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## BETWEEN DISABILITY AND CULTURE: THE SEARCH FOR A LEGAL TAXONOMY OF SIGN LANGUAGES IN THE EUROPEAN UNION

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**Abstract** Since the 1960s sign languages have been identified as natural human languages and conceived of as a key feature of Deaf culture and identity. Eschewing the notion of disability, deaf advocacy organisations have connected the use of sign language to linguistic and cultural rights. Despite the clear preference of deaf advocates, the legal protection of sign languages remains uneven and somewhat difficult to grasp, being situated at the intersection of disability rights and linguistic rights. Few attempts have been made to identify the extent to which sign languages are recognised and enshrined within domestic legal systems. This article aims to propose a novel taxonomy that focuses on the normative conceptualisation of sign language and deaf people in national legislation. Based on a comparative analysis and focusing on European Union Member States, it identifies three main approaches: an explicit ‘minority’ approach—ie the express recognition of deaf persons as a linguistic minority; a more nuanced ‘cultural approach’—which acknowledges sign language as autonomous language and provides for promotional measures; and a ‘disability’ approach—which mandates and/or promotes the use of sign language primarily as an accessibility measure.

**Keywords:** sign languages, Deaf culture, disability, United Nations Convention on the Rights of Persons with Disabilities, comparative methods, legal taxonomy.

## I. INTRODUCTION

Since the 1960s, sign languages have been identified as natural human languages,<sup>1</sup> and conceived of as a key feature of Deaf culture and identity.<sup>2</sup> This tallies with the archetypal distinction, put forward in the mid-1970s by Woodward, between deaf, as a person with a hearing impairment, and ‘Deaf’, as an individual utilising sign language.<sup>3</sup> In the 1980s, the Deaf pride movement pointed to Deaf identity as being primarily characterised by the use of sign language.<sup>4</sup> In the early 2000s, among others, Ladd articulated Deafhood in identitarian terms, as resistance to ‘medicalisation’ of hearing impairments.<sup>5</sup> More generally, eschewing the notion of disability or impairment, deaf advocates have strongly connected the use of sign language to linguistic and cultural rights.<sup>6</sup> The World Federation of the Deaf (WFD), the international umbrella organisation that represents deaf associations from 133 States globally,<sup>7</sup> identifies deaf people as belonging to a distinct ‘cultural and linguistic community who use sign language as a mother tongue or natural language to communicate’,<sup>8</sup> rather than as persons with disabilities.<sup>9</sup>

Despite the clear preference of deaf advocates to connect sign language to linguistic and cultural rights, the legal protection of sign languages remains uneven and somewhat difficult to grasp, both at the international and domestic levels, located at the intersection between disability rights and linguistic rights.<sup>10</sup> At the domestic level, the recognition of sign language as a minority language is patchy and States have adopted different regulatory approaches. The WFD<sup>11</sup> distinguishes States that recognise sign language at the constitutional level from those that protect sign language by means of legislation. Further, the WFD identifies States that have included provisions related to the protection and promotion of their national sign language in their general language legislation. It then distinguishes between States that have adopted a specific Sign Language Act and those that have implemented

<sup>1</sup> WC Stokoe, *Sign Language Structure: An Outline of the Visual Communication Systems of the American Deaf*, Studies in Linguistics, Occasional Papers 8 (University of Buffalo 1960).

<sup>2</sup> JJ Murray, ‘Linguistic Human Rights Discourse in Deaf Community Activism’ (2015) 15(4) *SignLangStud* 379.

<sup>3</sup> J Woodward and TE Allen, ‘Models of Deafness Compared: A Sociolinguistic Study of Deaf and Hard of Hearing Teachers’ (1993) 79(1) *SignLangStud* 113; See also JC Woodward, ‘Implications for Sociolinguistic Research among the Deaf’ (1972) 1(1) *SignLangStud* 1.

<sup>4</sup> L Mauldin, ‘“Coming Out” Rhetoric in Disability Studies: Exploring the Limits of Analogy by Looking at its Fit with the Deaf Experience’ (2018) 38(2) *DisabilStudQ* <<https://doi.org/10.18061/dsq.v38i2.5863>>.

<sup>5</sup> P Ladd, *Understanding Deaf Culture: In Search of Deafhood* (Multilingual Matters 2003).

<sup>6</sup> *ibid.*

<sup>7</sup> See WFD <<https://wfdeaf.org/>>.

<sup>8</sup> WFD, ‘Know and Achieve your Human Rights Toolkit’ (WFD August 2016) <<https://wfdeaf.org/wp-content/uploads/2017/01/7.-Human-Rights-Toolkit.pdf>>.

<sup>9</sup> ER Harvey, ‘Deafness: A Disability or a Difference’ (2008) 2(1) *HealthL&Pol* 42; HL Lane, ‘Do Deaf People Have a Disability?’ (2002) 2(4) *SignLangStud* 356.

<sup>10</sup> Murray (n 2).

<sup>11</sup> WFD, ‘The Legal Recognition of National Sign Languages’ <<https://wfdeaf.org/news/the-legal-recognition-of-national-sign-languages/>>.

broader laws that recognise other forms of communication used by deaf persons and usually include communication used by deafblind people.<sup>12</sup> The WFD also identifies a number of States that protect sign languages by virtue of legislation related to the functioning of a language council. Lastly, the WFD also identifies States which recognise their respective sign language(s) by way of general disability legislation.<sup>13</sup>

Other attempts to identify regulatory approaches to the protection of sign languages have been made by the European Union of the Deaf<sup>14</sup> and De Meulder.<sup>15</sup> Very much in line with the WFD, De Meulder suggests ‘that the different sorts of rights (if any) granted by means of recognition at the national level are illustrative of the ways in which countries accommodate (or neglect to accommodate) linguistic and cultural diversity’. She identifies five approaches: constitutional recognition; recognition by means of general language legislation; recognition by means of a sign language law or act; recognition by means of a sign language law or act, including other means of communication; and recognition by means of legislation on the functioning of the national language council.<sup>16</sup> Furthermore, De Meulder argues that, in some States, an implicit legal recognition may exist.<sup>17</sup>

Other scholars have engaged with sign language legislation in selected States. For example, Venade de Sousa discusses the legal recognition of sign language *vis-à-vis* the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD).<sup>18</sup> His analysis centres on the Portuguese and Catalan models, and generally argues for ‘contextualising’ the protection of sign languages, taking into account sociopolitical circumstances.<sup>19</sup> Wilks, in a recent contribution, distinguishes between ‘Deaf-disabled rights’ and ‘language minority rights afforded to the Deaf community’.<sup>20</sup> He posits that the difference between language minority rights as opposed to Deaf-disabled rights is that the former rights ‘are afforded to deaf people from the perspective of language rather than disability’.<sup>21</sup> He suggests that language

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.* This classification has been used and referred to by Amezcua-Aguilar and Amezcua-Aguilar. T Amezcua-Aguilar and P Amezcua-Aguilar, ‘Contextos inclusivos: el reconocimiento de la lengua de signos como derecho de las personas con diversidad funcional’ (2018) 8(2) *IndexComunicación* 123.

<sup>14</sup> M Wheatley and A Pabsch, *Sign Language Legislation in the European Union* (2nd edn, European Union of the Deaf 2012).

<sup>15</sup> M De Meulder, ‘The Legal Recognition of Sign Languages’ (2015) 15(4) *SignLangStud* 498. See also M De Meulder and JJ Murray, ‘Buttering Their Bread on Both Sides?’ (2017) 41 *LangProblems&LangPlan* 136; M De Meulder, JJ Murray and RL McKee (eds), *The Legal Recognition of Sign Languages: Advocacy and Outcomes Around the World* (Multilingual Matters 2019).

<sup>16</sup> De Meulder, ‘The Legal Recognition of Sign Languages’, *ibid* 500.

<sup>17</sup> *ibid* 504.

<sup>18</sup> F Venade de Sousa, ‘Essential Framework of the Legal Status of Sign Language: Recognition and Officiality’ (2022) 78 *RevLlengua i Dret* 177.

<sup>19</sup> *ibid.*

<sup>20</sup> R Wilks, ‘Developing Deaf Jurisprudence: The Role of Interpreters and Translators’ in C Stone et al (eds), *Routledge Handbook on Sign Language Translation and Interpretation* (Routledge 2022).

<sup>21</sup> *ibid* 252.

recognition ‘is likely to result in more favourable, positive outcomes for deaf people in terms of how they are perceived and treated by hearing people in society’.<sup>22</sup> However, Wilks, while mentioning relevant international and regional legal frameworks, focuses on the law of the United States and United Kingdom. He critically analyses what he calls the ‘Deaf Legal Dilemma’ but does not endeavour to provide a classification of legal approaches to sign languages and remains focused on the right to translation and interpretation.<sup>23</sup>

This article builds on current scholarship. It acknowledges that the classifications by the WFD and De Meulder shine a light on the way in which sign languages are regulated in domestic contexts, but it contends that they are descriptive in that they focus on the *type of act* that affords protection to sign languages, rather than on the normative approach underpinning national legislation. Thus, moving away from these classifications, this article aims to put forward a novel, yet more nuanced, taxonomy that focuses on the normative conceptualisation of sign language and deaf people in national legislation. It identifies three main approaches: an explicit ‘minority’ approach—ie the express recognition of deaf persons as a linguistic minority; a more nuanced ‘cultural approach’—which acknowledges sign language as autonomous language and provides for promotional measures; and a ‘disability’ approach—which mandates and/or promotes the use of sign language primarily as accessibility measure.

Being part of a research project,<sup>24</sup> the comparative analysis conducted has a discrete geographical scope: it focuses on the 27 Member States of the European Union (EU). The choice of this geographical scope is also premised on the idea that all States considered belong to what has been referred to as the European ‘geo-legal’ sphere of integration,<sup>25</sup> and are parties to the CRPD. Further, the article adopts a specific terminological approach. It refers to deaf people/deaf persons, but will occasionally use ‘Deaf’ with upper-case ‘D’ to refer to sociocultural entities or established concepts such as ‘Deaf community’ or ‘Deaf culture’.<sup>26</sup> This approach is consistent throughout, regardless of

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

<sup>24</sup> The project (‘Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity through European Union Law: Exploring New Paths – DANCING’) commenced in September 2020 and will end in August 2025. It is funded by the European Research Council.

<sup>25</sup> R Toniatti, ‘Los derechos del pluralismo cultural en la nueva Europa’ (2000) 58(II) *RevVascaAdminPúb* 17; F Palermo, ‘Quanto è morbido il *soft law*? La tutela non giurisdizionale dei diritti delle minoranze nelle aree geogiuridiche europee’ (2022) 1 *RivDirComp* 74.

<sup>26</sup> A Kusters, M De Meulder and D O’Brien, ‘Innovations in Deaf Studies: Critically Mapping the Field’ in A Kusters, M De Meulder and D O’Brien (eds), *Innovations in Deaf Studies: The Role of Deaf Scholars* (OUP 2017) 8.

how national legislation approaches the matter. When referring to disability, it uses person-first language in line with the CRPD.<sup>27</sup>

Following these initial remarks, the article proceeds as follows. Section II outlines the comparative methodology underpinning the analysis and the usefulness of taxonomies in comparative legal analysis. Section III moves on to summarise the key features of sign languages and the legal challenges associated with them. Then Section IV briefly discusses the approach of international, regional and EU law to the protection of sign languages, that inevitably informs national legislation. Section V identifies those States that have opted for an explicit constitutional protection of sign languages and discusses the merit of such a choice. Section VI introduces the proposed new taxonomy of the identified approaches. Section VII provides some concluding remarks, highlighting areas where further comparative analysis would be valuable.

## II. METHODOLOGY

### A. Comparative Method and Taxonomies

The twentieth century ‘has seen a major rise of comparative law as a research methodology in Europe and around the world’, but recently its ‘methodological limits have been exposed’ and different research approaches have become more widespread.<sup>28</sup> Comparative law nevertheless retains its scholarly significance, and the endless questioning of its functioning and methodology serves to advance its epistemological value.<sup>29</sup> Van Hoecke and Warrington in a seminal article published in this journal in 1998 suggested that comparative law is ‘concerned with the description and the [systematisation] of law, but this is from an external point of view’, in order to develop ‘some neutral framework’.<sup>30</sup> They recognise that such an endeavour might be problematic from a practical and an epistemological point of view, but they equally recognise the importance of creating a ‘common language with which several legal systems could be described in a way accessible to and completely understandable by lawyers belonging to any one of those legal systems’.<sup>31</sup>

<sup>27</sup> EJ Kakoullis and K Johnson, *Recognising Human Rights in Different Cultural Contexts* (Palgrave 2020) 4–5; A Broderick and D Ferri, *International and European Disability Law and Policy. Text, Cases and Materials* (CUP 2019) 5.

<sup>28</sup> ‘The Editor’s Introduction: The End of Comparative Law?: Legal Research Methods for the 21st Century’ (2016) 23(2) MJ 350. In a similar vein, Valcke introduces her volume *Comparing Law* with a prologue titled ‘The “Malaise” of Comparative Law’ and highlights the extent to which the very status of comparative law as an academic discipline is periodically called into question. See C Valcke, *Comparing Law: Comparative Law as Reconstruction of Collective Commitments* (CUP 2018) 8.

<sup>29</sup> M Siems, ‘New Directions in Comparative Law’ in M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019).

