

ARCHITECTURAL BARRIERS AND THE RIGHT TO INCLUSION: AN ESSENTIAL COMBINATION

BARRIERE ARCHITETTONICHE E DIRITTO ALL'INCLUSIONE: UN BINOMIO IMPRESCINDIBILE



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ABSTRACT

The right to inclusion is a core principle for building inclusive, accessible societies. In legal terms, it demands equal opportunity and full participation of persons with disabilities by removing obstacles to their social, economic and political life. Architectural barriers are among the main challenges. This paper analyzes, from the UN CRPD through other international instruments to national law, how these rights and removal measures align and are implemented.

Il diritto all'inclusione è un principio fondamentale per la costruzione di società inclusive e accessibili. In termini giuridici, richiede pari opportunità e piena partecipazione delle persone con disabilità, rimuovendo gli ostacoli alla loro vita sociale, economica e politica. Le barriere architettoniche sono tra le sfide principali. Questo articolo analizza, dalla Convenzione delle Nazioni Unite sui diritti delle persone con disabilità attraverso altri strumenti internazionali fino al diritto nazionale, come questi diritti e le misure di rimozione si allineano e vengono attuati.

KEYWORDS

Inclusion, accessibility, rights of the person with disabilities, architectural barriers, fundamental rights, disability
Inclusione, accessibilità, diritti della persona con disabilità, barriere architettoniche, diritti fondamentali, disabilità

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Introduction

Architectural barriers and the right to inclusion for people with disabilities have always been bound by an inversely proportional relationship: as the former increase, the latter inevitably diminish.

In Italy, the legislative silence on this issue persisted until 1965, when the National Association of Mutilated and Disabled Workers (ANMIL) and the Italian Association for Assistance to Spastics (AIAS) convened the Stresa International Conference. On that occasion, "architectural barriers" emerged for the first time as a distinct subject of discussion, with the aim of raising awareness—both among institutions and civil society—of the everyday challenges faced by individuals with disabilities in seeking full participation in social life.

Following this event, the first institutional response came in the form of Circular No. 425, issued by the then Ministry of Public Works. Of particular note is point 1.6, which draws the attention of professionals in public construction to "the need to take into account, both in urban planning and especially in building design, the issue of so-called architectural barriers" (Circular No. 425, 1967). The circular also offers the first official definition of architectural barriers as "obstacles encountered by individuals with physical impairments in moving through urban environments and buildings—obstacles primarily involving elevation changes (such as steps, protrusions, differences in level, staircases), or the narrowness of passageways (bottlenecks, lift cabins, doorways)." It further recommends, "as far as possible, the avoidance of such routes or, alternatively, the provision of special pathways to facilitate the movement of spastic individuals or those otherwise impeded or handicapped" (Circular No. 425, 1967).

While this document remains in force, its limitations are evident. The use of discriminatory and at times offensive terminology, such as "impeded" or "handicapped," and its lack of binding legal authority, reflect the era's mindset. Nevertheless, the circular served a catalytic role in initiating legislative attention to the issue.

This initial momentum led to the issuance of Circular No. 4809 in 1968 and, subsequently, to Law No. 118 of 30 March 1971—both of which inherited the same problematic language identified in the original circular (Steffan, 2006).

Yet, despite the substantial legal framework developed in the decades since, the persistence of architectural barriers in both public and private spaces remains a pressing concern. Even today, the phenomenon is deeply entrenched across

multiple sectors of Italian society. This is particularly evident in the educational system. According to ISTAT's 2024 report on the inclusion of pupils with disabilities, only 40% of school buildings in Italy are accessible to students with motor impairments. The territorial divide remains stark: while 44% of schools in the North meet accessibility standards, this figure drops to 36% in the South—underscoring a broader pattern of regional inequality (ISTAT,2024).

