in many international legal documents, thus accepted, and fostered by many countries. The very first document to have promoted the former principle has been the United Nations Universal Declaration of Human Rights, adopted by the United Nations General Assembly in Paris on December 10, 1948 on the basis of Resolution n° 217.

Although being highlighted in the Universal Declaration of Human Rights, the concept of equality assumes a much deeper significance in the Declaration of Principles on Equality. As in the case of the Universal Declaration of Human Rights, here discrimination is condemned where it is on grounds of race, color, ethnicity, descent, sex, pregnancy, maternity, civil, family or career status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds. However, differently from the Universal Declaration of Human Rights, the Declaration of

Principles on Equality provides a greater number of grounds, and, most importantly, it recognizes disability as one of these.

The first greatest legal achievement welcomed by the United Nations in the field of disability law, was the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, in 1993. This document, adopted by the UN General Assembly on 20 December, with Resolution 48/96 Annex, signed the conclusion of the so-called Decade of Disabled Persons (1983-1992). The latter was announced by the General Assembly with the intent of providing a specific time frame during which time frame 'during which Governments and organizations could implement the activities recommended in the World Program of Action Concerning Disabled Persons (WPA). The WPA proclaimed 1981 the 'International Year of Disabled Persons', a key theme of which was full participation and equality. The importance of such document relies on the addressing of three main themes: prevention, rehabilitation and equalization of opportunities.

In 1993 the World Conference on Human Rights, organized on 25 June, adopted the Vienna Declaration and Program of Action. The Declaration, at paragraph 22, states that 'special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society'. Most importantly, the Declaration reserves a short section, including three principles, to the rights of the disabled person. It clarifies that, since 'every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society', persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.

However, the most important document signed by the UN bodies at closure of the Decade of Disabled Persons, still remains the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, mentioned above. This non-binding instrument represents one of the two milestones of the UN's efforts in giving expression to disabled people and to their needs, together with the following CRPD. The Standard Rules embody the human rights approach of disability, by taking into account discriminatory barriers and limitations to the enjoyment of such societal systems by disabled people.

2. A SPECIFIC FORM OF DISABILITY: DEAFNESS

A person is said to be affected by hearing loss if she is not able to hear as well as someone with normal hearing – hearing thresholds of 25 dB or better in both ears. Such loss may occur in varying degrees. In fact, hearing loss may be mild, moderate, severe, or profound. Moreover, it can affect one ear or both ears.

The different degree of hearing loss implies different ways to communicate and to partially alleviate the problem. 'Hard of hearing' people often resort to hearing aids or, in the case of a more profound loss, to cochlear implants, to compensate such loss, and they may be also able to communicate through spoken language. On the contrary, 'deaf' people may benefit truly little from such aids. The loss is so severe that it does not allow any minimum remedy. Thus, deaf people are not able to talk properly, unless they have become deaf in a late stage of life. They can only communicate through sign language.

The causes triggering deafness and hearing loss are numerous, and depending on their particular nature, they may lead to different types of loss, such as conductive– which affects the transmission of sound from the outer ear to the inner ear; and sensorineural hearing loss - due to a damaged cochlea, which is uncapable of transmitting the electrical impulses to the brain.

Deaf or hard-of-hearing people, compared to hearing people, are asked to face harder challenges, which come to affect the quality of their everyday lives in several respects. Thus, the physical limitation reveals itself at the functional, social, emotional and economic levels.

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 the so-called sign language, consisting of a set of gestures associated to specific images, events, or abstract concepts. Thanks to the recognition sign language has gained as a full-fledged language – featuring fundamental linguistic properties found in spoken languages – the former term 'deaf-mute' has been abandoned in favor of the single word deaf. In fact, although lacking hearing capacity and the ability to reproduce the words heard, deaf people are able to communicate by resorting to their own particular signed linguistic system.

Since ancient times, deaf people and their peculiar way of communicating, have been object of interest and curiosity. Passages of the Old Testament refer to the deaf as people accepted by society, since they were considered as part of the creation made by God. However, little was known about deafness. Unawareness concerning deafness and muteness persisted in Roman times. Deaf people were considered to be uncapable of taking care of themselves. Their inability to verbally express their opinion as hearing people affected their legal standing and led to exclusion from civilian life. The roman Emperor Giustiniano, in his *Corpus iuris civilis* of 534 AD, laid down some legal limitations to deaf people, such as the prohibition to make will and to enter into contracts, or the impossibility of inheritance.

During the 16th century, many religious men and scientists started to resort to different methods of education of the deaf based on writing as a means of communication. The first to embark on a program of education of the deaf was Pedro Ponce de León, a Benedictine monk of the Monastery of San Salvador de Ona, in Spain. He used a particular method based on a manual alphabet, through which he succeeded in educating many children from noble families. At that time, teachers were jealous of their methods, thus education for the deaf war private and reserved to members of rich families.

