

## **DISABILITY AND BODY IN THE PERSPECTIVE OF THE CONSTITUTION**

### **LA DISABILITÀ E IL CORPO NELLA PROSPETTIVA DELLA COSTITUZIONE**

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#### **Abstract**

The cultural approach for which some people are the so-called “normal one” and some others are “disabled” persists. Instead, it is necessary to realize that there is a unique human race, made up of people, each with its peculiarities, each with its dignity: the point is that disability is one of the many displays of the human person, placed at the center of the republican constitutional program. The body, the σῶμα, the external dimension of the person or a particular genetic condition must not become an insuperable obstacle to the process of the full development of the human being enshrined in the Italian Constitution, which perceives the social relationships with other people as the core of the authentic social inclusion. Indeed, the heart of the constitutional protection of people with disabilities consists of precisely safeguarding and enhancing their specific socialization needs.

L'approccio culturale per cui da una parte ci siano i c.d. “normali” e dall'altra i “disabili” ancor oggi fatica ad esaurirsi. Occorre invece rendersi conto che esiste un unico genere umano, fatto di persone, ognuna con le sue peculiarità, ognuna con la sua dignità: il punto è che la disabilità è una delle tante manifestazioni della persona umana, collocata al centro del programma costituzionale repubblicano. Il corpo, il σῶμα, la dimensione esteriore della persona ovvero una sua peculiare condizione genetica non debbono diventare un ostacolo insuperabile al processo di pieno sviluppo della persona umana sancito in Costituzione, che vede nella costruzione di relazioni con le altre persone la base dell'obiettivo di autentica inclusione sociale. Il cuore della tutela costituzionale delle persone con disabilità, anzi, consiste proprio nella salvaguardia e valorizzazione delle loro specifiche esigenze di socializzazione.

#### **Key words**

disability, body, inclusion, Constitution  
disabilità, corpo, inclusione, Costituzione

## 1. The body of Romito 8: prehistoric traces of an inclusive society

The approach to disability from the perspective of the body might seem reductive only apparently. However, without any bias on the fact that people with disabilities are precisely *people* like all others, and therefore identifiable in the unity of mind and body, moving, in this case, the analysis from the external dimension of the person helps to focus on the problems we have to face immediately. Hence, we should avoid some clichés such as, for example, “it is the inner beauty that matters”.

The disability must not be sweetened, sanctified, or worse hidden, but as a manifestation of the human person, it must be seen and recognized as such, without any pretense.

The point is that «le differenze non sono ridicibili come diseguaglianze; vanno accettate, anzi vanno valorizzate perché più noi ci rendiamo conto che le differenze sono importanti, per quel che richiamano anche in termini valoriali di rispetto e di importanza della persona, più la società in qualche modo diventa per così dire più umana. // Questo è il grande interrogativo che assilla i sociologi oggi: riuscire a immaginare relazioni sociali umane /differences are not reducible as inequalities; they must be accepted. Indeed, they must be valued because the more we realize that differences are significant, for what they also recall in terms of values of respect and importance of the person, the more society becomes in some way more human, so to speak. // This is the great question that haunts sociologists today: to be able to imagine human social relations/» (Colasanto, 2010). We need to look to the past to understand precisely the «today» of authentically «human» relationships.

The body, as we said, is the lens through which we can interpret and evaluate the issues that are the object of our study; then, our investigation will start from *a body*: the body of Romito 8.

In Calabria, in the Pollino National Park inside the Grotta del Romito (Romito’s Cave, hence his name), the burial of our ancestor who lived about 12,500 years ago was found.

