THE SOCIAL RIGHT TO MOBILITY IN THE RENEWED LEGAL CONTEXT

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ABSTRACT: Among the predominant values that the main study profiles have in common today, it seems impossible not to include sustainability, social inclusion and the environment; there is no doubt, in fact, that these three factors intersect with all aspects of human existence: from health to 'quality of life', passing through the economy and the world of work. All these values are linked to the 'social right to mobility' of people, as a complex and essential legal situation for the growth of the individual and the community. For these reasons we chose to reflect on the theme of the social right to mobility, as a physiological evolution of freedom of movement, and the 'means' that contribute to its satisfaction.

Keywords: Social Rights; Right To Mobility; Local Public Transport; Public Service; Administrative Regulation.

PRELIMINARY REMARKS

The profound transformations that (even) in very recent times have largely contributed to innovating the legal context, often assuming the weight of real upheavals, of authentic metamorphoses - and suffice it to think of the recent global financial and economic crisis caused by the Covid-19 health emergency and the consequent strategic action to combat the pandemic situation undertaken at a European level and, at a national level, through the 'Italia Domani' National Recovery and Resilience Plan (PNRR) - to which is added the urgency of resolving the 'environmental issue'[2] represent a valid

[1] Associate Professor of Administrative law. University of Parma. The present article is authorized to be republished by the editor, considering that it has already been previously published in editions of Iberojur Science Press. We are referring to the National Recovery and Resilience Plan in the version approved on 27 April 2021 by the Chamber and the Senate and subsequently transmitted to the European Commission which on 22 June 2021 published the proposal for the Council's implementing decision, providing an overall positive assessment of the Italian PNRR. On 13 July 2021, the national PNRR was definitively approved with a Council Implementing Decision which implemented the European Commission's proposal. See the recent analysis offered by DUGATO, Marco, *L'intervento pubblico per l'inclusione, la coesione, l'innovazione e la sostenibilità ed il ruolo del servizio pubblico locale nel Piano Nazionale di Ripresa e Resilienza,* in *Munus,* 1/2022, where the Author, starting from the exact consideration according to which the main objective of the PNRR is to counteract the «fragilities that fuel unacceptable inequalities, to be achieved through actions aimed at inclusion, cohesion, sustainability and innovation», states that «the main instrument around which the actions revolve is that of the public service and, in particular, the local public service».

[2] This is an expression also used by the doctrine: SIMONCINI, Andrea, *Ambiente*

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opportunity to promote a wide-ranging investigation aimed at those issues that, at a given historical moment, are perceived as priorities and central.

On closer inspection, these are subjects that are sometimes characterised by a profound heterogeneity, but which nevertheless have in common that they are permeated by dominant values at a given moment in history. Nowadays, if we look at the predominant values that unite the main study profiles, it seems impossible not to include sustainability, social inclusion and the environment; there is no doubt, in fact, that these three factors intersect with all aspects of human existence: from health to 'quality of life', passing through the economy and the world of work, to name but a few. All three of the values now mentioned are intimately connected to the subject matter of this reflection: the 'social right to mobility' of persons, as a complex and essential legal situation for the growth of the individual and the community, a generic reference may be permitted for now. Similarly, local public transport is at the crossroads of fundamental and systemic legal junctions, junctions whose centrality, from the point of view of values, is well expressed by the importance that the quality and quantity of the corresponding services assume with respect to a plurality of purposes of undoubted constitutional relevance. Since its inception, the development of the public transport system has been grounded in the need, inter alia, to allow the full exercise of freedom of movement and at the same time ensure the effective expression of personality at an individual and collective level[3].

With this in mind, we have chosen to investigate the current (and potential, especially when referring to shared planning at a supranational level) role of the local public transport segment in relation to its ability to contribute to the concrete fulfilment of the recently coined social right to

e protezione della natura, Padova, 1996, p. 3; more recently, CHITI, Edoardo*, Verso una sostenibilità plurale? La forza trasformatrice del Green Deal e la direzione del cambiamento giuridico*, in *Riv. quadr. dir. amb.*, 3/2021, pp. 130 ss.; MOLITERNI, Alfredo, *Transizione ecologica, ordine economico e sistema amministrativo,* in *Riv. dir. comp.*, 2022, p. 397; PEDRABISSI, Stefania, *Il trasporto aereo nazionale nel Piano Nazionale di Ripresa e Resilienza*, in *Riv. quadr. dir. amb.*, 2/2021, pp. 555 ss.