However, in the 18th century, unlike the majority of his colleagues, the French Catholic priest Charles-Michel De l'Épée was never jealous about his findings regarding education and deafness. On the contrary, he started to promote his method and to provide a more comprehensive education for the deaf. In fact, in 1760, he came to establish the first public school for deaf children in Paris, the National Institute for Deaf-Mutes. The school was open to all, without any distinction between social classes. On the basis of John Locke's principle, according to which ideas and sounds expressing them are linked through an arbitrary relationship, as in the case of ideas and written signs, De l'Épée developed a first recognizable type of sign language, elaborated on the basis of the signs used by his students to communicate with at home, to which the priest added new ones. By adding his manual alphabet, it became a complete language, with signs expressing grammar elements, such as prepositions, grammatical tenses, conjunctions, the subject of verbs, names and articles.

The French method of education for the deaf gradually draw attention from every European country, including Italy. Here, Tommaso Silvestri, an Italian priest, was 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. 'Silvestri's school was open to all the illustrious visitors and to those who wanted to follow the teaching of deaf-mutes for the foundation of their schools in the Italian states of the time. The first Italian institute to have ever been established was in Rome, in 1889, called *Regio Istituto Sordomuti*, still present in Street *Nomentana*, 54, in which the roman deaf were educated exclusively by means of the Italian sign language (*LIS*).

Sign language is defined as a language that uses a system of manual, facial, and other body movements as t he means of communication, especially among deaf people. Doubts have risen with concern to the nature of sign language as a fully-fledged language. However, important studies, carried out by the American William Stokoe first, and by a group of linguists at the Salk Institute in California later – in 1979 –, have assessed that, notwithstanding slight differences, sign languages are natural linguistic systems, each complying with a grammar unrelated to spoken language. They perform the natural communication tasks of all other languages and they seem to be sharing more or less the same linguistic organizational aspects. The fundamental contrasting element lies in the mimic-gestural modality of transmission.

3. THE INTERNATIONAL PERSPECTIVE

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. Due to its invisibility, deafness is not fully understood in the limitations and unease it entails. As a consequence, many countries still struggle 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. They demand respect, and also support, at the social, economic, educational and working levels. In particular, their focal point of attention remains 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), one of the oldest international organizations of persons with disabilities in the world. It was established in Rome, in 1951, during the 1st World Deaf Congress, under the direction of the Italian *Ente Nazionale Sordomuti (ENS*). Specifically, it was established within the framework of the United Nations, with the aim of promoting 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 levels. For this purpose, in 1958 the WFD launched the International Weak of the Deaf in Rome. In 2012, and from 2015 to 2019, the week has focused on sign language, and, in conformity with such initiatives, the United Nations has proclaimed the 23rd of September as the International Day of Sign Languages, starting from 2018, issuing the Resolution A/C.3/72/L.36/Rev.1 of November 14, 2017.

The United Nations has further demonstrated its commitment in fostering the protection of disabled – and among these, deaf – people's rights by adopting the UN Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, representing the cornerstone of the UN's action in this respect.

Art.1 CRPD, states that 'the purpose of the present 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 full and equal enjoyment of human rights by disabled persons results from the provision of facilities that ensure accessibility.

Art. 21 addresses the topic of accessibility, with specific reference to information, together with freedom of expression and opinion. At point (b), it calls upon States to promote all forms of communication, including 'sign languages, Braille, augmentative and alternative communication. With specific regard to deaf people's rights, the final point (e) stresses the requirement for States to recognize and promote the use of sign language.

Art. 24 addresses the issue of education, recognized by the Convention as a fundamental right to be ensured to people with disabilities. Disabled individuals shall enjoy the right of receiving an inclusive, quality and free primary and secondary education, without discrimination and with measures necessary to facilitating and maximizing their academic development. Deaf people shall be guaranteed with measures facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community.

Since being a real treaty, hence a binding formal agreement, it obliges, or strongly requires States parties to uphold and implement its provisions at the national level, by concretely embedding the provisions in the national legal system and consequently respecting them in the first place and ensuring that they are respected by others. Articles 33 and 34 of the UN CRPD lay down the requirements regarding implementation and monitoring - in the national and international systems - of the same provisions contained therein. However, many States parties – among these, Italy and France – have shown negligence in complying with such provisions.

4. THE EUROPEAN UNION FRAMEWORK

The European Union began to be involved in the protection of disabled persons' rights in the 1970s. The first measures to be adopted by the EU arose as part of soft law. In fact, these initiatives were characterized by a non-binding nature.

Their aim was to enhance the exchange of information between EU Member States, and they were confined to the areas of employment and vocational training.