Research carried out in this important prehistoric site revealed that Romito 8 was probably a hunter with a robust build. However, the body shows traces of trauma to the limbs, which caused paralysis of the left arm and perhaps also of the left leg. Romito 8 must have poorly fallen, chasing prey or running away from a ferocious animal, but he did not die from this accident. The analyses made on the bones of the legs show that he often remained crouched and those on the teeth reveal considerable damages. In his condition - it is clear - he lost his role as a hunter. Still, that primitive society (in the sense of prehistoric) did not abandon him: indeed, the community helped him to “reinvent himself”, not to see himself as a “burden” for the others, to gain a new position in the society. The deep damages of the teeth suggests that they were used not only to feed himself but to carry out a real job: Romito 8, according to the archaeologists, was probably dedicated to chewing softwood or reeds, which, as a result of this “treatment”, were later used by the artisans of the time to build baskets or mats (Stella, 2019).

One wonders whether, today, in the «età della tecnica [age of technology]» (Irti, 2007), it is possible to experiment equally effective work and social inclusion seriously.

However, that we *should* proceed in that direction is inscribed in the republican constitutional program, for which the realization of «pari dignità sociale [equal social dignity]» is functional to the «pieno sviluppo della persona umana [full development of the human being]» (Modugno, 2008).

If the personalist principle innervates the entire frame of the constitutional textile, there is no *constitutional* reason why *some people* are excluded from this framework of protections.

## 2. The constitutional model: the «new right to socialization»

The body, the σῶμα, perhaps shaped by a particular genetic condition, connotes the person with disabilities, who, as a *person*, not only, like the others, is placed at the center of the constitutional project, but also enjoys the specific protection recognized to the so-called «soggetti deboli [weak subjects]» (Colapietro and Girelli, 2020). This term is used here certainly not to emphasize a condition of minority. Still, it can be used to underline how the Republic requires

the fulfillment by all (private subjects and public institutions) of those duties of social solidarity aimed at that in concrete, really all people can become protagonists in constructing their own «social dignity». The condition of minority could be considered instrumental, as mentioned, to the full development of personality. And with specific reference to people with disabilities, an effort to involve them is particularly required according to the logic of «nothing about us, without us», the inspiring canon of the Convention on the Rights of Persons with Disabilities (ratified and enforced in Italy with act no. 18/2009), which also qualifies for having accepted ««la prospettiva del cosiddetto modello “bio-psico-sociale” della disabilità [the perspective of the so-called “bio-psycho-social” model of disability]» (Arconzo, 2020). The basis of the constitutionally imposed objective of authentic social inclusion is to be found in the (real) possibility of establishing relationships with others: the heart of the constitutional protection of persons with disabilities consists precisely in the safeguard and enhancement of their specific socialization needs, already underlined in the well-known sentence of the Italian Constitutional Court n. 215/1987 and – then – constantly repeated in subsequent decisions. Indeed, the evolution of constitutional jurisprudence would allow us to identify what has been defined as the «nuovo diritto alla socializzazione [new right to socialization]» of people with disabilities (Scagliarini, 2013). The first pillar, on which this «new right» is based (which, indeed, poses as a real meta-right), is the recognition of the right to education, as only thanks to effective integration of students with disabilities in schools, a realistic path of social inclusion is conceivable, which, if possible, also contemplates a profitable integration into the world of work.