<sup>30</sup> M Van Hoecke and M Warrington, ‘Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law’ (1998) 47(3) ICLQ 495. <sup>31</sup> *ibid.*

Glenn, when investigating the aims of comparative law, inter alia, discusses comparative law as an instrument for advancing knowledge and enhancing a better comprehension of law itself, but also as an evolutionary and taxonomic discipline.<sup>32</sup> This article embraces those aims in putting forward a taxonomy of sign language protection, yet one that is ‘problematised’, nuanced and has normative, rather than merely descriptive, significance. Taxonomies can be criticised for fixing the objects of classification exactly for the purpose of their classification. Being inherently static, they cannot be used for the purpose of ‘assessing or appreciating what is often referred to as the “development” of law or its variation over time’.<sup>33</sup> However, as Mattei suggests, taxonomies are ‘as important in the law as in any other discipline’ as they provide ‘the intellectual framework of the law and [make] the law’s complexity more manageable’.<sup>34</sup> Mattei also posits that ‘[i]n the world of legal globalization, transfers of knowledge are needed not only within different areas of a given legal system but also between different legal systems’ and a legal taxonomy is a tool that allows mutual learning and arguably transferability. Echoing Hirschl’s words, ‘one should never underestimate the significance of the “concept formation through multiple description” level of comparative inquiry’.<sup>35</sup> Taxonomies continue to be a widespread endeavour and their significance is periodically highlighted. In a recent work, Pascual et al argue that ‘taxonomies provide a common lexicon and discrete categories to facilitate communication, collaboration, and harmonization across cultures, languages, and jurisdictions, as well as to understand where there is divergence’.<sup>36</sup>

Siems, discussing taxonomies of legal systems, contends that ‘legal taxonomies of countries have a descriptive, analytical and normative dimension’.<sup>37</sup> *Mutatis mutandis*, such dimensions also characterise classifications of legal norms related to a specific issue in micro-level comparative analysis,<sup>38</sup> like the one this article endeavours to provide. As noted in the Introduction, the taxonomy presented in this article does not focus on the type of act or provisions related to sign language. Rather, it attempts to identify the main normative approach taken towards sign

<sup>32</sup> HP Glenn, ‘Aims of Comparative Law’ in J Smits et al (eds), *Elgar Encyclopedia of Comparative Law* (2nd edn, Edward Elgar 2023).

<sup>33</sup> HP Glenn, ‘Comparative Legal Families and Comparative Legal Traditions’ in Reimann and Zimmermann (n 29).

<sup>34</sup> U Mattei, ‘Three Patterns of Law: Taxonomy and Change in the World’s Legal Systems’ (1997) 45(1) *AmJCompL* 5.

<sup>35</sup> R Hirschl, ‘The Question of Case Selection in Comparative Constitutional Law’ (2005) 53(1) *AmJCompL* 125.

<sup>36</sup> M Pascual et al, ‘Building a Global Taxonomy of Wildlife Offenses’ (2021) 35 *ConservBiol* 1903, 1904.

<sup>37</sup> M Siems, ‘Varieties of Legal Systems: Towards a New Global Taxonomy’ (2016) 12(3) *JInstEcon* 581.

<sup>38</sup> J Bell, ‘The Value of Micro-Comparison’ in H Dedek (ed), *A Cosmopolitan Jurisprudence: Essays in Memory of H. Patrick Glenn (ASCL Studies in Comparative Law)* (CUP 2021).

language as it emerges from legislation. In doing so, it aims to identify what concepts, assumptions and rationales underpin current sign language laws and the ensuing rights afforded to deaf people. In that regard, using Sherwin's approach,<sup>39</sup> it could be framed as a 'reason-based classification' which organises legal materials according to the 'broader rationales that support them'. On the whole, the mapping and taxonomy proposed here support the engagement with conceptual frameworks for studying the rights of deaf people. Further, they provide input to advance the protection of these rights.

### *B. Comparing Legislation on Sign Languages*

This article is not concerned with a macro-comparison and does not engage with legal systems, legal families or legal traditions. It conducts what is usually termed as 'micro-comparison',<sup>40</sup> by focusing on legislation related to sign language. It adopts a synchronous dimension of comparison,<sup>41</sup> meaning that the comparative research conducted here takes into account sources in force in the States analysed at the time of writing. Nonetheless, it incorporates elements of diachronic analysis, by highlighting recent legal developments and juxtaposing present and past. As noted by Scarciglia, 'the two temporal perspectives—synchronic and diachronic—are not incompatible', and their simultaneous adoption is often useful or even necessary to understand the law better.<sup>42</sup>

Further, this article is underpinned by a functionalist approach to comparison.<sup>43</sup> It focuses on a specific legal issue (ie the protection of sign language) and investigates the legal solutions adopted in the compared legal systems. Hirschl contends that by studying various manifestations of, and solutions to, certain challenges, 'our understanding of key concepts' becomes more sophisticated and analytically sharper.<sup>44</sup> The functional method, despite its pitfalls,<sup>45</sup> allows also a discussion of whether the solutions adopted can be considered 'functional equivalents'. As Scarciglia notes, 'functionalism represents a reasonably flexible way to allow brilliant results in comparison, though it is not always easy to define what function [is served by] a legal institute or a rule in two different legal systems'.<sup>46</sup>

There is a general awareness that 'law in action' might be rather different from 'law in the books', and that deep comparison requires more than engagement

<sup>39</sup> E Sherwin, 'Legal Taxonomy' (2009) 15(1) LEG 25.

<sup>40</sup> R Scarciglia, 'Reconsidering Comparative Methodology in Administrative Law' (2019) 10(4) BeijingLRev 1051. <sup>41</sup> *ibid.* <sup>42</sup> *ibid.*

<sup>43</sup> K Zweigert and H Kötz, *An Introduction to Comparative Law* (3rd edn, Clarendon 1998). See also J Husa, 'Functional Method in Comparative Law – Much Ado About Nothing?' (2013) 2(1) EurPropLJ 4; J Husa, 'Traditional Methods' in M Siems and PJ Yap (eds), *The Cambridge Handbook of Comparative Law* (CUP 2024). <sup>44</sup> Hirschl (n 35).

<sup>45</sup> U Kischel, 'The Comparative Method' in U Kischel, *Comparative Law* (OUP 2019).

<sup>46</sup> Scarciglia (n 40).

with *littera lege*.<sup>47</sup> This article, being concerned with creating a taxonomy of the regulatory approaches chosen in the States considered and adopting a relatively broad scope (with a high number of States), necessarily focuses primarily on statutory sources, rather than case law, which is, however, mentioned at various junctures. While acknowledging the limits of the analysis, this article is premised on the idea that engagement and appreciation of the legislation itself, which is at the core of this taxonomy, is the basis for further research. Where feasible, the article also takes into account national scholarship, with the aim of supporting a deep understanding of the law. In doing so it engages with the so-called ‘cultural formant’.<sup>48</sup> In fact, this article goes beyond ‘the mere collation or confrontation of information about different legal system[s]’.<sup>49</sup> It aims to construe a taxonomy that also embeds normative value, by considering what Sherwin terms as ‘posited rules’ and ‘attributed rules’, ie rules that are ‘drawn from the decisions of courts and legislatures but are not posited by those authorities’.<sup>50</sup>

As most scholars highlight, language may act as a barrier in comparative research, especially research with a broad geographical scope. Husa, for example, posits that ‘law and language are deeply intertwined and for a comparative law scholar this causes a specific problem concerning information about foreign law’.<sup>51</sup> In an effort to combine an academically ambitious approach with pragmatism, where feasible primary sources in national languages were consulted or reliance was placed on official English translations where available, and on unofficial translated material where needed. Alongside scholarly work in the English language, legal scholarship in other languages supported the comparative analysis.

### III. SIGN LANGUAGES AND DEAF CULTURE

#### A. Characterising Sign Languages

Sign languages are conveyed by means of hand movements, the use of facial expressions and lip patterns, taking the form of visual–gestural actions. From a linguistic perspective, they are fully fledged natural languages,<sup>52</sup> and their

<sup>47</sup> M Van Hoecke, ‘Deep Level Comparative Law’ in M Van Hoecke (ed), *Epistemology and Methodology of Comparative Law* (Hart Publishing 2004).

<sup>48</sup> R Sacco, ‘Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)’ (1991) 39(1) *AmJCompL* 1.

<sup>49</sup> JS Bell, ‘Comparative Administrative Law’ in Reimann and Zimmermann (n 29).

<sup>50</sup> Sherwin (n 39).

<sup>51</sup> J Husa, ‘Language Skills and Comparative Law – Finding a Balance?’ (*ASCL Blog*, 18 October 2021) <<https://ascl.org/language-skills-and-comparative-law-finding-a-balance/>>.

<sup>52</sup> W Sandler, ‘Sign Language: Overview’ in K Brown (ed), *Encyclopedia of Language and Linguistics* (2nd edn, Elsevier Science 2006) 328; H Eichmann, ‘Planning Sign Languages: Promoting Hearing Hegemony? Conceptualizing Sign Language Standardization’ (2009) 10(3) *Current Issues in Language Planning* 293; B Woll and R Sutton-Spence, ‘Sign Languages’ in J Simpson (ed), *The Routledge Handbook of Applied Linguistics* (Routledge 2011) 359; L



grammar, morphology and phonology are comparable to those of spoken languages.<sup>53</sup> Given normal exposure, sign languages are naturally learned by children, without further instruction.<sup>54</sup>

Due to divergent historical developments, sign languages are not necessarily confined within distinct geographical boundaries or nation-States. In fact, they have developed whenever deaf people have formed a community.<sup>55</sup> However, most sign languages (especially in Europe) are nowadays associated with a State dimension,<sup>56</sup> and each State has its own national sign language.<sup>57</sup> Further, sign languages continue to evolve and develop,<sup>58</sup> and new forms are currently emerging in different communities.<sup>59</sup> To date, between 159<sup>60</sup> and 227<sup>61</sup> sign languages globally have been identified by linguistic research.

Sign languages are typically unwritten and do not encompass written literatures.<sup>62</sup> Dictionaries of sign languages have often been described as ‘bilingual word lists’<sup>63</sup> using written language and illustrations that only very roughly translate the meaning, variation and nuances of sign language vocabulary. Further, the use of dictionaries and other language planning tools to ‘correct’ perceived linguistic ‘wrongs’ in sign languages<sup>64</sup> is often experienced as imposition and therefore rejected by many native users of sign languages.<sup>65</sup>

For (spoken) minority languages, standardisation has often brought about empowerment in the form of acknowledgement as ‘proper’ languages<sup>66</sup> and works of reference have been useful tools in this respect. In the context of sign languages, standardisation seems only in some instances to be motivated by aims of legal recognition.<sup>67</sup> The legal recognition of the Dutch Sign Language (Nederlandse Gebarentaal; NGT) is an interesting case in this

Kauppinen and M Jokinen, ‘Including Deaf Culture and Linguistic Rights’ in M Sabatello and M Schulze (eds), *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2013) 133.

<sup>53</sup> Sandler *ibid* 329; Kauppinen and Jokinen *ibid* 133–4.

<sup>54</sup> Woll and Sutton-Spence (n 52) 366; Wheatley and Pabsch (n 14) 16.

<sup>55</sup> M Jaraisy and R Stamp, ‘The Vulnerability of Emerging Sign Languages: (E)merging Sign Languages?’ (2022) 7 *Languages* 50; SCE Batterbury, ‘Language Justice for Sign Language People: the UN Convention on the Rights of Persons with Disabilities’ (2012) 11 *LangPol* 257.

<sup>56</sup> J Bakken Jepsen et al, *Sign Languages of the World: A Comparative Handbook* (De Gruyter Mouton 2015).

<sup>57</sup> Wheatley and Pabsch (n 14) 12.

<sup>58</sup> C Tannenbaum-Baruchi and P Feder-Bubis, ‘New Sign Language New(s): The Globalization of Sign Language in the Smartphone Era’ (2018) 33(2) *Disability&Soc* 309.

<sup>59</sup> Jaraisy and Stamp (n 55) 49.

<sup>60</sup> DM Eberhard, GF Simons and CD Fennig (eds), *Ethnologue: Languages of the World* (26th edn, SIL International 2023) <<https://www.ethnologue.com/>>.

<sup>61</sup> H Hammarström et al (eds), *Glottolog 5.0* (Max Planck Institute for Evolutionary Anthropology 2024) <<https://glottolog.org/>>.

<sup>62</sup> J Branson and D Miller, ‘National Sign Language and Language Policies’ in S May and NH Hornberger (eds), *Encyclopedia of Language and Education: Language Policy and Political Issues in Education* (Springer 2008) 153.

<sup>63</sup> Woll and Sutton-Spence (n 52) 365. <sup>64</sup> *ibid.*

<sup>65</sup> *ibid.*

<sup>66</sup> Eichmann (n 52) 296 citing E Brandhoff, ‘Zur Standardisierung von Gebärdensprachen. Die Rolle der Linguistik bei der Ausformung einer Gebärdens-Hochsprache’ (2005) 19(71) *Zeich* 448.

<sup>67</sup> C Lucas, ‘The Role of Variation in Lexicography’ (2002) 3 *SignLangStud* 323 as cited in Woll and Sutton-Spence (n 52) 365.

regard. Since the 1980s the Dutch Deaf Council had sought to secure legal recognition for NGT as an official language of the Netherlands.<sup>68</sup> Following their lobbying efforts, the Department of Education and Department of Health and Welfare set up the Committee for Recognition of the Sign Language of the Netherlands in 1996 and established that legal recognition would only be possible once NGT was standardised.<sup>69</sup> In fact, such recognition only occurred in 2020 when the Law on the Recognition of Sign Language of the Netherlands was passed by the Dutch Parliament.<sup>70</sup>

Further, while sign languages could arguably fit the categorisation of ‘lesser used languages’, which are usually associated with minority groups and minority protection, the question remains whether deaf people can be understood as a linguistic minority. It holds true that language recognition does not necessarily coincide with the legal recognition or protection of minorities or groups of language users.<sup>71</sup>

### *B. Sign Languages, the Deaf Community and Group Identity*

Many people identifying as deaf emphasise the inescapable relationship between sign language and their culture,<sup>72</sup> through which they construe their identity as a linguistic and/or cultural minority rather than as persons with disabilities.<sup>73</sup> An array of scholarship within the remit of Deaf studies has focused on such collective claims of identity and cultural production to explain Deaf culture.<sup>74</sup> Psychological and sociological research has also investigated Deaf culture from different perspectives. Leigh’s book titled *A Lens on Deaf Identities*,<sup>75</sup> for example, examined the sociocultural explanations of deaf identities and how they rely on minority or ethnic models of deafness. Ladd introduced the term ‘Deafhood’ to elaborate on what had been described as ‘deafness’. According to Ladd, ‘Deafhood’ is a process of ‘becoming’, in which native sign language users learn, develop and create a shared cultural experience different from hearing peers.<sup>76</sup> This conceptualisation contrasts deaf people from ‘deafened’ persons, who in the course of their life acquire a hearing impairment, at times making the use of sign languages a necessity or asset.<sup>77</sup> In line with Deaf studies, advocacy has

<sup>68</sup> Eichmann (n 52) 296.

