

ESSENTIAL FRAMEWORK OF THE LEGAL STATUS OF SIGN LANGUAGE: RECOGNITION AND OFFICIALITY

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Abstract

The present article aims to contribute to understanding the meaning and scope of recognition and officiality of the legal status of sign languages – using the example of the legal status of Portuguese Sign Language and Catalan Sign Language – with respect to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). To a certain extent, the Convention seeks to respond to and protect the inherent rights of deaf people, according special consideration to their inherent rights in linguistic matters. Although the fundamental definition of officiality in the respective sign language statutes may vary according to the national legal system of the sign language in question, it can be said that the minimum presuppositions of officiality under the Convention are that the State recognize sign language as a 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.

Keywords: sign language; United Nations Convention on the Rights of Persons with Disabilities; recognition; officiality.

MARC FONAMENTAL DE LA SITUACIÓ JURÍDICA DE LA LLENGUA DE SIGNES: RECONeixEMENT I OFICIALITAT

Resum

En aquest article es pretén contribuir a conèixer el significat i l'abast del reconeixement i l'oficialitat de la situació jurídica de les llengües de signes (amb l'exemple de la situació jurídica de la llengua de signes portuguesa i la llengua de signes catalana) en relació amb la Convenció sobre els drets de les persones amb discapacitat de les Nacions Unides. En certa mesura, en la convenció s'intenta respondre als drets inherents de les persones sordes i protegir-los, amb especial atenció als seus drets inherents en matèria lingüística. Tot i que la definició fonamental d'oficialitat dels estatuts respectius de la llengua de signes pot variar en funció del sistema jurídic nacional de la llengua de signes en qüestió, es pot dir que les premisses mínimes d'oficialitat segons la convenció són que l'Estat reconegui la llengua de signes com una llengua de ple dret, amb unes característiques que la converteixen en un mitjà de comunicació legítimament vàlid que es fa servir en les interaccions entre les persones sordes i les autoritats públiques en general.

Paraules clau: llengua de signes; Convenció sobre els drets de les persones amb discapacitat de les Nacions Unides; reconeixement; oficialitat.

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1 General considerations: sign language and linguistic rights

The present study intends to contribute to a legal approach based on law and language, looking simultaneously at sign languages as a matter of cultural and linguistic particularities of deaf people and as a matter of human rights (Venade de Sousa, 2021, 2022). Specifically, it seeks to contribute to understanding of the legal-linguistic status of sign languages and their articulation with linguistic rights. These are understood as a compass for language policies, establishing sociopolitical principles in linguistic matters and their legal matrices, particularly within the framework of international human rights law (Venade de Sousa, 2021). The sociopolitical and legal contexts of a sign language cannot therefore be understood as a matter of the legal status of a language in its own right without relating it to the reasons expressed by the sociolinguistic reality of the linguistic community that expresses itself through said language (De Varennes, 2007; Skutnabb-Kangas, 1995, 1998).

To a certain extent, international law seeks to respond to and protect the rights of deaf people, according these rights the special consideration of inherent rights in terms of human rights and fundamental freedoms. Notwithstanding, deaf people respond with their own vision, preserving their cultural and linguistic traits and fighting for the recognition, enjoyment and exercise of rights considered fundamental in the cultural and linguistic sphere.

Both dynamic and evolving, international law goes hand in hand with the concretization, delimitation and revelation of the treatment of the rights of deaf people and the statutes inherent to their respective sign languages under international human rights law, particularly the United Nations Convention on the Rights of Persons with Disabilities (CRPD), as well as soft law international declarations adopted by the United Nations, the Council of Europe and the European Union (Krausneker, 2008; Tupi, 2019). There is widespread awareness of the issue of linguistic rights for deaf people, both nationally and internationally, and the defense of sign language has been claimed as a human rights issue for many years.

The relationship between language and law is understood multifunctionally. Language articulates and represents the linguistic community that expresses itself through a common language. The use of language thus represents the idiosyncratic essence of the linguistic community in question. It is one of the functions of the law to ensure respect and protection for linguistic diversity, supported by the legal order of the State in question, and to strive to achieve a proportionately balanced coexistence between the general protection of rights considered fundamental and the preservation of the sociocultural particularities of the speakers of certain languages.

The use of language is an integral part of personal identity, a principle underpinned by respect for human dignity, freedom of expression, equality and non-discrimination on language grounds. Linguistic rights guarantee respect for the use of language as a means of expression and communication. Specifically, these rights are seen as linguistic freedoms, integrating the matrix concept of freedom of expression, such as the freedom to use language. These rights form part of the catalog of human rights and fundamental freedoms within the scope of international human rights law, as in the legal framework of the CRPD, for example (Venade de Sousa, 2021, 2022).

In principle, the concept of the linguistic rights of deaf people embodies the principles of linguistic law associated with human rights, as well as the axiological values of sign languages as idiosyncratic languages of deaf communities. Constituting a specific legal reality and embodied in norms and legal principles, these linguistic rights, endowed with their own dynamic, are intersectional and interconnected with international human rights law and, above all, the linguistic rights of their respective countries (Ruíz Vieyetez, 2004; Pizzorusso, 1986). In other words, the linguistic rights of deaf people are considered a specific, intersectional, multifunctional legal-linguistic reality that is interconnected with other branches of knowledge, primarily international human rights law and constitutional law, including minority rights and the rights of persons with disabilities, among other areas of human rights and fundamental freedoms (Venade de Sousa, 2021, 2022; Murray, 2015). It is a concept that cannot be understood in isolation, much less fully, without considering the multifunctional contexts, that is, the intersectional framework of the historical and cultural associations of the linguistic community in question, the social problems to which it proposes to respond, and the ways in

which, in practice, the legal norms are respected by public authorities in the sphere of deaf people in general (Batterbury, 2012; Busatta, 2022).

