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# Active international healthcare mobility and urban accessibility: the essential role of Italian cities and urban planning in the development of foreign healthcare tourism

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**Abstract [En]:** The balance between Italians who go to be treated abroad and foreigners who come to be treated in Italy is still negative for our country; there are many difficulties (of an organizational, regulatory and management type) that push health tourists to choose other countries instead of ours. However, Italy should strive to try to resolve the aforementioned difficulties in order to become a coveted country; in this context, a fundamental role can be played by Italian cities, effective protagonists of health migration. It seems that among the aspects to be addressed is that of urban accessibility, given that many Italian cities are not yet able to be fully inclusive. The problem, as highlighted in the text, obviously does not concern medical tourists alone, but also, and more generally, disabled people residing in our country, who are often unable to participate in the prosperity deriving from urban revitalization. An action that is aimed at ensuring urban accessibility with the aim of making Italy a country sought after by health tourists, therefore, is an action that simultaneously benefits all those who live in it.

**Abstract [It]:** Il saldo tra gli italiani che vanno a farsi curare all'estero e gli stranieri che vengono a farsi curare in Italia è ancora negativo per il nostro Paese; molte sono le difficoltà (di tipo organizzativo, regolatorio e gestionale) che spingono i turisti sanitari a scegliere altri paesi al posto del nostro. Tuttavia, l'Italia dovrebbe impegnarsi per cercare di risolvere le suddette difficoltà al fine di diventare un paese ambito; in quest'ottica, un ruolo fondamentale può essere giocato dalle città italiane, protagoniste effettive delle migrazioni sanitarie. Si ritiene che tra gli aspetti da attenzionare vi sia quello dell'accessibilità urbana, posto che molti comuni italiani non riescono ancora ad essere pienamente inclusivi. Il problema, come evidenziato nel paper, non riguarda, evidentemente, i soli turisti sanitari, ma anche, più in generale, le persone disabili che risiedono nel nostro Paese, le quali non riescono spesso a partecipare alla prosperità derivante dalla rivitalizzazione urbana. Un'azione che sia diretta ad assicurare l'accessibilità urbana col fine di rendere l'Italia un paese ambito da turisti sanitari, dunque, è un'azione che si pone contestualmente a beneficio anche di tutti coloro i quali vivano in essa.

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## 1. Active international healthcare mobility in Italy

The phenomenon of international health mobility, also known as medical tourism<sup>1</sup>, is constantly growing<sup>2</sup> and it is substantiated for various reasons.

As far as Italy is concerned, many people move only to face lower costs: especially for certain types of services (which would still be at their expense, even if they were performed in our country -for example, cosmetic surgery-) they travel to third world countries, where, regardless of the quality of the intervention, the costs are certainly lower. It is therefore clear that in this case the trend is opposite to that affecting national interregional mobility. The latter mobility is related to a direct search for the choice of a structure that ensures the best possible performance<sup>3</sup>. The reason of this difference is easy to understand: in the second case, the service, regardless of other tangible private costs, is in any case borne by the NHS; in the first, however, the patient, since he also has to bear the costs of the service, since this is not included in those guaranteed on a national level, tends to "save", even to the detriment of the final result<sup>4</sup>.

Some individuals move in order to obtain services that are not available in Italy because they are considered unlawful here (for example, until a few years ago, before the Italian Constitutional Court intervened, this happened for heterologous fertilization procedures<sup>5</sup>). Furthermore, others move because they are looking for services of higher quality than those available in Italy, or because they see the possibility of being treated more quickly and/or because they have a naturalistic or cultural interest in the places where the facilities where they will be treated are located<sup>6</sup>.

<sup>1</sup> If the movements take place in the European Union, it is preferable to speak of "free movement of patients in the European Union". In these terms, J. Heulin Martínez De Velasco, *La libertad de circulación de los enfermos en la Unión Europea: del turismo sanitario al reintegro de gastos*, in *Derecho y Salud*, 2011, 85. It is not clear, actually, which types of treatment must be included in this definition: for example, we can speak of health tourism both for urgent and due interventions, and for interventions chosen and autonomously desired by the subject (many people, in fact, travel to obtain surgical treatments even if purely aesthetic). Henderson, in 2004, attempted to systematize the topic, proposing different categories of analysis (J.C. Henderson, *Healthcare Tourism in Southeast Asia*, in *Tourism Review International*, 2004, 111 ff. The author spoke of health tourism as a phenomenon that includes several sub-categories: that of *illness* (check-up; screening; surgery for urgent interventions; transplants, dentistry services); that of *wellness* (acupuncture, massages, thermal baths); that of *enhancement* (aesthetic plastic surgery); that of *reproduction* (fertility treatments, assisted procreation). This classification is the one that today, still, it is customary to consider as valid. On the movements of Italian health tourists to EU countries (and on the practical problems they risk encountering), reference should be made to N. Posteraro, *Cure oltre lo Stato: l'effettività del diritto alla salute alla luce del d.lgs. n. 38 del 2014*, in *federalismi.it*, 2017.

<sup>2</sup> A Deloitte study calculated that seven million people travel around the world every year for health reasons, generating a turnover of 100 billion dollars.

<sup>3</sup> The reference to the analysis carried out in N. Posteraro, *La compensazione e i rimborsi nella mobilità sanitaria interregionale e transfrontaliera*, in *Il diritto dell'economia*, 2018, 851 ff.

<sup>4</sup> The data shows that those who leave Italy to get treatment are looking for savings for dental treatment, cosmetic and reconstructive surgery, hair transplantation, spas.

<sup>5</sup> Cf. Italian Constitutional Court, June 10, 2014, no. 162.

<sup>6</sup> Most popular destinations are: Costa Rica, India, Israel, Malaysia, Mexico, Singapore, South Korea, Taiwan, Thailand, Turkey and the United States. For cosmetic surgery, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Mexico, Turkey, Thailand and Ukraine are particularly popular. (Cf. Patient Beyond Borders, *Medical Tourism Facts&Statistics*.

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The dangers of these cross-border movements are numerous: in some countries, such as India, South Africa or Thailand, infections can be contracted by patients that are very different from those that can be contracted here and therefore they then appear difficult to manage once the patient has returned home. The quality of post-operative care may also be poor, since it strictly depends on the efficiency of the hospital in the country of reference, which can operate with very different standards from the typical Italian ones.

Still, traveling long distances immediately after having surgery can increase the risk of serious complications. Long flights, for example, essential for returning home, can predispose the patient to thrombosis and pulmonary embolisms. Furthermore, receiving treatment in a country whose language is not spoken can lead to dangerous misunderstandings.

Lastly, it should be noted that the post-operative hospitalization is borne by the patient and by his family members; and that, therefore, can have negative repercussions on the community, where the patient returns, for example, with a procured disability that will have to be borne by the country to which he belongs and not by the one that caused it by performing the service. In addition, the countries involved often offer little protection from a legal point of view against the risks of malpractice.

In this moment, the balance between those who come and those who go to be treated abroad is still negative for our country. If it is true that about 5 thousand foreigners choose to be treated in Italy (we are chosen for services with a higher specialization rate: neurology, cardiac surgery, oncology, bariatric surgery and orthopedics in particular<sup>7</sup>), it is equally true there are 200 thousand Italians are still going in medical centres, hospitals and clinics across the border<sup>8</sup>.

Indeed, even if the potential attractiveness of our country is high, both in relation to the quality of the professionals and services offered, and in relation to the competitiveness of public costs, there are, however, various regulatory, organizational and management obstacles that make it unattractive for others. Yet, Italy should have an interest in solving these difficulties, because, through a large flow of medical tourists, it would be able to obtain a lot of practical advantages; for example, it would be able to ensure, among other things, an improvement in the quality of services: it is not unlikely, in fact, to think

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Retrieved July 14, 2014; Medical tourism: Need surgery, will travel, CBC News Online, June 18, 2004. Retrieved September 5, 2006).

<sup>7</sup> At the moment, the Italian healthcare excellence mainly attracts patients who come from Arab countries (Saudi Arabia, Kuwait, Arab Emirates and Oman), Switzerland, Russia and Albania and who spend between 20 and 70 thousand euros for treatments and surgery.

<sup>8</sup> This is according to the estimates of the Observatory on Private Consumption in Healthcare (Ocps)-Sda Bocconi presented in 2016 in Rome on the occasion of the launch of "Hospitality", a network of public and private health facilities promoted by the Campus Bio-Medico of Rome.

that foreign lenders would be stimulated to invest in the construction of health infrastructures, if they were more sought by medical tourists<sup>9</sup>.

Our country could, for example, enhance its beauties, given that, as revealed by the research carried out on this point, at the base of the phenomenon of health tourism there is very often the patient's interest in visiting the places of care also for cultural and/or leisure reasons<sup>10</sup>. Because of this, Italy should commit itself to try to ensure a broader and more structured offer of services not only for health, but also for tourism. Given the potential it has, it should also pay particular attention to transport policy, which, due to its organization, is not having a good reputation and discourages travel<sup>11</sup>.

It is believed that in the direct action to overcome the aforementioned difficulties (sub-species, of the organizational ones, above all), cities can play a primary and important role, since they are the protagonists of health migrations on whose attractiveness our country depends as a whole.

## **2. The role of cities in the development of active cross-border mobility: the importance of ensuring urban accessibility**

In recent years, attention to the cities has increased conspicuously (in particular, with a view to making them more "intelligent") and to the rights connected to them, a new frontier of administrative law<sup>12</sup>.

Undoubtedly there are many actions that they could take to make themselves really attractive in the eyes of foreigners interested in moving for health reasons. In any case, before working on something innovative, in order to become avant-garde, it is believed that they must take action to solve the problems that exist within them, hoping for an effective and concrete resolution. In other words, before thinking about "doing to innovate" they should try to "do to solve in view of innovation".

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<sup>9</sup> In any case, it should be noted that high active mobility could lead to a dizzying increase in litigation on the subject of medical liability and thus stiffen the Italian judicial system, which in itself is not very fast: it should be considered that, as reaffirmed by paragraph 3 of article 5 of Legislative Decree no. 38 of 2014 with reference to the migration to Italy of healthcare tourists from European countries (decree transposing the 2011 Patient Directive), the patient who suffers damage due to healthcare received in Italy from healthcare providers operating in the territory Italian has the right to pursue the ordinary judicial remedies provided for by national law.