<sup>69</sup> *ibid* 296–7; B Van den Bogaerde and T Schermer, ‘Deaf Studies in the Netherlands’ (2007) 23 *DeafWorlds* 27 as cited in Eichmann (n 52) 297.

<sup>70</sup> Eerste Kamer der Staten-Generaal, ‘Stemming Erkenning Nederlandse gebarentaal’ Verslag van de vergadering van 13 oktober 2020 (2020/2021 nr. 5) (Wet erkenning Nederlandse gebarentaal) (34562) <[https://www.eerstekamer.nl/verslagdeel/20201013/erkenning\\_nederlandse\\_gebarentaal](https://www.eerstekamer.nl/verslagdeel/20201013/erkenning_nederlandse_gebarentaal)>.

<sup>71</sup> T Skutnabb-Kangas, ‘Language Rights’ in J Jaspers, J Östman and J Verschuereen (eds), *Society and Language Use* (John Benjamins Publishing Company 2010) 215.

<sup>72</sup> Kauppinen and Jokinen (n 52) 133.

<sup>73</sup> Batterbury (n 55) 260; Ladd (n 5) 14–15.

<sup>74</sup> Kusters, De Meulder and O’Brien (n 26).

<sup>75</sup> IW Leigh, *A Lens on Deaf Identities* (OUP 2009).

<sup>76</sup> Ladd (n 5) 4, 14.

<sup>77</sup> *ibid* 14–5.

traced the contours of the ‘Deaf community’ as a group of people who share similar experiences and sign language as their primary mode of expression.

However, the uneasy relationship between deafness and disability remains an ‘elephant in the room’.<sup>78</sup> In this respect, the WFD Charter on Sign Language Rights for All (WFD Charter)<sup>79</sup> is illustrative as, while not a legal text, it represents a comprehensive document on the aspirations of the Deaf community worldwide. The WFD Charter navigates a liminal space by mentioning disability, while articulating a cultural identity of the Deaf community. In this regard, as will be discussed in the next section, it has the same textual fuzziness as the CRPD (which is also cited at the outset alongside a range of human rights treaties and soft law).<sup>80</sup> The WFD Charter emphasises ‘the paradigm shift’ from the medical model of disability, which equates disability to the individual’s impairment, to the human rights model of disability affirmed by the CRPD, which conceptualises disability as stemming from the interaction between an individual’s impairments and external barriers, recognises the inherent dignity of persons with disabilities, and situates disability within human diversity.<sup>81</sup> To this end, the WFD Charter locates deaf persons within the broader disability community.<sup>82</sup> It highlights that ‘[d]eaf people are human rights holders entitled to equal opportunities to participate in society in the same way as other citizens’ and are part of a unique intersectionality of rights, belonging to both linguistic and cultural groups, and the disability movement’.<sup>83</sup> The WFD Charter also anchors the status of sign languages to their legal recognition ‘as official languages, equal to national spoken and written languages’<sup>84</sup> but does not articulate an explicit minority protection. Busatta argues that the WFD Charter focuses on protection and promotion, through the empowerment of deaf persons.<sup>85</sup> She claims that the WFD Charter designs a role for political institutions ‘to effectively grant’ rights to people belonging to the Deaf community.

In a similar fashion to the WFD Charter, the WFD Action Plan 2016–2019 echoes the CRPD, which is also cited several times, by stating that the WFD ‘works tirelessly for the recognition of sign languages as part of human

<sup>78</sup> Among others, see M Corker, ‘Deaf Studies and Disability Studies. Extended Review’ (2009) 15(6) *Disabil&Soc* 949. See also J Sinecka, “‘I Am Bodied’”. “I Am Sexual”. “I Am Human”. Experiencing Deafness and Gayness: A Story of a Young Man’ (2008) 23(5) *Disabil&Soc* 475; S Burch and A Kafer, *Deaf and Disability Studies: Interdisciplinary Perspectives* (Gallaudet University Press 2010).

<sup>79</sup> WFD, ‘WFD Charter on Sign Language Rights for All’ (WFD Charter) <<https://wfdeaf.org/charter/>>.

<sup>80</sup> *ibid*, art 1(1).  
<sup>81</sup> T Degener, ‘A New Human Rights Model of Disability’ in V Della Fina, R Cera and G Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017).

<sup>83</sup> WFD Charter (n 79) art 2(3).

<sup>82</sup> WFD Charter (n 79) art 1(2).  
<sup>84</sup> *ibid*, art 2(1).  
<sup>85</sup> L Busatta, ‘The Legal Recognition of Sign Languages in an Intersectional Perspective’ (2022) 1(1) *CompL&Lang* 74.

diversity and aims to improve the status of national sign languages'.<sup>86</sup> In the European context, the Brussels Declaration on Sign Languages in the European Union (the Brussels Declaration)<sup>87</sup> calls for the legal recognition of sign languages 'on an equal footing with the respective spoken languages of the Member States', stating that deaf people are users of sign languages forming communities equal to other linguistic and cultural minorities. Interestingly, disability is not mentioned in the document, although the CRPD is recalled as one of the legal means for the implementation of the human rights of deaf people.<sup>88</sup>

Despite native sign language users often having favoured a classification as a linguistic and/or cultural group, as will be further discussed in the subsequent section, the CRPD, and more broadly the disability discourse, has added a layer of complexity, pushing the protection of sign languages under the remit of disability rights.

#### IV. THE INTERNATIONAL AND REGIONAL FRAMEWORKS

The previous section briefly outlined the key features of sign languages and their connection to Deaf culture. This section discusses how sign languages have been framed in international law and in European (Council of Europe (CoE) and EU) law with a view to situating the discussion of domestic types of protection of sign languages.

##### *A. Sign Languages in the UN Legal Framework: From Invisibility to the CRPD*

Before the CRPD, none of the core human rights treaties protected sign languages and Deaf culture explicitly.

The Universal Declaration of Human Rights (UDHR) and other treaties include language as one of the protected grounds of discrimination.<sup>89</sup> Further,

<sup>86</sup> WFD, 'World Federation of the Deaf Action Plan 2016–2019' (WFD 2016) <<https://wfdeafnew.wpenginepowered.com/wp-content/uploads/2016/10/Action-Plan-2016-2019.pdf>>.

<sup>87</sup> European Union of the Deaf, '2010 Brussels Declaration on Sign Languages in the European Union' (19 November 2010) <[http://www.gehoerlosen-bund.de/browser/567/brussels\\_declaration\\_final.pdf](http://www.gehoerlosen-bund.de/browser/567/brussels_declaration_final.pdf)>.<sup>88</sup> *ibid.*

<sup>89</sup> Universal Declaration on Human Rights (adopted 10 December 1948) 217 A(III) (UN General Assembly) (UDHR) art 2; International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 2200A (XXI) (ICESCR) art 2. For example, art 2 of the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) requires States Parties 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Alongside obligations related to procedural rights in a court of law (ICCPR, art 14), art 24 of the ICCPR states that the rights of the child must be protected by the State without any discrimination on all the grounds included in art 2 (including language). See R Dunbar, 'Minority Language Rights in International Law' (2001) 50(1) ICLQ 90.

Article 27 of the International Covenant on Civil and Political Rights (ICCPR) recognises the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture and language inside the community.<sup>90</sup> Alongside the ICCPR, the UN Convention on the Rights of the Child (CRC) protects linguistic rights by providing that a child belonging to a linguistic minority shall not be denied the right to enjoy their own culture or language.<sup>91</sup> Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises ‘the right of everyone ... to take part in cultural life’, and it is seen by the Committee on Economic Social and Cultural Rights (CESCR) as guaranteeing minority and indigenous groups the freedom to practise and promote awareness of their cultures.<sup>92</sup> On the whole, human rights law provides for what Dunbar calls ‘a regime of linguistic tolerance’ including ‘measures which aim to protect speakers of minority languages from discrimination and procedural unfairness, among other things’.<sup>93</sup> Soft-law documents, such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, recognise the right of minority groups to enjoy their own culture and language without discrimination,<sup>94</sup> encompassing a regime of linguistic promotion and certain ‘positive’ rights to key public services, such as education and public media, through the medium of minority languages.<sup>95</sup> However, they do not specifically mention deaf people or sign languages.

It not easy to infer from the letter of these human rights provisions a legal protection of deaf people as a minority group. This uneasiness is also related to the blurred contours of the notion of minority, which is generally (but not universally) referred to as a ‘non-dominant group’ in a nation-State that meets one or more of the following criteria: they are numerically smaller than the rest of the population; they are not in a dominant position; they have a culture, language, religion or race that is distinct from that of the majority, and their members have a will to preserve those characteristics.<sup>96</sup>

<sup>90</sup> ICCPR *ibid*, art 27.

<sup>91</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 30.

<sup>92</sup> ICESCR (n 89) art 15. R O’Keefe, ‘The “Right to Take Part in Cultural Life” Under Article 15 of the ICESCR’ (1998) 47(4) ICLQ 904.

<sup>93</sup> Dunbar (n 89).  
<sup>94</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted in New York 18 December 1992): UN General Assembly Res 47/135 (3 February 1993) UN Doc A/Res/47/135.

<sup>95</sup> Dunbar (n 89).  
<sup>96</sup> UN Sub-Commission on Prevention of Discrimination and Protection of Minorities Special Rapporteur, Francesco Capotorti, ‘Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities’ (1979) UN Doc E/CN.4/Sub.2/384/Rev.1. See also Commission on Human Rights, ‘Compilation of Proposals Concerning the Definition of the Term “Minority”’ (14 November 1986) UN Doc E/CN.4/1987/WG.5/WP.1; Human Rights Council, ‘Report of the Independent Expert on Minority Issues, Rita Izsák’ (31 December 2012) UN Doc A/HRC/22/49.

UN treaty bodies have thus far been cautious. References to sign languages in General Comments of various treaty bodies<sup>97</sup> evidence that the UN has been keen to consider sign language within a broader concept of freedom of expression and opinion, rather than linguistic rights legislation. Echoing the interpretation of the Human Rights Council, the Committee on the Rights of the Child posited that the right to freedom of expression pursuant to Article 13 of the CRC includes ‘the right to seek, receive and impart information and ideas and use the means of their dissemination, including spoken, written and *sign language* ...’.<sup>98</sup> The CESCR has made references to sign language in several instances under Article 15 of the ICESCR, but without taking any definite stand on deaf persons as members of a minority group. By contrast, the CESCR’s General Comment No 21 refers to sign language in the paragraphs dedicated to cultural participation of persons with disabilities, although it mentions ‘the recognition of their specific cultural and linguistic identity, including sign language and the culture of the deaf’.<sup>99</sup>

Among scholars, Sabatello posits that, even if the Deaf community self-identifies as a cultural–linguistic minority, ‘their legal status as such is questionable’.<sup>100</sup> Ball points out that native sign language users and deaf people may fall outside the criteria to qualify as a minority on the ground that the only trait they share between all members is deafness.<sup>101</sup> A more nuanced approach is afforded by Manning et al discussing the Deaf community as ‘intersectionality of belonging to both a cultural–linguistic minority group and the disability movement’.<sup>102</sup> This scholarly account aligns with Wheatley and Pabsch’s perspective,<sup>103</sup> and Wilks’s approach<sup>104</sup> pointing to the intersection of language rights, on one hand, and disability rights, on the other, when defining the Deaf community.

The CRPD is the first core human rights treaty that explicitly deals with sign languages. However, it does not qualify deaf people as a minority community. Rather, it unequivocally places deafness in the social–contextual concept of disability, ie the view of disability as stemming from the interaction between

<sup>97</sup> See, eg, UN Human Rights Committee, ‘General Comment No. 34. Article 19: Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34, para 12.

<sup>98</sup> UN Committee on the Rights of the Child, ‘General Comment No. 20 on the Implementation of the Rights of the Child during Adolescence’ (6 December 2016) UN Doc CRC/C/GC/20, para 42 (emphasis added).

<sup>99</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 21: Right of Everyone to Take Part in Cultural Life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights)’ (21 December 2009) UN Doc E/C.12/GC/21.

<sup>100</sup> M Sabatello, ‘Disability, Cultural Minorities, and International Law: Reconsidering the Case of the Deaf Community’ (2005) WhittierLRev 1025.

<sup>101</sup> AR Ball, ‘Equal Accessibility for Sign Language Under the Convention on the Rights of Persons with Disabilities’ (2011) 43 CaseWResJIntlL 773.

<sup>102</sup> V Manning, JJ Murray and A Bloxs, ‘Linguistic Human Rights in the Work of the World Federation of the Deaf’ in T Skutnabb-Kangas and R Phillipson (eds), *The Handbook of Linguistic Human Rights* (Wiley 2022).

<sup>103</sup> Wheatley and Pabsch (n 14) 24.

<sup>104</sup> Wilks (n 20)

an individual's impairment and environmental or societal barriers.<sup>105</sup> In fact, Article 30(4) of the CRPD singles out deaf identity as a 'specific linguistic and cultural identity', but arguably within the broader disability identity. Further, Article 24(3) of the CRPD provides for the right of deaf learners to education in a national sign language, but does not fully address the debate on whether inclusive education (which is mandated by Article 24 of the CRPD) is appropriate for them.<sup>106</sup> According to De Beco, the CRPD 'does protect [deaf people] from the goal of assimilating them into the mainstream'.<sup>107</sup>

In the CRPD sign languages are also recognised as a means of communication and access. Article 9(2)(e) of the CRPD, on accessibility, obliges States Parties 'to provide forms of live assistance and intermediaries, including ... professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public'. Article 21(b) of the CRPD requires States Parties to accept and facilitate 'the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means'. Wilks argues that the CRPD articulates Deaf-disabled rights.<sup>108</sup> Bantekas et al contend that the CRPD does allow (but arguably does not compel) States Parties to consider and recognise them as minority languages.<sup>109</sup> In a similar fashion, Ball argues that 'despite its disability locus, the CRPD opens a pathway to eventual sign language policy in the minority language policy arena'.<sup>110</sup> He suggests that by focusing on individual rights and on the specific circumstances of each individual sign language user, the CRPD obliges States Parties to tailor solutions that ensure accessibility for each deaf individual, regardless of whether the particular sign language is recognised as a minority language at the national level.<sup>111</sup> Venade de Sousa posits that the CRPD requires as a minimum standard the recognition of sign language as an official 'fully fledged language, with such characteristics as to make it a legitimately valid means of communication used in interactions between deaf people and public authorities in general'.<sup>112</sup>

Thus far, the CRPD Committee in its Concluding Observations and jurisprudence has urged States Parties to recognise sign languages as national official languages,<sup>113</sup> but has mostly addressed sign languages as a matter of

<sup>105</sup> UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 03 May 2008) UN Doc A/RES/61/106 (CRPD) art 1.