Moreover, in the constitutional perspective, it is above all «soprattutto la *qualità* del lavoro [...] che conta [the *quality* of work that matters]» or «la capacità delle forme di organizzazione del lavoro di garantire lo sviluppo della personalità del singolo nel confronto con gli altri [the ability of the forms of work organization to guarantee the development of the individual's personality in comparison with others]» (Luciani, 2008). In this sense, the sentence of the Constitutional Court no. 163/1983 where it states: «non sono costituzionalmente, oltre che moralmente, ammissibili esclusioni e limitazioni dirette a relegare su un piano di isolamento e di assurda discriminazione soggetti che, particolarmente colpiti nella loro efficienza fisica o mentale, hanno invece pieno diritto di inserirsi nel mondo del lavoro [Exclusions and limitations aimed at relegating to a level of isolation and absurd discrimination subjects who, particularly affected in their physical or mental efficiency, instead have the full right to be included in the world of work]». Although school and work constitute the main guidelines followed over time by constitutional jurisprudence to outline the (due) path of social inclusion of people with disabilities, they are not the only ones. Suppose the body is the *fil rouge* that binds and directs these considerations of ours. In that case, it is also necessary to think of those decisions where the Council has emphasized the quality of relationship life, compromised not only by the person's disability but above all by the unjustified lack of predisposition means of contrasting this compromise, of compensating for the condition of objective disadvantage. In this regard, in particular, one cannot fail to refer to sentence no. 167/1999, which ruled as follows: «la impossibilità di accedere alla pubblica via, attraverso un passaggio coattivo sul fondo altrui, si traduce nella lesione del diritto del portatore di handicap ad una normale vita di relazione, che trova espressione e tutela in una molteplicità di precetti costituzionali: evidente essendo che l'assenza di una vita di relazione, dovuta alla mancanza di accessibilità abitativa, non può non determinare quella disuguaglianza di fatto impeditiva dello sviluppo della persona che il legislatore deve, invece, rimuovere. // L'omessa previsione della esigenza di accessibilità, nel senso già precisato, della casa di abitazione, accanto a quelle produttivistiche, dell'agricoltura e dell'industria rende, pertanto, la norma denunciata in contrasto sia con l'art. 3 sia con l'art. 2 della Costituzione, ledendo più in generale il principio personalista che ispira la Carta costituzionale e che pone come fine ultimo dell'organizzazione sociale lo sviluppo di ogni singola persona umana [the impossibility of accessing the public road, through a forced passage on the property of others, results in the violation of the right of the disabled person to a normal life of relationship, which finds expression and protection in a diversity of constitutional precepts:

it is evident that the absence of life of relationship, due to the lack of accessibility to housing, cannot fail to determine that inequality that blocks the development of the person that the legislator must, instead, remove. // The omitted provision of the need for accessibility, in a sense already specified, of the dwelling, alongside the productive activities, agriculture, and industry, makes, therefore, the denounced rule in contrast with both art. 3 and with art. 2 of the Italian Constitution, damaging more generally the personalist principle that inspires the Constitutional Charter and which places the development of every single human person as the ultimate goal of social organization/». A decision in which not a little must have weighed «la considerazione dei rapporti di fatto sottostanti [the consideration of the underlying factual relationships/» (Lipari, 2020) and where (consequently) «erompono prepotentemente le esigenze dell'eguaglianza sostanziale, della necessità di perseguire attraverso la concreta rimozione degli ostacoli di ordine sociale il completo sviluppo della personalità secondo il programma espresso dal principio costituzionale [the needs of substantial equality erupt forcefully, the need to pursue through real removal of the obstacles of social order the complete development of the personality according to the program expressed by the constitutional principle/» (Serges, 2000).

### **3. Against (not only) architectural barriers: the «Casa Agevole» and diversity as an authentically human dimension**

When one approaches a theme such as disability, mainly if observed through the prism of the body, one must necessarily acquire a practical sense, given the indissolubility of the theme, precisely, with the real life of people: it is not just a case if in the judgment mentioned above of constitutionality (abstract by definition) the «fact» had a decisive weight. Unfortunately, the age-old problem of architectural barriers, which objectively cannot be denied, has received responses over time on a regulatory and jurisprudential level, continuing to negatively affect, *as a matter of fact*, the quality of life of many people with disabilities, both in what we could define their external mobility and in that inside one's own home, «proiezione spaziale della persona [spatial projection of the person/» (Constitutional Court n. 135/2002).