[3] Local public transport, more over, can act as a «paradigm of public service» (as authoritatively supported in doctrine: CAIA, Giuseppe, *Il trasporto pubblico locale come paradigma del servizio pubblico (disciplina attuale ed esigenze di riordino*), in *Riv. AIC,* 3/2018, pp. 331 ss.; SALTARI, Lorenzo, *Trasporto pubblico,* in *Enc. dir., I tematici, III, Funzioni amministrative,* Milano, 2022, pp. 1179 ss.) being since the law of 29 March 1903, n. 103 considered by the legislator as a public service, as an activity «intended to satisfy collective needs and therefore established and organized by the public authorities in such a way as to ensure its implementation in terms of duty and in compliance with the principles of universality, continuity and management quality». On the subject of local public services, the literature is truly boundless and any attempt to include an exhaustive bibliography would be in vain. We limit ourselves to indicating those contributions consulted in the writing of these pages. on the notion of public service, CAIA, Giuseppe *I servizi pubblici*, in MAZZAROLLI, Leopoldo, PERICU, Giuseppe, ROMANO, Alberto, ROVERSI MONACO, Fabio Alberto e SCOCA, Franco Gaetano (a cura di), *Diritto amministrativo*, Bologna, 2005, IV ed., pp. 131 ss.; NAPOLITANO, Giulio, *Servizi pubblici,* in CASSESE, Sabino (a cura di), *Diz. dir. pubb.,* Milano, 2006, VI, pp. 5517 ss.; MERUSI, Fabio, *Servizio pubblico*, in *Noviss. dig. it.*, XVII, Torino, 1970, pp. 215 ss. In general, on the concept and evolution of the public services regime, CASETTA, Elio, *Manuale di diritto amministrativo,* in FRACCHIA, Fabrizio (a cura di), Milano, 2021, p. 625, DUGATO, Marco, *I servizi pubblici locali*, in *Diritto amministrativo speciale*, III, *I servizi pubblici. Finanza pubblica e privata*, in Trattato di diritto amministrativo, in CASSESE, Sabino (a cura di), Milano, 2003, pp. 2581 ss.; ID., *La crisi del concetto di servizio pubblico locale tra apparenza e realtà,* in *Dir. amm.*, 3/2020, pp. 511 ss.; MIDIRI, Mario, *Autonomie territoriali servizi pubblici e tutela della concorrenza: la sfida delle innovazioni dirompenti, in Diritto amministrativo e società civile*, Bologna, 2019, pp. 119 ss.; PIPERATA, Giuseppe, *Tipicità e autonomia nei servizi pubblici locali,* Milano, 2005, pp. 125 ss.

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mobility[4], with the aim of attempting to provide an answer to the question raised by several voices in doctrine (or at least contribute fruitfully to the debate), whether it can actually play a central role in the renewed legal context.

This reflection is all the more useful in systems such as ours, based on a rigid fundamental charter, whose values assume a superordinate rank in the hierarchy of sources, and in which the issues and rights pertaining to the 'person', together with the maintenance of the social aggregate, represent the pivot of constitutional protection.

For the sake of clarity, it must be said at the outset that the purpose of this paper is not to provide an exhaustive picture of the concept of the social right to mobility, nor is it to reconstruct the legal situation of local public transport, a subject which, as is well known, boasts a tormented legislative history. It was therefore deemed preferable to try to limit the field of investigation to a specific profile by employing a holistic method - in the sense of taking into account the plurality of interests at stake - while not excluding some useful trespassing on the subject.

The basic idea is therefore to investigate the dynamics of the legal system that consolidate in view of the achievement of the priorities recognised from time to time, in order to understand whether they go in the direction of strengthening and reinforcing public transport on a local scale, also in order to establish the extent of the claim that the individual can make against state intervention. The perspective angle from which to observe the whole affair is the transition from the primordial concept of transport to that of mobility, since the evolution of this notion encompasses the development and balancing of the various values on which our institutional structure rests[5].

1. THE THEME OF THE INVESTIGATION

The choice of observing the changing 'needs of the individual' within a complex and ever-changing society through the filter of the transport system is well understood when one considers the transversal

[4] In recent times the doctrine has developed a notion of "right to mobility" as a social right. Without anticipating what is illustrated below, we will simply point out the contributions of: CANDIDO, Alessandro, *Verso quale trasporto pubblico locale? il diritto sociale alla mobilità,* in *Federalismi.it,* 2016, pp. 2 ss.; CHIARELLI, Raffaele, *Un rilevante contributo alla determinazione del diritto alla mobilità*, in *Dir. e pol. dei trasporti*, II/2022, pp. 98-101; GASPARI, Francesco, *Territorio, formazioni sociali e tutela dei diritti fondamentali: una nuova prospettiva del diritto alla mobilità*, Bari, 2021, ID., *La tutela del diritto fondamentale alla mobilità e le esigenze di contenimento della spesa pubblica tra fallimenti della globalizzazione (e del mercato) e ritorno alla sovranità*, in *Dir. e pol. dei trasporti*, II/2020, pp. 123-133.

[5] Without any claim to be exhaustive, please refer to the recent contributions of: BONETTI, Tommaso, *Il traporto pubblico locale nel prisma della mobilità sostenibile*, in *Dir. amm*, 3/2020, pp. 563 ss.; CANDIDO, Alessandro, *Verso quale trasporto pubblico locale? il diritto sociale alla mobilità,* cit., pp. 2 ss.; GUARNIERI, Enrico, *Città, trasporto pubblico locale e infrastrutture nella stagione della mobilità sostenibile: la sinergia dell'insieme*, in *Federalismi.it*, 16/2022, pp. 151 ss.

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and instrumental character of the transport network that allows the full exercisability of numerous constitutional rights and freedoms and at the same time helps to neutralise social inequalities.

The absence of an adequate and effective transport system in a country prevents the full fulfilment of the right to mobility, of that need to promote and make equal the right of the individual to travel throughout the national territory, starting from the assumption that the enforceability of such a subjective legal situation is essential for the civil, economic and cultural growth of the individual and the community as a whole. In order to begin reasoning around the chosen theme, given its intuitive breadth, it seems of some use to provide an initial delimitation: the social right to mobility, within whose multiform prism it is possible to include local public transport, today can be well summarised in terms of a complex subjective legal situation, an integral part of the 'new administrative citizenship'[6]. It is a right that is functional to the development of the 'constitutionalised' person and to substantive equality (Article 3(2) of the Constitution). Substantial equality to be understood as a 'constitutional first principle'. as well as a tool for 'personal fulfilment' and 'self-emancipation'.