<sup>106</sup> On inclusive education for deaf learners, see K Snoddon and JJ Murray, 'The Salamanca Statement and Sign Language Education for Deaf Learners 25 Years On' (2019) 23(7–8) *IntJInclusEd* 740.

<sup>107</sup> G De Beco, 'The Indivisibility of Human Rights and the Convention on the Rights of Persons with Disabilities' (2019) 68(1) *ICLQ* 141.

<sup>108</sup> Wilks (n 20).  
<sup>109</sup> I Bantekas, MA Stein and D Anastasiou, 'Article 30: Participation in Cultural Life, Recreation, Leisure, and Sport' in I Bantekas, MA Stein and D Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP 2018) 904.

<sup>110</sup> Ball (n 101) 784.

<sup>111</sup> *ibid.*  
<sup>112</sup> Venade de Sousa (n 18).

<sup>113</sup> A Leahy and D Ferri, 'The Right to Participate in Cultural Life of Persons with Disabilities in Europe: Where is the Paradigm Shift?' (2022) 16(4) *Alter* 5.

accessibility or in the context of reasonable accommodation.<sup>114</sup> In the views adopted in the individual communication *Sahlin v Sweden*, which concerned the failure to hire a deaf lecturer because it would be too expensive to finance sign language or a deaf interpreter, the CRPD Committee focused on the concept of reasonable accommodation in employment contexts.<sup>115</sup> It reached the conclusion that Sweden had failed to fulfil its obligations under Articles 5 (on equality) and 27 (on the right to work) of the CRPD. While, admittedly, the individual communication revolves around the right to work, it is notable that the CRPD Committee never mentions Deaf culture or identity, not even *a fortiori*. It only limits itself to embracing the view expressed by the complainant that hiring a deaf lecturer would have promoted diversity in the workplace and facilitated more inclusion in the future. In 2017, and on the basis of the CRPD, the UN General Assembly proclaimed 23 September as International Day of Sign Languages.<sup>116</sup> It explicitly recognised ‘the importance of preserving sign languages as part of linguistic and cultural diversity’ but did not qualify deaf people as a minority.

An overt recognition of the Deaf community as a linguistic minority has been given by the UN Special Rapporteur on minority issues, Fernand de Varennes. In his 2017 report to the General Assembly,<sup>117</sup> he declared that the rights of deaf people would be considered within the mandate of the Special Rapporteur on minority issues, and his following four reports<sup>118</sup> have addressed the rights of deaf and hard-of-hearing people under the Minorities Declaration. On the whole, however, a disability approach, or the subsuming of the Deaf community under the social–contextual model of disability, remains a key aspect of the protection of sign language users under current international law.

### *B. The Regional Context*

Within the CoE, the European Convention on Human Rights (ECHR) does not include any specific reference to the Deaf community or to disability.<sup>119</sup>

<sup>114</sup> See Committee on the Rights of Persons with Disabilities (CRPD Committee), ‘Views adopted by the Committee under Article 5 of the Optional Protocol, concerning Communication No. 13/2013: *Michael Lockrey v Australia*’ (8 April 2013) UN Doc CRPD/C/15/D/13/2013; CRPD Committee, ‘Views adopted by the Committee under Article 5 of the Optional Protocol, concerning Communication No. 11/2013: *Gemma Beasley v Australia*’ (25 May 2016) UN Doc CRPD/C/15/D/11/2013.

<sup>115</sup> CRPD Committee, ‘Views adopted by the Committee under Article 5 of the Optional Protocol, concerning Communication No. 45/2018: *Richard Sahlin v Sweden*’ (15 October 2020) UN Doc CRPD/C/23/D/45/2018.

<sup>116</sup> UN General Assembly Res 72/161 (25 January 2018) UN Doc A/RES/72/161.

<sup>117</sup> Human Rights Council, ‘Report of the Special Rapporteur on Minority Issues. Priorities and Vision of the Mandate’ (16 January 2018) UN Doc A/HRC/37/66.

<sup>118</sup> Human Rights Council, ‘Reports of the Special Rapporteur On Minority Issues’ (9 January 2019) UN Doc A/HRC/40/64; (9 January 2020) UN Doc A/HRC/43/47; (3 March 2021) UN Doc A/HRC/46/57; (15 March 2022) UN Doc A/HRC/49/46.

<sup>119</sup> CoE, Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol (adopted 4 November 1950, entered into force 3 September 1953) ETS No 005 (ECHR).



However, Article 14 of the ECHR lays down the principle of non-discrimination, outlawing any discrimination, inter alia, on the ground of language and (albeit implicitly) disability.<sup>120</sup> Further, the European Court of Human Rights (ECtHR) has, on various occasions, decided upon the provision of sign language, mostly in conjunction with the right to private and family life,<sup>121</sup> and the right to life.<sup>122</sup> In none of these cases, however, have sign languages been regarded as a cultural issue. In fact, for the most part, the ECtHR has considered deaf people as persons with disabilities. The case of *Kacper Nowakowski v Poland* is particularly notable. It pertained to the contact rights of a deaf father with his son, who had a hearing impairment but communicated orally. Mr Nowakowski contended that the dismissal of his application by national courts for an extension of contact with his son without the presence of the mother had been solely on the ground of his disability and had been discriminatory. He alleged the violation of Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the ECHR. The ECtHR acknowledged a violation of Article 8 of the ECHR but remained reticent on the discrimination allegation based on disability. The judgment rendered by the ECtHR faced considerable criticism from Judge Motoc. In a concurring opinion, the Judge criticised the Court for not having taken into account ‘the discrimination against the applicant regarding his enjoyment of the rights and freedoms set forth in the Convention, that discrimination being based on his disability’.<sup>123</sup> Further, while recalling extensively the CRPD, Judge Motoc asserted that:

Respect for difference, the right to preserve identities, and acceptance of deaf people and sign languages as part of human diversity and humanity imply that the recognition of sign language is inseparable from the recognition and acceptance of deaf people’s cultural and linguistic identity. The CRPD also recognises that culture (principle (d), Article 30), identity (principle (h), Articles 24 and 30) and language (Articles 2, 21 and 24) constitute an inseparable triangle.<sup>124</sup>

The revised European Social Charter (ESC), while calling on States Parties to undertake measures to ensure employment for people with disabilities as well as their participation in the life of the community, does not explicitly refer to sign language or deaf persons.<sup>125</sup> The European Committee of Social Rights has addressed sign language in several conclusions on reports from the Member States within the remit of Article 15 of the ESC, calling for official status to

<sup>120</sup> *Glor v Switzerland* App No 13444/04 (ECtHR, 6 November 2009) para 44.

<sup>121</sup> See *Nasri v France* App No 19465/92 (ECtHR 13 July 1995) para 33; *Kacper Nowakowski v Poland* App No 32407/13 (ECtHR 10 April 2017) paras 47–52.

<sup>122</sup> *Jasinskis v Latvia* App No 45744/08 (ECtHR 21 March 2011) para 42.

<sup>123</sup> *Kacper Nowakowski v Poland* (n 121) Concurring Opinion of Judge Motoc, para 1.

<sup>124</sup> *ibid.*, para 9.

<sup>125</sup> CoE, European Social Charter (revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS No 163 (ESC).

be afforded to sign languages,<sup>126</sup> but without engaging with the question as to whether deaf persons can be considered members of a linguistic minority.

Within the CoE framework, national minorities are protected by the Framework Convention on National Minorities (FCNM).<sup>127</sup> Due to the lack of a general definition of the term ‘minority’ in the FCNM, States Parties to this Convention can exercise some discretion in deciding what constitutes a minority, albeit within the restraints of international law and Article 3(1) of the FCNM.<sup>128</sup> Thematic Commentary No 4<sup>129</sup> states that the goal of the FCNM is to ensure that the space for diversity and for being ‘different’ in society is protected and affirmed. It also reaffirms the right to free self-identification contained in Article 3 of the FCNM and supports a multidimensional conceptualisation of minority. However, the Deaf community seems to remain outside the scope of protection of this instrument. When ratifying the FCNM, 14 EU Member States<sup>130</sup> submitted declarations on what they considered to be a minority under the FCNM. None of these declarations explicitly considered the Deaf community as a minority.

The European Charter for Regional or Minority Languages (the Charter) is another important instrument for the protection of linguistic minorities in the CoE framework.<sup>131</sup> Notably, the Charter specifies two criteria for the identification of a language as a minority one: (i) it must be traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; (ii) it must be different from the official language(s) of that State. The Charter acknowledges that the language might be bound to the geographical area or can be identified as ‘non-territorial language’, meaning that the linguistic minority can be geographically spread and not confined to a particular area. It may be argued that sign languages *prima facie* fulfil these criteria as they are used by nationals who form a group numerically smaller than the rest of the population and are different from the official language. However, the Committee of Experts, the body responsible for the implementation and

<sup>126</sup> E Tupi, ‘Sign Language Rights in the Framework of the Council of Europe and Its Member States’ (Council of Europe 2019). See also European Committee of Social Rights, ‘Conclusion Austria 2016’, ‘Conclusion Estonia 2005’, ‘Conclusion Slovenia 2003’.

<sup>127</sup> CoE, Framework Convention for the Protection of National Minorities (adopted 1 February 1995, entered into force 1 February 1998) ETS No 157 (FCNM). Three EU States: Belgium, Greece and Luxembourg, have signed but not yet ratified the FCNM. Notably, France has neither signed nor ratified the FCNM.

<sup>128</sup> J Ringelheim, ‘Minority Rights in a Time of Multiculturalism: The Evolving Scope of the Framework Convention on the Protection of National Minorities’ (2010) 10(1) HRLRev 99, 113.

<sup>129</sup> CoE Advisory Committee on the Framework Convention for the Protection of National Minorities, ‘The Framework Convention: A Key Tool to Managing Diversity through Minority Rights. Thematic Commentary No. 4 The Scope of Application of the Framework Convention for the Protection of National Minorities’ (adopted on 27 May 2016) ACFC/56DOC(2016)001.

<sup>130</sup> Austria, Bulgaria, Belgium, Denmark, Estonia, Germany, Luxembourg, Latvia, Malta, the Netherlands, Poland, Slovenia, Sweden and Spain.

<sup>131</sup> CoE, European Charter for Regional or Minority Languages (adopted 5 November 1992, entered into force 1 March 1998) ETS No 148 (Charter).

monitoring of the Charter, has concluded that the Charter was not conceived to meet the specific needs of sign languages, which should be protected and promoted by disability legislation.<sup>132</sup>

CoE soft law has tried to nudge CoE Member States towards adopting some form of protection of sign languages, often navigating a liminal space between linguistic and disability rights. For instance, in 2003, the CoE Parliamentary Assembly adopted Recommendation 1598,<sup>133</sup> which urged the drafting of an additional protocol to the Charter incorporating sign languages into its scope, among the non-territorial minority languages. Further, in 2018, the CoE Parliamentary Assembly adopted Resolution No 2247 which called on Member States, on a voluntary basis, to provide information on the use and protection of sign languages to the Committee of Experts of the Charter.<sup>134</sup> Sign languages are also mentioned in the remit of the CoE disability policies: the CoE Disability Strategy 2017–2023<sup>135</sup> calls on CoE bodies as well as local and regional authorities and private sector stakeholders to promote sign languages as an accessible format of communication.

In the EU, numerous soft-law documents have encouraged Member States to protect and promote sign languages and have pointed to sign languages as a matter of linguistic diversity. One of the oldest and yet most significant documents is the 1998 European Parliament Resolution on sign languages.<sup>136</sup> At that time, only four EU Member States had given official recognition to their national sign language, yet the Resolution acknowledged sign languages as an emblem of cultural identity. This Resolution did not explicitly identify deaf people as a linguistic minority, and instead focused on calling on the European Commission ‘to make a proposal to the Council concerning official recognition of the sign language’ in each Member State, and to adopt a range of measures supporting the use of sign language, including the training of interpreters. In 2016, the European Parliament again called for the official recognition of national and regional sign languages in Member States and within EU institutions, as well as the adoption of a range of accessibility measures.<sup>137</sup> In doing so, however, it clearly situated sign languages within the remit of disability rights, in line with the CRPD. In fact, since the

<sup>132</sup> N Timmermans, *The Status of Sign Languages in Europe* (Council of Europe Publishing 2005).

<sup>133</sup> Parliamentary Assembly of the CoE, ‘Protection of Sign Languages in the Member States of the Council of Europe’ (1 April 2003) Rec 1598.

<sup>134</sup> Parliamentary Assembly of the CoE, ‘Protecting and Promoting Sign Languages in Europe’ (23 November 2018) Res 2247.

<sup>135</sup> CoE, ‘Human Rights: A Reality for All. Council of Europe Disability Strategy 2017–2023’ (Council of Europe, March 2017) <<https://rm.coe.int/16806fe7d4>>.

<sup>136</sup> European Parliament Resolution of 7 December 1998 on sign languages [1998] OJ C379/66.

<sup>137</sup> European Parliament Resolution of 23 November 2016 on sign languages and professional sign language interpreters (2016/2952(RSP)) [2016] OJ C224/68.

ratification of the CRPD,<sup>138</sup> the EU has mostly promoted sign language as an accessibility measure<sup>139</sup> and by means of accessibility legislation, such as the European Accessibility Act.<sup>140</sup> It is thus evident that the CRPD and its implementation in EU law has had an impact on the domestic promotion of sign languages, injecting a ‘disability’ approach into national systems.