In the 1990s, in the wake of the development of the United Nations' disability policy, after the adoption of the Standard Rules for the Equalization on Opportunities of Persons with Disabilities by the United Nations, in 1993, the European Union laid down the first comprehensive disability policy plan, named 'New Community Disability Strategy'. The 1996 Strategy focused on the principle of equality of opportunities and promoted human diversity, on the basis of the social model of disability. A year later, in 1997, the European Union also launched the European Disability Forum (EDF), consisting of an independent non-governmental organization, acting as an umbrella organization for all the ones representative of disabled persons in Europe. It was created with the intent of ensuring that decisions made for persons with disabilities are taken with but also by the same disabled individuals, by being led by persons with disabilities and their families. The main purpose of the EDF was to ensure persons with disabilities full inclusion in society and access to our human rights through our active involvement in policy development, implementation and monitoring of the UN Convention on the Rights of Persons with Disabilities in Europe. Furthermore, the EDF promoted the campaign for achieving the inclusion of a reference to disability in the European founding documents. It was concluded in 1999, thanks to the insertion of Art. 13 in the Amsterdam Treaty. The latter has been the first article referring to disability as a field for the battle against discrimination.

In the wake of the entry into force of the Amsterdam Treaty – May 1, 1999 - the European Union took an advanced and remarkable step in the protection of disabled people's rights, by issuing the Employment Equality Directive (Directive 2000/78/EC), in 2000, representing the very first European legislative initiative addressing discrimination in the field of disability. The Directive advocated equal treatment in the employment and occupation world, thus rejecting all kinds of discrimination – direct or indirect.

In 2000, in the wake of the adoption of the Employment Equality Directive, in order to ensure the protection of a wide range of human rights, not only regarding employment and occupation, also proper of disabled persons, the European Union adopted the EU Charter of Fundamental Rights, in Nice. It acquired the nature of a binding document upon the adoption of the Treaty of Lisbon in 2009; thus, it became directly applicable in the national legal system of its signatory States.

In 2003, the European Union launched the Disability Action Plan, a challenging long-term policy plan, first extended over the 2003-2010 period of time. It advocated full inclusion of disabled persons in society, by fostering the elimination of barriers to the full achievement of such integration. Built on the principle of equality of opportunities, it fostered the implementation of the Employment Equality Directive. The latest European Union Disability Action Plan (2010-2020) was launched with the aim of giving full effectiveness to the UN Convention on the Rights of Persons with Disabilities, signed by the EU Commission on 30 March 2007. In compliance with the principles enshrined therein, the EU DAP focused – and still focuses - on the issue of accessibility, regarded to as the priority issue of EU disability law and policy.

With specific regard to deaf people, accessibility is strongly advocated by the European Union of the Deaf, a not-for-profit non-governmental organization, entailing National Associations of the Deaf (NADs), established in 1985 in representation of the deaf community at the European level. Its action relied on three main long-term objectives: recognition of the right to use an indigenous sign language; empowerment through communication and information; and equality in education and employment. In order to achieve such purposes, it worked in close contact with the European Parliament. The liaison between the European Union of the Deaf and the European Parliament in fostering the rights of deaf people and the right to sign language has been, and still is, remarkable, and it led to the adoption of numerous legal initiatives in such sense. Namely, for instance, the Resolutions on Sign Language for Deaf People (1988 and 1998) the Parliamentary Assembly Recommendation 1598 (2003), the Brussels

Declaration (2010) and the Parliament Resolution on Sign Languages and Professional Sign Language Interpreters (2016).

5. THE NATIONAL CASE: ITALY

A comparison with France

Italy is one of the first countries, together with France and the United States, to have developed the use of sign language. Thanks to many outstanding figures in the field of sign language teaching and education, namely, for instance, Tommaso Silvestri, Abbot Benedetto Cozzolino, Abbot Ottavio Assaroti, Italy became the scene of the edification of numerous institutes for the education of the deaf. In fact, between the end of the 18th century and the beginning of the 19th century, in total were built 19 schools, which, despite the International Congress on Deaf-mutes held in Milan in 1880, gave a remarkable contribution to the development of the Italian deaf culture and of the fight for the protection of the rights of the deaf and to sign language.

The Italian deaf are represented by the former *Ente Nazionale per la Protezione e l'Assistenza dei Sordomuti,* then *Ente Nazionale sordi (ENS)* after the adoption of the Law 20 February 2006 n.95, which officially substituted the word 'deaf-mute' with 'deaf' in all legal provisions in force. On the basis of its Statute, approved at the XXV National Congress held by the same ENS, on 4 June 2015, the ENS represents, promotes and values the dignity and the autonomy of the deaf person, her full rights to citizenship in all fields of life, fostering sign language, the full communication and bilingualism.