From a diachronic point of view, the right to mobility, especially when referring to the urban dimension, developed in the wake of an ideology mainly of a sociological matrix; only following the progressive demographic increase of urban areas, and the consequent depopulation of inland areas, did it acquire an increasingly central role in urban transport policies and environmental protection policies, in parallel with the legal emergence of constitutional values such as health and personal dignity. The social right to mobility, as will be seen later in more detail, has a precise implication in terms of freedom of movement, which is guaranteed in our system by Article 16 of the Constitution and, at the same time, is at the heart of supranational policy. Within the national context, the right to mobility has been qualified as 'not only one of the fundamental rights guaranteed by the Constitution of the Republic but a prerogative that directly affects the individual'. As we have begun to illustrate, travel intertwines all the main spheres of the subjective sphere of each of us; mobility is linked to freedom of movement, the right to health, the right to work and study. If this is true, then the axiological link

[6] See the theme of the c.d. "administrative citizenship", which arises from «belonging to a territorial community» (CAVALLO PERIN, Roberto, *La configurazione della cittadinanza amministrativa*, in *Dir. amm.,* 2004, fasc. 1, pp. 201 ss.) and can be defined as the «relationship between the individual and the administration» (ARENA, Gregorio, *La cittadinanza amministrativa. Una nuova prospettiva per la partecipazion*e, in *Espaço jurídico*, 2010, vol. 11, n. 2, pp. 522 ss.) which the «political-juridical order makes use of for the realization of its own purposes», we limit ourselves to reporting the contributions consulted here: ARENA, Gregorio, *La cittadinanza attiva nella Costituzione,* in CORTESE Fulvio, SANTUCCI, Gianni, SIMONATI, Anna (a cura di), *Dallo status di cittadino ai diritti di cittadinanza,* Editoriale Scientifica, Napoli, 2014, pp. 241 ss.; CASSESE, Sabino, *Il cittadino e l'amministrazione pubblica*, in *Riv. Trim. Dir. Pubbl.,* 1998, pp. 1015 ss.; DE LUCIA, Luca, *La cittadinanza presa sul serio. Legittimazione a ricorrere al giudice amministrativo e tutela degli interessi diffusi e collettivi*, in *Pol. dir.*, 2022, fasc. 1, pp. 85 ss.; PELLIZZARI, Silvia, *La cittadinanza amministrativa tra diritto europeo e diritto nazionale*, in CORTESE, Fulvio, SANTUCCI, Gianni, SIMONATI, Anna (a cura di), *Dallo status di cittadino ai diritti di cittadinanza,* cit., pp. 127.

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with the aforementioned social function of the local public transport service, intimately connected to a concept of mobility that seems to take shape as a sort of 'qualified freedom of movement', in relation to the multiple needs for movement connected to the satisfaction of primary constitutional rights, becomes quite evident. For this reason, then, one comes to speak of job mobility, school and university mobility, health mobility and so on, wishing to emphasise the complex of different principles and rights of constitutional rank having the 'purpose of facilitating (and in some cases permitting) the movement of the individual with the aid of a vehicle'. According to this approach, a systematic reading of art. 16 of the Constitution and of the principles and rights referred to several times (the right to work, health and a healthy environment, study) would establish a genuine 'right to mobility', a complex subjective legal situation whose guarantee would involve (albeit in different ways) all levels of government of public affairs, through legislative and administrative interventions aimed at planning, funding and managing public transport, starting from the local level.

If we turn our gaze to the European horizon, the right to mobility has developed based on the Community principles connected to freedom of movement but has now lost its exclusive link with the 'reasons' of the market and the free movement of goods and persons, taking shape as an instrument of homogenisation at a social and territorial level intimately connected to European citizenship and the right to movement. According to the Court of Justice, the right that derives from being a European citizen consists first in equal treatment, which derives from Art. 12 tr. EC (prohibition of any discrimination on grounds of nationality).

This gives rise to a series of limits on national laws regulating the status of European citizens moving to another Member State for study, work, tourism or other reasons. At the European level, the issue of transport is, in fact, at the heart of cohesion policies and the use of structural funds, and a fundamental role is assigned to the development of networks both for the strengthening of the market and for social, economic and territorial cohesion.

On closer inspection in both legal frameworks (albeit in the firm awareness that our legal system is one with the supranational one) the 'new' social right to mobility has moved a long way away from the primitive vision that relegated it to the sole meaning of 'mere transport' (of goods or persons); the legal situation under discussion rests firmly on constitutional precepts, interpreted in their current consistency; it is a social right that must also be conceived in its connection with the territory, with the needs of the population, since it aims to improve the living conditions of citizens and is therefore a

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fundamental element in achieving the goals of the new idea of city and territorial community, among which is the generalized increase in people's well-being.[7]

The above-mentioned national and European provisions have largely contributed to the crystallization of a right to mobility with a profoundly different physiognomy from the idea of mere 'transport'; the social right to mobility is now theorized with reference to the multiple needs for movement connected to the satisfaction of primary constitutional rights, it would therefore be a sort of 'qualified freedom of movement'.

And it is precisely the connection with the numerous goods of constitutional rank underlying the demands for mobility that makes the link with the distinct social function of local public transport so strong that it leads policymakers to the necessary choice of adopting an integrated approach capable of elevating the various forms of mobility, even on a local basis, to true means at the service of the community. At the end of these first pages, it seems possible to arrive at an initial fixed point to corroborate the basic idea behind this article: the citizen's right to enjoy a mobility system is based on Articles 1, paragraph 1, 2, 3, 4, 16, 33 and 34 of our Constitution; a systematic vision that allows us to affirm the existence of a real constitutional and social right to mobility, to be understood as an individual's right and the interest of the community.