V. THE IMPORTANCE OF BEING ‘CONSTITUTIONAL’: CONSTITUTIONAL CLAUSES FOR THE PROTECTION OF SIGN LANGUAGES

The constitutional recognition of sign languages places them within the remit of constitutional values, at the highest level in the domestic hierarchy of the sources of law. However, such recognition does not in itself qualify or dictate the type of normative approach adopted by a State, which may arise mostly from legislation regulating sign language.

As yet, only five States in the EU have explicitly included sign language in their constitutions: Austria, Finland, Hungary, Portugal and Slovenia. Aside from the Hungarian constitutional provision, which was enacted in 2011, and the Slovenian one, adopted in 2021, the constitutional provisions predate the CRPD.

Hungary and Portugal frame sign languages as an aspect of linguistic and cultural identity, but within the scope of national identity. In fact, none of the constitutional provisions explicitly qualifies sign languages as minority languages or deaf people as a minority. Hungary protects ‘Hungarian Sign Language as a part of *Hungarian* culture’ by means of Article H(3).<sup>141</sup> Kruzslicz and Tribl contend that the constitutional recognition has an important symbolic value.<sup>142</sup> They posit that Hungarian Sign Language is one of the national symbols under constitutional protection with a strong national (rather than minoritarian) ‘identity-creating function’.<sup>143</sup> The

<sup>138</sup> Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

<sup>139</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69.

<sup>140</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70.

<sup>141</sup> Magyarország Alaptörvénye, Magyar Közlöny 43. szám A Magyar Köztársaság Hivatalos Lapja (2011. április 25.) art H(3) (emphasis added).

<sup>142</sup> P Kruzslicz and N Tribl, ‘Legal Protection of State, National and Community Symbols in Hungary’ in J Zoltán Tóth (ed), *Studies of the Central European Professors’ Network* (Central European Academic Publishing, Ferenc Mádl Institute of Comparative Law 2022) 154.

<sup>143</sup> *ibid.* Interestingly, Hungary has also claimed before the CRPD Committee that Act CXXV does recognise ‘the community of the person using the sign language as a language minority’: CRPD Committee, ‘Implementation of the Convention on the Rights of Persons with Disabilities. Initial Report submitted by States Parties under Article 35 of the Convention: Hungary’ (28 June 2011)

Constitution of Portugal mentions Portuguese Sign Language within the remit of the constitutional clause on education. In a similar vein to the Hungarian Constitution, Article 74(2)(h) of the Portuguese Constitution protects sign language as an ‘expression of culture’, while concurrently acknowledging its importance for accessibility, facilitating access to education and promoting equal opportunities.<sup>144</sup>

In a slightly different approach, the constitutions of Slovenia and Austria seem to frame sign languages as an aspect of linguistic and cultural diversity within the State. Article 62a of the Constitution of Slovenia affords protection to Slovenian Sign Language and guarantees its free use and development.<sup>145</sup> Notably, it also protects Italian and Hungarian sign languages in the Slovenian municipalities where Italian or Hungarian are official minority languages.<sup>146</sup> However, Article 62a of the Constitution of Slovenia does not explicitly acknowledge Slovenian Sign Language as a minority language, despite it being designated as such in the National Programme for Language Policy 2021–2025.<sup>147</sup> Austria also constitutionally recognises sign language. It qualifies it as an ‘independent language’ by virtue of Article 8 of the Federal Constitution, accepting that sign language is a fully fledged language from the linguistic point of view.<sup>148</sup>

The wording of the Finnish Constitution is slightly more nuanced, although Finnish national legislation is far more clear-cut in its cultural approach to sign language and deaf people. Article 17 of the Constitution, which protects the ‘right to one’s language and culture’, refers to the ‘rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability’.<sup>149</sup> In this regard, it places sign language users alongside persons with disabilities. However, Article 17 does not confer substantive rights, which are instead provided by the Sign Language Act (2015).<sup>150</sup> Despite the nuanced constitutional wording, the Act plainly frames national policy around linguistic aspects of sign language, rather than disability rights.

UN Doc CRPD/C/HUN/1, para 17 <<https://www.refworld.org/reference/statepartiesrep/crpd/2011/en/88574>>.

<sup>144</sup> Constituição da República Portuguesa, VII Revisão Constitucional [2005] art 74(2)(h).

<sup>145</sup> Ustava Republike Slovenije Uradni list RS, št. 1/91-I in 19/91 – popr. DRUG74, art 62a.

<sup>146</sup> *ibid.*

<sup>147</sup> National Assembly of the Republic of Slovenia, ‘Resolution on the National Programme for Language Policy 2021–2025 (RenJP21–25)’ <<https://pisrs.si/pregledPredpisa?id=RESO123>>. This programme states: ‘Slovenian sign language is the first natural language of the deaf and is therefore considered a minority language in Slovenia’ (para 2.2.3), albeit throughout the document there are references to special needs and deaf people are mentioned alongside people with disabilities.

<sup>148</sup> Bundes-Verfassungsgesetz der Republik Österreich (B-VG) StF: BGBl. Nr. 1/1930 (WV) idF BGBl. I Nr. 194/1999 (DFB) art 8.

<sup>149</sup> Suomen perustuslaki 731/1999, art 17 (emphasis added).

<sup>150</sup> Viittomakielilaki 359/2015. It should be noted, however, that both Suomen perustuslaki 731/1999, *ibid.*, art 17 and art 1 of Viittomakielilaki 359/2015 refer to Finnish Sign Language as well as Finnish–Swedish Sign Language, two distinct sign languages used by different groups of sign language users in Finland.

The linguistic rights approach to sign language is confirmed by the fact that sign language is included in periodical reports on the implementation of the Charter submitted to the Committee of Experts, even though, as noted above, the Committee has indicated that sign languages are outside the remit of the Charter.<sup>151</sup>

Finland, Austria and Slovenia have also incorporated an express reference to primary legislation as a tool to ‘give flesh’ to the constitutional provision, whereby the linguistic rights of sign language users must be provided by legislation.<sup>152</sup> Delegating the actual protection to ad hoc legislative instruments allows for different protection and promotion measures to be articulated. However, if no legislative instrument is enacted, the constitutional provision remains a paper tiger. At the time of writing, Slovenia regulates sign languages by virtue of pre-existing acts,<sup>153</sup> but has not yet enacted the regulatory mechanisms necessary for the implementation of Article 62a,<sup>154</sup> which hampers the effectiveness of the novel constitutional provision.

In Austria, as yet, no specific legislation has been adopted to implement Article 8(3) of the Federal Constitution, in spite of constitutional and administrative challenges and advocacy efforts. Case law illustrates the mere declaratory nature of this constitutional protection, which is not per se enforceable. For example, in decision G84/2013<sup>155</sup> of 22 November 2013, the Constitutional Court of Austria rejected a request to repeal Article 16 and Article 18(12) of the School Instruction Act. The applicants claimed these provisions violated Article 8(3) of the Federal Constitution as they did not provide for the possibility of using Austrian Sign Language as a language of instruction in the school attended by their children. The Constitutional Court observed that there is no legislation regulating the implementation of Austrian Sign Language as a separate language of instruction, nor is it envisaged in the Federal Constitution. In 2015 the applicants brought a case on the same issues to the Federal Administrative Court.<sup>156</sup> Namely, they sought judicial review of the decision of the Regional

<sup>151</sup> Tupi (n 126) 18.

<sup>152</sup> Bundes-Verfassungsgesetz der Republik Österreich (B-VG) (n 148) art 8, para 3. See also Ustava Republike Slovenije (n 145) art 62a; and Suomen perustuslaki 731/1999 (n 149) art 17.

<sup>153</sup> The ‘Use of the Slovenian Sign Language Act’ from 2002 grants deaf people the right to use sign language in all spheres of work and life with the assistance of Slovenian sign language interpreters, but does not take a decisive linguistic rights approach. Provisions related to sign language in legislation related to special needs education seem to adopt a disability approach.

<sup>154</sup> Republic of Slovenia Human Rights Ombudsman, ‘Deputy Ombudsman Repeats Calls for the Regulation of Full Realisation of the Constitutional Rights For Sign Language and Language of the Deaf-Blind’ (6 August 2023) <<https://www.varuh-rs.si/en/news/news/deputy-ombudsman-repeats-calls-for-the-regulation-of-full-realisation-of-the-constitutional-rights-f/>>.

<sup>155</sup> Verfassungsgerichtshof (VfGH) Beschluss G84/2013 (22 November 2013) ECLI:AT:VFGH:2013:G84.2013.

<sup>156</sup> Bundesverwaltungsgericht (BVwG) Beschluss W224 2015175-1/2E (4 March 2015) ECLI:AT:BVWG:2015:W224.2015175.1.00.

School Board for Carinthia which had rejected their request to introduce Austrian Sign Language as a language of instruction. The Federal Administrative Court dismissed the case and held that Article 8(3) cannot support such a request. The Court ruled that the constitutional provision is not conclusive in that the scope and content of the protection of sign language have to be regulated by law. In 2018, in a similar fashion, the Federal Administrative Court, in case W227 2141779-1/2E<sup>157</sup> by the same applicant against the decision of the (then) Federal Minister of Education and Women's Affairs, confirmed that Article 8(3) of the Federal Constitution is not directly enforceable and does not confer any substantive rights. Notably, when the case came before the CRPD Committee it adopted a cautious stance, similar to that of the national court.<sup>158</sup> The CRPD Committee stated that 'comparison with the situation of autochthonous linguistic minorities inadequately considers their specific factual and legal circumstances'.<sup>159</sup> It observed that the applicants insufficiently substantiated the claim of discrimination towards Austrian Sign Language users compared with other non-German linguistic minorities.

When there is no overt protection clause, an implicit constitutional protection of sign languages might be argued on the basis of general clauses related to linguistic rights or linguistic minorities, such as Article 6 of the Italian Constitution,<sup>160</sup> or general equality clauses or disability provisions. The added value of such implicit constitutional protection remains unclear, and there is little evidence that equality or disability provisions can be invoked to protect the rights of sign language users. This is particularly the case for those provisions that are still informed by a medical model of disability, focusing on impairment, such as Article 69 of the Constitution of Poland. This provision protects people with disabilities and aims to guarantee aid in subsistence, adaptation and communication, but the Constitutional Tribunal of Poland has held that it is not a source of rights.<sup>161</sup> It rather provides an obligation for public authorities to implement the 'task' (ie to provide 'aid to disabled persons to ensure their subsistence, adaptation to work and social communication') through the creation of the appropriate legislative mechanism.<sup>162</sup> As yet, there does not seem to be a definitive affirmation that the Polish Sign Language Act adopted in

<sup>157</sup> BVwG Beschluss W227 2141779-1/2E (20 April 2018) ECLI:AT:BVWG:2018:W227.2141779.1.00.

<sup>158</sup> CRPD Committee, 'Views adopted by the Committee under Article 5 of the Optional Protocol, concerning Communication No. 50/2018: *Köck v Austria*' (18 May 2022) UN Doc CRPD/C/26/D/50/2018. <sup>159</sup> *ibid*, para 6.6.

<sup>160</sup> Costituzione della Repubblica Italiana, originally published in GU No 298 of 27 December 1947. Consolidated text as last modified in 2023 <<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:costituzione>>. See A Mazzola, 'La lingua dei segni nell'alveo dell'art. 6 Cost.' (2021) *BioLaw* 375 <<https://teseo.unin.it/biolaw/article/view/1791>>.

<sup>161</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku Dz.U.1997.78.483, art 69; Trybunał Konstytucyjny, 'Wyrok z dnia 23 października 2007 Trybunał Konstytucyjny' 106/9/A/2007.

<sup>162</sup> Wyrok z dnia 23 października 2007 Trybunał Konstytucyjny 106/9/A/2007, para 5.3.2.

2011<sup>163</sup> constitutes part of the ‘appropriate legislative mechanism’ facilitating the implementation of Article 69. Several initiatives to recognise Polish Sign Language within the Constitution have not been followed up. Petition P9-35/17 of 2017<sup>164</sup> which aimed to amend Article 69 of the Constitution with a view to explicitly protecting Polish Sign Language as a manifestation of culture, and a similar petition<sup>165</sup> that argued for recognition of sign language in Article 27 of the Polish Constitution,<sup>166</sup> were both disregarded.

The existence of an implicit constitutional protection of national sign languages has been the subject of scholarly discussion in France, following the request for French Sign Language (FSL) to be recognised in the Constitution by several members of the Senate.<sup>167</sup> In their responses,<sup>168</sup> both the Ministry of Justice and the Secretary of State questioned the need for such a constitutional change, citing the existing legislative protection of FSL and emphasising the general constitutional provisions on fundamental rights and equality. They argued that the current legislative recognition of FSL suffices without explicit inclusion in the Constitution.<sup>169</sup> In a somewhat similar vein, Cantin<sup>170</sup> argues that FSL is *de facto* protected under Article 2 of the Constitution, which designates French as the language of the Republic.

<sup>163</sup> Sejm Rzeczypospolitej Polskiej, ‘Ustawa z dnia 19 sierpnia 2011 r. o języku migowym i innych środkach komunikowania się’ Dz.U. 2011 Nr 209, poz 1243.

<sup>164</sup> Petycja z dnia 11 września 2017 r. w sprawie podjęcia inicjatywy ustawodawczej dotyczącej zmiany art. 69 Konstytucji Rzeczypospolitej Polskiej (P9-35/17).

<sup>165</sup> Petycja z dnia 19 października 2020 r. w sprawie podjęcia inicjatywy ustawodawczej dotyczącej zmiany art. 27 Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., celem ustanowienia ochrony dla polskiego języka migowego jako części kultury polskiej (P10-104/20).

<sup>166</sup> Art 27 of the Constitution of the Republic of Poland recognises Polish as an official language in Poland.