<sup>10</sup> With this in mind, Croatia's dentists offer low-cost care packages with the possibility of staying in tourist resorts as well; cities like Dubai that have invested in large quality healthcare facilities to attract wealthy patients from around the world.

<sup>11</sup> The Italian legislator himself seems to be aware of the importance and potential of health tourism, who, in preparing the measures to promote tourism (law delegated to the Government on tourism), recently (July 2019) included among the tourism sectors emerging, including health and spa tourism based on a travel and stay offer aimed at health care and the search for well-being, which provides for specific health treatments and the assistance of professionally qualified medical personnel.

<sup>12</sup> J.-B. Auby, *Per lo studio del diritto delle città*, in G. della Canaea, C. Franchini (edited by), *Il diritto che cambia*, Naples, 2016, 205 ff.

Cities should, for example, work on the protection of a healthy environment, which is closely connected with the protection of health<sup>13</sup>: they should therefore avoid the occurrence of dangerous situations such as those that occurred in Campania until a few years ago due to waste (and which led the ECHR to condemn our country for violating article 8 of ECHR<sup>14</sup>). Foreigners will otherwise be rightly reluctant to reach certain cities in our country, if they feel they are putting their own health at risk (health which, by moving, they would rather protect).

But they should also pay some attention to the issue of urban accessibility, a topic to which the study (certainly not exhaustive) of these pages is dedicated: it is believed, in fact, that if Italian cities really want to contribute to making Italy a country coveted by health tourists, they must become more inclusive (and, therefore, fully accessible even to people with special needs). This is a theme that still appears little explored in research and urban planning practices and which, on the other hand, requires some attention. The risk is that otherwise foreign disabled people will give up their travel with us from the beginning because of the difficulties they might encounter in order to move freely in the city where the health facility from which they wish to be treated arises; without considering that the problem becomes even more acute if the medical tourist is interested in satisfying, at the same time, an interest in visiting the places of care also for cultural and/or leisure reasons: in these cases, it is clear that the patient will not choose to migrate to a place where, *ex ante* (before the treatment), or *ex post* (after the treatment has been performed), he will have difficulty in moving freely and independently.

Evidently, the difficulties mentioned above concern, indeed, not only people who have particular needs from the beginning, but also those who become carriers of a disability -even only temporary- once they have received medical treatment.

### **3. Urban accessibility in Italian cities: a not entirely positive balance**

According to the World Health Organization, about 15% of the world's population has some form of disability and visiting or getting around the city is a major concern for people with special needs.

<sup>13</sup> Especially thanks to the civil jurisprudence, then relaunched by the doctrine, the right to health was considered as one of the tools through which to develop the presence in the legal system of the right to the environment (cf. D. Siclari, *La tutela del diritto ad un ambiente salubre tra attività prestazionale dell'amministrazione e vincoli di bilancio*, in *Nomos*, 2017). The healthiness of the environment is a *sine qua non* element to ensure individual and collective psycho-physical well-being (L. Mezzetti, *La Costituzione dell'ambiente*, in *Id.* (edited by), *Manuale di diritto dell'ambiente*, Padua, 117). The link between health and the environment also emerges in the same definition of environment proposed by the WHO, which identifies it as a set of physical, chemical, biological and social elements that exert an appreciable influence on the health and well-being of individuals and communities.

<sup>14</sup> See, C. Feliziani, *Il diritto fondamentale all'ambiente salubre nella recente giurisprudenza della Corte di Giustizia e della Corte EDU in materia di rifiuti. Analisi di due approcci differenti*, in *Riv. it. dir. pubbl. com.*, 2012, 999 ff.

According to data compiled by ANMIL (National Association of Workers with health conditions or impairments), in Italy there are cities where disabled people are able to lead an almost normal life and others that are still very hostile to the issue<sup>15</sup>; in any case, even if there are more and more Italian municipalities that, sensitive to everyone's needs, promote initiatives aimed at eliminating architectural and social barriers, there is still a long way to go to make our cities fully accessible. The interventions prepared, when prepared, are often inadequate; and this depends both on the crisis of the financial equilibrium of public accounts, and on the regulatory fragmentation, which certainly does not help those who have to apply the provisions to extricate themselves from the labyrinth of rules.

The most vulnerable people therefore find it difficult to participate in the prosperity resulting from urban revitalization. Not all residents in this regard are able to have equal access to the services of the city, to participate in the municipal decision-making process and to benefit from the economic growth of the city.

In large cities, the problem frequently relates to the need to overcome large distances to reach a certain destination, especially if the route has a variable elevation or is made up of an uneven ground: a gravel or pebble pavement, typical for example of some historic centres, is an obstacle for those with disabilities and affects motor skills and orientation (think of the difficulty of handling a wheelchair on cobblestones or the balance problems that uneven flooring can cause to a visually impaired or elderly person). The insufficient width of the sidewalks or any obstacles encountered along the way (such as benches, tables, litter bins, flower boxes, etc.) are also architectural barriers and which, especially for a sensory disabled person, can be dangerous if not properly marked.

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<sup>15</sup> Indeed, during the sixth edition of the Access City Award, the prize for the most accessible city in Europe, was awarded by the European Commission and the European Disability Forum to the city of Milan. However, it is an award that is awarded on the basis of the policies and practices actually put in place in order to reduce the barriers for people with motor and sensory disabilities. To be rewarded, in other words, is the commitment to improve, rather than the overall judgment of accessibility.

This is a problem which, as also noted by the Italian Constitutional Court, affects negatively the fundamental right to health of these people<sup>16</sup>: being able to use places that can be used easily and safely, in fact, facilitates mobility and amplifies the network of social relations<sup>17</sup>.

Indeed, difficulties still exist despite the fact that the legislator has repeatedly intervened on the subject with the aim of ensuring an effective inclusiveness of Italian cities: it is true that we do not have an internal regulatory definition of urban accessibility (national legislation in fact provides definitions of accessibility partial and limited, as it refers specifically to certain areas -buildings, for example, or computer tools<sup>18</sup>-)<sup>19</sup>; however, although the search for the construction of an inclusive space, without

<sup>16</sup> Health, as known, is a condition on which not only the physical and mental integrity of the subjects depends, but also the normality of social life within which each individual forms his or her personality and identity (it is known that, in occasion of the International Conference of Alma Ata of 1978, promoted by the World Health Organization -WHO-, health has been defined as a state of physical, mental and social well-being and not simply the absence of disease or infirmity). It is therefore a right that, far from being a mere element of collective interest linked to the mere absence of pathologies, it becomes an enforceable right through which the formation of personal identity passes. The Italian Constitutional Court has also contributed to the development of health as total well-being, which, since the 1980s, has often had the opportunity to definitively sanction this new concept of health as a right to personal identity which also leads to a healthy and aware social life. See, for example, the rulings on the right to gender identity of transsexuals (reference should be made to N. Posteraro, *Il diritto alla salute delle persone transessuali e la rettificazione chirurgica del sesso biologico: problemi pratici*, in *Riv. it. med. legale e del diritto in campo san.*, 2017, 1085 ff.; Id., *Transessualismo, rettificazione anagrafica del sesso e necessità dell'intervento chirurgico sui caratteri sessuali primari: riflessioni sui problemi irrisolti alla luce della recente giurisprudenza nazionale*, in *Riv. ita. di med. leg. e del diritto in campo san.*, 2017, 1351 ff.).

<sup>17</sup> Cf. Italian Constitutional Court, May 10, 1999, no. 167, according to which “[deve] ritenersi ormai superata la concezione di una radicale irrecuperabilità dei portatori di handicap e come la socializzazione debba essere considerata un elemento essenziale per la salute di tali soggetti sì da assumere una funzione sostanzialmente terapeutica assimilabile alle pratiche di cura e riabilitazione”. In particular, the Court declares the unconstitutionality of a rule of the civil code, because it does not allow the establishment of a right in favour of the handicapped in the case of forced passage through a third party fund. The Council states that the impossibility of accessing the public road, through a forced passage on the grounds of others, results in the violation of the right of disabled person to a normal life and relationships, which finds expression and protection in a multiplicity of constitutional precepts; it is evident that the absence of a life with relationships, due to the lack of accessibility to housing, cannot fail to determine that inequality that actually impede the development of the person that the legislator must, instead, remove. And in this sense the Court not only affirms the violation of article 3, paragraph 2, of the Constitution, but also of its article 32, as it includes a notion of health that extends to the psychic sphere of the person. On socialization as “an essential element for the health of those concerned, so as to assume a substantially therapeutic function similar to the practices of treatment and rehabilitation”, cf. Italian Constitutional Court, July 4, 2008, no. 251. On this point, cf. also Civil Court of Cassation, section II, March 28, 2017, no. 7938, according to which the provisions on the elimination of architectural barriers constitute imperative and mandatory rules, directly implementing not only article 42 of the Constitution, but also, precisely, of article 32 of the same Charter. Recently, Civil Court of Cassation, section III, February 13, 2020, no. 3691.

<sup>18</sup> For the IT level, the legislator has regulated the issue of accessibility in terms of use and access to the web network with the Law January 9, 2004, no. 4 (“Disposizioni per favorire l’accesso dei soggetti disabili agli strumenti informatici”), as well as with the related implementing regulation (Presidential Decree March 1, 2005, no. 75). The provision in question is mainly addressed to the public administration, providing for the obligation of the same to consider, in the purchase of goods and in the supply of IT services, the accessibility requirements as a preferential condition in the evaluation of the technical offer. Legislative Decree August 10, 2018, no. 106, implementing the European Union Directive relating to the accessibility of websites and mobile applications of public bodies (Directive (EU) 2016/2102), has updated and amended Law no. 4/2004, cit., extending and clarifying the notion of accessibility.

<sup>19</sup> A more complete definition of accessibility, although limited to the tourism sector, is indeed found in the recent 2017-2022 Strategic Tourism Development Plan published by MIBACT; it, acknowledging, in some respects, the concept of

barriers, is a relatively recent phenomenon (which has to deal with a spatiality measured on the "standard man" and therefore with centuries of "exclusive" design), there have been few regulatory interventions with which the legislator has hoped to overcome the problems.