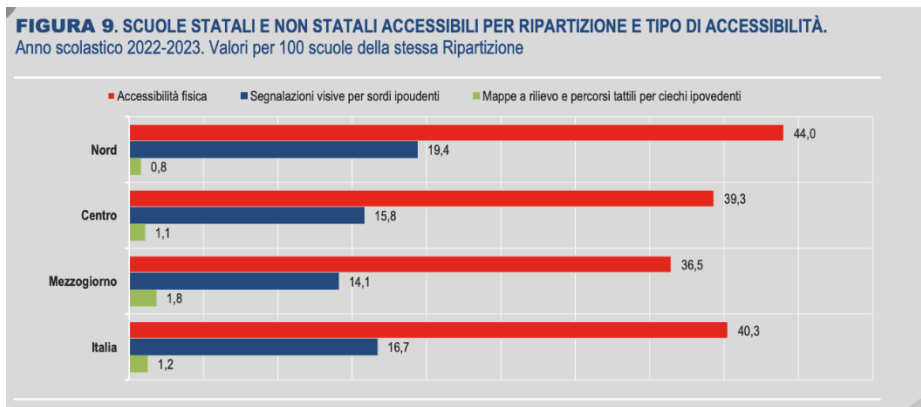


Figure 1. Data on the physical accessibility of Italian schools by distribution and type of accessibility. Istat. The scholastic inclusion of pupils with disabilities, 2024.

The data presented in Figure 1 also reveal a troubling reality regarding the accessibility of school spaces for students with sensory disabilities. Only 16.7% of Italian schools are equipped with visual signage for students with hearing impairments, and a mere 1.2% provide tactile pathways for pupils who are blind or have low vision.

These figures highlight a stark inconsistency: despite the provisions of Article 27 of Law No. 118/71—Architectural Barriers and Public Transport—which explicitly mandates that public buildings, including educational institutions, ensure the absence of architectural barriers in newly constructed facilities, or actively remove them in existing structures, substantial accessibility issues persist. These shortcomings result in forms of indirect discrimination, which undermine the very principle of equal opportunity.

Further underscoring this contradiction is the increasing number of students with disabilities enrolled in Italian schools. According to ISTAT's 2024 report The Scholastic Inclusion of Pupils with Disabilities, nearly 359,000 students with

disabilities attended schools of all levels during the 2023–2024 academic year—representing 4.5% of total enrolment. This marks a 6% increase from the previous year and a 26% increase over the past five years. Of these students, approximately 8.9% live with motor disabilities.

This rise in numbers cannot be overlooked, especially when considered alongside the continuing accessibility deficit. Only 41% of school buildings are accessible to pupils with motor disabilities. Regionally, the data reveal sharp disparities: northern regions exceed the national average with 44% of schools deemed accessible, while southern regions lag significantly behind, at just 37%. The Aosta Valley emerges as the most inclusive region, with 76% of its schools meeting accessibility standards. In contrast, Liguria and Campania report the lowest rates, with just 30% of schools free from architectural barriers.

The most common obstacles include the absence of lifts or the installation of non-compliant systems (50%). Other significant shortcomings include a lack of internal stairlifts (37%), accessible restrooms (26%), and ramps to address level differences (25%). Issues concerning staircases (7%) and doorways (3%) are less widespread but nonetheless present (ISTAT, 2024).

These data compel us to engage in a broader ethical and pedagogical reflection: have we truly grasped the full meaning of the term inclusion? Judging by the evidence, the answer appears to be negative. How can we speak of equitable education and inclusive teaching when we fail to guarantee basic physical access to school buildings for all learners?

There is, therefore, an urgent need to rethink the concept of inclusion, moving beyond a paternalistic or charitable approach towards people with disabilities. Instead, inclusion must be grounded in the recognition of their fundamental human rights. Only then can we aspire to a society that is not merely habitable for all its members, but one that is genuinely founded on the principles of equity, participation, and ethical responsibility—principles that the Constitution of the Italian Republic is called upon to embody and defend.