The concept of the linguistic rights of deaf people presents itself as a framework capable of combining, on the one hand, axiological values, fundamental principles and legal norms based on reciprocal and intersectional interactivity, with sociohistorical, sociopolitical and even legal-linguistic dimensions on the other. This multifunctional concept therefore contributes to the scope of a vast understanding, simultaneously cultural and legal, of the realization, delimitation and disclosure of the inherent rights of deaf people and the legal statutes of their respective sign languages.

The framework of the linguistic rights of speakers of a minority language community is the main instrument for safeguarding linguistic peculiarities (De Varennes, 1996, 2007). The minimum scope of the necessary recognition implies the following: (i) linguistic rights are a matter of equality of normative dignity with the fundamental rights and freedoms enjoyed by other people; (ii) recognition and promotion of sociocultural and linguistic diversity in a heterogeneous society, guided by linguistic equality and non-discrimination and respect for linguistic particularities; (iii) the existence of a proportionally adequate legal framework for the protection and promotion of inherent rights in the various spheres of daily life, as well as mechanisms for the protection, implementation and monitoring of such measures as are deemed necessary. This recognition must be effective in practice to fully ensure the enjoyment and exercise of these fundamental rights (Venade de Sousa, 2021).

2 Principles of the legal recognition of sign languages

The CRPD can be said to constitute an essential *corpus iuris* to guide and contribute to an understanding of the legal status of sign languages and their respective linguistic rights frameworks. It is, therefore, important to systematize and identify this *corpus iuris* or essential core of the Convention in relation to the status of sign language, that is, articles 2, 9, 21, 24 and 30, which have various interconnected and complementary implications. The essential principles of Article 3 of the Convention are applicable to the fundamental rights and freedoms of persons with disabilities, including deaf persons. Moreover, these principles are complementary and adaptable to the specific nature of the inherent rights of deaf persons in relation to the use of sign language (Venade de Sousa, 2021).

2.1 Principle of linguistic dignity

The legal recognition of sign language is a matter of the linguistic and cultural dignity shared by speakers of a given language community. Linguistic dignity consists of affirming that any and all languages are considered worthy in society (Venade de Sousa, 2021). Languages assume an axiological value that represents the dignity of the speaker of a given language. In other words, linguistic dignity is rooted in the linguistically axiological essence of human language, which is constituted by the speakers of these languages, with all the linguistic characteristics worthy of the recognition of their sociolinguistic value in society (Moreno, 2000). Sign language, therefore, represents the extrinsic essence of the dignity of the deaf person, in the sense that it is the speakers of the linguistic community who express sign language as an idiosyncratic language, since their use of sign language is a matter of dignified cultural and linguistic existence.

Sign language is linguistically worthy of the same consideration, or equal treatment, as any other language. A language by itself does not define its own degree of sociolinguistic dignity, nor does it determine the degree of any other language, since all languages, whether spoken or otherwise, are entitled to the same linguistic consideration. Consequently, the dignity of sign language is an axiological acknowledgement of all its linguistic singularities, as is the case for other human languages used by their speakers to express themselves with dignity.

Through this recognition, the sociocultural existence of speakers in society is reaffirmed as being on an equal footing with other holders of full rights, taking into account the sociocultural singularities of speakers in general. Thus, the legal recognition of sign language must have practical effects in the different spheres of daily life. Lack of recognition can lead to the marginalization of deaf people in society. Conversely, legal

recognition of sign language contributes to linguistic dignity and the promotion of the use of sign language in society; discriminatory, language-based barriers are removed; and the cultural richness of the speakers is enhanced, in a message of inclusion to society. Language undoubtedly builds bridges between people and their cultures. In short, sign language is seen as an accredited language with its own legal reality, characterized by its legal-linguistic specificity of inherent rights, through which the legal status of sign language is recognized in the national legal system and reveals its axiological and dogmatic legal reality of fundamental rights.

2.2 Principle of linguistic freedom

Linguistic freedom is closely related to the essence of the right to the free development of personality in linguistic and identity matters. Therefore, the legal system has the necessary mechanisms through which to provide the ways and means to ensure respect for the linguistic rights of any and all individuals (De Varennes, 2007).

Recognition of the use of sign language is the essence of the right of deaf people to freedom to use, express and communicate in their own language, according to the CRPD. This recognition is the materialization of full personal freedom; without it, personal freedom is diminished. Hence, recognition of sign language by the State demonstrates compliance with one of the legal requirements of the CRPD, in the sense of protecting and valuing sign language in all contexts of daily life (Venade de Sousa, 2021).

Self-expression through sign language is an individual freedom of each and every speaker, and one with which the state is not permitted to interfere in general, under penalty of incurring a violation of the right to freedom of expression through language, and hence deprivation of personal freedom. Therefore, this freedom is directly related to the right of the individual to fully develop their personality.

The concept of linguistic freedom recognized by the CRPD is therein defined, on the one hand, in a negative dimension, insofar as any speaker may exercise this right of freedom of expression and opinion, including “the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice” (CRPD, Article 21). On the other hand, in a positive dimension, the Convention defines the more concrete and less abstract notion of the enjoyment and exercise of individual freedom of expression. In particular, under Article 21, paragraphs (b) and (e), respectively, “Accepting and facilitating the use of sign languages (...) and all other means, modes and formats of communication of their choice by persons with disabilities in official interactions” and “Recognizing and promoting the use of sign languages”.