Within the institutional and organizational framework of the Italian National Agency for the Deaf (Ente Nazionale Sordi – ENS), emerges the National Committee on Sign Language, established by the same Italian National Agency with the aim of carrying out the INSIGN Project designed at the European Union level by the DG JUSTICE of the European Commission, in 2013. aimed at improving the communication between deaf and hard-of-hearing people and the European Union Institutions by eliminating the communication barriers that exist at the EU level. Thus, it takes into account national sign languages and real-time text communication.

The Ente Nazionale Sordi's mission is inspired not only to the principles of the Italian Constitution and of the European Parliament Resolutions of 17 June 1988 and of 18 November 1998, but also, and most importantly, to the principles enshrined in the UN Convention on the Rights of Persons with Disabilities.

Italy appeared among the first signatories of the UN CRPD and it ratified it with Law 3 March 2009 n. 18. Most importantly, in order to implement the CRPD at the national level, it emerged as the first State to set out Guidelines on Disability and a Disability Action Plan, in line with the international principles outlined in the Convention. Despite embracing the principles of the UN CRPD, specifically those concerning the protection of the rights of deaf people, Italy has proved to be negligent and ineffective in this respect. Specifically, it lacks a law explicitly recognizing sign language as a fully-fledged language, thus worthy of the respect and protection of the national spoken language.

The Framework Law n. 104/1992 and the Law n. 95/2006 on the deaf person in the framework of civil invalidity, despite promoting 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, do not ensure the protection of the rights of deaf people as specific law fully dedicated to the latter would. In fact, by finally adopting the Framework Law n. 4679 on the *Citizenship rights of persons affected by deafness, auditory impairments in general and deaf blindness*, which has initiated its process in 2013, and it was transmitted to the Italian Chamber on 4 October 2017, Italy would ensure deaf people numerous benefits. Namely, the presence of an inclusive educational and schooling system, ensuring the full participation of deaf – and deaf blind – 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); 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; and finally, the strengthening of the right to health and to social assistance through the possibility to benefit from services offered by offices and public structures. The Framework Law n.4679 has been recently resumed by the Draft Law n. 2248. However, its relevant legislative procedure is still ongoing.

France emerges as one of the first countries – together with 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) - is the result of an educational process begun in the half of the 18th century, thanks to French Catholic Priest Charles-Michel de l'Épée, who elaborated a conventional sign language, resulting from the union of the gestures already used by the deaf and new ones added to represent objects, events and grammar structures of the French language.

The French deaf community is represented by the *Fédération Nationale des Sourds de France (FNSF),* at the national, European and International levels. It promotes significant role of sign language as a means of communication ensuring the full development of the deaf individual in all aspects of social and community life, especially in the field of education, in line with the principles enshrined in the Salamanca Statement on Principles, Policy and Practice on Special Needs Education - adopted by the World Conference on Special Needs Education, in Salamanca on 10 June 1994337 - of which the FNSF is a signatory. Since France has incorporated the recognition of French Sign Language in education legislation - specifically in the Law n. 102/2005, recognizing sign language as a full-fledged language in the Code of Education - the FNSF required 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.

On 18 February 2010, France has also ratified the UN CRPD and its Optional Protocol. However, little is has done to ensure full implementation of the provisions set out therein, in compliance with Articles 33-34 of the Convention. As a result, France lacks effectiveness in ensuring the protection of the rights of disabled – and deaf – persons.

Notwithstanding the adoption of the Law n. 102/2005, and the following ratification of the UN Convention on the Rights of Persons with Disabilities, the protection of the rights of French deaf people remains feeble. Therefore, the FNSF strongly advocates the achievement of the Constitutional recognition of French sign language. 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. Although the request of a Constitutional recognition of FSL has been recently submitted to the Secretary of State before the Prime Minister and the Ministry of Justice, it remains unanswered.

6. CONCLUSIONS

In conclusion, despite featuring among the first counties to have experienced the birth of sign language as we know it today, and notwithstanding the ratification of the UN CRPD – promoting the recognition of the use of sign language at Art. 21(e) - Italy and France still lack an effective – legal on the one hand, constitutional on the other – recognition of the right of deaf people to resort to sign language in all spheres of community life. The adoption of the Framework Law n. 104/1992 on the Assistance, Social Integration, and the Rights of Handicapped Persons and Law n. 95 20 February 2006 regarding the deaf person in the framework of civil invalidity in Italy, and the adoption of the more specific Law n. 102/2005 on Equality of Rights and Opportunities, Participation and Citizenship of Disabled Persons in France have provided deaf people with a partial enjoyment of their rights. Nevertheless, much is yet to be done in order to ensure Italian and French deaf and hearing-impaired persons inclusion in all fields of society on an equal basis with others.