1. The right to inclusion in European legislation

At the international legal level, the recognition and protection of the rights of persons with disabilities is a relatively recent area of development. The first

significant milestone is undoubtedly the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. While the Declaration does not explicitly refer to disability or a right to inclusion, it lays a foundational framework for subsequent legal developments. By affirming the inherent dignity of every individual as its guiding principle, the Declaration paves the way for interpreting rights in an inclusive manner. Through a doctrinal reading of Articles 1, 2, 22, 25, and 27, one can discern a normative intent to ensure equal dignity, freedom, and participation in cultural life—regardless of ethnicity, gender, beliefs, economic status, or disability. In this sense, the concept of inclusion begins to emerge implicitly, framed as the full enjoyment of inalienable human rights by all individuals.

Another fundamental step is represented by the European Convention on Human Rights (ECHR), signed in 1951 and ratified by Italy through Law No. 848 of 4 August 1955. The ECHR plays a dual role in the Italian legal system: it serves both as an interposed norm for assessing constitutional legitimacy and as a guide for the constitutional interpretation of domestic law. While it does not explicitly address disability, it guarantees a range of inalienable rights—such as the prohibition of discrimination and the right to freedom of movement—which are directly applicable to persons with disabilities. Nevertheless, the Convention and its Additional Protocols reveal gaps in addressing specific challenges faced by this population.

To help bridge this gap, the United Nations adopted a series of non-binding declarations in the 1970s: the Declaration on the Rights of Mentally Retarded Persons (1971), the Declaration on the Rights of Disabled Persons (1975), and the Declaration on the Rights of Deaf-Blind Persons (1979). These documents promote equal access to services and the right to an adequate standard of living, acknowledging the diverse needs of persons with disabilities. Building upon this, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in Resolution 48/96 (1993), became a reference point for future legislation. These rules affirm that individuals with disabilities—regardless of age or gender—are integral members of society and must enjoy the same rights and responsibilities as others. Among the key provisions is Rule 5, which urges States to implement programmes ensuring physical accessibility by removing environmental barriers.

However, these rules lack binding force and do not impose legal obligations on States. It was only in 2006 that a true codification of disability rights was achieved with the adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This treaty is the most comprehensive international instrument for the promotion and protection of the rights of persons with disabilities. Unlike previous frameworks, the CRPD is grounded in a social model of disability, shifting the focus from individual limitations to the barriers imposed by society. Its aim is not simply to integrate persons with disabilities, but to transform societal structures so as to foster their full and effective participation.

Article 1 of the CRPD establishes that the purpose of the Convention is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.” Notably, the Convention adopts inclusive and respectful language, moving away from outdated and offensive terms like “handicapped.” Article 9, titled Accessibility, is of particular relevance. It compels States Parties to take appropriate measures to ensure access to the physical environment, transportation, and public services in both urban and rural areas. This includes the identification and elimination of barriers to buildings, facilities, and schools—spaces essential to personal development.

Also significant is Article 19, which recognises the right of all persons with disabilities to live independently and be included in the community. Complementing this, Article 28 underscores the right to an adequate standard of living and social protection, placing an obligation on States to adopt measures that ensure these rights without discrimination.

The CRPD also introduces structural mechanisms for implementation. Article 33 requires each State Party to designate a coordination mechanism to monitor and promote the Convention’s application. Furthermore, Article 34 establishes the Committee on the Rights of Persons with Disabilities, tasked with overseeing national compliance, issuing recommendations, and reviewing periodic reports submitted by States every four years. In cases of delay or concern, the Committee may assess the situation based on credible third-party information. It submits biennial reports to the General Assembly and the Economic and Social Council and may offer general observations on implementation challenges.

The Optional Protocol to the CRPD allows individuals or groups to file complaints directly to the Committee if they believe their rights under the Convention have been violated. Under Article 3 of the Protocol, the Committee confidentially examines such communications and the relevant State must respond within six months, explaining how it intends to remedy the situation. The Committee's conclusions are forwarded to both the complainant and the State.

Despite the strengths of the CRPD, structural limitations remain. The Committee lacks enforcement powers, which weakens its deterrent effect. Moreover, Article 8 of the Protocol permits States to opt out of recognising the Committee's competence under Articles 6 and 7—an exclusion that undermines the very purpose of the Convention.