The issue of urban accessibility was introduced by the Decree of the President of the Republic of July 24, 1996, no. 503 ("Regolamento recante norme per l'eliminazione delle barriere architettoniche negli edifici, spazi e servizi pubblici"): the decree introduced precise rules concerning building areas, urbanization works and urban furniture works, as well as the necessary accessibility public spaces for the handicapped<sup>20</sup>. It also dealt with public utility services<sup>21</sup>.

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valorisation contained in the Legislative Decree January 22, 2004, no. 42, qualifies accessibility as the possibility of physically and culturally accessing the environmental, landscape, cultural and territorial resources of our country. The term accessibility, we read, refers to the existence of conditions that : a) allow accessibility for tourism and enjoyment purposes through mobility systems, including sustainable ones, helping to reduce the isolation of peripheral or poorly served areas where there are resources that can be exploited; b) support tourist use for everybody without distinction of age, health or any other type; c) make it possible for visitors to understand and interpret the history, complexity and variety of the heritage visited (cultural permeability), appreciating its uniqueness and helping to understand the identity of the places. On this point F. Vescovo, *L'accessibilità urbana: considerazioni di base e concetti introduttivi*, in *Paesaggio Urbano*, 1992, 94, according to which urban accessibility can be defined as the set of spatial, distributive and organizational-managerial characteristics of the built environment that are able to allow easy use, in conditions of adequate safety and autonomy, of the places and equipment of the city also by people with reduced or impaired motor or sensory skills. On the international level, however, there are various "broad" definitions of accessibility, which, as such, are adaptable, in general, to the urban fabric as well. In particular, the U.N. Convention is relevant on the rights of people with disabilities, ratified by the Italian Parliament in 2009, which, specified that disability is the result of the interaction between people with disabilities and attitudinal and environmental barriers, which prevents their full and effective participation in society on a basis of equality with others, in its article 9 it proposes an understanding of accessibility that relates to places, transport, information and communication systems in general (cf. D. Ferri, *L'Unione europea e i diritti delle persone con disabilità: brevi riflessioni a vent'anni dalla prima "Strategia"*, in *Politiche Sanitarie*, 2016, 118 ff.). Indeed, the first references on the subject can be found in the early 1990s, in the United Nations Rules for Equal Opportunities for Disabled Persons, adopted by the UN General Assembly in December 1993. These are recommendations addressed to the Member States to take the necessary measures to guarantee disabled people the same opportunities as other citizens, counteracting any discrimination and ensuring the creation of accessibility conditions. In particular, article 5 of the rules in question specifies that states should recognize the central importance of accessibility in the process of achieving equal opportunities in every sphere of social life. For people with disabilities of all kinds, States should: a) introduce action programs to make physical environments accessible; b) find the tools to make information and communication accessible; c) facilitate access to physical environments. The recognition of the relevance of accessibility is part of a more general framework of promoting the rights of people with disabilities, their dignity and their respective personal freedoms. In accordance with the definitional approach of the aforementioned Convention, the definition provided by the European Commission in the document "European strategy on disability 2010-2020: a renewed commitment for a Europe without barriers", of November 15, 2010. In particular, on page 5 of this document, it is specified that "accessibility" means the possibility for disabled people to have access, on an equal basis with others, to the physical environment, transport, systems and technologies of information and communication (ICT) as well as other services and facilities.

<sup>20</sup> On this point, the principle enshrined in article 3 ("Aree edificabili?": it prescribes that in the development of urban planning tools, areas intended for public services are chosen, preferring those that ensure the design of buildings and spaces without architectural barriers. Accessibility must therefore be taken into consideration before planning, and not just before designing and implementation.

<sup>21</sup> More precisely, on tramway, trolleybus, car and underground lines (article 24); on trains, stations, railways (article 25); on maritime navigation services and on national ships (article 26); on inland navigation services (article 27); on terminals (article 28); on services for travelers (article 29); on public telephone systems (article 31). It also imposed the unification

In truth, however, it can be said that an anticipation to the issue of the accessibility of urban spaces had already been provided by Law no. 104/1992 ("Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate") and, more specifically, by its article 24, which, by significantly integrating and modifying the provisions contained in the previous provisions on the subject, represented a significant step forward for what concerns the provisions aimed at facilitating urban accessibility and the elimination of architectural obstacles<sup>22</sup>. Paragraph 9 of article 24 prescribes, in particular, that the Plans for the elimination of architectural barriers (the so-called PEBA, article 32, paragraph 21, Law of February 28, 1986, no. 41, "Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato"), which can be qualified as "implementation tools" of the symbolic element of urban planning and, in general administrative law, of the paradigm of the planning function<sup>23</sup>), are modified by providing for the making, also urban outdoor spaces (in particular by identifying accessible pedestrian paths, installing acoustic traffic lights and removing the signs installed in such a way as to constitute an architectural barrier)<sup>24</sup>.

This law has, therefore, held and continues to have a particular importance<sup>25</sup>. However, although inspired by the personalistic principle (it places the person with disabilities at the centre of a system in which all the institutions involved must act in a synchronous and organized manner to carry out the project of

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of public and private building standards. V. Amato, L'eliminazione delle barriere architettoniche, ambientali e sociali all'integrazione delle persone. Elementi per un approfondimento e considerazioni minime, in Questione Giustizia, 2018.

<sup>22</sup> The first paragraph of article 24, as mentioned above, considerably extends the field of application of the technical standards for the elimination of architectural barriers by explicitly extending them to "all building works concerning public and private buildings open to the public that are likely to limit accessibility and visitability". Pursuant to Law no. 104/92, the rules and technical measures are therefore no longer applicable only in cases of new construction or building renovation (which in the reality of the cases are limited compared to the generality of the building operations that are carried out on the territory). They also find application in all the other numerous, and less demanding, "recovery" interventions such as ordinary and extraordinary maintenance, restoration and conservative rehabilitation, as well as the so-called "internal works". Of course, in such cases, the obligation to eliminate existing architectural barriers does not refer to the entire property, but at least to the portion of the building subject to the restoration or modification works. In any case, it should be noted that already the circular of the Ministry of Public Works of January 20, 1967, no. 425, on the subject of residential standards, in article 6, concerning the qualitative aspects of building and urban planning standards, had considered "*indispensabile richiamare... l'attenzione sull'esigenza di tener conto, sia nelle progettazioni di natura urbanistica, sia particolarmente in quelle di natura edilizia, del problema delle così dette "barriere architettoniche" e cioè degli ostacoli che incontrano individui fisicamente menomati nel muoversi nell'ambito [anche] degli spazi urbani (...)*".

<sup>23</sup> Thus, in doctrine, the general regulatory plan is defined; cf. E. Boscolo, Nuove dimensioni della pianificazione comunale, in F. Di Lascio, F. Giglioni (edited by), La rigenerazione di beni e spazi urbani. Contributo al diritto delle città, Bologna, 2017, 143, who focuses on the evolution of the municipal urban plan and states that today the plan remains a discretionary and political act, but the cognitive apparatus and the preliminary phase assume a central importance compared to the past.

<sup>24</sup> However, it is not clear the exact aim of the prescription and specifically which "urban spaces" should be referred to in the planning stage. So, F. Vescovo, in <https://www.progettarepertutti.org/quadro-delle-disponibilita-normative/>.

<sup>25</sup> According to the Italian Constitutional Court, July 29, 1996, Law no. 104/1992 constitutes "una prima, significativa risposta al pressante invito rivolto da questa Corte al legislatore di garantire la condizione giuridica del portatore di handicap".

substantial equality that the constitutional dictates require), it is difficult to apply it, probably also due to the difficulties of coordination among the various institutional levels<sup>26</sup>.

It is worth noting that after more than thirty years, many Italian municipalities have not yet adopted the PEBA (and they were not, however, commissioners, in defiance of the provisions of paragraph 22 of article 32 of Law no. 41/1986, cit.)<sup>27</sup>. In this sense, there are numerous complaints made by associations in defence of the rights of disabled people<sup>28</sup>.

Indeed, it seems that the preparation of these Plans has encountered serious difficulties due to the fact that, upon the decision to appoint the technicians, the necessary documentation support is often not followed by the Administration concerned, nor the implementation of the necessary payments. It also

<sup>26</sup> The aims that the law proposes are set out in article 1, which provides that the Republic: "a) garantisce il pieno rispetto della dignità umana e i diritti di libertà e di autonomia della persona handicappata e ne promuove la piena integrazione nella famiglia, nella scuola, nel lavoro e nella società; b) previene e rimuove le condizioni invalidanti che impediscono lo sviluppo della persona umana, il raggiungimento della massima autonomia possibile e la partecipazione della persona handicappata alla vita della collettività, nonché la realizzazione dei diritti civili, politici e patrimoniali; c) persegue il recupero funzionale e sociale della persona affetta da minorazioni fisiche, psichiche e sensoriali e assicura i servizi e le prestazioni per la prevenzione, la cura e la riabilitazione delle minorazioni, nonché la tutela giuridica ed economica della persona handicappata; d) predispone interventi volti a superare stati di emarginazione e di esclusione sociale della persona handicappata". However, it requires specific measures, especially in relation to the more general programmatic provisions.

<sup>27</sup> For this reason, on September 12, 2014, the President of ANCI, Piero Fassino had sent a communication to all the Mayors, inviting them to take the necessary actions for the adoption in the Municipalities of the PEBA and, above all, urging them to engage the municipal bodies responsible for ensuring the full usability of public spaces by all citizens.