<sup>167</sup> Sénat, ‘Reconnaissance dans la Constitution de la République française de la langue des signes: Question écrite no 10084 – 15<sup>e</sup> législature. Question Mme IMBERT Corinne (Charente-Maritime – Les Républicains-R)’ (*JO Sénat*, 18 April 2019) 2054 <<https://www.senat.fr/questions/base/2019/qSEQ190410084.html>>; Sénat, ‘Reconnaissance dans la Constitution de la République française de la langue des signes: Question écrite no 10286 – 15<sup>e</sup> législature. Question de Mme PEROL-DUMONT Marie-Françoise (Haute-Vienne – SOCR)’ (*JO Sénat*, 9 May 2019) 2489 <<https://www.senat.fr/questions/base/2019/qSEQ190510286.html#question>>; Sénat, ‘Reconnaissance dans la Constitution de la République française de la langue des signes: Question écrite no 20504 – 15<sup>e</sup> législature. Question de M. DÉTRAIGNE Yves (Marne – UC)’ (*JO Sénat*, 4 February 2021) 670 <<https://www.senat.fr/questions/base/2021/qSEQ210220504.html>>.

<sup>168</sup> Sénat, ‘Reconnaissance dans la Constitution de la République française de la langue des signes: Réponse du Secrétariat d’État auprès du Premier ministre, chargé des personnes handicapées’ (*JO Sénat*, 5 September 2019) 4560 <<https://www.senat.fr/questions/base/2019/qSEQ190410084.html>>; Sénat, ‘Reconnaissance dans la Constitution de la République française de la langue des signes: Réponse du Ministère de la justice’ (*JO Sénat*, 28 May 2020) 2438 <<https://www.senat.fr/questions/base/2019/qSEQ190510286.html#answer>>; Sénat, ‘Reconnaissance dans la Constitution de la République française de la langue des signes: Réponse du Ministère de la justice’ (*JO Sénat*, 23 September 2021) 5518 <<https://www.senat.fr/questions/base/2021/qSEQ210220504.html#answer>>.<sup>169</sup> *ibid.*

<sup>170</sup> Y Cantin, ‘The Societal and Political Recognition of French Sign Language (LSF) in France: 1970–2018’ in De Meulder, Murray and McKee (n 15).



Cantin posits that the first section of Circular No 2008-109 (2008),<sup>171</sup> which expressly acknowledges FSL as a language of the Republic on an equal footing with French in the educational field, suggests that there exists a constitutional protection of FSL. This scholarly reconstruction has neither been supported nor expressly contradicted by case law, and the French National Federation of the Deaf advocated for an explicit constitutional protection of FSL through a Request to the Parliament for the Constitutional Recognition of FSL in 2019.<sup>172</sup>

#### VI. LEGISLATION ON THE PROTECTION OF SIGN LANGUAGES: A LEGAL TAXONOMY

Irrespective of whether they have constitutionally recognised sign language, all the States examined have adopted dedicated legislation and/or provisions within general acts providing sign language users with an array of rights with regard to the use of sign language in educational, employment, political, judicial and social contexts.

As noted in Section II, the taxonomy presented in this section attempts to identify the main normative approaches taken towards sign language as it emerges from the legislation. While taking into account initial reports presented to the CRPD Committee, this taxonomy recognises that those reports do not always portray the actual normative approach adopted by the State. It identifies three main approaches to sign languages: an explicit (although not always consistent) ‘minority’ approach—ie the express recognition of deaf persons as a linguistic minority; a more nuanced ‘cultural approach’—which acknowledges that sign languages are autonomous languages and cultural expression and provides for promotional measures; and a ‘disability’ approach—which mandates or promotes the use of sign language as a mode of communication and accessibility measure.

This taxonomy thus departs from previous classifications that conflated the level (constitutional or legislative) of protection and focused on the type of act rather than the type of normative approach.<sup>173</sup> These classifications also shied away from addressing whether deaf persons are explicitly recognised and qualified as a linguistic minority, alluding (although implicitly) to the Deaf community as a group numerically smaller than the rest of the population of the State and possessing distinct cultural characteristics and language different from those of the rest of the population which they aim to preserve. In fact, while the concept of linguistic minority

<sup>171</sup> D Calin, ‘Conditions de mise en œuvre du programme de la langue des signes française à l’école primaire: Circulaire no 2008-109 du 21 août 2008. Enseignements élémentaire et secondaire’ (14 March 2018) <[http://dcalin.fr/textoff/lst\\_circulaire\\_2008.html](http://dcalin.fr/textoff/lst_circulaire_2008.html)>.

<sup>172</sup> Fédération Nationale des Sourds de France, ‘La langue des signes française dans la Constitution de la République française: une requête légitime’ (1 February 2019) <<http://www.fnsf.org/wp-content/uploads/2019/03/Lettre-aux-Parlementaires-1.pdf>>.

<sup>173</sup> De Meulder (n 15).

is in itself ‘slippery’,<sup>174</sup> this issue is relevant not only in theoretical terms, but also in relation to the rights afforded and their enforceability. Minority rights strongly link to a distinctive identity and to a collective dimension of linguistic rights, which complement the individual rights of language users.<sup>175</sup> It has been highlighted that linguistic rights imply some kind of a collective nature,<sup>176</sup> underpinning what Rubio-Marín calls ‘the expressive interest in language as a marker of identity’.<sup>177</sup> Further, given that the term minority is grounded in a power imbalance, referring to groups with less status and less power,<sup>178</sup> linguistic rights of minorities may potentially connect and give rise to specific rights of political representation.

While this taxonomy classifies States on the basis of the approach that seems predominant and most illustrative of the national legislation, it does recognise that regulatory approaches tend to coexist. Even when there is an overt reference to the concept of linguistic minority, or a more nuanced recognition of the cultural value of sign languages, such recognition does not prevent the application of non-discrimination legislation on the ground of disability to deaf persons. Further, the recognition of deaf people as a linguistic group runs alongside disability legislation or legislation implementing EU accessibility provisions.

#### *A. A Linguistic Minority Approach*

An explicit minority approach can be found in Sweden and Romania.

In Sweden, Swedish Sign Language was acknowledged as the first language of deaf people as early as 1981 by the Riksdagen (Swedish Parliament).<sup>179</sup> Since then rules relating to Swedish Sign Language have primarily been made through legislation on health and education.<sup>180</sup> Subsequent legislation on minorities and minority languages in Sweden does not include Swedish Sign Language or its users. However, the Language Act 2009:600 protects Swedish Sign Language alongside Swedish language and national minority

<sup>174</sup> A Tomaselli and L Panzeri, ‘The Definition of “Linguistic Minority”’: Linguistic versus Legal Perspectives’ in I Ward (ed), *Literature and Human Rights: The Law, the Language and the Limitations of Human Rights Discourse* (De Gruyter 2015).

<sup>175</sup> A Spiliopoulou Åkermark, *Justification of Minority Protection in International Law* (Kluwer Law 1996).

<sup>176</sup> T Skutnabb-Kangas, ‘Linguistic Human Rights’ in LM Solan and PM Tiersma (eds), *The Oxford Handbook of Language and the Law* (OUP 2012).

<sup>177</sup> R Rubio-Marín, ‘Language Rights: Exploring the Competing Rationales’ in W Kymlicka and A Patten (eds), *Language Rights and Political Theory* (OUP 2003).

<sup>178</sup> S May, *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (Pearson Education 2001).

<sup>179</sup> Regeringens proposition 2008/09 153 Språk för alla – förslag till språklag 24.

<sup>180</sup> Hälso- och sjukvårdslag (1982:763) art 3b(3), which has since been repealed and replaced by Hälso- och sjukvårdslag (2017:30) Ch 8, art 7(3) referring to the obligation to provide interpretation. On provisions on education, see for instance, Lag (2022: 1315) om ändring i skollagen (2010:800) Ch 21, art 4 and Skolförordning (2011:185), mostly regulating Swedish Sign Language as a subject.

languages. This act situates sign language within linguistic rights and protects it in conjunction with minority languages (Finnish, Jiddish, Meänkieli, Romani Chib and Sámi).<sup>181</sup> This Language Act places special responsibility on ‘the public’ to use and develop spoken Swedish, and to protect and promote the national minority languages and Swedish Sign Language. Moreover, those who are resident in Sweden have the right to learn, develop and use Swedish, those who belong to national minorities may learn, develop and use their respective minority language and those who are deaf or hard of hearing and others who have the need to use sign language are given the opportunity to learn, develop and use Swedish Sign Language.

In a similar vein, Communication 2020/21:95 on ‘Children’s and young adults’ reading’,<sup>182</sup> presented by the Government in 2021, addresses sign language alongside minority languages. It states that ‘children and young adults should continue to be given the opportunity of developing their national minority language, their mother tongue *and sign language* alongside Swedish’.<sup>183</sup> Furthermore, this provision of the Communication was included in Sweden’s 8th Report to the CoE under the Charter in 2020.<sup>184</sup>

Despite a seemingly clear-cut minority approach, sign language users have often been considered persons with disabilities within the remit of discrimination case law. In judicial decisions related to discrimination in the workplace,<sup>185</sup> sign language has been conceived of as a reasonable accommodation measure to be guaranteed in compliance with national non-discrimination law implementing the EU Employment Equality Directive.<sup>186</sup> One of those cases gave rise to the individual communication to the CRPD Committee in *Sahlin v Sweden*.<sup>187</sup>

Romania has also explicitly qualified deaf people as a minority. Article 3 of the Law of Sign Language No 27 of 27 March 2020 defines the Deaf community as a ‘linguistic and cultural minority’ and acknowledges the right to use, preserve, develop and maintain Deaf culture.<sup>188</sup> However, Romanian Sign Language does not feature among the 20 officially acknowledged minority languages in the State.

Interestingly, neither Sweden nor Romania (nor any other EU Member State) has formally identified their respective national sign languages as a minority

<sup>181</sup> Språklagen (2009:600) arts 7–9; Wheatley and Pabsch (n 14) 96–7.

<sup>182</sup> Regeringens skrivelse 2020/21:95: Barns och ungas läsning (Children’s and young adults’ reading) Regeringen överlämnar denna skrivelse till riksdagen. Stockholm den 24 mars 2021 <<https://www.regeringen.se/contentassets/83baa2be54344a508317cbd4738c1058/barns-och-ungas-lasning-skr.-20202195.pdf>>.

<sup>183</sup> *ibid* 33 (emphasis added).  
<sup>184</sup> CoE, ‘European Charter for Regional or Minority Languages. Eighth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter: Sweden’ (4 June 2021) MIN-LANG (2021) PR3 4.

<sup>185</sup> See, *inter alia*, Arbetsdomstolen 2020 nr 3 A-149-2018; Arbetsdomstolen 2017 nr 51 A-146/16.

<sup>186</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

<sup>187</sup> CRPD Committee (n 115).

<sup>188</sup> Lege nr 27 din 27 martie 2020 privind limba semnelor române.

language in the instrument of ratification of the Charter. Some States seem to have considered deaf persons as a linguistic minority by virtue of the incorporation of sign languages in their periodic reports under the Charter, as recommended by CoE Resolution No 2247 of 2018. For instance, in its recent report, Finland, referring to soft law, explicitly asserted that ‘sign language users are a linguistic and cultural *minority*’.<sup>189</sup> Such recognition tallies with a more nuanced cultural approach in legislation, which will be discussed in the subsequent section.

Two further States—Spain and Slovenia—present an interesting ‘mixed’ approach that tallies with their general linguistic policies and the presence in their territories of linguistic minorities and regional languages.<sup>190</sup>

Spain included Spanish Sign Language, recognised by Law 27/2007,<sup>191</sup> in its 2023 report under the Charter,<sup>192</sup> although it refrained from explicitly characterising the Deaf community as a linguistic minority. The instrument of ratification of the Charter declared that ‘the languages protected by the Statutes of Autonomy in the territories where they are traditionally spoken are also considered as regional or minority languages’.<sup>193</sup> According to this provision, Catalan Sign Language, recognised in Article 50(6) of the Statute of Autonomy of Catalonia in 2010, could qualify as a minority language, but this would not seem to be the case for Spanish Sign Language. Other Statutes of Autonomy mention sign languages, but often in conjunction with the protection of disability rights.<sup>194</sup> The most recent legislation on the basis of the CRPD does encompass a disability approach, while recognising a minority approach for regional sign languages. The Royal Decree 674/2023 of 18 July 2023 approves the Regulation of the Conditions of Use of Spanish Sign Language and the means of support for oral communication for deaf, hearing-impaired

<sup>189</sup> CoE, ‘European Charter for Regional or Minority Languages. Sixth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter: Finland’ (19 May 2023) MIN-LANG (2023) PR7 14 (emphasis added).

<sup>190</sup> See, eg, M Josep Jarque, M Bosch-Baliarda and M González, ‘Legal Recognition and Regulation of Catalan Sign Language’ in De Meulder, Murray and McKee (n 15); S Novak-Lukanović and D Limon, ‘Language Policy in Slovenia’ (2012) 25(1) *LangCult&Curric* 27.

<sup>191</sup> Ley 27/2007, de 23 de octubre, por la que se reconocen las lenguas de signos españolas y se regulan los medios de apoyo a la comunicación oral de las personas sordas, con discapacidad auditiva y sordociegas. For a comment, see R Castano Calle, ‘El reconocimiento de las lenguas de signos españolas como instrumento de comunicación para la comunidad de personas sordas’ (2010) *Hekademos: revista educativa digital* 23. See also the recent commentary ‘Informe de valoración jurídica de la Ley 27/2007, de 23 de octubre, por la que se reconocen las lenguas de signos españolas y se regulan los medios de apoyo a la comunicación oral de las personas sordas, con discapacidad auditiva y sordociegas tras 15 años’ (2022) <[https://cnlse.es/es/recursos/publicaciones/informe\\_valoracion\\_juridica\\_ley27\\_2007.pdf](https://cnlse.es/es/recursos/publicaciones/informe_valoracion_juridica_ley27_2007.pdf)>.

<sup>192</sup> CoE, ‘European Charter for Regional or Minority Languages. Sixth Periodical Report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter: Spain’ (3 August 2023) MIN-LANG (2023) PR9.

<sup>193</sup> CoE, ‘Reservations and Declarations for Treaty No. 148 – European Charter for Regional or Minority Languages (ETS No. 148)’ <<https://www.coe.int/en/web/Conventions/full-list?module=declarations-by-treaty&numSte=148&codeNature=10&codePays=SPA>>.