On a regional level, the European Disability Strategy 2010–2020 sought to dismantle barriers to full participation and promote inclusion within the social and economic fabric of the European Union. The strategy identified eight priority areas: accessibility, participation, equality, employment, education and training, social protection, health, and external actions. Within the field of accessibility, the European Commission promoted regulatory and standardisation tools to improve access to buildings, transport systems, and digital infrastructure, in alignment with the Digital Agenda for Europe. The strategy also encouraged the incorporation of universal design principles into education and professional training, helping cultivate a European market for assistive technologies.

Despite these efforts, however, recent data from the European Commission's Directorate-General for Employment, Social Affairs and Inclusion reveal persistent challenges. The Strategy for the Rights of Persons with Disabilities 2021–2030 builds upon its predecessor but must contend with sobering statistics: 58% of persons with disabilities report having experienced discrimination at least once, and many respondents noted an increase in discriminatory experiences since 2019 (European Commission, 2023).

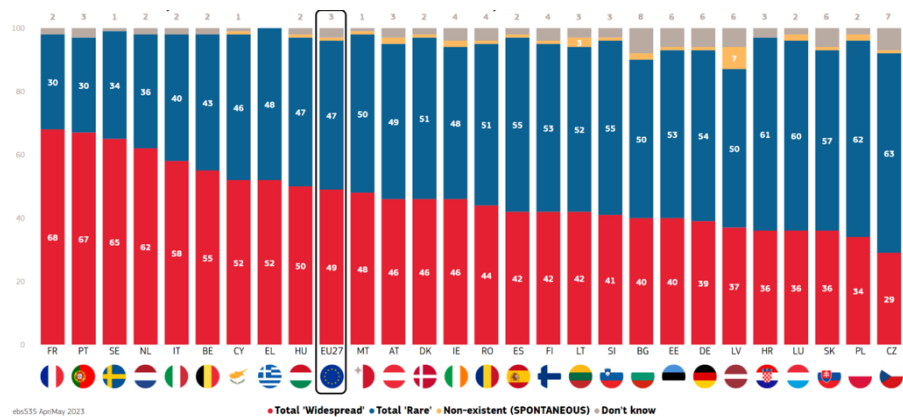


Figure 2. Data on perceived discrimination by people with disabilities in Europe. Taken from European Commission, 2023. Discrimination in the European Union.

2. The right to inclusion in national law

At the national level, the right to inclusion is not a right expressly declared in the Constitutional Charter of the Italian Republic, but it is possible to arrive at a formulation of the same through a doctrinal interpretation of art. 2-3 of the Italian Constitution.

In fact, from the combined reading of these two constitutional provisions it is possible to deduce the leitmotif that the Italian legislator should have maintained in the regulations that constitute the legislative corpus of the subject under discussion, namely the recognition and guarantee of the "inviolable rights of man, both as an individual and in the social formations where his personality develops [...]", equal social dignity and the recognition by the State of the duty to "remove obstacles of an economic and social order, which, by limiting the freedom and equality of citizens, prevent the full development of the human person" (Constitution, 1948).

As mentioned at the beginning, although these obligations were expressly provided for by the Constitution, the Legislator has addressed the question from the perspective of the integration of something external to society and not from the perspective of the just and dutiful recognition of fundamental human rights.

This trend would seem to be confirmed by a reading of the first regulations that make up the body of legislation on architectural barriers.

Wanting to reconstruct the progress of the regulations concerning the removal of architectural barriers, a starting point can be seen in the aforementioned Law 118/71 where the Legislator, in article 27, for the first time, provides for an express legislative provision on the removal of architectural barriers and does so by recalling the Circular of the Ministry of Public Works of 1968 on the removal of architectural barriers and the structural adaptation of architectural barriers. existing structures, emphasizing the necessary accessibility of public transport services including trams and subways.

Taking this legislation into consideration, it can be seen that already at the beginning the integrative rationale of the Legislator and the presence of a lexicon that is not in keeping with the evolution that it has undergone over time is clear.