This legal situation is not limited to intercepting a plurality of constitutional values that have already been mentioned, but the holistic matrix that permeates its foundations makes it necessary to broaden the horizon to include that system of protection, strongly desired by the supranational legislator, based on today's perspective of customer satisfaction, which has made it possible to embark on the road that today makes it possible not only to assess the work of the professional, but also to embrace the visual angle of service obligations, the primary expression of the social regulation necessary to satisfy specific instances of social welfare in the broadest sense, in a context marked by competition[8].

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[7] . See, GARDINI, Gianluca, *Alla ricerca della "città giusta". La rigenerazione come metodo di pianificazione urbana,* in *federalismi.it*, 24/2020, pp. 44 ss.

[8] Without being able to deal extensively with the subject of universal service, for obvious reasons of cost-effectiveness, we limit ourselves to recalling the concept of "universal service" which has developed in parallel with the process of liberalization of markets. This development has helped to generate a regulation of the markets with different intensity depending on the objectives to be pursued: on the one hand, the creation of a highly competitive market economy, On the other hand, the maintenance of advertising rules necessary for the pursuit of social objectives. The universal service is therefore a corrective of the market, aiming to ensure a minimum service of standard quality, even where for various conditions (geographical ones, for example) Economic operators would not intervene if they followed only market logic. The contracted company is thus encumbered by the service obligations even in the absence of a profit. See, PEDRABISSI, Stefania, *La regolazione del trasporto aereo nazionale,* Napoli, 2021, p. 314. As has been authoritatively stated in doctrine, the public service obligation makes the activity of providing a part economic (linked to demand by a correlation) and part public (to a collective user and linked to redistributive needs). See, PERICU, Andrea, *Impresa pubblica e obblighi di servizio*, pp. 312 ss.

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For the reasons shared thus far, the asserted constitutional relevance of the social right to mobility gives rise to the compulsory choice of devising an effective regulatory system that not only 'democratically' involves all levels of government and the users themselves, but is also capable of developing a sustainable policy that takes into account, on the one hand, the role of infrastructures and, on the other, the 'environmental issue', the quality of life of citizens, without neglecting the objective of safety and quality of transport services. It is not surprising, therefore, if at supranational level, the institutions have for some time been placing the emphasis on the profile of the global approach to transport and the environment, a combination effectively summarized in the phrase 'sustainable mobility'. In the light of this acquired need, therefore, the intervention (and role) of the state acquires new and more meaningful value, all the more so if we consider the commitments made in the PNRR season and the consequent planning capable of orienting the dynamics of the legal system[9].

Nothing new, on closer inspection. The transport sector has always been characterized by the pervasive presence of the public role. The peculiar morphology of network infrastructures (see below) qualifies it as a sort of natural monopoly and the activity of infrastructure provision, as Giannini observed, is one of the «oldest activities of regulation of the economy carried out by public authorities»[10].

The revision of infrastructural endowments, and the consequent deployment of substantial resources for their provision, appear today more than ever indispensable in order to promote the effective enjoyment of the social right to mobility: there is no doubt that much of the future of mobility will depend on the regulation, financing and quality of local infrastructure networks and network services[11].

In this scenario, the reference to regulation must then be understood in a manner that is perhaps less idealized than in the past but undoubtedly more in keeping with today's scenarios - profoundly changed, even in very recent times - which require regulatory interventions capable of combining freedom of enterprise and free competition with the protection of other general interests of equal importance, including those of a social nature. Regulation will have to be oriented towards the three

[9] To be complete, the most characteristic feature of the PNRR's infrastructures is that they are not only intended to prepare the functional work to guarantee the exercise of a right or the provision of a service but also to provide the necessary tools and teleologically directed to orient some trajectories of the country system, which in this case correspond to those of sustainable mobility.

[10] GIANNINI, Massimo Severo, *Diritto pubblico dell'economia*, Bologna, 1993, p. 57.

[11] See, DI LASCIO, Francesca, *Le infrastrutture sociali tra complessità amministrativa e prospettive di valorizzazione,* in *Munus,* 3/2020, pp. 501-525.

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main dynamics just mentioned that condition the future of the social right to mobility and, as far as the subject of investigation entrusted to these pages is concerned, the prospects for improving local public transport, which for too long now has been one of the «greatest and most unresolved national issues». For these reasons, the choice of selecting local public transport as a perspective angle for observing the whole affair seems, at least in theory, fruitful, especially when one considers that it is a sector characterized by the constant presence of the State, dominated by public management, subject to multiple and specific forms of regulation and whose operation is mainly guaranteed by substantial public subsidies. As effectively observed in doctrine, every choice concerning local public transport, even the apparently most secondary one, and even regardless of the rank or nature of the source or act - regulatory, administrative or negotiated - that encompasses it, ends up in fact intimately, but in parallel, involving not only the dynamics of relations between the state and the market or between public and private, but also the difficult identification of an acceptable point of equilibrium, in time and space, between the universality and accessibility of the service, as well as the rights of users, with the inevitable requirements of public finance as well as, on the other hand, with the logic of the efficiency canon itself[12].

For the reasons we have begun to illustrate, the subject of local public transport can be approached from numerous perspectives that allow us to examine different aspects and profiles, albeit complementary to each other, which nevertheless involve separate methodological and systematic approaches. As recalled at the beginning of these pages, the intention here is not to offer a complete reconstruction of the complex multi-level governance of the segment under discussion; the chosen theme involves making precise considerations on the main critical issues that contribute to making effective recourse to the sector under consideration more than a little hostile in relation to the mobility needs of individuals and the community described.