<sup>28</sup> The reality is clearly evident from the monitoring carried out in some territorial areas: from the ANCI Lombardia 2018 survey on the state of implementation of the PEBA in the region, it emerges, for example, that 94.2% of the Lombard municipalities do not have a plan for the elimination of architectural barriers and that 61.7% of them do not have the budgetary resources necessary to finance the priority interventions (the sample includes 64% of the municipalities of the Lombardy Region; in fact, they participated in the survey, answering the questionnaire prepared from ANCI, 968 municipalities out of 1516. The report shows that only 5.8% of municipalities have a PEBA). The 2013-2014 report by the Regional Center for Information and Documentation on Disability (CRID, now CRA, Regional Center for Accessibility) certifies that, among the 166 Tuscan municipalities belonging to the sample, only 68 have prepared a plan. In general, it seems that all the regions have legislated in the period immediately following the entry into force of the law establishing the PEBA in order to reiterate the obligation of compliance by the Municipalities belonging to their territorial area (see Regional Law Calabria no. 8/1998; Regional Law Lazio no. 74/1989; Regional Law Tuscany no. 47/1991; Regional Law Lombardy no. 6/1989). But only in recent years - and therefore with enormous delay compared to the national law of 1986 - some of them have prepared guidelines for the preparation of PEBA as a support and guide to municipal planning. A very recent example is constituted by the guidelines of the Lazio Region (Guidelines for the deliberation, drafting and approval of PEBA (full of elimination of architectural barriers) for the municipalities of Lazio, resolution of February 11, 2020 no. 40), approved in February of this year, which should give impetus to the long-awaited planning work in Rome's municipalities. The document outlines a methodological model from which the municipalities can draw inspiration "in line with their own specificities, also making use of the collaboration of the most representative associations for the protection of disabled people in the area", dividing the PEBA into "levels of analysis and implementation": *building level*, with identification of municipal and non-municipal public buildings (but equally included in the territory) and the degree of accessibility of each; *territorial urban level*, related to internal mobility (public transport and parking, pedestrian routes and access to public and private services open to the public) and external (accessibility to and from the territory); *administrative level*, relating to the review or revocation of concessions that belong to the municipality. The guidelines provide for the annual updating of the PEBA implementation plan, the incorporation into urban planning and/or landscape and financial instruments and the identification of intervention priorities with relative cost estimates.

appears that public bodies have encountered various difficulties in recovering the necessary funding to actually carry out all the adjustment operations envisaged by the Plan<sup>29</sup>.

#### **4. Beyond health tourism: looking at urban accessibility as an investment and not as an expense**

It is evident that the issue that is being addressed is particularly important, given that it goes beyond the boundaries of health tourism and involves, more generally, both the problem of accessibility to the cities by tourists, including non-medical ones, and, in an even more evident way, the problem of accessibility for disabled people residing in Italy.

Indeed, as the business economics studies on this point attest, a city full of obstacles is an inexpensive city: this was already demonstrated by the Finance Law no. 41/1986, cit., which, although not having as its specific object disabled people or architectural barriers, intervened on the subject with important innovations; urban accessibility must therefore be read as an investment, not as an expense: if truly guaranteed, it not only undoubtedly feeds the phenomenon of tourism (even non-healthcare)<sup>30</sup>, making it inclusive (accessible) and competitive, capable of promoting economic, cultural and social development throughout the territory<sup>31</sup>, but more generally allows disabled residents -inhabitants of the territories- to

<sup>29</sup> See, F. Vescovo, in <https://www.progettarepertutti.org/quadro-delle-disponibilita-normative/>. The small deadline of one year provided for the fulfilment of the obligation by the "competent administrations", sanctioned by the 1986 law with a compulsory administration that remained mainly on paper, denoted - as underlined by A. Lauria, *I piani per l'accessibilità. Una sfida per promuovere l'autonomia dei cittadini e valorizzare i luoghi dell'abitare*, Rome, 2012- an underestimation by the legislator of the complexity of the planning operation. The lack of criteria to guide the administrations in the drafting of the plans and the scarcity of financial resources actually disbursed to the Municipalities to implement the programs for the removal of architectural barriers, although sporadically sketched in an uneven way, have considerably affected the failure of the instrument which instead turns out to be extremely valuable for orienting planning from the outset towards inclusive perspectives in a logic of "prevention".

<sup>30</sup> With the Strategic Tourism Plan for Italy, for example, MIBACT has identified accessibility as one of the cross-cutting principles to be considered. As part of the initiatives of the Directorate General for the enhancement of cultural heritage, the "A.D. Art", started in 2010 by service I of the Directorate General for the Enhancement of Cultural Heritage: the aim was to conceive and implement a system of analysis and detection of the accessibility conditions of Italian state cultural sites and the subsequent placing on the network of an information system designed to ensure the complete availability to the public of the site's usability levels. However, due to technical problems, it was not entirely successful (on this point, A. Ragusa, *Persone disabili e accessibilità: il progetto A.D. ARTE per i musei statali*, in *educare.it*, 2015, 172 ff.). The attempt to introduce the issue of accessibility into the discipline of tourism has indeed met with a ruling of constitutional illegitimacy (see Italian Constitutional Court, April 5, 2012, no. 80, on article 3 of the so-called tourism code, which required the State to ensure that people with motor, sensory and intellectual disabilities could benefit from the tourist offer, with the same quality and without increasing costs compared to other users: according to the Court, article 3 "attiene, con evidenza, ai rapporti tra Stato e Regioni in materia di turismo e realizza un accentramento di funzioni, che, sulla base della natura residuale della competenza legislativa regionale, spettano in via ordinaria alle Regioni, salvo che lo Stato non operi l'avocazione delle stesse, con l'osservanza dei limiti e delle modalità precisati dalla giurisprudenza di questa Corte"; concluding for the constitutional illegitimacy of the law for violation of articles 76 and 77, first paragraph, in relation to arts. 117, fourth paragraph, and 118, first paragraph, of the Constitution).

<sup>31</sup> For a study on the economic value of accessibility, cf. A. Almici, A. Arenghi, R. Camodeca, *Il valore dell'accessibilità. Una prospettiva economico-aziendale*, Milan, 2020.

fully develop their personality, pursuant to articles 2-3 of the Constitution<sup>32</sup>, as well as, among other things, contributing (or, continuing to contribute, if the disability has occurred) to the material or spiritual progress of society through the exercise of one's right to work (whose effectiveness depends on the promotion of the conditions to be part of the Republic, pursuant to article 4 of the Constitution<sup>33</sup>). The intervention on cities, on their shape and on the principles that govern them, in this sense, is designed to ensure the full satisfaction of the interests of the person: the improvement of living conditions, in any part of the world, necessarily requires the improvement of the cities, because most of humanity lives within them; in this sense, "l'urbanistica [ha] forti e precise responsabilità nell'aggravarsi delle disuguaglianze e (...) il progetto della città deve essere uno dei punti di partenza di ogni politica tesa alla loro eliminazione o contrasto"<sup>34</sup>. Only in this way it can be avoided for the cities to be seen as the place of representation of inequalities<sup>35</sup>.

With this in mind, it is believed that, in order for people with special needs to exercise their right to the city, which manifests itself as a superior form of rights<sup>36</sup>, among other things, accessibility issues must be more effectively integrated into general urban planning<sup>37</sup> (and, more generally, in all administrative procedures relating to the transformation of urban space)<sup>38</sup>.

At the same time, it also seems that the checks relating to the results obtained must be strengthened, the controls disseminated by the competent administrations must be increased and the introduction of

<sup>32</sup> "Per consentire il " pieno sviluppo" è [infatti] pregiudiziale che la persona stia bene nel proprio "spazio di vita". E una città consente ai suoi cittadini di "stare bene" solo se essa fornisce loro un complesso di beni e condizioni, materiali e immateriali, che consentano alla persona di crescere e coltivarsi" (C. Iaione, *La città come bene comune*, in Aedon, 2013). Cf. C. Colapietro, *Diritti dei disabili e Costituzione*, Naples, 2011.

<sup>33</sup> At the level of national legislation, the importance of ensuring the presence of accessible environments is also emphasized in the context of Legislative Decree April 9, 2008, no. 81 ("Testo Unico sulla salute e sicurezza sul lavoro"), whose article 63 requires that workplaces "be structured in such a way as to take into account, where appropriate, disabled workers".

<sup>34</sup> B. Secchi, *La città dei ricchi e la città dei poveri*, Rome-Bari, 2017, 30.

<sup>35</sup> In the twentieth century, it has been observed how the spatial dimension inevitably conditions the quality of daily life of citizens and their forms of interaction and sharing. In other words, cities constitute the main ecosystem for the development of human personality and as such represent the priority physical space within which conditions of individual and collective well-being must be ensured, the exercise of citizenship rights, the possibility of living diversity. C. Iaione, *La città come bene comune*, cit.

<sup>36</sup> Rights to freedom, to individualization in socialization, to habitat, to dwell (H. Lefebvre, *Il diritto alla città*, Venice, Marsilio, 1970 (original edition *Le droit à la ville*, Paris, Editions Anthropos, 1968).

<sup>37</sup> As noted by the jurisprudence, planning cannot be conceived in the abstract and according to rigid and predetermined criteria of zoning, but must know how to listen to the needs of the territory and reconcile their interests, allowing the local community to self-represent its own future (R. Di Pace, *La rigenerazione urbana tra programmazione e pianificazione*, in Riv. giur. ed., 2014, 258; F. Gualandi, Dallo "jus aedificandi" allo "jus restituendi" (inteso come diritto di recuperare, rigenerare e sostituire l'esistente). Riflessioni sulla rigenerazione urbana, in *giustamm.it*, 2014).

<sup>38</sup> It is one of the assumptions on which the "Guidelines for integrated policies (Cities accessible to all)" are based, the result of a project promoted by INU (Urban Planning National Institute).

effective tools must be ensured that allow disabled people to obtain effective protection where they believe they have been unjustly harmed by the failure to eliminate architectural barriers.

It is also essential that accessibility policies provide for correct information on the use, presence and destination of services dedicated to disabled people (and, more generally, accessible and therefore usable spaces). It is therefore necessary to work on that connection between works and actions that the more integrated approach requires: for example, the budget forecast of a mechanical stair lift in a public building must necessarily be combined with the investment for information actions aimed at users.

It is certain that the decision-maker, in making the choices to guarantee people with special needs, will have to take into account what will be represented by the directly concerned and by the trade associations. Therefore, before deciding, he must ensure their participation in the decision-making process, applying the express provisions, on a supranational level, of the United Nations Convention on the rights of persons with disabilities<sup>39</sup>: people with disabilities can certainly be spokespersons for innovative proposals regarding goods and services that meet the needs of people who face similar problems (e.g., people with weak eyesight can make suggestions that adhere to reality on how to illuminate streets , homes and workplaces).