In fact, already in Article 2 of Law 118/71 the Legislator in stating that "[...] citizens suffering from congenital or acquired disabilities, including progressive disabilities, including those with mental irregularities due to oligophrenia of an organic or dysmetabolic nature, mental insufficiencies deriving from sensory and functional defects that have suffered a permanent reduction in working capacity of not less than one third or, if under the age of 18, are considered mutilated and invalid civilians. who have persistent difficulties in carrying out the tasks and functions proper to their age [...]" (Parliament, 1971) uses inadequate terms that presuppose a divergence from the common man, certainly due to the historical moment in which the Law was promulgated, and which seems to follow the fascist ideal of the man useful to the State, as demonstrated by the terms impairments, psychic irregulars and defects with which the Law under examination appears to be pervaded.

In the regulatory context described, the legislator has tried to address the problem of accessibility, paying particular attention to the elimination of architectural barriers. In fact, it was established that all public buildings or buildings open to the public, as well as newly built educational institutions, must comply with the circular of the Ministry of Public Works of 1968, which provides for specific measures to facilitate access to the maimed and disabled civilians (Parliament, 1971).

This obligation also extends to buildings that have already been constructed, which must be adapted where possible. In addition, emphasis is placed on the accessibility of public transport services, with a particular focus on trams and subways, which will have to be adapted for use by non-ambulatory disabled people.

However, despite the apparent completeness of the forecasts, some significant critical issues emerge.

Firstly, the rule seems to be limited to recalling previous circulars without clearly outlining how these indications should be concretely implemented, generating the risk that, in the absence of a more detailed regulatory framework, good intentions will remain only on paper, with fragmented and non-uniform interventions at the territorial level.

Furthermore, although the law mandates accessibility in public places and places open to the public, the process by which these spaces must be made inclusive is not adequately defined. In fact, the text limits itself to providing "reserved spaces" for disabled people in wheelchairs during public events, but does not deepen or regulate the conditions that make this inclusion effective.

These gaps generate doubts about the real effectiveness of the rule and lead to critical reflection: while recognizing the importance of the steps taken, it is clear that the legislator does not provide sufficient tools to ensure that the obligation to remove architectural barriers is fully respected and not left to the interpretation or initiative of individual administrations.

Another piece of the puzzle is represented by Law 41/1986, in particular by Article 32, paragraph 20, which introduces the prohibition of approving "construction or renovation projects of public works that do not comply with the provisions of the Decree of the President of the Republic of 27 April 1978, no. 384, on the overcoming of architectural barriers. Contributions or subsidies for the implementation of projects in contrast with the rules referred to in the same decree." (Parlamento, 1986). Furthermore, Law 41/1986 in the same article in paragraph 21 inserts the absolute novelty of the obligation incumbent on the "competent administrations plans for the elimination of architectural barriers within one year of the entry into force of this law" (Parliament, 1986). This legislative provision represents the first concrete step towards the removal of architectural barriers as it provides for the establishment of the so-called PEBA or the Plan for the Elimination of Architectural Barriers without specifying in other regulations or circulars how to structure this programmatic document, asserting only the obligation on local administrations to equip themselves with a PEBA, leaving this burden to the professionals with whom the Administration has equipped itself. This *modus operandi* actually contributes

to creating a potential gap, as the PEBA will be all the more effective the greater the availability of funds allocated for this document.

Another legislation of fundamental importance is Law 13 of 1989 entitled "Provisions to promote the overcoming and elimination of architectural barriers in private buildings". This legislation represents the cornerstone of the legal corpus that regulates the elimination of architectural barriers and appears to be the first legislation that explicitly deals with the issue of accessibility with a view to fulfilling the obligation incumbent on the State to "remove obstacles of an economic and social order, which, by limiting the freedom and equality of citizens, prevent the full development of the human person and the effective participation of all workers to the political, economic and social organization of the country" explained in Article 3 of the Constitution. With a view to guaranteeing the equality of citizens, Law 13/89 provides for a specific enunciation of some key principles for subsequent legislation on the subject. In fact, the legislation opens with a specific provision regarding the design of new buildings, stating that the same must provide for i) technical devices suitable for the installation of mechanisms for access to the upper floors, including stairlifts; ii) suitable access to the common parts of the buildings and to the individual building units; iii) at least one level access, ramps without steps or suitable lifting equipment; iiiii) the installation, in the case of buildings with more than three levels above ground, of a lift for each main staircase accessible by ramps without steps. In addition, the legislation represents a necessary novelty in the face of the legislative void left by the previous legislation by providing for the extension of the accessibility obligation not only to public places or places of public access and transport, but also to private buildings by also providing for a specific Fund established at the Ministry of Public Works and referring to the Ministry itself the creation of technical prescriptions necessary to ensure the accessibility, adaptability and visibility of private and residential buildings dictated by Article 3 of Ministerial Decree 236/89.