Therefore, it is helpful to refer to a practical solution developed to cope with similar difficulties: the «Casa Agevole», a practical example of social inclusion. The «Casa Agevole», literally smart home, is a spatial/organizational solution, patented by the architect Fabrizio Vescovo and the Santa Lucia Foundation. The peculiarity of the project consists in the fact that it was created with an extended user base in mind. The technical solutions adopted are not aimed at satisfying the (only) needs of a specific category of people. Still, those of a wide multi-generational band, to intercept the greatest number of users: a house, a real house, destined to be inhabited not only by people with disabilities (motor or sensory), but also by children, the elderly, couples. A house, not a hospital, with spaces conceived as «domestic spaces», precisely, to «modify the negative pre-concept», so that those who travel with a wheelchair necessarily need large spaces to maneuver. The «Casa Agevole», which consists of two bathrooms, two bedrooms, entrance, living room, kitchen, dining area, wardrobes, and closets, extends for about 60 square meters, is defined as a «*Concept House*», in the sense that it is «un prototipo di alloggio non virtuale ed utopistico ma concretamente realizzato [A prototype of accommodation that is not virtual and utopian but concretely realized/» (Vescovo, 2013).

In the era in which human ambition seems to have no boundaries, to the point of lapping immortality, to think seriously of being able to «transform *Homo sapiens* into *Homo Deus*» (Harari, 2016), the harsh reality is that humankind, *precisely because it is such*, continues to have within itself a conspicuous (according to the WHO) component of people who have the most evident signs of the authentically human dimension, which can't be reduced to an perfect physical homologation.

In this regard, Andrea Canevaro's teaching on «belonging [appartenenza/» is precious: the «originalità di un individuo è nell'appartenenza ad una pluralità di originalità che compongono una società [the originality of an individual is in belonging to a plurality of originalities that

make up a society/». The metaphor of “patchwork” fully conveys the sense of this perspective: «Un bel patchwork, che significa “lavoro con le pezze”, valorizza il singolo pezzo di stoffa nell’insieme. I singoli pezzi vanno accostati e cuciti per formare un insieme di gusto, con diversi colori e stoffe che armonizzino per accostamento e collocazione. La composizione può essere geometrica, per sovrapposizione, con decorazioni ritmiche... e può dare un risultato sgargiante o sobrio... Le possibilità sono molte, e sono date dalla varietà, non certo dall’omogeneità [A beautiful patchwork, which means “work with the patches”, enhances the single piece of fabric as a whole. The individual pieces are put together and sewn to form a tasteful ensemble, with different colors and fabrics harmonizing in combination and placement. The composition can be geometric, by overlapping, with rhythmic decorations ... and it can give a garish or sober result ... The possibilities are many and are given by the variety, certainly not by the homogeneity/» (Canevaro, 2011).

On the other hand, the Constitutional Court has expressly stated that disabled people do not constitute a homogeneous group (Decision no. 80/2010); this, however, certainly does not apply only to people with disabilities. Indeed, we should know that we are all different: «abbiamo tutti diritto a conservare la nostra diversità, la nostra identità [we all have the right to preserve our diversity, our identity/» (Flick, 2013).

#### **4. A single humanity**

Accepting or knowing how to welcome diversity is not (albeit a duty) a simple path. One cannot exempt oneself from confronting even the most delicate issues.

Think, for example, of sexuality, which certainly should not be impoverished, reducing it to physicality alone, but which - of course - claims the body as a leading actor. The issue is of such importance and delicacy that it certainly cannot be explored here, nevertheless, we can remember that in other countries, the professional figure of the sexual assistant has been disciplined. In the current Italian Legislature (the XVIII), the proposed legislation, bill no. 1876 «Disposizioni in materia di assistenza all’emotività, all’affettività, alla corporeità e alla sessualità per le persone con disabilità [Provisions on the subject of emotional assistance, affectivity, corporeality and sexuality for people with disabilities/» and bill no. 963 «Istituzione della figura dell’educatore al benessere sessuale per le persone disabili [Establishment of the figure of the educator for sexual well-being for disabled people/». Beyond the rules that the legislator will establish on the subject, any reasoning on the sexuality of people with disabilities certainly cannot ignore the conditions of the socio-cultural dimension, in the context of which it is advanced: the same configurability of a «diritto alla sessualità [right to sexuality/», which then needs to be guaranteed, could, in fact, represent «una delle cartine al tornasole di più processi culturali in atto nella società e che riguardano tutti [one of the litmus papers of several cultural processes that take place in society and affect everyone/» (Rotelli, 2016).