Particular importance must also be given to the issue of training, on which it is necessary to invest: besides being aimed at technicians, administrators and politicians, it promotes, among other things, a better design quality of the solutions and, above all, a correct application of the legislation mandatory (and, therefore, a consequential effective protection of those individuals who, due to an unjust and restrictive reading of the concept, are not considered as direct recipients of the rules which -rightly- they ask for the concrete application: thus, the subsequent involvement of the judge, who is often called upon to intervene ex post to recognize the existence of a violation of the interest in the accessibility of the disabled person which, in constant application of the provisions relating to the subject correctly, could well have been avoided)<sup>40</sup>. Through training, it will also be possible to correctly address the legislator, who, among other

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<sup>39</sup> Article 4, paragraph 3, of the United Nations Convention on the Rights of Persons with Disabilities establishes a general obligation for States to consult and actively involve persons with disabilities, including children, through their representative organizations in the development and application of legislation and policies aimed at implement the Convention, as well as in other decision-making processes relating to disability issues. Indeed, the second "Programma di azione biennale per la promozione dei diritti e l'integrazione delle persone con disabilità", in Action 1 dedicated to "Accessibility area, universal design, removal of architectural and sense-perceptive barriers", provides for the participation of organizations representing people with disabilities precisely in implementation of article 4, paragraph 3, of the Convention.

<sup>40</sup> The concept of disability must be interpreted in a broader sense "anche alla luce della nuova dimensione che ha assunto il diritto alla salute, non più intesa come semplice assenza di malattia, ma come stato di completo benessere fisico e psichico" (*ex multis*, Civil Court of Cassation, section. I, october 16, 2007, no. 2174). In light of this, for example, it must be considered that the legislation concerning the overcoming and elimination of architectural barriers, referred to in Law January 9, 1989, no. 13, should also be considered applicable to people who, in a condition of advanced age, even if they are not handicapped, still have physical discomfort and motor difficulties (cf. Civil Court of Cassation,

things, will consequently be able to use more appropriate terms to refer to disabled people who are recipients of the rules introduced, without further stigmatizing their condition (it is known, in fact, that the disabled people themselves prefer to use the term “people with special needs”, instead of the more common ones that are normally used -disabled, handicapped, etc.-).

In this sense, the public administration is a key player in this innovation (in terms of supply of goods and services, for example, or of setting up spaces and places); however, the responsibility for urban and architectural accessibility policies will not only be borne by the administrations: an active role must in fact also be played by the administrators (think of the case in which they manage activities such as bars, clubs, restaurants, museums); in other words, according to the principle of horizontal subsidiarity (article 118 of the Constitution), understood in its positive meaning, the administration and citizens will have to join forces to ensure the development of the person and substantial equality.

## 5. Accessibility of the collective transport system and buildings of cultural interest

As regards the actions to be implemented in order to ensure, at the same time, the development of active health tourism, it is believed that particular attention should be paid, among other things, to the accessibility of the collective transport system, in many Italian municipalities still not fully guaranteed. This is an important issue, given that there are not rare cases in which our jurisprudence has found itself obliged to judge the existence of indirect discrimination of an omission type in the sector of accessibility to the transport system<sup>41</sup>. For example, the Court of Rome has repeatedly condemned Atac s.p.a. for

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section VI, october 18, 2017, no. 4824, according to which “La norma agevolativa sul superamento e l'eliminazione delle barriere architettoniche negli edifici privati (...) trova applicazione anche in presenza di persone che, pur non essendo diversamente abili secondo le condizioni previste dalle disposizioni specifiche sul punto, siano comunque affette da disagi fisici e difficoltà motorie seppure non accertate o certificate (ad esempio anziani, ma non solo, donne in stato di gravidanza, persone che spingono passeggini per bambini ecc.)”; in the same sense, Civil Court of Cassation section II, March 28, 2017 no.7938, according to which the favorable legislation referred to in Law no. 13/1989 also applies when it comes to elderly people who, although not carriers of real disabilities, still suffer from physical discomfort and motor difficulties).

<sup>41</sup> With the Law March 1, 2006, no. 67 (“Misure per la tutela giudiziaria delle persone con disabilità vittime di discriminazioni”), was promoted “la piena attuazione del principio di parità di trattamento e delle pari opportunità nei confronti delle persone con disabilità... al fine di garantire alle stesse il pieno godimento dei loro diritti civili, politici, economici e sociali” (article 1, first paragraph). First of all, a precise notion of discrimination is offered; direct discrimination is defined as treatment, “per motivi connessi alla disabilità”, less favorable than the one insured (even conditionally) to a non-disabled person in a similar situation; indirect discrimination the situation in which “una disposizione, un criterio, una prassi, un atto, un patto o un comportamento apparentemente neutri mettono una persona con disabilità in una posizione di svantaggio rispetto ad altre persone”. Finally, discrimination is considered “le molestie e quei comportamenti indesiderati, posti in essere per motivi connessi alla disabilità, che violano la dignità e la libertà di una persona con disabilità, ovvero creano un clima di intimidazione, di umiliazione e di ostilità nei suoi confronti”. On the assumptions of the applicability of the discipline cf. Civil Court of Cassation, section III, September 23, 2016, no. 18762, according to which the situation of inaccessibility to a private place open to the public (in this case, a room used for the use of an ATM), due to the presence of an architectural barrier, legitimizes the disabled person to resort, even to private individuals, to the anti-discrimination protection. See also K. Mascia, *Anche la persona affetta da disabilità deve poter accedere agevolmente al servizio di bancomat*, in *Diritto & Giustizia*, 2016, 5. Discrimination conflicts, among other rules, with the first

discriminatory conduct towards disabled people, who were often blocked in the Roman underground stations. With an ordinance of 2018<sup>42</sup>, following the appeal concerning compensation for damage resulting from the malfunction of the elevation systems of the Policlinico and Furio Camillo metro stations, the Roman Court held that the failure to prepare an organization suitable for making the accessibility of the systems effective , also existing in the structure, would determine indirect discrimination pursuant to article 2, Law March 1, 2006, no. 67 ("Misure per la tutela giudiziaria delle persone con disabilità vittime di discriminazioni"): the obligation to guarantee the right to free and safe circulation to the weakest users -a right of constitutional significance- cannot be subject to logistical and/or organizational conditions and/or related to staff shortages; therefore, it stated, the defenses of the defendant on this point, concerning the temporary absence of personnel and the organizational difficulties encountered, are completely irrelevant<sup>43</sup>.

But also places of cultural interest will have to be taken into account, given that those who take advantage of medical treatment to simultaneously satisfy their cultural interests will probably want to visit them (e.g. historical parks and gardens, archaeological areas and parks; urban spaces; buildings and monumental complexes; places of worship; exhibition spaces, museums, archives and libraries)<sup>44</sup>.

In more detail, buildings of cultural interest should be considered, among others: they frequently present barriers to entry, for example, strictly inherent to the architectural structure and its artistic value. In

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paragraph of article 21 of the Charter of Fundamental Rights of the European Union (which expressly prohibits any type of discrimination based, among other conditions, on genetic characteristics, age and disability) and with article 26 of the same Charter, according to which the Union recognizes and respects the right of persons with disabilities to benefit from measures aimed at guaranteeing their autonomy, social integration and professional and participation in community life. The nature of the subjective situation enacted, as pertaining to the inviolable rights of the person, constitutionally guaranteed, by now consolidated statement, implies that in the event of injury, the injured party has the right to compensation for damage, even non-pecuniary, regardless of the circumstance whether the damaging fact constitutes a crime or not, so that for compensation purposes it is irrelevant that the constitutive elements of incriminating cases exist and article 185 of the Italian Criminal Code is applicable. P. Virgadamo, *La tutela risarcitoria del danno non patrimoniale patito dai disabili: dalle barriere architettoniche alla l. n. 67 del 2006*, in *Giust. civ.*, 2007, 263.

<sup>42</sup> Court of Rome, I civil section, order of February 2, 2018.

<sup>43</sup> The jurisprudence has considered "indirect discrimination" to be an integral behavior also the failure to remove architectural barriers for the purposes of accessing the beach and the usability of bathing for people with disabilities. In particular, the Court of Latina (I civil section, order of March 12, 2018) condemned the Municipality of Sabaudia for discriminatory conduct from omisive behavior, not having prepared suitable walkways (being the existing ones inadequate in terms of width, inclination and materials used) that allowed disabled access from the road to the coast, nor mobile structures that guaranteed parking on the shoreline and entry into the water (so-called job chair) for wheelchair users: "l'omissione, da parte del Comune di Sabaudia, dell'abbattimento delle barriere architettoniche, sia quale omessa vigilanza del rispetto delle concessioni rilasciate, sia in termini di *faccere*, è un comportamento che il disabile (...) ha diritto di eliminare, rivolgendo istanza al giudice di imporre alla amministrazione pubblica l'adozione delle misure necessarie e finalizzate alla cessazione della condotta discriminatoria".

<sup>44</sup> With this in mind, the "Linee guida per il superamento delle barriere architettoniche nei luoghi di interesse culturale" (MIBACT, 2008) provide a useful and in-depth overview of the architectural barriers that can hinder accessibility in places of cultural interest and of the technical solutions that allow them to be overcome.

addition, the complex plan that characterizes them requires the removal of entrance barriers, accessibility to toilets and to the various floors or levels<sup>45</sup>.

Certainly, in these cases, more than in others, the need arises to adequately balance the interest of disabled person in accessing culture through the building with the public interest in preserving the historical value of the structure itself, subject to constraint.