One of the absolute novelties of this legislation is represented by the simplification of the bureaucratic process related to the removal of architectural barriers which before Law no. 13/89 was regulated, as already mentioned above, in a fragmentary manner by the Italian legal system.

In fact, before the entry into force of the aforementioned regulation, the system did not have an organic regulation, for this reason the existing building regulations concerned only general aspects on construction and interventions on buildings, but

did not deal with accessibility in a systematic way. The individual who wanted to carry out work to install ramps, elevators or other devices for the removal of architectural barriers had to first present a technical project to the competent municipal offices, then applying for a building permit, which followed the same procedures as any other building intervention, without simplifications, making waiting times longer and slowing down the start of the work a lot.

With Law no. 13/89, although there is an explicit provision that any adaptation works must be resolved during the condominium meeting, there is the possibility for the person with a disability or those who take care of his or her interests, in the event that the condominium refuses to hire, or does not hire within three months of the request made in writing, the resolutions referred to in paragraph 1 of Article 2 of Law 13/89, to install, at its own expense, the compensatory tools suitable for circumventing the architectural barriers of which the condominium building consists.

Another fundamental step for the area under discussion is the Framework Law 104 of 1992. This regulatory text represents a fundamental tool for the protection and inclusion of people with disabilities in Italy and aims to ensure respect for the dignity, autonomy and "social integration" of people with disabilities. With regard to this law, it should also be emphasized that the terminology used by the Legislator does not seem to keep pace with the linguistic register used for some time now

Here, moreover, attention must necessarily be paid to the integrative and non-equalitarian perspective of the rule in open contrast, both with the principle of substantial equality and with the principle of formal equality. In fact, a literal examination of the paragraphs contained in these rules leads to the emergence of numerous critical issues of different kinds.

The first problem detected is certainly of a constitutional nature, as the maintenance of an integrative perspective leads to the natural consequence of the creation of an institutional "misunderstanding" such that those who fall into the categories expressed in the Framework Law 104/92 are to be considered as external to society due to their physical condition. This body of legislation contributes to maintaining a structure that clearly violates both the principle of non-discrimination expressed in both the Constitution in Article 3 and Article 14 of the ECHR.

The second problem, closely linked to the above conception, covers the sphere of common thought and society's narrative regarding disability. In fact, the problem of the integrationist conception appears to be present on a large scale even in contemporary times, just think of the narration of some commercials for the search for degenerative diseases and the like in which the effect they want to produce is a sense of pietism towards people with disabilities. Or the commercials generally proposed by sports companies, in which the athlete with a disability is admired, who overcomes his or her limits and thus manages to win every possible competition (Maltese & Fazliu, 2023).

Ultimately, even if we want to separate law from social practice, it is the latter that forges law itself, in a vast "Pygmalion effect" in which society, in its action, continuously shapes legal reality and vice versa. This process does nothing but consolidate and reproduce an ontological distance between the "normal" citizen and the one with disabilities, creating a distinction that is as much social as normative.

In this sense, *ius inclusionis* represents an urgent necessity for the achievement of a society truly based on respect for fundamental human rights, meaning the relationship between two sets in which each element of one or the other contributes to creating a single whole.

Symbolically, the law represents the commitment of the Italian State to promote a fairer and more inclusive society, where people with disabilities are not marginalized, but have equal opportunities to participate in social, working and school life.