Indeed, within the framework of individual linguistic freedom and the margins of political-legislative conformity as to the ways and means of adopting legislative measures, speakers may use sign language to express themselves, communicate and be served by public services. In addition to linguistic freedom, the right to use and express oneself in sign language is inherent to the issue of freedom of expression, as well as to issues of officiality.

2.3 Principle of equality and non-discrimination on language grounds

The prohibition of discrimination on language grounds is universally recognized and enshrined, in its various aspects, in articles 2 and 5 of the CRPD. These articles of the Convention establish that sign languages are equal to other spoken languages, and are inherent to the clause of non-discrimination on language grounds; that is, non-discrimination on the basis of the languages used by deaf people (Venade de Sousa, 2021).

The principle of non-discrimination on the basis of the language used by the speaker constitutes a legal and axiological basis for respecting the sociolinguistic characteristics of speakers who express themselves in their own language. Linguistic equality is inherent to respect for linguistic dignity. Speakers who express themselves in their own languages are entitled to any and all rights considered fundamental to ensure their sociolinguistic existence as a member of the linguistic community that freely identifies their cultural reference. Hence, linguistic dignity and equality are axiologically indivisible.

In general terms, there are three minimum preconditions for the admissibility of non-discriminatory treatment on language grounds (Venade de Sousa, 2021): (i) the consideration that a given language has an official linguistic status which provides additional protection of the non-discriminatory clause on language grounds, depending on the factual and specific normative circumstances; (ii) the non-discriminatory subjective

qualification of the speakers who speak the language in question; (iii) non-discriminatory treatment based on language takes into account the sociohistorical, social and linguistic contexts of the situation of the speakers and the linguistic normalization of the historically discriminated (or invisible) languages themselves, which may proportionally justify the need to adopt positive action measures to offset inequalities, where necessary.

Illegitimate exclusions or restrictions related to the use, teaching and learning of a given language in society may constitute, depending on their specific circumstances, a violation of this principled element, unless there are legitimate and proportionate justifications for the measures adopted to support the promotion and safeguarding of the language in question. For this reason, the adoption of such a language policy must be committed to eliminating barriers to the use of a given language in society, effectively ensuring the maintenance, development and preservation of the use of the minority language.

2.4 Principle of cultural conception of sign language

Each and every constructed language is essentially “the expression of a collective identity and of a distinct way of perceiving and describing reality and must therefore be able to enjoy the conditions required for their development in all functions” (Universal Declaration of Linguistic Rights, 1996). Articles 1 and 2 of the same Declaration go on to state that “All languages are collectively constituted reality and are made available within a community for individual use as tools of cohesion, identification, communication and creative expression.” Indeed, sign languages are seen, beyond any doubt, as human languages, whose sociohistorical and sociolinguistic reality is constituted by deaf people and represented by the deaf community as having their own sociolinguistic identity. These languages are the fundamental instrument of communication, available and accessible for individual use, by deaf people in particular, and are also instruments of cultural and identity cohesion for the same community that is responsible for their creation and development.

It is pertinent to affirm that the sign languages used by respective deaf communities have unquestionable cultural and linguistic value as vectors for the inherent identity of the deaf community as a whole. Sign language is the representation of a sociocultural reality and has the characteristics that are valued by the deaf people who identify with it. The sociolinguistic meaning of sign language is not only a question of linguistic legitimacy, as languages historically constructed by the speakers of that linguistic community; sign language is also part of the linguistic diversity of the richness of humanity, insofar as it is endowed with its own inherent linguistic characteristics.

Of overarching importance is the recognition of rights considered relevant for the purpose of the exercise of rights in society, on an equal footing with other languages. This recognition presupposes respect for linguistic equality and also takes into account the cultural identity of the linguistic community. Full recognition acquires sociopolitical relevance with the adoption of significant measures to ensure and promote the fundamental rights and freedoms of deaf people, mainly with respect to sociocultural and linguistic differences. In order to achieve respect for recognized rights, effective compliance with the necessary measures of any nature must be enforced, in the field of education and elsewhere, to ensure the deaf community’s full enjoyment of fundamental rights and freedoms (Batterbury, 2012; De Meulder & Murray, 2017).

2.5 Principle of legality of recognition and officiality of the use of sign language

The relationship between language and law is multifunctional, as it presents several dimensions of language use in both private and public spheres (Milian i Massana, 2016; Pérez Fernández, 2006). The legal regulation of language use defines, by its nature, the meaning, content and scope of linguistic rights, and takes into account the multifunctional concept of the right to language, the meaning of which differs according to the nature and scope of the legislation. In fact, the use of a given language becomes the object of legal regulation by the State, which assumes its political, administrative and legislative functions in relation to the framework of language as a means of communication between public authorities and citizens, both individually and collectively (Pérez Fernández, 2006).

The definition of officiality inherent to the legal status of sign language varies, therefore, according to their national legal systems (for example, Major, 2014; Ruíz Vieytes, 2004; Rytz Regula & Romano, 2019). However, it can be said that the minimum presuppositions of officiality are that the State recognize sign language as a

fully-fledged language with the capacity to be seen as a legitimately valid means of communication used in interactions between deaf people and public authorities in general. In this sense, the CRPD requires states to declare the legal status of a sign language as equal to other languages, while acknowledging its inherent linguistic and communicative characteristics and, consequently, recognizing it as a language in its own right. The CRPD does not allow the State to discriminately disregard or restrict this statute of sign language, thereby harming the inherent rights of deaf people. In this way, the Convention conditions the degree to which states, within their political and legislative faculties, comply with the principles and norms therein. Essentially, it is up to the State to adopt legislative and other measures in accordance with the aims of the CRPD; that is, the State must adopt a legal framework for the use of sign language, safeguarding the rights of sign language speakers and the conditions required for the enjoyment and exercise of these rights in linguistic matters. Hence, the CRPD contains the presuppositions addressed to states to regulate and provide the necessary conditions to ensure the recognition and use of sign language.

