

Book Review – Francesco Palermo & Gabriel N. Toggenburg (eds.), European Constitutional values and cultural diversity (2003).

Francesco Palermo & Gabriel N. Toggenburg (eds.), European Constitutional Values and cultural diversity. EURAC Research Bozen/Bolzano, 2003. 117 pages.

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The notion of cultural diversity has been widely accepted and utilised since the 1960ies in several manuals of sociology, particularly in the United States.

The same notion, in more recent years, started to be used in the European continent too; there, since the 1980ies and until today, it has represented a subject of great attention for many thinkers. Although at the beginning the majority of these scientists usually came from the field of sociology or political science, in recent years, even the jurists show some interest in the impact of the cultural differences on the juridical organization of the society, and in the problems that the so called “multiculturalism” raises in contemporary States.

The book n. 43 of the publications series 2003 of the European Academy of Bolzano/Bozen is entitled “European Constitutional Values and cultural diversity” and offers several useful keys for a better understanding of the lively debate on the cultural diversity in the European experience. In particular this book deals with the relationship between the value of cultural diversity and the European integration in progress, from a juridical point of view. It is in this perspective that the different meanings of cultural diversity that live together in the European experience and, subsequently, their impact both on the European juridical organization and on each European State are analyzed. Finally a self-consistent view of the whole process is outlined through the evaluation of the influence of this juridical organization on the evolution of the concept of cultural diversity.

The subject is developed in five essays on specific topics. The editors, F. Palermo (Universities of Verona and Trento and Senior Researcher in the European Academy of Bolzano/Bozen), and G.N. Toggenburg (Researcher in the European Acad-

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emy of Bolzano/Bozen and PhD researcher at the European University Institute of Florence), invited five promising young jurists to discuss the different topics. Even though each lecture could be read independently, as a self-contained article, the entire collection offers an exhaustive view of the relationship between cultural diversity and the European legal system. The book, completed by editors' introduction and epilogue, provides a useful tool to focus on European Constitutional Values and offers an idea of how these values can live and evolve together. Last but not least, the book analyses the impact of this evolution on the juridical organization of the European States and of the European Union.

The contributors are: C. Piciocchi (Europe faces cultural diversity: towards a European multicultural model?), M.T. Bia (Towards an EU immigration policy: between emerging supranational principles and national concerns), K. Henrard (The protection of the Roma: the European Convention of Human Rights at the rescue of a controversial case of cultural diversity?), A. Herold (Between art and commerce: constitutional contradiction within the framework of the EU film policy), R. J. Neuwirth (The "Cultural Industries": a clash of a basic values? A comparative study of the EU and the NAFTA in light of the WTO).

A central theme of the book is the new challenges that the European experience has to face in respect of the new different meanings of the notion of cultural diversity.

The notion of cultural diversity in the European experience is traditionally bound to the plurality of the States that express different cultural identities. At the same time, another kind of cultural diversity, traditionally studied in the European experience and accepted as an European characterising factor, comes from the possibility that within the member States exist some ethnic, religious or linguistic minorities.

Therefore, in the European juridical organisation, there are some procedural guarantees acting as a protection of this kind of pluralism in the European experience. The principle of subsidiarity, the principle of enumerated powers, the treaty revision procedure laid down in article 48 of the EU Treaty (which provides for the consensus of the members States) and even the structural setting out of the Union, where the Council is decidedly stronger than the European Parliament, are all instruments of guarantee of the European pluralism as traditionally interpreted. But new problems arise when the notion of cultural diversity is interpreted in other ways: the European Union and its member States face new challenges in the field of the cultural diversity, e.g. because of the increase of the extra-European immigrations and of the so called "new minorities", groups claiming special rights in order to pursue their separation from their legal environment.

There are new kinds of cultural diversity the European Union and the States have to confront with. Some of the instruments traditionally used to solve the problems

created by the cultural diversity in its traditional meanings begin to be inadequate and it is necessary to carry out a careful reflection on the new strategies that are going to be developed in a pluralistic society. Three chapters of the book are dedicated, in different ways, to those themes; they respectively deal with the European multicultural model and the new minorities, the EU immigration policy and the difficulties of its implementation, and, finally, the protection of the Roma in the European experience through The European Convention of Human Rights.

An entire lecture is dedicated to the EU immigration policy (M.T. Bia). A challenge to the traditional legal categories used to define the social diversity comes from the different cultures that the extra European immigrants bring with them. The increasing number of immigrants flowing towards Europe forces the European Union and its member States to take into consideration the practices and the cultural needs expressed by the immigrants. These needs have to be harmonised with the culture of the host territories. The policies and the strategies to manage the immigration flows differ greatly from one country to another and even though in recent years an European approach to immigration has been developed "as long as the EU lacks binding legal instruments in this area, member States will keep on constructing their own policies with mainly national considerations in mind and without reference to the European context"¹.