Keeping faith with the above rationale, Framework Law 104/92 deals with the issue of the elimination of architectural barriers, identifying them as physical obstacles present in buildings, transport and public spaces, which prevent or limit access and use to people with motor, sensory or mental disabilities, limiting themselves to recalling previous regulations.

In Article 24, entitled "Elimination or overcoming of architectural barriers" (Parliament, 1992), the Legislator, in addition to emphasizing what had already been included in previous regulations, dwells on the issuance of the building permit or authorization for the works, asserting that the same is subject to the verification of the conformity of the project carried out by the technical office or by the technician appointed by the municipality. With this in mind, the Municipality, in

issuing the certificate of habitability and habitability for the works, must ascertain that the works have been carried out in compliance with the provisions in force on the elimination of the architectural barriers (Parlamento, 1992). To this end, he may request from the owner of the property or the holder of the concession a declaration made in the form of a sworn appraisal drawn up by a qualified technician. Furthermore, in the case of public works, without prejudice to the prohibition of financing referred to in Article 32, paragraph 20, of Law no. 41 of 28 February 1986, and the obligation of the designer's declaration, the assessment of compliance with the regulations in force on the elimination of architectural barriers is the responsibility of the competent Administration, which acknowledges it when approving the project.

The Legislator - in the same article - also provides for a sanction to be imposed on the designer, the director of works, the technical manager of the assessments for usability or habitability and the tester, each for his own competence, holding them directly responsible in the event that the works in public and private buildings open to the public are in breach of the provisions in force on accessibility and the elimination of architectural barriers. They shall be punished with a fine of between ITL 10 million and ITL 50 million and suspension from their respective professional registers for a period of between one and six months.

These provisions are part of a broader regulatory framework that, over time, has progressively regulated construction activity and land management, moving from a phase of almost total freedom to one increasingly bound to compliance with rules and procedures. This process found one of its first moments of systematization with the introduction of Law 1150 of 1942, which marked a turning point in the government of the territory and in the regulation of the urban fabric, establishing a principle of control and planning that forms the basis of the current regulatory system.

In this regard, it should be emphasized that construction was born as an entirely free anthropic initiative and disconnected from any administrative authorization process and any prior regulatory regulation and maintained this characteristic until the entry into force of Law 1150 of 1942 where the Legislator introduced into the legal system a first general discipline on the government of the territory and on the legislation of the urban fabric.

In the aforementioned legislation, the Legislator, in Article 31, has in fact provided for the need for a prior authorization of the license, issued by the mayor, for those who intend to build new buildings or proceed with the expansion of existing buildings, while all other building activities carried out in inhabited centers and which do not constitute a modification of existing buildings remain free, emphasizing that they are to be considered part of the bed of free construction all those works that do not change the volume, shape or intended use of the building, and that do not require interventions on the load-bearing structures such as ordinary and extraordinary maintenance interventions that do not alter, therefore, the structural consistency of the building.

Article 31 of Law 1150/1942 was then completely amended by Article 10 of Law 765/67, which extends the obligation to obtain a building permit not only on all new dwellings to be erected in built-up areas, but throughout the municipal area. From this extension derives a physiological decrease in building activities that can be freely carried out by private individuals. In fact, for all new construction works and extensions of existing buildings, the building permit must be acquired in advance, while *ante legem*, no authorization was required for other building activities, effectively creating a first distinction between free building activity and building activity subject to the prior acquisition of the building permit. To complete the picture just described, the so-called Bucalossi Law has also contributed, which replaces the license with the building permit, which will then be flanked by the building authorization required for the so-called extraordinary maintenance activities and subsequently also restoration or conservative rehabilitation interventions identified by Law 94/1982.

The combination of the building permit with the concession creates the need to define the individual types of intervention subject to one or the other regime. For this reason, an allocation criterion is created that identifies the works subject to the building permit regime, all new construction works and those aimed at removing or replacing structural parts of buildings with modification of the perspective aspects of the latter. On the other hand, the works falling under the building permit regime are identified as those aimed at the better conservation and functionality of the buildings but without a transformation of their perspective aspects.