However, it should be understood that as attested by the rules<sup>46</sup>, there is no a priori incompatibility between the aforementioned interests<sup>47</sup>. It is therefore wrong to believe that the interest in the conservation of cultural property (of which the administration responsible for the protection of buildings subject to constraint is the custodian, to which the intervention project drawn up according to the provisions of the law must be concretely presented) is an interest that has to always prevail over accessibility. On the contrary, it is an interest that can also withdraw, if it is ascertained that, in practice,

<sup>45</sup> When the place of cultural interest is a museum, then, or an exhibition space, or a historical library, or, again, an archaeological area, the problems of physical accessibility are added to those related to the need to make it accessible to all, also to people with cognitive or sensory disabilities, the cultural, educational, artistic, cognitive message that you want to convey. In these hypotheses, the overcoming of the barriers that hinder access to the cultural experience is achieved through the preparation of multisensory paths, suitable furnishings and equipment, tactile maps, audio guides, captions in Braille, guided tours in LIS, simplified guides for communication of contents to those with intellectual disabilities. The Directorate General of the Ministry for Cultural Heritage and Activities published in July 2018 the Guidelines for the preparation of PEBA in museums, museum complexes, archaeological areas and parks, created by a working group of experts and addressed to the directors of the places of culture as a support to planning aimed at improving accessibility conditions. The idea is to use the PEBA within the museum spaces as a transversal tool to the other planning tools already used (such as plans for safety or those of educational activities), with the function of systematically incorporating the instances of accessibility in the ordinary management of the structures, optimizing the interventions and the economic resources used. The document calls for the creation of synergies with the municipal administrations and the competent bodies in the area where the places are located: "il museo in quanto istituzione al servizio della società e del suo sviluppo può costruire la propria credibilità e autorevolezza, per relazionarsi con gli organi di governo del proprio territorio e con la comunità, anche sul tema dell'accessibilità culturale. Ciò permette di avviare delle progettualità capaci di operare in un sistema di relazioni per contribuire a far crescere la cultura dell'accessibilità e della progettazione inclusiva". Generally, it is stated that the Italian legislation on overcoming architectural barriers is of an advanced type: it is made up of immediately prescriptive provisions, directly implementing, among others, article 32 of the Constitution, attributes to disabled people, in the perspective of national jurisprudence, a real subjective right to the elimination of architectural barriers (Civil Court of Cassation, section III, September 23, 2016, no. 18762) and is part of broader social inclusion policy. Nevertheless, in the case of buildings of cultural interest (both if they are to be built from scratch, and if they are to be restored, as they already exist) it does not seem that such legislation is always correctly interpreted by those who are required to apply it. Indeed, it seems that the problems encountered by disabled people who want to access such buildings are still numerous. On this point, please refer to the investigation carried out in N. Posteraro, Dell'accessibilità delle persone disabili agli edifici di interesse culturale: problemi e prospettiva, in Munus, 2019, 893 ff.

<sup>46</sup> See article 4 and 5 of the Law no. 13/89, cit., as regards private buildings and article 82, paragraph 2, TU building (as well as article 19, paragraph 3, Presidential Decree no. 503/1996, cit.) as regards public and private buildings open to the public. Such rules, when they regulate, on a procedural level, the case in which the interest protected by the intervention to be prepared for the overcoming and elimination of architectural barriers in private buildings can clash with historically and/or artistically relevant values and strong enough to be protected by an administration placed by the legal system to guarantee their protection, they indirectly recognize that the direct intervention to overcome obstacles can/should be applied also on buildings subject to constraints.

<sup>47</sup> Recently, among many, cf. Council of State, section VI, October 18, 2017, no. 4824. Before that, Council of State, section VI, January 29, 2013, no. 543.

there are no limits to the application of the rules (established by the law) aimed at satisfying the right of disabled people to obtain the elimination of architectural barriers<sup>48</sup>.

In fact, if it is true that the protection of the historical and artistic heritage has been raised to a fundamental principle of the Constitution (article 9 of the Constitution), it is equally true that the constitutional significance of an interest does not determine its absolute and unconditional prevalence, but involves the need for this interest to always be taken into consideration in the possible balances made by the legislator (or by public administrations)<sup>49</sup>.

Indeed, it seems that, due to the way the provisions on the subject have been "structured", the terms of the question can even be "overturned": it seems that the legislator, while excluding the absolute validity of a principle of absolute and automatic superability and derogation of the restrictions placed on buildings for the purpose of historical and cultural protection<sup>50</sup>, has ex ante -legitimately<sup>51</sup>- considering the interest in the conservation of the heritage bound as a rule recessive in the face of interest in accessibility (recte, in front of the guarantee of the dignity of the person and of the right to health -articles 2, 3 and 32-)<sup>52</sup>, establishing that it can prevail only in completely exceptional cases (where, that is, the mandatory intervention to be carried out can cause a serious prejudice, in the case of private buildings to the property subject to protection)<sup>53</sup>.

<sup>48</sup> For too long it has been erroneously interpreted that the legal obligations for accessibility could not be considered as such as they are detrimental to the property which, in absolute terms, requires full protection. On this point, as regards the buildings of private cultural interest, if you like, N. Posteraro, *Sul potere autorizzatorio esercitato dalla Soprintendenza nel caso di richieste dirette al superamento delle barriere architettoniche in costanza d'edifici privati vincolanti per motivi storico-artistici*, in *Rivista giuridica europea*, 2020.

<sup>49</sup> Italian Constitutional Court, June 28, 2004, n. 196. Indeed, it is difficult "pensare ad una legge, o ad una teoria che voglia tutelare il monumento e non le persone, ad una cultura che prescinda dall'uso nel senso più ampio del termine" (A. Bellini, *La pura contemplazione non appartiene all'architettura*, in *TeMa*, 1998, 2): briefly, it is impossible to believe that two fundamental values to be safeguarded, such as that of the protection of historical and artistic testimonies present in a building and that of its usability, are necessarily incompatible.

<sup>50</sup> In this sense, Regional Administrative Court of Campania, Naples, section IV, September 15, 2011, no. 4402; Regional Administrative Court of Lazio, Rome, section II-quater, September 20, 2011, no. 7597; Regional Administrative Court of Umbria, January 17, 2000, no. 17. The rules recognize, in fact, that the elimination of architectural barriers, although it certainly represents a worthy objective of the building regulations, because it is aimed at concretely improving the quality of life of people with special needs, can conflict with the equally deserving need for protect the artistic and cultural heritage of the Nation (Council of State, section VI, March 7, 2016, no. 905, point 15 and Council of State, section VI, February 12, 2014, no. 682, point 3).

<sup>51</sup> On the fact that primary values can be balanced by the ordinary legislator, cf. G. Sciullo, 'Interessi differenziati' e procedimento amministrativo, in *Riv. giur. urb.*, 2016, 83 ff.

<sup>52</sup> Cf. G. Sciullo, *A proposito delle valutazioni di compatibilità rispetto a vincoli storico-artistici e paesaggistici*, in Aedon, 2018. Constitutional Court, June 25, 2008, no. 251, point 11; Regional Administrative Court of Sicily, Palermo, February 4, 2011, no. 218; F. Pellizer, *Commento agli artt. 4-6 della legge 9 gennaio 1989*, n. 3, 356 e M. Brocca, *Barriere architettoniche e beni culturali: interessi a confronto*, in *Urb. e appalti*, 2007, 11.

<sup>53</sup> It is certain that the legislator has explicitly admitted the sacrifice of the interest inherent in the tied assets when the protection needs of persons with disabilities so require: so, G. Sciullo, *A proposito delle valutazioni di compatibilità rispetto a vincoli storico-artistici e paesaggistici*, cit. According to Council of State., section VI, October 18, 2017, no. 4824, the law, in the provisions in question, affirms the prevalence of the interest in the protection of the disadvantaged person in the face of the protection of the artistic heritage, an interest that can succumb only in exceptional cases"; the

Without considering, then, that the current legislation on accessibility to buildings allows and favors the possibility of deepening technologies and imagining innovative and more advanced spatial solutions than those contained in the regulatory documents (provided that it is possible to demonstrate "the equivalent or better quality of the achievable results")<sup>54</sup>: the designers would therefore have the opportunity to undertake to propose alternative solutions capable of achieving accessibility even in constant places on which the interventions, as prescribed by the standards, could not be carried out, under penalty of the impact on the historical-artistic value that justified the placing on them of the constraint<sup>55</sup>.

## **6. Conclusions: five minimum aspects to consider when working on urban accessibility and the relationships between urban accessibility and smart cities**

In conclusion, it seems important to list five minimal aspects that certainly must be taken into account when working on urban accessibility (and therefore, in building a wellbeing-oriented city).

First of all, it is necessary that the institutions really work taking into account the fact that, as attested by the WHO since 2001, disability is no longer a "disease" to be endured within the mere family context, but a condition which, needing to be recognized, accepted, integrated (rectius included) and valued by the whole society, requires a series of "positive" actions<sup>56</sup>; with this in mind, our case law, analyzing the

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College specifies that it is precisely "from this prevalence" that "a particularly intense motivational burden derives for the Administration regarding the serious damage to the historical-artistic heritage deriving from the elimination of architectural barriers (on the reinforced motivational burden, see below). In the same sense, Regional Administrative Court of Lazio, section II -quater, July 25, 2017, no. 8928; Id., March 2, 2018 no. 2343.

<sup>54</sup> "Queste norme devono essere considerate non in modo statico, ma come importante punto di partenza, per un continuo e proficuo atteggiamento di ricerca, sperimentazione e verifica delle soluzioni da parte dei tecnici e degli utenti. Si è voluto cioè superare la logica di prescrivere vincoli e misure assolute e di stabilire standard dimensionali troppo rigidi, definiti una volta per tutti e destinati specificamente a chi deve usare la sedia a rotelle" (F. Vescovo, Universal design: un nuovo modo di pensare il sistema ambientale per l'uomo, in Paesaggio urbano, 2000).

<sup>55</sup> Furthermore, even if accessibility (understood in the sense of the aforementioned regulatory definition, therefore qualifying as "direct") is not concretely insurable, in the case of public buildings, they could still be prepared (should be prepared) of the substitutive mechanisms to ensure at least an "indirect" accessibility to the impassable building (multimedia stations, live cameras, three-dimensional models, etc.): in fact, remain valid the provisions of article 2 of the code of cultural heritage and landscape, according to which they are intended for "use by the community". However, from the research carried out on another occasion (N. Posteraro, Dell'accessibilità delle persone disabili agli edifici di interesse culturale, cit.), it is shown that adequate compensatory measures of this type are rarely set up, which on the contrary would still allow, albeit indirectly, the knowledge and enhancement of the listed buildings.