2. THE TRANSPORT SYSTEM: AN OVERVIEW

The various segments of which the complex transport sector is composed, although profoundly heterogeneous, have the common characteristic of possessing a physical infrastructure necessary for the distribution of the service itself, they are therefore united by being ascribable to network services and as such, without prejudice to the specificities of the different modes of transport, they have

[12] See GIULIETTI, Walter, *Finanziamento pubblico nel settore dei trasporti, in Infrastrutture di trasporto e sistemi di regolazione e gestione. Coesione sostenibilità finanziamenti,* in COLOMBINI, Giovanna, D'ORSOGNA, Marina, GIANI, Loredana, POLICE, Aristide (a cura di), Napoli, 2019, Vol. I, pp. 73–95.

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significant common profiles ranging from the separation between infrastructure and service, to the regulation of access, to consumer protection.

The transport system represents a neuralgic economic segment towards which the European Community has been looking for some time now for two reasons: on the one hand because of the structural physiognomy that is peculiar to the segments under discussion (especially if we bear in mind the peculiar morphology of the network infrastructures of rail or air transport, which qualify it as a sort of natural monopoly and, therefore, prone to the physiological vocation of sacrificing competition), and on the other hand because of the intimate connection that links the services rendered through the use of the network and the quality of life - in economic and social terms - of the citizens. In these segments, the liberalization process strongly advocated by the European Union necessitated an initial devolution that over time became (re)regulation and allowed the markets to be opened up to a plurality of operators, both public and private, which contributed to raising the levels of economy and efficiency in the transport sector. Perhaps more immediately, at supranational level, the European legislator has regulated the various sectors into which the sector in question is divided, aiming firstly to guarantee the opening up of the markets to the dynamics of free competition and, secondly, to regulate their operation, correcting the distortions produced by a logic of pure competition, so as to be able to satisfy specific social welfare needs even in a competitive context. A circumstance that has contributed to raising the level of attention of the European legislator who, well aware of the strategic role played by the transport sector - especially with reference to the same project underlying the success of the common European space, just think of the very freedom of movement of goods and persons within the Union's borders - has intervened with a series of measures aimed at implementing the protection of the end user, including through a body of legislation capable of guaranteeing a minimum and uniform standard of service quality and ensuring an adequate level of protection for passengers. And in pursuit of this ambitious goal, the European legislator has adopted a series of regulatory measures expressly dedicated to regulating the rights of passengers in the different types of transport (air, sea, rail and bus). A body of legislation through which the legislator intended to regulate the offer of transport services and the methods of access to them by EU citizens, (especially for those citizens with disabilities or reduced mobility), thus conforming, in the individual articulations of which the complex segment of transport is composed, certain aspects of the typical content of the contract concluded between passenger and carrier. In particular, a series of regulations has been adopted with the aim of regulating the methods of ticket sales and envisaged information obligations for transport companies not only in the pre-contractual phase, but also after the conclusion of the contract, in the

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hypothesis in which, in particular, a disruption occurs that could prevent the exact performance of the transfer service. For the purposes of the reflections entrusted to these pages, it would seem of some use to recall immediately, with regard to rail transport, Regulation (EU) no. 782/2021 , which has replaced Regulation (EC) no. 1371/2007, which provides, among other measures, for information obligations to be borne by companies in the event of delays, missed connections or cancellation of services; Regulation (EU) no. 1177/2010, dedicated to the protection of passengers travelling by sea, which provides for the right to compensation in the event of delays, as well as to receive information on the journey. Similar provisions are then contained in Regulation (EU) No. 181/2011 with regard to the rights of passengers travelling by bus and coach. And again, with regard to air transport, the expression of this perceived need are: Regulation (EC) No. 1008/2008, on common rules for the provision of air services and in particular Article 23 provides for obligations of information and non-discrimination with reference to tariff conditions; Regulation (EC) No. 2111/2005 concerning, inter alia, the right to compensation in the event of delays and the right to receive information on the right to travel in the event of delays, as well as the right to receive information on the right to travel in the event of delays. 2111/2005 relating, inter alia, to the information to be provided to passengers on the identity of the operating carrier, but also Regulation (EC) no. 1107/2206, which encompasses the rights of passengers with disabilities and reduced mobility and, again, Regulation (EC) no. 261/2004.

In order to guarantee the effectiveness of the measures put in place to protect passengers, it required Member States to monitor compliance with the provisions adopted in the aforementioned regulations and to provide for effective, proportionate and dissuasive sanctions, designating the bodies responsible. This has given rise to the concomitant need to identify apparatuses to which to entrust these regulatory functions, compatible with the new dimensions of the economic sectors constituting the breeding ground for them.

The intertwining of these different factors has (greatly) contributed to the crystallization of today's regulatory framework, which has a complex structure and unfolds along two lines: a composite and multilevel legislation, the foundations of which are based on both European and domestic law in a concentric regulatory interweave within which the simultaneous protection of multiple general interests of primary rank converge (consumer protection, competition protection, fair information, to name but a few); the provision of sectoral regulatory authorities with prescriptive and sanctioning powers (at present, let us remain general).

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The establishment of an authority in the transport sector immediately seemed indispensable to create a regulatory system based on transparent procedures and an adversarial dialogue between the parties to guarantee impartiality.

In fact, overcoming a great deal of resistance and with a delay of more than 15 years compared to its larger sister companies (energy and electronic communications sectors), between December 2011 and March 2012, with Decree-Laws no. 201 of 2011 and no. 1 of 2012 (both converted into law), the transport sector was also provided with an independent regulatory authority (henceforth also ART). With the establishment of the ART, the legislator filled the gap that had characterized the framework of public utilities since the approval of Law No. 481 of 1995, the first attempt at independent regulation of public utilities[13].