3 Normative contribution of the legal recognition of sign languages

3.1 Models of the legal status of sign languages: Portuguese Sign Language and Catalan Sign Language

Different models of legal recognition portray or explore the different legal solutions of their respective legal systems to contribute to the legal statutes of sign languages (for example, De Meulder et al., 2019; Van Herreweghe et al., 2015). In other words, the legal recognition model has multiple different aspects since it is contextualized according to the sociopolitical circumstances and the legal system of the respective state. Consequently, the legal recognition of sign languages is determined by their respective national legal systems (Rytz Regula & Romano, 2021). Equally, the meaning, scope and effect of legal recognition are defined differently by their respective legal systems, as is the content inherent to the linguistic officiality of the sign language statutes of the respective countries. For example, the legal status of sign language can benefit from its constitutional, infra-constitutional or legal value, nature and effectiveness (e.g., De Meulder, 2016; Busatta, 2022).

Table 1.

| PORTUGUESE CONSTITUTION (1997) | STATUTE OF AUTONOMY OF CATALONIA (2006) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CHAPTER III. Cultural rights and duties | CHAPTER V. Governing principles |
| Article 74: Education | Article 50: Promotion and dissemination of Catalan |
| 2. In implementing the education policy, the state is charged with: (...) h) Protecting and developing Portuguese sign language as an expression of culture and an instrument for access to education and equal opportunities | 6. Public authorities shall guarantee the use of Catalan sign language and conditions of equality for deaf people who choose to use this language, which shall be the subject of education, protection and respect. |

Source: Prepared by the author

For example, the constitutional recognition of Portuguese Sign Language (in Portuguese, *Língua Gestual Portuguesa*) in the Portuguese Constitution and Catalan Sign Language (in Catalan, *Llengua de Signes Catalana*) in the Statute of Autonomy of Catalonia (as it is treated as an organic law under the Spanish legal system) reveal different models of dealing with constitutional and legal recognition, respectively. These recognition models are rooted in the principles often invoked by their national legal systems in terms of protecting and promoting the use of sign language inherent in respect for equality and non-discrimination, access to education and, above all, inclusion in society (Busatta, 2022).

The above articles establish recognition of the respective sign languages as a starting point, despite the different nature of their constitutional and legal models, defining their legal statutes with different implications founded in the terms *protecting* and *developing* in the Portuguese Constitution, and *guarantee*, *protection* and *respect* in the Statute of Autonomy of Catalonia. These models regulate the protection and promotion of the use of

sign language. Portugal has intersectional legislation in different areas that have no specific legislation. For example, under Article 15 of Decree-Law 54/2018, Portuguese Sign Language is recognized as a specific subject for deaf students who attend certain bilingual schools that have their own Ministry of Education-approved curricular programs. On the other hand, Article 4 of Law 46/2006 protects the rights of deaf people who invoke discrimination on language grounds, having been excluded or diminished by authorities that have failed to fulfill their obligations. Catalonia complements its own legislation on the basis of Article 50 of the Statute of Autonomy. Catalonia has several laws regarding the use of sign language: Law 27/2007 recognizes both Spanish and Catalan sign languages at the state level; Law 17/2010 recognizes Catalan Sign Language; and Law 13/2014 makes provision for accessibility at the Catalan regional level (see Jarque et al., 2019; Quer, 2012). In general, the expressions “cultural rights and duties” (Portuguese Constitution) and “governing principles” (Catalonia) are classic legal categories of constitutional law with different prescriptive and/or programmatic implications in their respective legal systems. These are precepts that, included in Chapter III (Cultural rights and duties) of the Portuguese Constitution; and in Chapter V (Governing principles) of the Statute of Autonomy of Catalonia, with somewhat similar legal implications regarding the recognition and use of sign language. In principle, articles 74.2, subparagraph (h), of the Portuguese Constitution, and 50.6 of the Statute of Autonomy of Catalonia, under the aegis of equality and non-discrimination on language grounds and, above all, universal accessibility in society, assign to the competent authorities the responsibility for ensuring and promoting the necessary conditions for deaf people to enjoy and exercise their right to the recognition and use of their respective sign language.

As in other countries, these recognitions are not autonomously self-executable, despite having the objectively declarative legal effect important to their legal systems: political, legislative and administrative intervention is required to translate these legal statutes into practical effectiveness – to the detriment of theoretical or illusory rights – and the enjoyment and exercise of the rights thereby protected.

With regard to the meaning and nature of the legal recognition of sign languages in constitutional and legal texts, respectively, systematic and *pro homine* interpretation allows us to understand that these legal systems, according to their interpretative elements, introduce the categorization of the legal status of sign language as a fully-fledged language and a legitimate instrument of inclusive accessibility in society. This must include specific consideration of the unique legal reality of sign languages, according to the sociopolitical and sociocultural particularities of their respective deaf communities. For example, the Portuguese Constitution defines Portuguese Sign Language as “an expression of culture” and “an instrument for access”. This provision is a constitutional declaration that recognizes the different meanings of the language in question. However, the regulation of these constitutional declarations, necessary to complete the legal effects inherent to the enjoyment and exercise of rights, is lacking in the educational sphere (Decree-Law 54/2018), in legal protection against discrimination on grounds of disability (Law 46/2006), and in various other associated spheres, such as access to communication and information, among others. With respect to Portuguese Sign Language, Portugal has specific laws that deal with minority languages – *Mirandês* (Law 7/99) and *Barranquenho* (Law 97 /21) – with limited legal effects.