The International Day of Persons with Disabilities is celebrated every 3rd December. It is important to remember this because the event focuses on the fact that there is still a large part of humanity, which too often does not see its role fully recognized within humanity.

The cultural approach for which on the one hand there are the so-called “normal” and on the other the “disabled” still struggle to run out. Instead, it is necessary to realize that on our “small third planet”, there is a single human race, a single humanity, made up of people, each with its own peculiarities, each with its own dignity: the point is that disability is one of the many manifestations of the human person, placed, as mentioned, at the center of the Italian republican constitutional program.

Moreover, disability is a condition that can also occur due to the unpredictable events of life; on the contrary, the Covid-19 pandemic shows us how no one can consider himself immune from situations of personal or social fragility.

A society aware of all this begins to be built at school, where there is fertile ground in children, which will bear its fruits if properly plowed and cultivated; if, according to the

(clear) indications of constitutional and administrative jurisprudence (Constitutional Court no. 275/2016; State Council, Section VI, no. 2023/2017), the necessary resources will be used despite an uncertain economic framework: but in the face of the «tirannia del denaro [tyranny of money]» it is necessary to deploy «i mezzi della *cultura* del costituzionalismo e della *forza* del diritto costituzionale [the means of the *culture* of constitutionalism and the *strength* of constitutional law]» (Luciani, 2006).

And it is precisely in the world of children (perhaps it is no coincidence) that some references can be found to try to carry out conclusive considerations on the implications of the relationship between the body and disability.

In these difficult times, in which «una interazione sociale [...] senza i corpi [a social interaction [...] without bodies]» (Sterpa, 2021) has been experienced, we have lived Christmas in a completely new dimension and, perhaps, with a more intense spirituality than in the past. In some Christian contexts, Christmas is the period in which children legitimately start thinking about gifts. Among the dolls on sale this year was also available the Barbie with the wheelchair. This image did not find a generalized favor; the reasons can be well understood: the first emotional impact that this type of toy can arouse can be as intense as it is negative, if only because making a product with such appearance might seem like a dubious commercial operation.

There is no doubt that disability is not a game at all: to confirm it, anyone could contact the people who live in this condition or even those who live close to people with disabilities.

Yet even in the face of this choice of the Barbie manufacturer, however, adopting that practical sense mentioned above, it remains possible to see once again “the glass half-full” (mental *habitus*, of which those dealing with disabilities can hardly do without).

This doll gives an important message: disability is a condition that affects everyone, not just the unfortunate few, also because anyone can become disabled temporarily or permanently.

No one, therefore, even for selfish reasons alone, could think in these terms: “it doesn’t concern me, I don’t care”. Not even Barbie, who represents the stereotypical image *par excellence* of the beauty of the youthful body.

What then the children and or when children play with dolls they can choose between the characters of the stories, which they invent, even people who move with the wheelchair does not seem to have negative repercussions at all; quite the opposite: the possibility of a plural construction of the game, which also contemplates the differences among people, which can ultimately be found in the reality of human relationships, may well be declined in terms of *opportunities*.

The hope, then, is that it is not necessary to disturb the «*prima categoria* formale assiomatica [first formal axiomatic category]» which is «*l'autorelazione del singolo con sé come unità psico-fisica [the self-relationship of the individual with himself as a psycho-physical unit]*», rooted in art. 13 of the Constitution (Modugno, 1995), so that Barbie remains for everyone Barbie even if she now moves in a wheelchair.

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