The legitimizing foundation of the institution of the Transport Regulatory Authority is identified in the general principle of liberalization of economic activities, which represents one of the instruments for promoting competition capable of producing virtuous effects for the economic circuit. The Constitutional Court itself, in the now well-known pronouncement no. 41 of 2013, reiterated the importance of the completion, on a legislative level, of the system of independent regulation precisely in that sector that «(...) appears to be more resistant than others to the entry of private operators, due to certain peculiar characteristics, linked, among other things, to the high costs, to the need to ensure the service even in non-remunerative sections, and to the consolidated presence of public subjects both in the management of the networks and in the supply of services. In this context, the risk of the creation or consolidation of dominant positions is particularly felt and, therefore, it is opportune that the transition to a liberalized system be accompanied, as has already occurred for other public services, by a regulation entrusted to an independent Authority that guarantees equal opportunities to all operators in the sector».

At the constitutional level, Article 37, Paragraph 1 of Decree-Law No. 201 of 2011, after affirming that the Authority is competent in the sector of transport and access to the relative infrastructures and accessory services, establishes that it operates 'in compliance with the principle of subsidiarity and the competences of the regions and local authorities as per Title V of Part Two of the Constitution'. In this perspective, the Authority has the task of 'guaranteeing, according to methodologies that

[13] The consolidated ART discipline is now contained in art. 37 of decree-law n. 201 of 2011 (as subsequently amended and supplemented). On the long and troubled path that led to the establishment of this Authority see the contributions of TONETTI, Alessandro, *l'Autorità di regolazione dei trasporti,* in *GDA,* 2012, pp. 589 ss.; NAPOLITANO, Giulio, *La rinascita della regolazione per autorità indipendenti*, cit., pp. 229 ss.; SEBASTIANI, Mario, *Le autorità indipendenti e l'autorità di regolazione dei trasporti*, *Astrid on-line*, 2007. See also, PEDRABISSI, Stefania, *La regolazione del trasporto aereo nazionale*, Napoli, 2021.

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encourage competition, the productive efficiency of management and the containment of costs for users, companies and consumers', fair and equal access conditions to the various infrastructures, also protecting 'the mobility of passengers and goods in the national, local and urban context, also connected to stations, airports and ports' (art. 37, paragraph 2, lett. a).

The reference to the principle of subsidiarity and to the division of competences outlined following the reform of Title V of the Constitution does not represent a mere opening formula of style; the ratio that governs the legislative framework establishing the Authority is that of giving shape to an autonomous body capable of pursuing primarily the purpose of promoting competition in the transport services market. The powers conferred on the Authority in question, if read through the filter of the ratio that inspired its establishment, do not absorb the competences pertaining to the regional administrations, but presuppose and support them.

The Constitutional Court in its oft-referenced 2013 ruling, in order to clarify the compatibility of the Regulatory Authority with the division of competences between State and Regions, reiterated that 'the exercise of (State) exclusive and transversal competence on the subject of the protection of competition can intersect any title of regional power, albeit within the limits necessary to ensure the interests protected according to criteria of adequacy and proportionality'.

At the regulatory level, art. 37, paragraph 1, of Law Decree no. 201 of 2012 includes the Authority 'within the scope of the regulatory activities of public utility services referred to in Law no. 481 of 14 November 1995', which, in art. 2, introduces a series of provisions that it qualifies as 'general principles that inspire the regulations on the Authorities'.

Still on the level of general framework notes, it seems useful to highlight how the Authority is an independent administrative authority with a 'transversal' profile to which competences are attributed in all transport sectors: rail, port, airport, motorway and local public transport. The Authority acts 'in full autonomy and with independence of judgement and assessment' exercising the functions attributed to it 'in the transport sector and access to related infrastructure and ancillary services, in accordance with European regulations and in compliance with the principle of subsidiarity and the competences of the regions and local authorities, as per Title V of Part II of the Constitution' (art. 37, paragraph I, legislative decree no. 201 of 2011).

The law establishing the Authority outlines a traditional model of an independent authority, with reference to the type of interests it is responsible for protecting, the nature of the functions and the instruments entrusted to it, but also to the methods of operation and organization. The competences, functions and powers assigned to it are listed pursuant to Article 37 of Law Decree No. 201 of 2011;

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in reality, these are heterogeneous attributions: some are extended to the entire transport sector in general, others are expressly provided for in relation to the individual reference units, almost as if to signify the need for different regulation processes within the same horizontal regulation.

It follows that the activity of the Authority can be configured both as a second-degree regulation directed to other regulators and as a first-degree regulation directed to specific operators - as in the case of the airport operator - where the Authority approves the identification of the tariff model, the consequent determination of the fees by the airport operator and the possible authorization of specific tariff systems.

The Authority is called upon to exercise regulatory functions in the broad sense (with economic and administrative content), administrative in the proper sense (and in particular control), 'para-jurisdictional' and auxiliary functions.

In particular, the regulatory functions concern access, fees, quality of services, users' rights and tender acts. With regard to access, the Authority guarantees 'fair and non-discriminatory conditions of access to the railway, port, airport and motorway networks, (...) as well as in relation to the mobility of passengers and goods in the national, local and urban context, also connected to stations, airports and ports' (Article 37, paragraph 2, letter a), Law Decree no. 201 of 2011). With reference to charges, the Authority defines 'the criteria for the setting of tariffs, fees and tolls by the competent bodies' (sub. para. b). In relation to quality, the Authority determines 'the minimum quality conditions of national and local transport services with public service obligations' (sub. para. d).

The Authority also defines, after consulting the Ministry of Infrastructure and the regions and local authorities concerned, the scope of the public service on the routes and the financing methods. More extensive are the functions relating to supervision and control. In general, the Authority verifies the correct application by stakeholders of the criteria for determining tariffs, fees and tolls. The Authority also assesses the congruence of the technical and safety provisions laid down by the administrations with economic regulation.