In the case of Catalan, Article 50.6 of the Statute of Autonomy establishes the guarantee of the use of Catalan Sign Language as a guiding principle of public policy. This article is specified by the legislation for this purpose. Law 27/2007 uses the term *recognize*: “recognize Catalan sign language as the language of deaf, hearing-impaired and deaf-blind people in Catalonia, who freely decide to use it, without prejudice to subsequent legislative and regulatory regulations that may correspond to the Generalitat de Catalunya, developing its powers”. Meanwhile, Law 17/2010 states: “Recognize Catalan Sign Language as a linguistic system and regulate its teaching and protection from the public authorities, in accordance with article 50.6 of the Statute of Autonomy”. On the one hand, then, the legislation defines the term; *recognize* means defining the language used by the deaf community. On the other, *recognize* refers to the legal framework that defines a set of linguistic rights with different legal effects. These aspects will be explored in further detail below.

3.2 Interpretation of the CRPD: recognition and officiality

3.2.1 First presupposition: formal and material recognition of sign language status

The CRPD does not expressly define the concept of sign language recognition. In general, legal recognition is a multifunctional concept that evolves according to the sociopolitical, sociocultural and linguistic contexts of a given society. The concept of recognition is associated with linguistic ideologies “about the normativity of the spoken modality” (De Meulder, Murray & McKee, 2019). However, from a strictly legal perspective, the concept of recognition is not merely associated with confirmation of the existence of the language itself. Essentially, recognition is inherent to the functional metamorphosis, endowed with declarative, attributive and constitutive effect, of the language’s status as a language that is formally and materially used by speakers in different contexts of everyday life (Venade de Sousa, 2021).

In short, legal recognition is a legal category that reveals the existence of a stated legal-linguistic reality. This means that the legal existence of language can be neither denied nor neglected by the legal system. The language has a formal and materially stated statute with all the necessary conditions for the enjoyment and exercise of rights (Venade de Sousa, 2021).

Hence, it is understandable that legal recognition is a legal category of its own that encompasses, in different ways, for example, formalization of the communicative acts of public authorities in their official interactions with speakers; the symbolic manifestation of cultural expression of a language community; and the legal elevation of a language in need of legal-linguistic protection, both axiological and normative, from the State (Pizzorusso, 1986; De Meulder, 2016).

The attribution and definition of legal recognition is essentially up to the political faculties of the respective states in accordance with their legal systems, which declare, establish and determine the legal statutes of specific languages with different legal effects and, above all, the leveling of legal-linguistic protection (Pérez Fernández, 2006). Legal status means that certain languages have legal frameworks, established by their respective legal systems, that regulate the determination and endowment of the legal effectiveness of the given language, in the sense that this status fulfills essential assumptions and creates the conditions necessary to implement the effects of legal recognition and thus translate the enjoyment and exercise of linguistic rights into practice (Pérez Fernández, 2006).

Thus, legal recognition requires the State to formally declare, in accordance with its discretionary political faculties, *de iure* and/or *de facto*, the existence in society of the language in question, as a legitimate and legal instrument of communication in accordance with its statutory framework – whether legal, political, administrative or social in nature – and endowed with juridical-linguistic value and sociolinguistically instrumental effectiveness in conditions of preservation, valorization and promotion of the language in society. Hence, legal recognition is a formal instrument through which the State, as the ultimate recipient of the adoption of language policies, can wield, to the extent of its competences, to guarantee the aforementioned existence, preservation and valorization of the language.

The content of legal recognition must be, essentially and simultaneously, (i) *formal*, that is, a state declaration inherent to its linguistic legislation, depending on the degree and type of the legislation; (ii) *material*, that is, the definition and implementation of the enjoyment and exercise of rights inherent to the status of the recognized language; (iii) *explicit*, that is, the existence of a multifunctional framework to implement its measures; and (iv) *practical*, as regards the value and effectiveness of measures that promote the preservation, valorization and promotion of the language in question.

In short, recognition is merely the starting point for the protection, guarantee and promotion of linguistic rights; it is the result of this recognition that will make the difference (see Venade de Sousa, 2021). Although recognition will not be an instant panacea, it is nonetheless the first step towards adopting the measures necessary to promote the use of and access to the language in the daily life of speakers in society (see Venade de Sousa, 2021).

3.2.2 Second presupposition: content of the legal status of sign language inherent to officiality

Recognition involves different types, degrees and levels of protection conferred by its legal status as a means of communication and/or as an instrument of cultural expression of the language community concerned (e.g., De Meulder, 2015, 2016). This recognition involves *a posteriori* definition of the nature and degree of

the status of linguistic officiality, since *legal recognition* and *linguistic officiality* are autonomous concepts, although mutually complementary.

Linguistic officiality is, therefore, a polysemic concept that has different meanings, contents and legal effects depending on the sociopolitical, sociocultural and linguistic circumstances of the society in question (Venade de Sousa, 2021). Nonetheless, it incorporates the importance of different terms such as *officialization* – inherent to the formal dimension of the statute – and *officiality* – associated with the material and substantive content of the exercise of language rights.

The term *officialization* is a presupposition of legal-linguistic accreditation in the sense of the metamorphosis or elevation of the formal status of the language, through the legal system, to that of a fully-fledged language.