The introduction of the authorization regime overcomes the previous dichotomy between building activities subject to the prior concession and building activities that can be freely carried out by private individuals, but even before that it makes

the identification of the latter complex. In this context, the concept of free building is defined, in the first instance, by the jurisprudence that leads back to this genus all the activities that constitute the exercise of that particular faculty inherent in the right of property called *ius intendi*.

The Legislator's response on the subject came with Law 47/85, in particular in Article 26, where it is clear that works carried out on buildings, unable to make changes to the shape, construction, elevations, or the increase in useful surfaces or the number of real estate units fall within the free construction. A second regulatory element, more pregnant for the topic under discussion, is due to the aforementioned Law 13/89 which elevates the place of location of the architectural barrier to a distinguishing criterion to the extent that it is able to distinguish between demolitions that can be carried out without authorization and demolitions that must necessarily be authorized.

Subsequently, the Consolidated Building Act (Presidential Decree no. 380 of 6 June 2001) further regulated the matter, introducing precise rules on accessibility and removal of architectural barriers. In particular, Article 82 of the Consolidated Law on Construction provides that projects for new public or private buildings open to the public, as well as renovation works, must ensure full accessibility of the spaces. Failure to comply with the provisions on accessibility involves not only administrative sanctions, but also the possibility of a further suspension of the works and the invalidation of the certificate of usability.

With the T.U.E. we begin to speak expressly of free building activity and to provide for a specific discipline for it summarized by Article 6 and the result of a unidirectional legislative push, aimed at an ever-greater simplification of administrative procedures.

Among the other innovations introduced by the T.U.E., worthy of express mention, are the three different types of building activities introduced in Article 3 of the T.U.E. Pursuant to this legislative provision, building interventions that concern the repair, renovation and replacement of the finishes of buildings and those necessary to integrate or maintain the efficiency of existing technological systems are to be considered ordinary maintenance interventions; On the other hand, the works and modifications necessary to renovate and replace structural parts of the buildings, as well as to create and integrate the sanitary and technological services, provided that they do not alter the overall volume of the buildings and do not entail

significant urban changes in the intended uses involving an increase in the urban load (Parliament, 2001). In the context of extraordinary maintenance interventions, the Legislator specifically includes changes to the façades of regularly built buildings, if such changes are necessary to maintain or acquire the usability of the building itself, as well as to guarantee access to users, provided that they do not compromise the architectural decorum of the building. These interventions must comply with the provisions in force on urban planning and construction and must not concern buildings subject to protection constraints pursuant to the Code of Cultural Heritage and Landscape, referred to in Legislative Decree no. 42 of 22 January 2004.

In addition, pursuant to Article 6, paragraph 1, letter b), it is allowed to proceed freely with interventions aimed at eliminating architectural barriers, provided that such interventions do not involve changes to the shape of the buildings.

Conclusion

In conclusion, the report on discrimination in Europe makes clear that Italy's extensive regulatory framework still needs fine-tuning, a task ideally entrusted to the Consolidated Act mentioned above. Recent legislative developments offer hope: Legislative Decree 20/2024 establishes a National Guarantor for the rights of persons with disabilities, charged with enforcing the UN Convention and national laws and combating direct or indirect discrimination. Legislative Decree 62/2024 revises disability terminology and introduces a multidimensional assessment for personalized life projects, marking a decisive step toward genuine inclusion. Yet the absence of technical guidelines for drafting and funding the PEBA leaves its content to municipal discretion, creating disparities based on local wealth. This vagueness conflicts with Article 3 of the Constitution, which guarantees formal and substantive equality, and risks turning accessibility into a concession rather than an inalienable right. Without clear, enforceable standards and uniform implementation, indirect discrimination persists and true inclusion remains out of reach.

Author contributions

The authors contributed equally to the submitted contribution. Francesco Pio Savino wrote paragraphs 1 and 2. Francesca Cangelli wrote the introduction and conclusions, while Giusi Antonia Toto translated and corrected the entire paper.

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