<sup>56</sup> This is a new concept of "disability" as outlined by the WHO in 2001, through the document ICF – International Classification of Functioning, Disability and Health. This condition, in fact, is now defined on the basis of a new "bio-psychosocial" matrix model, which integrates the complete human phenomenology, placing on the same level the aspects of a clinical nature (on which the previous WHO definition of disability) and aspects of social interaction, giving appropriate value to all relational contexts, public and private, in which the human activity of a person with disabilities is expressed. With the ICF cultural model, disability qualifies the relationship and consequently overcoming the disability can be achieved by acting on both people and the environment. In this way, the different conditions are recognized and we do not pursue the illusory objectives of standardizing people, a paradigm that dominated the twentieth century. On this notion, M.G. Bernardini, Disabilità, giustizia, diritto. Itinerari fra filosofia del diritto e Disability Studies, Turin, 2016, 1 e ss. On the notion of disability, cf., ex pluribus, B.M. Altma, Disability definitions, models, classification schemes, and applications, in G.L. Albrecht, K.D. Seelman, M. Bury (edited by), Handbook of disability studies, London, 2001;

internal legislation on overcoming architectural barriers, has specified that the level of protection of disabled people is now concretely considered as a primary interest of the entire community<sup>57</sup>, to be satisfied with interventions aimed both at creating inclusive environments from scratch, and at removing existing obstacles (architectural barriers, in fact), preclusive to the development of the person and the carrying out of a normal relationship life<sup>58</sup>.

Secondly, it is important that the issue of urban accessibility is faced with the awareness that it does not concern a niche of people: "disability" is attributable to a large portion of the population which includes all those who, for various reasons, find it difficult to interact with the material and immaterial environment (so-called invisible disabled people: elderly people, people with permanent or temporary disabilities, children, pregnant women, parents pushing a stroller, etc ...).

Thirdly, it is necessary to design taking into account the fact that the barriers to be broken down, as can also be deduced from the internal rules that define them in the building sector, are not only the architectural ones, but also the perceptive ones, found in the so-called sensory disabled. The difference is particularly important: while physical barriers, so-called "Architectural", require structural interventions in order to overcome or remove the material obstacle that stands in the way of the full accessibility of the space, those so-called "Perceptive", on the contrary, do not require structural works, but the

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C. Scorretti, *Un mondo che cambia: come definire e valutare oggi la disabilità*, in Riv. it. med. leg., 2010, 551 ss. The law must therefore also be "social-model oriented", in the sense that legal technique must be combined with Disability Studies. On this, R. Medeghini (edited by), *Norma e normalità nei disability studies. Riflessioni e analisi critica per ripensare la disabilità*, Trent, 2015.

<sup>57</sup> The judges of the Civil Court of Cassation explained that, in terms of the elimination of architectural barriers, the law (and, in particular, no. 13/1989) constitutes the expression of a principle of social solidarity, but also pursues purposes of a publicistic, because it favors accessibility to buildings in the general interest (Civil Court of Cassation, section II, April 12, 2018, no. 9101; in the same sense, see Civil Court of Cassation, section. II, March 28, 2017, no. 7938 and, before that, Civil Court of Cassation, section II, October 25, 2012, no. 18334, as well as Constitutional Court, April 29, 1999, no. 167). According to Civil Court of Cassation, section II, March 28, 2017, no. 7938, precisely because the law in question, on the basis of a constitutionally oriented interpretation, expresses the principle according to which the problems of people affected by some kind of disability must be assumed by the whole community, has in this sense imposed that in the construction of private buildings and in the renovation of pre-existing ones, architectural barriers are eliminated regardless of the actual use of the buildings by disabled people, since it is a question of guaranteeing fundamental rights (Constitutional Court, May 10, 1999, no.167; Civil Court of Cassation, section II, October 25, 2012 no.18334; Council of State, section VI, October 18, 2017, no. 4824) and not to grant personal and non-transferable rights by way of concession to disabled person as such (see also Civil Court of Cassation, section II, February 26, 2016, no.3858). In this regard, the jurisprudential orientation, formed on the subject of application of Law no. 13/1989, which generally recognizes the legitimacy of individual condominiums to request the elimination of architectural barriers, even in the absence of disabled people in the condominium, "essendo unicamente rilevante l'obiettiva attitudine dell'edificio, anche privato, ad essere frutto da parte di qualsiasi soggetto", thus regardless of the existence of a real or personal right of enjoyment of persons with disabilities (Regional Administrative Court of Catania, section I, May 13, 2016, no. 1321; Regional Administrative Court of Veneto, Venice, section II, April 5, 2007, no. 1122).

<sup>58</sup> Civil Court of Cassation, section II, October 25, 2012, no. 18334; Civil Court of Cassation, section II, March 28, 2017, no. 7938. For an excursus on the evolution of Italian and international legislation, refer to: A. Ornati, *Architettura e barriere. Storia e fatti delle barriere architettoniche in Italia e all'estero*, Milan, 2000; F. Marafini, *Barriera architettoniche*, Rome, 2007.

installation of suitable signaling systems, the omission of which itself becomes a barrier to mobility or orientation<sup>59</sup>. From this point of view, with reference to the urban fabric, the *wayfinding* assumes a particular importance, a science that deals with the design of orientation signs (taking care of color, lighting, graphic efficiency, comprehensibility and usability) to improve the ways in which information is conveyed: it proves particularly important in large railway stations, airports, shopping centers or equipped parks.

Finally, it is important that the criterion of Universal design is taken into account in the design<sup>60</sup>: the products and environments must be designed from the beginning so as to be immediately usable by everyone, to the greatest extent possible, without the need for subsequent adaptations or special aids<sup>61</sup>. This is an extended planning, which, in addition to generalizing the advantages, has the ability to anticipate the needs of individuals, adapting better to changes in society and the lifestyles of populations<sup>62</sup>. Thus,

<sup>59</sup> A. Arenghi, Barriere architettoniche (voice), in Rota G.L., Rusconi G. (edited by), Edilizia, Urbanistica, Governo del Territorio, Turin, 2006, 83 e ss. To facilitate orientation in the urban space for those with a sensory disability, as much information as possible must be provided to locate themselves in a point with reasonable accuracy and identify the most effective path to reach the desired goal. In general, to overcome these barriers, reference points are used first of all: vestibular, visual, tactile, acoustic, olfactory, kinesthetic information that has the function of making the environment recognizable. A blind or visually impaired person can, for example, draw a tactile clue from the presence of a bus waiting booth, which also constitutes an acoustic clue thanks to the reflection of sound, or even perceive a vestibular clue from the slope of a ramp and an acoustic information from a fountain. Street furniture, as well as the more exquisitely "decorative" and aesthetic choices, can therefore become invaluable anti-barrier tools. The guidelines that allow you to maintain the direction of travel also provide environmental information, which can be natural (such as the continuous wall of a building perceptible through the stick or the sound or thermal reflection), or artificial (such as the measures in the flooring that by modifying the roughness they can ideally trace the path).

<sup>60</sup> A. Arenghi (edited by), Design for all. Progettare senza barriere architettoniche, Turin, 2007. The term Universal Design was coined in 1985 by the American architect Ronald Mace, who was forced to use a wheelchair and a respirator. Mace described Universal Design as "the design of products and environments that can be used by everyone, to the greatest extent possible, without the need for adaptations or special aids". The term Universal Design, very common in the United States, has been adapted in Europe to "Design for all". The United Nations Convention on the Rights of Persons with Disabilities, in article 2, takes up the concept by defining Universal Design as "the design of products, structures, programs and services that can be used by all people, to the greatest extent possible, without the need for adaptations or specialized designs". The same article specifies, however, that 'universal planning' does not exclude support devices for particular groups of people with disabilities where they are necessary (on this, M.G. Bernardini, Universal Design, for example. Diritto, architettura e il soggetto a-vitruviano, in The Cardozo electronic law bulletin, 2017, 15).

<sup>61</sup> The applications of universal design are many and now tend to extend to all sectors in which the demand for accessibility has established itself: from physical environments, to services, to cultural and tourist experiences, as well as to educational contexts and more generally to all digital contexts. In recent years, for example, the original reference field of universal design, represented by physical environments, has been extended to the accessibility of learning contexts, giving rise to other models, such as Universal Design for Instruction (UDI) and Universal Design for Learning (UDL), which project and expand the principles of universal design to create inclusive and interactive didactic contexts. Finally, Universal Design has also found application in the tourism sector, in the version also known as "Tourism for All" (a term used for the first time in 1989 by the English Tourist Board and Holiday Care Service, which founded the Tourism for all, a working group entrusted with the task of developing recommendations for tour operators in order to include people with disabilities in the tourism market).

<sup>62</sup> There are many examples of universal widespread design (think of automatic doors): these are elements that represent a benefit for all the associates, in the end, and which are actually preferred for comfort and pleasantness of use. After

the stigmatization of the condition of disabled people will be avoided<sup>63</sup> and it will reduce the costs that must on the contrary be faced when it is necessary to prepare, ex post, innovations to adapt the building to the needs of specific categories of people<sup>64</sup>. The internal building regulations on architectural barriers indeed seem to take into account these aspects, which, in fact, in defining the latter, refers to obstacles that constitute a "source of danger" and "source of discomfort or fatigue" for anyone, thus certifying the transition from a building accessible to the disabled to a building that is safe and easy for any potential user, regardless of the existence of real diseases and disabilities<sup>65</sup>.

Accessibility, therefore, cannot be flattened into a regulatory dimension, as a requirement for which the law requires application; rather, it constitutes a cultural and planning approach, the aim of which is not purely and simply the removal of architectural barriers, but the creation of an environment "capable of welcoming" everyone and in which everyone can fully realize an "independent life".

Finally, if, as recently noted by the Italian administrative doctrine, cities are a mirror of our society and only by transforming the places where people mainly spend their lives can we hope to change humanity and ourselves<sup>66</sup>, it seems quite clear that this aspect must therefore be taken into account even when the so-called smart cities (or smart communities<sup>67</sup>) will be designed, new paradigm of urban development<sup>68</sup>. The concept of smart city cannot in fact be limited only to digitization or linked exclusively to environmental issues. On the contrary, it implies a real revolution in how to conceive the relationship

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all, many tools that were originally produced as aids for people with severe mobility difficulties have become a convenient "universal" accessory: the emblematic example is that of remote controls.

<sup>63</sup> In other words, it is necessary to avoid preparing an "apartheid design" towards people with disabilities (the expression is by L. Foster, *Access to the Historic Environment: Meeting the Needs of Disabled People*, Donehead, Shaftesbury, 1997).

<sup>64</sup> The definition does not refer to everyone, but to as many people as possible: each solution can present difficulties for a specific user; at the same time, there will always be special situations that require customized solutions.