The CRPD requires that the national legal system makes sign language official, a fully-fledged language, because a constitutive element of legal-linguistic personality is a prerequisite to having a *corpus iuris* of linguistic rights. The language will subsequently be framed in the light of the conditions of enjoyment and exercise inherent to the status of linguistic officiality.

Officiality, on the other hand, has to do with the necessary conditions for the language to be deemed official. That is, it relates to the applicability and feasibility of the legal statute to translate into practical effectiveness with respect to use of the language.

Applicability consists of stating that the status of linguistic officiality has the capacity to produce the potential legal effects in the legal system, and has to do with the degree and intensity of the legal-normative force of the statute in question; when a linguistic officiality statute has an adequate degree of effectiveness to be able to apply in a specific case, for example. Applicability is inherent to legal effectiveness. Depending on the specific normative circumstances, if any of the elements necessary to produce these effects are lacking, the applicability and, consequently, the practical effectiveness of this statute would be diminished.

The *feasibility* of the linguistic officiality status means that this status requires linguistic legislation that generates legal effect by implementing conditions for the speakers' enjoyment and exercise of their fundamental language rights. Presuppositions of normative sufficiency, clarity and determinability of the norms that constitute the official linguistic status enable a degree of practical feasibility, inherent to the legal-normative density of this statute as defined and established by linguistic legislation.

Linguistic officiality presupposes the *a priori* existence of the legal recognition of sign language as a fully-fledged language, on an equal footing with other languages and with its own sociolinguistic reality. In other words, linguistic officiality is the *continuum* and the *plus ultra* (or additional guarantee) of legal-linguistic recognition. Officiality implies that the status of a given language is an elevator of reinforced and complementary legal-linguistic protection of legal-linguistic recognition. The statute of linguistic officiality requires the legislator to establish the legal framework with the necessary conditions of practical fullness, adequate legal effectiveness and necessary feasibility in the various legal-linguistic spheres between speakers and public authorities in general.

The legal status of sign language must fit the scope of officialization in the sense of being deemed a language in its own right. In addition, the official status is the *plus* of legal-linguistic recognition, which is materially equated with a process of consequential officialization of the language's status.

4 Meaning and scope of Article 21 of the CRPD: case of sign language

4.1 Article 21 as a starting point for the requirement for legal recognition

“Although the CRPD does not refer explicitly to a legal right to language, this right is implied in the Convention” (Bantekas et al., 2018). Article 21 of the CRPD explicitly provides that the State *take – not be able to take* – “all appropriate measures to ensure” that deaf people may adequately exercise their fundamental rights, with particular respect to use of and access to the language in all contexts related to the rights protected by the Convention. This article is interconnected with other conventional norms and does not stand in isolation

(Bantekas et al., 2018). Moreover, these “appropriate measures” are characteristic of conventional regulation on the meaning and scope of the recognition and promotion of the use of sign language. Therefore, the CRPD itself is defining the essential content – with minimum conditions – of recognition of the use of sign language, which the State is obliged to incorporate into its domestic law framework in accordance with the Convention.

In the context of Article 21, paragraphs (b) and (e) of the CRPD, the Convention itself defines the essential content. These paragraphs are considered the legal basis inherent to a statute of sign language, since the terms *accept*, *recognize*, *facilitate* and *promote* have essential legal implications: “As a result, Article 21, para. (e), of the CRPD provides for two different but interrelated obligations.” (Della Fina et al., 2017).

Taking into account the background and *travaux préparatoires* (Bantekas et al., 2018; Della Fina et al., 2017) and, according to *pro homine* interpretive criteria (Venade de Sousa, 2021):

(a) The terms *accept* and *facilitate* refer to a subjective dimension of the legal status of sign language. These terms impose a qualitatively sociolegal meaning of the existence of the sociolinguistic reality of a given language. This subjective dimension implies that the definition of recognition has a subjective scope inherent in the speaker’s right to use sign language, a right that can be neither denied nor conditioned by the State in its official interactions. The definition of the inherent recognition of the terms *accept* and *facilitate* is understood as a guarantee of linguistic rights in line with the purposes of the Convention that the State acts in accordance with the legal framework that the Convention protects the rights of speakers in interactions with various public authorities.

(b) The terms *recognize* and *promote* refer to an objective dimension of the legal status of sign language. This objective dimension mainly applies to states that have obligations under the CRPD to adopt any and all measures necessary to harmonize their legislation and other actions compatible with the aims of the Convention. The term *recognize* translates into a formal declaration of the sociolegal dignity of the language in question, with elevating legal force in the legal system of the State (Venade de Sousa, 2021): “Accordingly, far from being just a meaningless recognition, Article 21, para. (e), of the CRPD also requires Contracting Parties to promote the use of sign languages so that the deaf are guaranteed the right to their natural language expression and development.” (Della Fina et al., 2017).

In other words, the State acts in accordance with the CRPD by formally declaring sign language to be a fully-fledged language in conditions of proportional equality with other languages (articles 2 and 5 of the Convention), with different means and forms, through the adoption of legislative or other measures, whether constitutional, infra-constitutional or legal in nature. Furthermore, the Convention requires the State to adopt the necessary measures to guarantee the use of sign language. This is a material officiality inherent to the substantive content of the enjoyment and exercise of protected rights with effective and practical conditions.

The CRPD contains cumulative presuppositions designed to verify that the legal status of sign language established by the national legal system in question is in accordance with the purposes of the Convention. Regardless of the formal typology of the constitutional, infra-constitutional or legal statute, it is pertinent that the legal statute should benefit from the regime of material and practical officiality and should not only rely on a symbolic or merely declamatory nature of officiality. This means that there must be effective and efficient conditions for speakers to fully enjoy and exercise their inherent rights in linguistic matters.