<sup>194</sup> Amezcu-Aguilar and Amezcu-Aguilar (n 13).

and deafblind people.<sup>195</sup> The purpose of this regulation is to implement Law 27/2007, which recognises Spanish Sign Language, and to ‘guarantee accessibility to information and communication’ and ‘equal opportunities and non-discrimination of deaf, hearing-impaired and deafblind people’ in, inter alia, ‘the learning, knowledge and use of Spanish Sign Language, and the protection of the linguistic identity linked to this language’.<sup>196</sup> The regulation, however, does not affect the regulation of the Catalan Sign Language as the ‘linguistic identity linked to said language is recognized, as an expression of the feeling of belonging of the people who use it to their particular linguistic community’.<sup>197</sup>

The Spanish approach is somewhat similar to the Slovenian one, whereby, as discussed above, Article 62a of the Slovenian Constitution extends protection to the Italian and Hungarian sign languages in municipalities where Italian or Hungarian holds the status of an official minority language, although without explicitly recognising them as minority languages. However, as mentioned above, the National Programme for Language Policy 2021–2025 qualifies Slovenian sign language as ‘a minority language in Slovenia’.<sup>198</sup>

### *B. A Cultural–Linguistic Approach*

Several States in the EU (Belgium, Bulgaria, Croatia, Estonia, Finland, Hungary, Ireland, Latvia, Malta, the Netherlands, Portugal, Slovakia) adopt a cultural–linguistic approach to the legal recognition of sign languages, without an explicit qualification of deaf people as a linguistic minority in their legislation.<sup>199</sup> This approach is typically exemplified by the adoption of dedicated sign language legislation or general language legislation that recognises and promotes sign languages as well as the linguistic rights of

<sup>195</sup> Real Decreto 674/2023, de 18 de julio, por el que se aprueba el Reglamento de las condiciones de utilización de la lengua de signos española y de los medios de apoyo a la comunicación oral para las personas sordas, con discapacidad auditiva y sordociegas «BOE» núm 171, de 19 de julio de 2023.

<sup>196</sup> *ibid.*, art 1(1)(A).

<sup>197</sup> *ibid.*, art 1(2) (emphasis added).

<sup>198</sup> National Assembly of the Republic of Slovenia, ‘Resolution on the National Programme for Language Policy 2021–2025 (ReNPJP21–25)’ (2021) <<https://pisrs.si/pregledPredpisa?id=RESO123>>.

<sup>199</sup> It must be noted, however, that some States do refer to deaf people as a minority in their reports to the CRPD Committee. The Finnish report (CRPD Committee, ‘Implementation of the Convention on the Rights of Persons with Disabilities. Initial Report submitted by States Parties under Article 35 of the Convention: Finland’ (9 August 2019) UN Doc CRPD/C/FIN/1) refers to sign language users as a ‘language and cultural minority’ (para 259). A consciousness of different linguistic groups amongst deaf people is also shown in references to Sámi and sign language users, who are said to represent minorities among persons with disabilities (para 257). It also refers to measures needed to protect the endangered Finnish–Swedish Sign Language (para 266). It recognises that sign language can be considered a native language if a parent or older sibling is a sign language user and if sign language has been used with a child since birth (para 261). See also, for Hungary, CRPD Committee (n 143) para 17.

deaf people on the basis of their distinct cultural identity,<sup>200</sup> although sometimes subsuming such identity within the broader national identity.<sup>201</sup> In general, these States also refer to sign language as ‘natural language’ (Flanders (Belgium), Bulgaria, Slovakia),<sup>202</sup> ‘own language’ (Finland)<sup>203</sup> or ‘first language’ (Malta).<sup>204</sup>

Most of these States explicitly identify sign language users as a ‘linguistic–cultural group’, without embracing a clear-cut minority qualification. For example, Maltese legislation defines the ‘Deaf community’ as ‘the distinct linguistic and cultural group of people who have a hearing impairment and who use Maltese Sign Language as their first or preferred language’, which also comprises ‘people who have a hearing impairment and who identify’ with the Deaf community.<sup>205</sup> In Belgium, Wallonia recognised the sign language of the French Deaf community by way of adopting a designated decree in 2003.<sup>206</sup> In turn, in the Decree on the Recognition of the Flemish Sign Language, deaf people are described as a linguistic–cultural group in which Flemish Sign Language plays an identifying role.<sup>207</sup>

Bulgaria has also adopted a strong cultural–linguistic approach to sign language, which is evidenced in Article 6 of the Law on Bulgarian Sign Language from 6 February 2021.<sup>208</sup> Specifically, this provision characterises Bulgarian Sign Language as a ‘natural independent language’ alongside recognising the cultural and linguistic identity of the Deaf community. Remarkably, this legislative act goes beyond merely ensuring equal access to education, information, public services and rights safeguarded by international legal instruments, having as one of its primary objectives the development of respect for the cultural and linguistic identity of the Deaf community through Bulgarian Sign Language.<sup>209</sup> Furthermore, it actively promotes scientific research aimed at the development of Bulgarian Sign Language. Similarly, Slovakia, under the Law on Sign Language of the Deaf of Slovakia, supports the linguistic and cultural identity of the Deaf community alongside recognising Slovak Sign Language.<sup>210</sup> The cultural approach is further substantiated by the inclusion of Slovak Sign Language in

<sup>200</sup> Linguistic rights are explicitly referred to in Finnish and Maltese laws. For instance, Viittomakielilaki 359/2015 (n 150) art 2 in Finland states that the objective of the act is to ‘promote the *linguistic rights* of sign language users’ (emphasis added).

<sup>201</sup> See, eg, Estonia.

<sup>202</sup> Decreet van 5 mei 2006 houdende de erkenning van de Vlaamse Gebarentaal, art 2; Zákon č. 149/1995 Z. z. Zákon národnej rady slovenskej republiky z 26 Júna 1995 o posunkovej reči nepočujúcich osôb, art 3(3).<sup>203</sup> Viittomakielilaki 359/2015 (n 150) art 1(2).

<sup>204</sup> Act No XVII of 2016 Maltese Sign Language Recognition Act (to provide for the setting up of the Maltese Sign Language Council and for matters ancillary or consequential thereto) art 2(a).

<sup>205</sup> *ibid.*

<sup>206</sup> Décret relatif à la reconnaissance de la langue des signes (Lois 28210).

<sup>207</sup> Decreet van 5 mei 2006 houdende de erkenning van de Vlaamse Gebarentaal, art 2.

<sup>208</sup> Закон за Българския Жестов Език, в сила от 06 февруари 2021 г (Law on Bulgarian Sign Language).<sup>209</sup> *ibid.*, arts 5(3), 6(3).<sup>210</sup> Zákon č. 149/1995 Z. z. (n 202) art 1.

the Representative List of the Intangible Cultural Heritage of Slovakia in 2018.<sup>211</sup>

Ireland, Latvia and Estonia have embraced a linguistic approach while refraining from explicitly acknowledging the cultural identity of the Deaf community. For instance, Ireland formally recognised Irish Sign Language (ISL) as the native language of Irish Sign Language users through the Irish Sign Language Act of 24 December 2017.<sup>212</sup> It covers a limited number of spheres such as access to public services and registration and accreditation of ISL interpreters in education and legal proceedings, without introducing any specific measures to promote or protect cultural aspects of sign language or the Deaf community in general, although it establishes that '[t]he community of persons using Irish Sign Language shall have the right to use, develop and preserve Irish Sign Language'. In Latvia the Official Language Law 1999, which regulates the status, protection and use of the Latvian language as the official language of the Republic and of other languages in the territory, establishes that the State shall ensure 'the development and use of the Latvian Sign Language for communication with deaf people'.<sup>213</sup> The Language Act 2011 in Estonia recognised Estonian Sign Language as 'an independent language' and signed Estonian language as 'a mode of the Estonian language'.<sup>214</sup> As Wheatley and Pabsch observed, Estonian Sign Language has a status similar to that of the Estonian language and distinct from other minority languages.<sup>215</sup> In Portugal the constitutional recognition of sign language as an 'expression of culture' combines with norms that support the use of sign languages in educational contexts. Article 15 of Decree-Law No 54/2018, which establishes the legal framework for inclusive education, supports the use of sign language within the context of 'bilingual education'.<sup>216</sup>

In some cases, the cultural–linguistic approach is strongly intertwined with a disability approach emphasising accessibility, in that sign language is promoted alongside alternative means of communication for persons with disabilities. For example, Law No 82/15 on Croatian Sign Language and other communication systems for deaf and deafblind persons recognises Croatian Sign Language as 'the original language of the community of deaf and deafblind people ... completely independent from the language of hearing people'<sup>217</sup> but underlines that it is part of a broader concept of communication systems

<sup>211</sup> Ministry of Culture of the Slovak Republic, 'Slovak Sign Language is Now Codified' (24 September 2020); See the Slovak Sign Language in the Representative List of Intangible Cultural Heritage of Slovakia <<https://www.ludovakultura.sk/en/list-ich/slovak-sign-language/>>.

<sup>212</sup> Irish Sign Language Act 2017 No 40, art 3(1).

<sup>213</sup> Valsts valodas likums, Latvijas Vēstnesis 428/433, 21.12.1999 Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 1, 13.01.2000, art 3(3).

<sup>214</sup> Keeleseadus Nr 860, Ch 2, art 3(2).

<sup>216</sup> Decreto-Lei No 54/2018 de 6 de julho.

<sup>217</sup> Zakon o hrvatskom znakovnom jeziku i ostalim sustavima komunikacije gluhih i gluhošlijepih osoba u Republici Hrvatskoj NN 82/15, art 5(1).

<sup>215</sup> Wheatley and Pabsch (n 14) 55.

which also involves other systems based on the Croatian language.<sup>218</sup> Act CXXV on Hungarian Sign Language and the use of Hungarian Sign Language (2009) explicitly recognises Hungarian Sign Language as a fully-fledged language and its constitutionally recognised linguistic status.<sup>219</sup> However, reference is made throughout the text to both Hungarian Sign Language and ‘special communication systems’.<sup>220</sup>

### *C. A Disability Rights Approach*

Some States view sign languages solely as communication systems, overlooking their cultural significance. Deaf people are thus considered as persons with disabilities, rather than being qualified as a distinct community, bringing sign language users’ rights unequivocally within the remit of disability rights. While legislation varies greatly, and often navigates a liminal space mentioning the ‘Deaf community’, this seems to be the case in Austria, the Czech Republic, Cyprus, Denmark, France, Greece, Germany, Italy, Luxembourg, Lithuania, Poland and, albeit with the caveats indicated above, Spain.

As noted above, in Austria, despite the constitutional recognition of sign language, legislation to protect it has yet to be adopted. Thus, sign language users’ rights are in substance protected by an array of provisions related to accessibility, most of which are implementing EU directives.<sup>221</sup> In Germany, sign language finds explicit mention within the context of the Equality of Persons with Disabilities Act.<sup>222</sup> Despite being recognised as an ‘independent language’ in Article 6(1), throughout the text sign language is conceived of as one of the ‘communication aids’ for ‘people with hearing impairment and people with speech impairment’.<sup>223</sup>

Another interesting example is the recent Italian Law 69/2021 (a miscellaneous law on urgent support for economic operators in connection with the COVID-19 emergency).<sup>224</sup> Despite ‘a long-standing and important tradition of language protection and promotion’<sup>225</sup> and numerous legislative

<sup>218</sup> Zakon o hrvatskom znakovnom jeziku i ostalim sustavima komunikacije gluhih i gluhošlijepih osoba u Republici Hrvatskoj NN 82/15, art 4.

<sup>219</sup> 2009. évi CXXV. Törvény a magyar jelnyelvről és a magyar jelnyelv használatáról, arts 1, 2(c). <sup>220</sup> *ibid.*

<sup>221</sup> See, eg, provisions related to sign language in broadcasting. On this, see F Dotter et al, ‘Austrian Sign Language: Recognition Achieved but Discrimination Continues’ in De Mulder, Murray and McKee (n 15) 218.

<sup>222</sup> Behindertengleichstellungsgesetz vom 27 April 2002 (BGBl I S 1467, 1468), das zuletzt durch Artikel 7 des Gesetzes vom 23 Mai 2022 (BGBl I S 760) geändert worden ist.

<sup>223</sup> Behindertengleichstellungsgesetz vom 27 April 2002 (BGBl I S 1467, 1468), das zuletzt durch Artikel 7 des Gesetzes vom 23 Mai 2022 (BGBl I S 760) geändert worden ist, arts 6(3), 9.

<sup>224</sup> L 21 maggio 2021, n 69 – Conversione in legge, con modificazioni, del decreto-legge 22 marzo 2021, n 41, recante misure urgenti in materia di sostegno alle imprese e agli operatori economici, di lavoro, salute e servizi territoriali, connesse all’emergenza da COVID-19.

<sup>225</sup> Busatta (n 85).



proposals on recognising Italian Sign Language (Lingua dei Segni Italiana; LIS),<sup>226</sup> Article 34-ter of Law 69/2021 adopted a disability approach to the protection of sign language on the basis of Articles 2 and 3 of the Italian Constitution, Articles 21 and 26 of the Charter of Fundamental Rights of the European Union, and Articles 9, 21 and 24 of the CRPD. Piergigli and Carlino contend that:

from the normative references made by the Italian legislator it is clear that the only perspective adopted is that of deafness as a disability, leaving out the dimension of the linguistic rights of the deaf community and, therefore, avoiding considering the LIS as a minority language.<sup>227</sup>

The Czech Republic, Poland and Cyprus do officially recognise sign language, but as a mode of communication rather than a natural language. The Czech Republic officially recognised the Czech Sign Language by Law 155/1998 as a ‘natural and fully fledged communication system’ of the Deaf community back in 1998,<sup>228</sup> which was commended by the CRPD Committee, though they also noted the lack of investment of resources in sign language interpretation.<sup>229</sup> In Poland, Article 3(2) of the Act on Sign Language and Other Means of Communication (2011)<sup>230</sup> defines Polish Sign Language as a natural visuospatial language of communication of deaf persons. The CRPD Committee in its Concluding Observations<sup>231</sup> on the Initial Report of Poland aptly noted that the restricted scope of this legislative provision, along with the lack of clarity and corresponding obligations, hinders the effective implementation of sign language rights under this act. Cypriot Sign Language is similarly referred to as a ‘means of communication’.<sup>232</sup>

As noted above, while Spain seems to consider regional sign languages as minority languages, Spanish Sign Language is positioned alongside ‘other communication aids’. Law 27/2007 recognised sign language as a language

<sup>226</sup> Camera dei Deputati, ‘Disposizioni per la promozione della piena partecipazione delle persone sorde alla vita collettiva e riconoscimento della lingua dei segni italiana’ no 4207 (16 marzo 2011).