<sup>65</sup> Equally important would be a reorganization of the numerous laws and administrative acts that govern the various aspects of the protection of disability. This would certainly also make it easier for disabled people and their families to understand what are, in practice, the ways to use the rights recognized to them (and, consequently, how and in what terms they can request protection, in the event of a perceived injury). On the subject, see the reflections of M. D'Amico, *Introduzione. Un nuovo modo di guardare al mondo delle disabilità: la Costituzione inclusiva*, in M. D'Amico, G. Arconzo (edited by), *Università e persone con disabilità. Percorsi di ricerca applicati all'inclusione a vent'anni dalla legge n. 104 del 1992*, Milan, 2013, 9 ff.

<sup>66</sup> Cf. G. Gardini, *Alla ricerca della "città giusta". La rigenerazione come metodo di pianificazione urbana*, in *federalismi.it*, 2020.

<sup>67</sup> The concept of smart community is used if the urban area of reference is larger than a city: See R. Ferrara, *The smart city and the green economy in Europe: a critical approach*, in *Diritto e processo amministrativo*, 2015, 635.

<sup>68</sup> R. Ferrara, *The smart city and the green economy in Europe: a critical approach*, in *Diritto e processo amministrativo*, 2015, 635 ff., especially 637; K.R., Kunzmann, *Smart cities: A new paradigm of urban development*, in *CRIOS*, 2014, 9 ff. As has been noted, smart cities are the expression of a new concept of administrative citizenship, as well as digital citizenship. On administrative citizenship see, C.E. Gallo, *La pluralità delle cittadinanze e la cittadinanza amministrativa*, in *Dir. amm.*, 2002, 481 ff.; R. Cavallo Perin, *La configurazione della cittadinanza amministrativa*, in *Dir. amm.*, 2004, 201 ff.; E. Boscolo, *Le regole per lo spazio urbano: dal piano regolatore alle politiche urbane*, in S. Civitarese Matteucci, E. Ferrari, P. Urbani (edited by), *Il governo del territorio*, Milan, 2003, 355 ff., especially. 381-382.

between man, environment and territory<sup>69</sup>. In other words, it would be wrong to fully assimilate smartness and digitalization, as in the construction of the new urban reality different elements are detected, and the centrality of the individual is felt in social and territorial as well as institutional factors.

In other words, Smart Cities must really create the conditions for governance, infrastructures and technologies, to also produce social innovation<sup>70</sup>.

Only if they are truly "sensitive"<sup>71</sup> because they are inclusive, the cities of the future can be defined as intelligent<sup>72</sup>. These needs were also highlighted by the United Nations, which among the principles for the implementation of the New Urban Agenda adopted in 2016, specifying that "cities are for people", also indicates that of "providing equal access for all to physical and social infrastructure and basic services"<sup>73</sup>.

This obviously does not mean that smart cities must be analog; indeed, the use of technologies will be fundamental, with a view to which, far from building new walls for those with special needs and difficulties<sup>74</sup>, they can facilitate inclusion within the social context, and consequently make urban contexts

<sup>69</sup> R. Bifulco, Intelligenza Artificiale, internet e ordine spontaneo, in F. Pizzetti (a cura di), Intelligenza artificiale, protezione dei dati personali e regolazione, Turin, 2018, 383 ff.; C. Donolo, T. Federico, La questione meridionale e le Smart Cities, in Riv. econ. Mezz., 2013, 189 ff., especially 196.

<sup>70</sup> If it is true that cities are at the same time centers of productive innovation and social innovation (R. Di Pace, La rigenerazione urbana tra programmazione e pianificazione, cit., 239), then it is also true that the smart city must innovate socially. It is necessary to ensure that all citizens can benefit equally from smart cities, especially in application of article 3, paragraph 2, of the Constitution (Cf. F. Fracchia, P. Pantalone, Smart City: condividere per innovare (e con il rischio di escludere?), in Federalismi.it, 2015, 17); it is also necessary to allow disabled people to achieve that "equal social dignity" contained in the first paragraph of article 3 of the Constitution (M. Luciani, Economia nel diritto costituzionale, in Dig. disc. pubbl., vol. V, Turin, 1990, 382).

<sup>71</sup> With this in mind, Carlo Ratti, an Italian architect who teaches at the Massachusetts Institute of Technology, where he directs the MIT Senseable City Lab, spoke more precisely of "senseable city", in order to put the emphasis on citizens and not on technologies.

<sup>72</sup> The Law Decree October 18, 2012, no. 179 ("Ulteriori misure urgenti per la crescita del Paese"), converted, with modifications, by Law December 17, 2012, no. 221, in article 20, paragraph 16, refers to intelligent inclusion, understood as the ability, in the forms and within the limits permitted by technological knowledge, to offer information as well as design and deliver services that can be used without discrimination by subjects belonging to weak or disadvantaged categories and functional to participation in the activities of intelligent communities.

<sup>73</sup> In 2015 the United Nations published the document "Transforming our world: the 2030 Agenda for Sustainable Development", which identifies seventeen objectives (so-called Sustainable Development Goals or SDGs); the United Nations, by establishing the 17 goals for sustainable development in support of its 2030 Agenda, also included that of "Making cities and human settlements inclusive [as well as] safe, long-lasting and sustainable" (goal 11). The 2030 Agenda for Sustainable Development has become a reference in many areas, so much so that many previous documents have been revisited with a view to the aforementioned objectives. With reference to the UN Convention for the Rights of Persons with Disabilities, the European Disability Forum has linked the SDGs with the articles of the Convention itself (for further information, see European Disability Forum, 2018, The 2030 Agenda and the Sustainable Development Goals: A European perspective to respect, protect and fulfil the United Convention on the Rights of Persons with Disabilities, available online in: [http://edf-feph.org/sites/default/files/edf\\_sdgs\\_human\\_rights\\_report\\_final\\_accessible\\_0.pdf](http://edf-feph.org/sites/default/files/edf_sdgs_human_rights_report_final_accessible_0.pdf)).

<sup>74</sup> As is known, this can often sadly happen; in particular, the design and programming of technology for users without disabilities, according to market logic, creates virtual barriers, which, like the architectural ones, become a source of marginalization and inequalities. The issue is of particular importance if disabled people have problems accessing the sites/information/digitized services of the public administrations; as is known, there are numerous cases in which

places of real “inclusive smart living”<sup>75</sup> (for example, it will be possible to invest in cutting-edge technological interventions that allow disabled people to keep track of accessible routes by constantly updating information related to the accessibility of places)<sup>76</sup>.

In this context, the active role of public authorities will be important and indispensable, and they will not need to limit themselves to granting public funding to promote the development of smart cities<sup>77</sup>, but they will have to carry out a specific policy and planning activity, identifying, from the top (top-down), the measures to be taken to obtain a high degree of innovation, including a social one, too<sup>78</sup>.

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disabled people are unable to freely access the sites of the public administration, or the documents that are included in these same sites where abstractly accessible (think of the case of a person who you browse the internet thanks to the aid of so-called assistive technologies: even if it is able to access the administration site, it will not easily be able to effectively view the documents that have been - obligatorily - published by the public administration on it, if merely scanned by the administration; in fact, in the eyes of the machine that should read them in place of the disabled person, they will appear as image files and not as text files. In other words, the public administration will appear opaque, in the eyes of these subjects, and not as transparent as it should: if you want, see N. Posteraro, Il restyling della legge Stanca, le nuove linee guida AGID e l'accessibilità delle persone disabili agli strumenti informatici delle pubbliche amministrazioni: a che punto saremo?, in Osservatorio IRPA “Lo Stato Digitale”, dicembre 2020 (<https://www.irpa.eu/il-restyling-della-legge-stanca-le-nuove-linee-guida-agid-e-l-accessibilita-delle-persone-disabili-agli-strumenti-informatici-delle-pubbliche-amministrazioni-a-che-punto-saremo/>).

<sup>75</sup> An important evolution of technology as an aid to the full development of people with disabilities interests the field of the so-called Artificial intelligence (AI). Think of the smart stick which, through integrated speakers, Google Maps and a voice assistant, helps the blind person to move, warning them of obstacles with special sensors.

<sup>76</sup> Digitization (as well as artificial intelligence/automation) is only one component, instrumental or serving, of the revolution, the human and social dimension of change being central (F. Gaspari, Città intelligenti e intervento pubblico, in Il diritto dell'economia, 2019, 78, which recalls E. Carloni, Città intelligenti e agenda urbana: le città del futuro, il futuro delle città, in Munus, 2016, 246-247, and E. Ferrero, Le smart cities nell'ordinamento giuridico, in Foro amm., 2015, 1285). Certainly, first of all, basic education must be provided to citizens without digital skills (so-called digital literacy), who, at present, precisely because of their ignorance on the subject, despite the Council of the European Union, in May 2018, in the constant publication of the new key competences for lifelong learning, qualified digital as a "basic competence", alongside reading and writing, they look with suspicion at innovation. As noted in a research conducted by the Digital Innovation in Health Observatory of the School of Management of the Politecnico di Milano with reference to the health sector, for example, 8 out of 10 citizens do not currently use web health services (86 % of patients prefer the in-person medical consultation, 83% go to the counters to pay for services and in 80% of cases collect the reports by hand; the research was also taken into account in the observatory on the digital state of IRPA, in a post dedicated to the ethical aspects of AI applied to medicine, which can be found at this link: <https://www.irpa.eu/gli-aspetti-etici-dell'intelligenza-artificiale-applicata-alla-medicina-il-cnb-e-il-cnbbsv-esprimono-il-parere-richiesto-dal-presidente-del-consiglio-dei-ministri/>).

<sup>77</sup> Recouring to the public-private *partnership* tool is certainly important for the creation of *smart cities*, but it is necessary to prepare a regulatory framework that prevents urban administrators from being encouraged to transform cities into profitability spaces for companies and entrepreneurs driven only by the final profit: see, F. Gaspari, Città intelligenti e intervento pubblico, in Il diritto dell'economia, 2019, 107.

<sup>78</sup> This is the Euro-unit (and Italian) approach to the issue, as opposed to the US one, which does not imply an active role on the part of public authorities: in it, innovation constitutes a *bottom-up* process, so much so that it can be said that it involves a substantial withdrawal of public authorities, which, in this perspective, are only called upon to promote a regulatory framework favorable to new technologies on a given market (see S. Cassese, Le prospettive, in L. Torchia (edited by), Il sistema amministrativo italiano, Bologna, 2009, 513 ff.).