To understand the legal effectiveness of Article 21 of the CRPD, the term *indirect applicability* is used, since it is necessary to constitute legislation that densifies the content of the official status of sign language, the task of which is to fulfill the enforceability of statute, the legislative and political intermediation of the legislator, and thus ensures the necessary conditions of this statute in everyday life. This is not to say that these norms of the Convention should be seen as a “blank check”, but rather a clear, objective imperative of the CRPD, aimed at the legislator to determine content and legal-linguistic framework in accordance with the principle-based assumptions of said norms. It is necessary to emphasize, once again, that the ordinary legislator cannot suppress the need for the status of linguistic officiality, by imperative of the Convention, in its various normative presuppositions, which are legally potent and not optional. The legislator is obliged to develop measures of a legislative and political nature, to describe and establish the legal consequences inherent in the legal-linguistic recognition of sign language. The issue is not one of a right of legal creation;

rather, it is one of an *ex constitutione* framework defining the principled presuppositions for the protection and valorization of sign language as a language in its own right.

The practical effectiveness of the status must at least guarantee to facilitate the use of sign language in official relations. The State must ensure the equitable provision of sign language in official interactions, fully and without any illegitimate or arbitrary political, legislative, regulatory, administrative or other obstacle.

In short, subparagraphs (b) and (e) of the same article qualify as a basic reference of the CRPD in linguistic matters, whereby the State is required to develop and specify the legal framework established by domestic law without distorting the purposes of the Convention. The legal recognition of sign language must have a declarative as well as a constitutive effect because it must contain a substantive framework for the enjoyment and exercise of these linguistic rights, thus justifying the fundamental right of deaf people to use and express themselves in sign language, according to the catalog of rights protected under Article 21 of the CRPD in particular. In other words, it is an essential framework for defining the set of various rights protected by the Convention inherent to the status of officiality regulated by the conventional legal system.

4.2 Jurisprudence of the Committee: complementary elements of interpretation of the CRPD

The United Nations Committee on the Rights of Persons with Disabilities has consistently reinforced its interpretive understanding of the recognition and use of sign language.

For example, despite the fact that the Portuguese legal system formally recognizes sign language in the Portuguese Constitution, however, the Committee still recommends that the Portuguese State “promote the official recognition of Portuguese sign language and Braille” (Committee on the Rights of Persons with Disabilities, 2016, § 41). The key word is *promote*, as in the Spanish Constitution’s “Ensure full access to sign language interpretation services for persons who are deaf and increase the training of sign language interpreters”, for example (Committee on the Rights of Persons with Disabilities, 2019, § 40).

In the cases of France (Committee on the Rights of Persons with Disabilities, 2021) and Switzerland (Committee on the Rights of Persons with Disabilities, 2022), however, which had no recognized sign languages, the Committee urged the states in question to adopt relevant legislative measures. According to the jurisprudence of the Committee, the following cumulative requirements are considered necessary to meet the aims of the CRPD:

- (i) The adoption of a legal framework for the rights of deaf people must be the result of a consultation and articulation process between the State and organizations that represent deaf people. In other words, “ensure close consultation and engagement with the deaf community, especially in schools, universities and other settings” (Committee on the Rights of Persons with Disabilities, 2022, § 42).
- (ii) The concept of the legal recognition of a sign language must have both a formal and a material dimension, as an “official language” in accordance with its national legal system and the purposes of the CRPD. For example, in the case of Switzerland, the Committee clearly recommends to the Swiss State: “Recognize the three Swiss sign languages as official languages at both the federal and the cantonal levels (...)” (Committee on the Rights of Persons with Disabilities, 2022, § 42).
- (iii) The typology and nature of the legal status of sign language varies according to the national legal system. It is up to the State to choose and adopt the statute of sign language in accordance with the aims of the CRPD. For example, in the French case, “Recognize French Sign Language as an official language, including at the constitutional level, and promote access to and the use of sign languages in all areas of life” (Committee on the Rights of Persons with Disabilities, 2021, § 40).
- (iv) Content inherent to the legal status of sign language generally covers “all areas of life” (Committee on the Rights of Persons with Disabilities, 2022, § 42). It should not be limited, for example, to recognizing only rights in the educational field (“sign language is recognized only in certain areas, such as education”, Committee on the Rights of Persons with Disabilities, 2021, § 39). To give another example, it is not complete if access to sign language interpretation provided by duly qualified interpreters is not guaranteed (“sign language interpretation is not recognized as a profession, and there

is a lack of professional requirements and specific training for sign language interpreters” (Committee on the Rights of Persons with Disabilities 2021, § 39). Consequently, it must not permit “limited availability” (Committee on the Rights of Persons with Disabilities, 2021, § 39) of the practical effectiveness of recognized rights, thereby preventing or hindering the enjoyment and exercise of these rights. On the contrary, it must “Ensure full access to sign language interpretation services for persons who are deaf and increase the training of sign language interpreters, particularly in rural areas” (Committee on the Rights of Persons with Disabilities, 2021, § 40).

(v) The legal status of sign language must cover the rights of deaf people in educational, informative, communicative and cultural matters in any context. For example, the Committee recommends the legal status recognize “the specific cultural and linguistic identity of deaf persons, including sign languages and deaf culture” (Committee on the Rights of Persons with Disabilities, 2022, § 58).