The general function of regulation of a normative nature assigned to the Authority is aimed at legally regulating a certain economic activity in order to achieve those objectives, normally pro-competitive, which cannot be achieved in the absence of a specific sectoral regulation and, therefore, which can be placed in an ex ante, preventive moment in time, capable of 'guaranteeing, according to methodologies that encourage competition, the productive efficiency of the management and the containment of costs for users, businesses and consumers' (Article 37, paragraph 2, lett. a) of Decree Law No. 201 of 2011).

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In addition to the general function of a regulatory nature described above, there is also the more administrative type of regulation in the form of the preparation of outlines for the drafting and calling of calls for tenders and agreements «to be included in the specifications of the same tenders». It is also up to the ART to set the criteria for the appointment of selection commissions. The choice of the national legislator to opt for a Transport Regulatory Authority with multi-sectoral competences fits well with a necessarily integrated and far-sighted future vision, capable of generating positive effects in terms of efficiency, cost savings and sustainability.

3. LOCAL PUBLIC TRANSPORT BETWEEN UNRESOLVED KNOTS AND CRITICAL ISSUES

Over the last two decades, in most European countries, the demand for the movement of people (and goods) has increased dramatically. The reasons that have largely contributed to the increase in demand for mobility are manifold and lie mainly in the breaking down of borders within the common area known as the European Community, or if you prefer the European Union, and the concomitant emergence of new economic and legal spaces within which to move and travel.

The enlargement of territorial borders brings with it a mobility of horizons, including legal horizons, which forces jurists, especially those who study administrative law, to question the actual adaptive capacity of the different segments of which the transport market is composed, in relation to mobility needs. In particular, the growing demographic concentration in urban centers makes it necessary to question the new concept of urban sustainability that aims at the quality of people's lives.

The main and priority objective is to understand how mobility realized through local public transport can implement the quality of life of people, of citizens, in a context in which cities and territorial communities take on a new role, based on the principles of vertical subsidiarity and differentiation.

The demand for mobility must be confronted with the availability and adequacy of the means to travel, which in turn contribute to making it effective. The demand for travel is then linked with the issues of safety and the environment, and it is precisely because of the nature of this interdependent relationship between movement, mobility and other fundamental rights - the right to work, health, safety and family relations - that corresponds to the State's duty to realize the other side of mobility, as a social right.

The presence of efficient local public services becomes of primary importance and is at the same time a litmus test through which to 'measure' the degree of development of a country and the ability

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to guarantee social cohesion, employment, economic growth, and the performance of a significant number of enterprises. In particular, the mobility of people, which is mainly met by local public transport services, private means of transport but also by new forms of public mobility such as car sharing, depends to a large extent on the quality of local infrastructure networks and network services. Otherwise, it involves the deployment of substantial resources and of a planning, management and regulation that are functional to the plurality of interests, both public and private, underlying the demand for travel and deserving of protection: it is clear, in fact, that how the social right to mobility must be observed in its dimension as an autonomous social right and in the complicated relationship between the claims of the citizen holder and the role of the State and the institutions with respect to their implementation.

A general look at the local public transport system reveals the profile of a sector with an uncertain physiognomy, a system incapable of surviving in the absence of massive public subsidies, in a segment characterized by highly fragmented and not always efficient management. The impression one gets, in short, is that of a public service that, far from being able to guarantee the social right to mobility with due appropriateness, is constantly misaligned both in terms of its internal organization and with respect to European standards and planning (suffice it to recall the distance with respect to the environmental objectives of collective mobility and the distance from the transport vision coined by Agenda 2030).

In terms of financing, then, the sector is beset by pressing critical issues. According to authoritative doctrine, the problem of (state) funding of local public transport depends largely on two main dynamics: firstly, the service is poorly subsidized by tariffs, which fail to remunerate production factors at all; secondly, the system has (been) affected by spending review policies and has (been for a long time) governed by non-incentive logics, since it is anchored to the disincentive criterion of historical expenditure.

The same choice in the regionalizing direction strongly desired by legislative decree no. 422 of 19 November 1997 (the so-called Burlando Decree) seems to have been permeated for some time by conflicting pressures that have largely contributed to the constant oscillations on the side of the preconceived transition from a mere financing state to a state that is the promoter and 'director' of the reform process.

The 1997 legislative decree was written in a historical season in which all the forces converged along the axis of decentralization; the economic crisis, first, and then the health crisis, led to the re-emergence of conflicting forces, which the regions tried to resist in constitutional litigation and in national concertation forums. The predominantly regional model preached by the framework law for

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the sector ended up giving way to a system of LPT financing within which the State maintains a central role, firmly anchored to the priority (and central) need to implement spending review policies[14]. The multi-criteria parameter of standard cost has not (yet) succeeded in becoming the backbone around which to redefine in reward terms the relationship between the sectoral governance architecture and the LPT financing system.

The result is that most resources have continued to be allocated through the disincentivizing criterion of historical expenditure, in a system that appears on the whole to be strongly unbalanced and incapable of improving the quality levels of the service itself. The reform process has remained halfway through; the alleged condition of persistent delay in giving concrete implementation to the sophisticated tax-allocative architecture outlined in Article 119 of the Constitution is the pivot around which the justifying reason for maintaining the fund and a role of the State that goes beyond that of a 'mere funder' committed to guaranteeing only economic resources. Against the backdrop of the issue of the criteria for the distribution of the LPT Fund's resources are the clearly visible profiles of all the critical aspects of a model of governance of the sector in which the institutional actors seem incapable of implementing reforms capable of combining social content and economic-managerial efficiency, in a framework of recovered economic sustainability that also effectively takes into account the (binding) planning shared at the supranational level.