<sup>227</sup> V Piergigli and V Carlino, ‘La lingua dei segni nell’ordinamento italiano: primi segnali per il riconoscimento’ (2023) *RevLlengua i Dret* <<https://hdl.handle.net/11365/1227659>>.

<sup>228</sup> Zákon č 155/1998 Sb Zákon o komunikačních systémech neslyšících a hluchoslepých osobthe, art 3.

<sup>229</sup> CRPD Committee, ‘Concluding Observations to the Initial Report of the Czech Republic’ (15 May 2015) UN Doc CRPD/C/CZE/CO/1.

<sup>230</sup> Ustawa z dnia 19 sierpnia 2011 r. o języku migowym i innych środkach komunikowania się Nr 209 poz.1243.

<sup>231</sup> CRPD Committee, ‘Concluding Observations to the Initial Report of Poland’ (29 October 2018) UN Doc CRPD/C/POL/CO/1.

<sup>232</sup> Ο περί της Αναγνώρισης της Κυπριακής Νοηματικής Γλώσσας Νόμος του 2006 (66(I)/2006) (The Cypriot Sign Language Recognition Law of 2006(66(I)/2006)) art 2; Νόμος 4488/2017 για τις dimósies syntaxiodotikés rythmíseis kai álles asfalistikés diatáxeis, tin enischysi tis prostasías ton ergazoménon, ta dikaiómata ton atómou me anapíría kai álles diatáxeis; Greek Federation of the Deaf, ‘Recognition of the Greek Sign Language as Equal to the Greek Language’ (Press Release No 906, 8 September 2017).

of deaf, hard-of-hearing and deafblind persons living in Spain alongside Catalan Sign Language in Catalonia.<sup>233</sup> Article 6 of this Law delineates its scope of application and implementation in specific domains such as public goods and services, transportation, relations with public administration, political participation, and media ‘in accordance with the cross-sectoral principle of policies regarding disability’. Notably, Article 4 draws a clear distinction between spoken languages ‘officially recognised in the Spanish Constitution’ and sign language as a linguistic system, pointing to the different legal status of these languages. As noted above, the recent Royal Decree 674/2023 of 18 July 2023 which approves the Regulation of the Conditions of Use of Spanish Sign Language<sup>234</sup> is mostly informed by the CRPD, while recognising deaf people’s linguistic identity. The regulation places emphasis on sign language as a tool to ensure ‘accessibility to information and communication’.

Luxembourg recognised German Sign Language<sup>235</sup> in 2018 by amending the Law of 24 February 1984 on the language regime.<sup>236</sup> Despite situating this provision within the legislation defining the use of languages in the State, the approach adopted towards German Sign Language is primarily focused on accessibility and the rights of people with disabilities.

Lithuania stands out as one of the pioneering EU Member States in recognising sign language as an independent language.<sup>237</sup> Despite being recognised as a native language of deaf people by means of Article 4 of the Law on Social Integration of Disabled Persons No 1-2044,<sup>238</sup> most of the provisions related to the promotion of sign language link to, or can be subsumed under, disability rights.

In Greece, the recognition of sign language as a language for deaf and hard-of-hearing students was first established through the enactment of Special

<sup>233</sup> Ley 27/2007, de 23 de octubre, por la que se reconocen las lenguas de signos españolas y se regulan los medios de apoyo a la comunicación oral de las personas sordas, con discapacidad auditiva y sordociegas BOE núm 255 BOE-A-2007-18476.

<sup>234</sup> Real Decreto 674/2023 (n 195).

<sup>235</sup> At the time of writing, no legislation recognising French or Luxembourgish Sign Language appears to exist. This point is noteworthy in that German Sign Language is the primary sign language used in the territory, yet this often creates difficulties for users as the Grand Duchy is trilingual and native sign language users are usually instructed and educated through spoken German and German Sign Language. However, spoken French is the primary language used in official communication and with authorities, creating a discrepancy between signers and people using spoken language(s) in Luxembourg. See Wheatley and Pabsch (n 14) 76–8.

<sup>236</sup> Loi du 23 septembre 2018 modifiant la loi du 24 février 1984 sur le régime des langues N 872, art 3*bis*(1).

<sup>237</sup> In 1995, the Government of Lithuania, through the Resolution No 630 ‘On the Recognition of the Sign Language of the Deaf as the Mother Tongue of the Deaf’, officially acknowledged sign language as the native language of deaf people. Lietuvos Respublikos Vyriausybės Dėl Kurčiųjų Gestų Kalbos Pripažinimo Gimtąja Kalba 1995 m. gegužės 4 d. Nr 630.

<sup>238</sup> Lietuvos Respublikos Invalidų Socialinės Integracijos Įstatymas (1991) I-2044, art 4; Lietuvos Respublikos Invalidų Socialinės Integracijos Įstatymo 2, 12, 13, 25, 26, 27, 28 Straipsnių Papildymo Ir Pakeitimo Įstatymas 1996 m spalio 22 d Nr I-1587.

Education Law No 281 in 2000.<sup>239</sup> Subsequently, in 2017, the recognition of Greek Sign Language was further solidified through Article 65(2) of Law 4488/2017.<sup>240</sup> This provision stipulates that ‘the Greek Sign Language shall be recognised as equivalent to the Greek language’ and that the ‘State shall take measures to promote it and to meet all the communication needs of deaf and hard of hearing citizens’. This provision falls within the realm of disability legislation, given that Article 65 focuses on communication between individuals with disabilities and public administration.<sup>241</sup>

In France, the Education Code, amended by Law No 2005-102 on Equal Rights and Opportunities, Participation and Citizenship of People with Disabilities, recognised FSL as a ‘language in its own right’ and the right of deaf persons to choose FSL as a language of instruction.<sup>242</sup> However, this provision, alongside Articles 76, 77 and 78 of Law No 2005-102, embraces a disability perspective on sign language. The initial report to the CRPD Committee refers to the recognition of sign language by Law No 2005-102 (2005),<sup>243</sup> but interestingly the Concluding Observations from the CRPD Committee note that sign language is recognised only in certain areas and call for an all-encompassing recognition of FSL as an official language, including at the constitutional level, as well as promotion of its use.<sup>244</sup> It is worth recalling that Decision No 410594<sup>245</sup> of the Council of State rejected the request by the National Federation of the Deaf of France to annul amendments to the Decree of 28 December 2009 pertaining to the procedure for attaining the qualification of associate professor within secondary education institutions. The contested legal act introduced a new section titled ‘languages of France’, which did not include FSL among the eight optional languages for the competition procedure. The Council of State held that there was no violation of Article L312-9-1 of the Education Code, as this provision pertains to the rights of students, which were not infringed upon. The Council of State further reasoned that the absence of ‘French Sign Language’ as an option within the ‘languages of France’ section does not place deaf individuals in a

<sup>239</sup> Νόμος 2817/2000 Εκπαίδευση ατόμων με ειδικές εκπαιδευτικές ανάγκες και άλλες διατάξεις (Law 2817/2000 Education of persons with special educational needs and other provisions).

<sup>240</sup> Νόμος 4488/2017 για τις dimósies syntaxiodotikés rythmíseis kai álles asfalistikés diatáxeis, tin eníschysi tis prostasías ton ergazoménon, ta dikaiómata ton atómou me anapiria kai álles diatáxeis, art 65, para 2.

<sup>241</sup> The Federation of the Deaf of Greece brought a series of claims to enforce the implementation of this provision. See Greek Federation of the Deaf (n 232).

<sup>242</sup> Loi n 2005-102 du 11 février 2005 pour l’égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées, art 75.

<sup>243</sup> CRPD Committee, ‘Implementation of the Convention on the Rights of Persons with Disabilities. Initial Report submitted by States Parties under Article 35 of the Convention: France’ (18 May 2016) UN Doc CRPD/C/FRA/1, para 181.

<sup>244</sup> CRPD Committee, ‘Concluding observations to the initial report of France’ (14 September 2021) UN Doc CRPD/C/FRA/CO/1, paras 44–45.

<sup>245</sup> Conseil d’État, 4ème chambre, 06/11/2019, 410594, ECLI:FR:CECHS:2019:410594.20191106.

different situation from hearing individuals since it has neither the object nor the effect of depriving deaf people of the right to present themselves in the competition and, therefore, does not amount to discrimination against sign language users.<sup>246</sup>

Danish Sign Language was recognised by way of an amendment to the Act on the Danish Language Council in 2015, which included Chapter 2a entitled 'Danish Sign Language Council and its Secretary'.<sup>247</sup> Previously, Danish Sign Language was regulated by legislation on education and other sectoral laws.<sup>248</sup> Notably, the Act on Interpretation for Persons with Hearing Disabilities<sup>249</sup> and Act on Activities with Indefinite Interpretation of People with Hearing Disabilities<sup>250</sup> elaborate on the rights and rules governing interpretation for persons using Danish Sign Language. Yet, they are primarily conceived of as persons with disabilities. Cases heard by the Danish Board of Equal Treatment articulate deaf rights as disability rights and refer to reasonable accommodation.<sup>251</sup>

#### VII. CONCLUSION

As noted by Hirschl, 'comparison is a fundamental tool of scholarly analysis', sharpening 'our power of description' and playing 'a central role in concept formation'.<sup>252</sup> In line with such understanding, the comparative analysis carried out in this article has provided a legal taxonomy that endeavours to capture the way in which sign languages are conceived of and protected in EU Member States. While existing classifications shed light on the way sign languages are regulated in domestic contexts, they conflate the *level* (constitutional or legislative) of protection with the *type* of act that regulates sign languages and fail to capture the normative assumptions underpinning the legislative recognition and protection of sign languages.

This article has highlighted that only a few EU Member States have recognised sign languages at the constitutional level. Constitutional recognition can be seen as an important stepping stone in defining deaf people as a cultural group and sign language as a fully-fledged language, but

<sup>246</sup> *ibid.*

<sup>247</sup> Lov om Dansk Sprognavn LBK nr 217 af 13/02/2015, Ch 2a, art 8(a)(b); De Meulder (n 15) 502. <sup>248</sup> Wheatley and Pabsch (n 14) 52–3.

<sup>249</sup> Lov om tolkning til personer med hørehandicap LBK nr 927 af 03/07/2013.

<sup>250</sup> Bekendtgørelse om aktiviteter med tidsbegrænset tolkning til personer med hørehandicap BEK nr 945 af 27/07/2010.

<sup>251</sup> J Miller, 'Explaining Paradigm Shift in Danish Anti-Discrimination Law' (2019) 26(4) MJ 556; Ligebehandlingsnævnets afgørelse om handicap – ansættelse – medhold KEN nr 9755 af 04/05/2016 J nr 2015-6811-30838; Ligebehandlingsnævnets afgørelse om handicap – er handicap – ansættelse – medhold KEN nr 9155 af 27/02/2017 J nr 2016-6810-10812; Ligebehandlingsnævnets afgørelse om handicap – uddannelse – er handicap – chikane – medhold KEN nr 10304 af 15/11/2017 J nr 2017-6810-23913. <sup>252</sup> Hirschl (n 35).

also in supporting linguistic rights. It may, however, remain devoid of practical effects if, as in Austria, it is not enforceable.

The article then identified a taxonomy of three main normative approaches to sign language: a 'minority' approach; a more nuanced 'cultural' approach; and a 'disability' approach. It shows that the slippery notion of 'minority' in international and domestic law<sup>253</sup> has not supported a clear-cut recognition of deaf people as a linguistic minority. This difficulty arises not only because of the uneasy intersection between deafness and disability, but also because sign languages are 'national' languages. In fact, deaf people have not faced the constructed 'otherness' in the same way people belonging to spoken-language minorities in nation-States have. Yet, deaf people are somewhat recognised as a group that is smaller and shares specific language characteristics that are different from those of the majority, which faces disempowerment and forms of 'subordination' compared to people using the national (spoken) language. In that connection, a 'cultural' connotation of deaf persons has emerged in many EU Member States. The influence of the CRPD has, however, pushed forward a disability rights approach, intertwining a cultural recognition of sign languages with the acknowledgement that deaf people are persons with disabilities for the purpose of the Convention. In fact, the CRPD does not explicitly qualify the Deaf community as a linguistic minority and is said to move beyond a minority approach.<sup>254</sup> The recent Italian and Spanish laws are a clear example of such blurred lines between cultural-linguistic rights and disability rights.

A few years ago, Batterbury suggested that the CRPD had 'the potential to be an effective tool to achieve language policy which promotes greater social justice' for people using sign languages.<sup>255</sup> Indeed, the CRPD has prompted or supported the adoption of domestic legislation that embeds some level of protection and promotion of sign languages and obligations related to the use of sign languages in different contexts. Yet, a disability rights approach may not necessarily or explicitly recognise the cultural value of sign language and may not protect the collective identity of deaf people as a distinct group. Rather, it tends to protect individual rights to use sign language.

On the whole, the analysis of the status quo in the selected jurisdictions shows that the promotion of and support for language rights are not strictly dependent on (and may actually eschew) the qualification of the Deaf community as a linguistic minority. It also evidences disparity in the approaches to sign languages, and the fact that deafness remains a multifaceted identity.

<sup>253</sup> F Palermo and J Woelk, *Diritto Costituzionale Comparato dei Gruppi e delle Minoranze* (Cedam 2021); D Gorter and J Cenoz, 'Legal Rights of Linguistic Minorities in the European Union' in Tiersma and Solan (n 176).

<sup>254</sup> Ball (n 101) 779.

<sup>255</sup> Batterbury (n 55) 254.

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