(vi) The purpose of the legal statute of sign language must, at least, fully guarantee informative and communicative accessibility as inherent to the exercise of recognized rights, without any discriminatory conditioning that might impede the enjoyment and exercise of such rights in conditions of proportional equality by virtue of articles 2 and 5 of the CRPD, for example: “Develop legally binding information and communications standards at the federal, cantonal and municipal levels to ensure the accessibility of provided to the public, including at public events and on websites, television and media services” (Committee on the Rights of Persons with Disabilities, 2022, § 42).

(vii) The effectiveness of the enjoyment and exercise of rights established by the legal statute of sign language must be guaranteed and promoted to ensure “access to and the use of sign languages in all areas of life” and “ensure the availability of qualified sign language interpreters” (Committee on the Rights of Persons with Disabilities, 2022, § 42).

The European Union of the Deaf (2022), incidentally, defines five fundamental points of the “official language” concept necessary to complete the recognition of a sign language: “(...) Official recognition of sign languages entails: 1. Recognizing sign languages as fully-fledged languages of the EU. 2. Granting sign language users their linguistic rights – the right to use and receive information in a national sign language in official interactions at the EU level. 3. Recognizing the culture of deaf people and awareness of the aspirations of the deaf community. 4. Ensuring accessibility in national sign languages on request via professional and verified sign language interpreters. 5. Celebrating national sign languages during the European Day of Languages”.

Thus, the CRPD states the essence of the State’s obligation as the State’s duty to effectively guarantee the right of deaf people to use and express themselves in sign language in their domestic legal system. The essential minimum requirements for the effectiveness of full sign language recognition are the following:

(i) Recognition means more than a mere formal proclamation which must also be materially accompanied by a sufficiently defined legal framework enforceable before any competent authority. The legal nature of recognition must not be merely symbolic, with no practical legal effects. Furthermore, it must assume an “instrumental” character with legal effects “aimed at ensuring that language is not an obstacle to the effective enjoyment of rights with a linguistic dimension” (De Meulder & Murray, 2017).

(ii) The existence of a legal framework created through adequate legislation that defines the legally and practically effective conditions for the enjoyment and exercise of rights appropriate to all aspects of daily life, far beyond mere proclamation of recognition itself.

(iii) The status of the use of sign language, in its normative dimensions and of any nature, must be multifunctionally inclusive and effective in all aspects of daily life.

(iv) The legal framework must be compatible with the catalog of fundamental rights protected by the CRPD, for these are authentic fundamental rights rather than mere faculties granted by domestic law.

(v) The essential elements of the enjoyment and exercise of the rights considered appropriate fall within the framework of the purposes legitimately pursued under the CRPD: (a) the right to use sign

language in any circumstances; (b) the right to choose to use sign language for official interactions; (c) the right of access in sign language under conditions of linguistic equality; and (d) the right to know sign language as a vehicle for teaching and learning.

5 Conclusions

Article 21 of the CRPD is the compass for definition of recognition of the status of sign language. The paragraphs referred to in said article are defined as the core of the CRPD and are inherent to the definition and establishment of the legal framework common to the states parties that act within the parameters of the Convention. It is true that each state party is free to constitute any legal framework for its respective sign languages according to the sociohistorical, sociopolitical and legal circumstances inherent to its national legal system and, naturally, to its own sociopolitical and linguistic ideologies. However, domestic law interprets and applies in accordance with the Convention, and not vice versa. Consequently, the broad and flexible concept of recognition is revealed by the Convention, which provided significant indications with which to complete the concept, scope and purposes of the eventual legal status of sign language.

Recognition is the consequence of linguistic officiality, which translates into a legal-linguistic materialization inherent to the use of and access to the language and which is, above all, associated with the linguistic rights of speakers and deaf people in particular. The CRPD clearly demonstrates that mere symbolic recognition without legal effects is not adequately compatible with the purposes of the Convention itself. In particular, the examples of legislation relating to Portuguese Sign Language and Catalan Sign Language are close to the purposes of Article 21 of the Convention. However, the problem of these legal statutes is not officialization per se, but difficulties related to the issue of officiality to fully guarantee the use of and access to the language in all contexts and not merely in some contexts of public services.

As is understandable, the competent authorities must necessarily adopt measures of a different nature that effectively ensure and promote the practical rights – to the detriment of theoretical rights – of speakers in society, allowing them to express themselves in sign language and have access to the language whenever possible, in any context of public, personal or family life. The CRPD itself determines that the State must adopt the necessary measures to ensure that sign language may fully exercise its sociolegal (and sociolinguistic) functions as a vehicle of communication between speakers and public authorities. This is, necessarily, a linguistic official status that must be legally developed and safeguarded by the State, which elucidates, within a certain margin of conformity as to the ways and means by which to properly achieve the necessary conditions for the exercise of the linguistic rights of speakers in official interactions.

Likewise, the promotion of the presence and use of sign language in official interactions is the permanent compass of the practical effectiveness of the fundamental right to language, hence the State may not justify, for any reason invoked in the eyes of the CRPD, its ignorance of the prevalence of a particular language to the detriment of sign language. On the contrary, to promote the use of sign language is to equitably ensure the sociolinguistic and sociolegal coexistence of the languages that exist under the legal system of the State in question.

The legal recognition of sign language presupposes a legal framework endowed with the effectiveness, legal and practical, of the enjoyment and exercise of the rights attributed to those who use and express themselves in that language, both in the active and passive dimensions, in accordance with the parameters of their respective national legal systems and, above all, by the CRPD. Indeed, the status of recognition is only appropriate if it adequately states the value and existence of the language in question in the linguistic legislation and, furthermore, if its framework is defined and established to ensure its socio-linguistic and socio-political effectiveness under conditions and through policies that are complete, up to date, appropriate and proportionate to its purposes.

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