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Cultural Diversity as a Value in the European Union and Private International Law

Gloria Esteban de la Rosa*

Professor of Private International Law, University of Jaén, Spain

When reference is made to the multiculturalism in the current European Union, the reflexion often focuses on the arrival of people from third countries during a specific recent historical age. However, we should not forget that the European Union itself is "one in the diversity" and the profound meaning of the community spirit (as stated by Jean Monnet, one of the founding fathers) was to be accepted, i.e., to be recognized, in the well-known formula of Ch. Taylor about the "policy of recognition".

Therefore, we should go back to the original idea of diversity that makes the European Union in the context of the end of the Second World War (as well as other international organizations such as the United Nations) with a clear purpose of ensuring peace among historically enemy nations. This involved channeling the said "demand for recognition" of each of the people which originally integrated it. Therefore, we are talking about the multiverse Europe to refer that the particular paradox of Europe is to be a pluralist culture that exists only in its differences.

Thus, the current European Community cannot be explained without the recognition of diversity (linguistic, ethnic, etc.) within its borders, as the Charter of Fundamental Rights (2000) and the current Treaty on the Functioning of the European Union does. However, it may be appreciated a certain deficit in the treatment given to that diversity in the sense that it is focused, primarily, on the diversity which arises within the European Union (particularly, the diversity of regulations), but not so much in the diversity which originates in the arrival of people from third countries.

In this regard, the treatment given by the European Private International Law to the growing formation (inside the European Union) of a multicultural society is still limited, as highlighted –among other resources– by the Rome III Regulation (Regulation No. 1259/2010), which includes a provision –specifically– oriented to prevent to may be applied –by the authorities of the States Parties– the Islamic-inspired regulations, as mentioned some delegations of Northern European countries during their drafting [1].

The article 10 is a clause of rejection provided to prevent the application of the Islamic law (*Sharia*) in the EU, so that the national authority of any Member State can apply this provision automatically. This conception recalls largely the Savignian notion of public policy, understood as defense mechanism of Christian civilization against Ottoman. On the contrary, others have seen in it a special provision of public policy. However, it is not about the traditional idea or most known case of public policy, nor about its interpretation according to the "proximity principle" (used by the jurisprudence of the Higher Court of States Parties, particularly, the French *Cour de Cassation*) [2].

And for that reason, it has been criticized, by not allowing, unlike the most traditional understanding of classical public policy exception, an assessment in each case of the effects of applying a foreign law are incompatible, particularly, with the principle of non-discrimination. However, at the present time, the jurisprudence of the States Parties and, singularly, the German jurisprudence is making a teleological reduction of the aforementioned art. 10, considering that it cannot be used when the dissolution of marriage is requested by the woman, in exchange for compensation (Decision of the *OLG* -Provincial High Court- of Hamburg) [3,4].

On the other hand, the cases are already reaching to the European Court of Justice and, in particular, it might mention the recent preliminary ruling rose by the *OLG* -Provincial High Court- of Munich, the 11 June 2005 (As. C-281/15, Soha Sayoumi v. Raja Mamisch).

However, the most important consideration is to analyze cultural diversity as a value in the current international community, which differs from the old international society by the fact of having undergone a process of socialization and , especially after the Second World War, by dealing with the most complex human relationships and giving an important role to the peoples and the persons, breaking the exclusivism of the States as the sole subjects of the International Law [5].

And this is the context of the UNESCO Declaration of 2001 (United Nations Educational, Scientific and Cultural Organization), as a result of the fear of cultural homogenization, especially by the new countries born after the decolonization process [6]. The aforementioned Declaration defines cultural diversity as "*common heritage of humanity and source for the growth, not only understood in an economic sense, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence*".

In this regards, Private International Law is a variable which is dependent on the organizational forms of the international society (M. Aguilar Navarro) and will also be affected by changes which are taking place, it has become an international community where the cultural diversity is a value which, therefore, must also make the system of Private International Law. This involves the recovery of the "ecological dimension" of the international society, on which International Law and, more specifically, Private International Law must inquire in crisis and changing situations such as the present. And, on the other hand, considering the possibility that a change in the function of Private International Law takes place, which is not just about the coordination of systems, but in putting human beings –perfectly– so that they can make their personal dimension (dignity) in a global level.

Therefore, Private International Law has already overcome its liberal approach of protection of national interests (against the foreign) or the satisfaction of merchant interest (in connection with commercial trade transactions), but it is about protecting human beings as person,

***Corresponding author:** Gloria Esteban de la Rosa, Professor of Private International Law, University of Jaén, Spain, Tel: +34 953 212 118; E-mail: gesteban@ujaen.es

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being protected all their dimensions in this way. And to that end, it is necessary the cooperation between legal systems, which, in turn, requires the use of the comparative method, but from a renewed conception, not the corseted one which succumbed to the formalistic approaches of the late legal positivism.

Its use at the present time allows the rapprochement between regulations, by knowing its contents, the role of each institution and establishing similarities or differences with the regulation of the forum, preventing the public policy exception operates as an exception. And, therefore, it must be conceived as a clause for safeguarding the fundamental values and principles of the forum. This will allow knowing to what extent the fundamental rights can be interpreted according the value of the diversity, as a challenge for current Western societies.

This approach links up with the idea maintained by renowned sociologists and philosophers of cosmopolitan Europe (U. Beck) about moving forward in the direction towards a new form of global democracy, as proposed by D. Held in the field of the contemporary political theory. Starting from the moral equality of all human beings, he recognizes the equality of freedom and forms of government based on deliberation and consent. Human beings are autonomous moral agents, capable of making rational decisions collectively, in such a way that the Law seeks to ensure minimum conditions to enable the exercise of their autonomy.

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