An interesting point of view is highlighted in the essay by K. Henrard that analyzes the protection of the Roma in Europe through the European Convention of the Human Rights. The lecture represents a reflection on the possibility of using traditional instruments of protection of human rights in new contexts. Even though Roma are generally acknowledged to constitute a minority and, consequently, an investigation of ways of protection of the Roma could be carried out on the basis of the classical minority rights, the paper focuses on the efficacy of an instrument of protection of individual rights in respect of individuals belonging to an eccentric community as the Roma are. The chapter analyzes some rights that cannot be qualify as cultural rights but that play an important role for the implementation of the cultural rights and that the author of the chapter defines as "pre-eminent rights". They need to be guaranteed to make possible that the cultural rights are enjoyed; examples of these preliminary rights are the right to life or the prohibition of torture and of inhuman or degrading treatments or punishments.

Besides the interesting study on the condition of the Roma in Europe, the paper invites to a reflection on how a traditional instrument of right protection works with eccentric cases. If these instruments are used for the Roma, can they also be

¹ M.T. Bia, p. 42

used for other different kinds of minorities, equally eccentric, as the life style (the new) minorities are?

It could be said that the aim of the second part of the book is to underline the manifold dialectic relationships that characterized the European experience. What is dialectic is, first, the relationship between the European constitutional values and the notion of cultural diversity; this notion, indeed, is one of the European constitutional values but, at the same time, it is also an obstacle for the progressive homogenization of the European values and for the process of bringing the States' legislations closer; but also the relationship between the members States and the European Union and the relationship between the juridical organisation of the States and their sociological complexity are dialectic too. The chapters written by A. Herold and R.J. Neuwirth, as well as the epilogue by F. Palermo, remark that the evolution of the European integration is characterized by those dialectic relationships.

The EU film policy is considered as an interesting example for a discussion on those dialectic relationships (European constitutional value versus cultural diversity and member States versus European Union). In the chapter entitled "Between Art and Commerce: constitutional contradictions within the framework of EU Film Policy", A. Herold defines two kinds of conflict; the first, is called the conflict of the "vertical dimension". It is a competence conflict between the European Union and the member States in the field of the film policy exacerbated by the consideration that both the European policy measures affecting the cinema sector and national policy cultural considerations have constitutional basis. As for the second conflict, it affects the "horizontal dimension" and is characterised by the contradiction between the economic objectives of market integration and the obligation to preserve cultural diversity, both constitutionalized within the EU legal order.

The chapter by R. Neuwirth analyses the legal framework of EU, NAFTA and WTO in order to understand how these different international organizations have faced and possibly solved the difficult relationship between culture and trade when both these subjects are constitutionalised.

Both the vertical and the horizontal conflicts characterize the integrated constitutional space that the EU is being creating; a space where there is a bilateral relationship and a continuous interaction between the European Union and its member States.

How can the value of cultural diversity live together with the other European constitutional values? To answer this question it is necessary to focus on another value that characterizes the basic European constitutional framework: the value of toler-

ance. In the European constitutional framework, tolerance is both a value and a method of the “European Constitution”; as a value, it is, at the same time, as Toggengburg clearly describes in his introduction, a foundational value (the political *movens* underlying the EC), an European idea (an element that sketch the profile of the European identity) and, through interpretation, even a legal principle. As a method, tolerance characterizes both the European Unions constitutional way of being and the member States.

Tolerance as a method characterizes the European Unions constitutional checks and balances and creates a liberty in continuous evolution but always in danger. This is not to be considered a weakness if the reader agrees with the opinion of an important Italian political scientist, Norberto Bobbio, who wrote that a liberty always in danger but in expansion is better than a protected liberty that can’t evolve; this is because only a liberty in danger can renew itself while a liberty that can’t renew itself sooner or later will become a new slavery².

In the already wide literature about multiculturalism in a juridical perspective, the book here in comment has an important virtue: a complete constitutional analysis of a constitutional value needs not only a study of the relationship between this value and the others, but also an evaluation of the guarantees that the constitutional framework offers to this value. Multiculturalism is often analyzed, from a juridical point of view, looking more at the first type of analysis described; The book n. 43 of 2003 of the publications series of the European Academy of Bolzano/Bozen, instead, notwithstanding his title, in its second part, tries to deal with the problem of the guarantees that the European Union offers to the cultural diversity as a value. This is a topic that needs to be examined carefully and, for this reason, a follow-up-book to this one could be entitled “European constitutional guarantees and cultural diversity”.

² The sentence is taken and translated from N. Bobbio “Elogio della mitezza ed altri scritti morali” Pratiche editrici, Milano, 1998, p. 158. Literally: “Meglio una libertà sempre in pericolo ma espansiva che una libertà protetta ed in quanto protetta incapace di evolversi. Solo una libertà in pericolo è capace di rinnovarsi. Una libertà incapace di rinnovarsi si trasforma presto o tardi in una nuova schiavitù”.