Systematic regulation, revision of the 'historical' logic of financing, and exact balancing of self-production and competition are not just longed-for terms of a stagnating reform path. The clear break from the current model and the distribution in reward terms, which the distribution based on standard costs should guarantee, seem then to be the only possible way forward.

SUMMARY REFLECTIONS

If one observes mobility from a diachronic profile, it seems impossible not to notice the cyclical manifestation of events - endogenous and exogenous to the transport system - capable of contracting or expanding the demand for travel and, more generally, capable of transforming its physiognomy. With an inescapable level of approximation that accompanies any attempt to summarise the evolution of a phenomenon in a few lines, it is enough to recall the phase of profound expansion of travel, especially air travel, typical of the 1980s and 1990s (which marked the end of the shortages caused by

[14] See BOSCOLO, Emanuele, *Il finanziamento statale del trasporto pubblico locale tra spesa storica e costi standard,* in ROVERSI MONACO, Fabio Alberto, CAIA, Giuseppe, (a cura di), *Il trasporto pubblico locale. Principi generali e disciplina di settore,* VOL. I, Napoli, 2018, 167 SS.

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the profound oil crisis), but also the sharp contraction linked to the attacks of 11 September 2001 and, in more recent times, the stalemate caused by the health emergency that was followed by the start of the 'era of transitions' (ecological, environmental, digital, to name but a few of the profiles overwhelmed by the change taking place), the true center of gravity of all European and international policies[15].

In this historical moment we are living through a season of legislation that is propitious to promote a real paradigm shift in line with the 'new' idea of mobility: if the lintel around which the social right to mobility is screwed is the holistic vision shared here, there is no doubt that local public transport and infrastructure are easily profiled, rightly and traditionally, as crucial components of public intervention for the removal of obstacles to substantive equality. However, what should be, in harmony with constitutional precepts and the many normative provisions of European and national sources, does not always correspond to what actually turns out to be.

The survey conducted to date on the local public transport sector paints a picture of a sector marked by profound changes and eroded by numerous problems. Local transport services are still undersized, network maintenance is poor for most means of transport, the means of transport themselves (think of regional buses and trains) are largely worn out, unable to provide good quality services. But that is not all, the distribution and supply of means of transport is not uniform and homogeneous throughout the country, to which is added the lack of development of intramodality with consequent prejudices on the planning of journeys by users.

These inefficiencies clearly reverberate on the enforceability of the right to public transport and, more generally, on the effectiveness of the constitutionally guaranteed principle of equality. In short, the impression one gets is that of a sector that is severely in crisis - within which the problem of recovering efficiency is far from being resolved - with little attractiveness to users, with the result that the rate of private car use is still prevalent.

There are many reasons for this phenomenon, and, for the sake of brevity, it has not been possible to list them all here. One problematic issue is certainly that of financing - in a scenario characterized by unsuccessful attempts to complete the reform process and make the definitive transition from the historical expenditure model to the standard cost model - which is accompanied by other unresolved problems related to the lack of investment in infrastructure and the massive recourse to direct contracts.

[15] See PEDRABISSI, Stefania, *Il trasporto aereo nazionale nel Piano Nazionale di Ripresa e Resilienza*, cit., pp. 555 ss.

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The only initiative in a genuinely pro-competitive sense, with direct effects on the complex governance of the sector under discussion, can be identified in the establishment of the ART, which seems to be the only entity capable of acting as a point of connection between the different levels of government, which, however, to date, has not yet contributed significantly to undermining the established structure.

The social right to mobility needs to be reflected in an efficient regulatory framework that is up to date with the changed socio-economic context, and also requires a regulation capable of promoting the development and efficiency of local public transport services. The rationalization of the sector, a need that can no longer be postponed, after decades of low fares, policies lacking an organic design and continual debt write-offs, requires much more radical and complex choices in the PNRR season, starting with financing, which directly affects real governance and also the distribution among the various decision-makers of the responsibility for completing a stagnant reform process.

The unresolved knots that characterize local public transport make its transition towards new horizons axiologically tortuous; these are critical issues that structurally and endemically affect local public transport systems and whose origins have very deep roots. In the writer's opinion, it is nevertheless worth trying to make a few additional considerations, to be taken as the conclusion of this paper.

We have chosen to open these pages with a reference to the social right to mobility, as a physiological evolution of freedom of movement, evoking its nature as a social right and as is well known, social rights are intimately connected to their implementation. Social rights involve interventions and, even before that, precise evaluations on the part of the legislator as to how they should be implemented.

The basic question that accompanies these pages is that of reasoning around the real capacity of local public transport to meet the mobility needs described above and, therefore, the more general and systemic goals referred to earlier. There are therefore two fronts on which to necessarily intervene: firstly, a suitable strategy to strengthen local public transport systems, to be understood in terms of a consistent functional reinforcement capable of overcoming the capacity limits of the current public transport offer and, above all, to ensure a real alternative to the use of cars and private vehicles. Secondly, if we turn our attention to the issue of financing, the clear departure from the current model in favor of the mechanism of apportionment in reward terms, which the apportionment based on standard costs should guarantee, then seems the only viable path. In fact, it should not be forgotten

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that the standard cost paradigm represents a system capable of undermining the misconception on which the vision that relegates local public transport to the status of an 'inferior good' still rests[16].

[16] See BONETTI, Tommaso, *Il traporto pubblico locale nel prisma della mobilità sostenibile*, cit., pp. 563 ss.

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