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Introduction

Contemporary Europe is not anymore characterized by traditional National-State borders, but rather by new borders within National-State borders. These new borders arise by cultural, ethnic and religious identity claimed by national and non-national citizens who live in the same public space. Therefore, these new borders are not territorial borders, such as those, which divide a state from another, but rather identitaries borders.

Though territorial borders still exist, nowadays Europe sees the process of the national state border's weakening and of the strengthening of the identitaries borders within states. This process is very linked to globalization, which on the one hand, has brought to the overcoming territorial borders and, on the other hand, has made the local dimensions stronger. Territorial borders do not reflect anymore a specific national identity, founded on a specific cultural, ethnic or religious identity. For instance, if in the past it could be said that an Italian person was only a white, Catholic and Italian language speaking person, nowadays to say that a person is a citizen of a specific nation, or lives in a specific nation does not necessarily mean that this person has specific characteristics linked to citizen membership.

The fact that even territorial borders are nowadays less strong is a problem for law. Indeed, law needs a territory, which is a space with borders where the rules of a legal system are in force (Consorti 2013, 20). Moreover, law itself builds borders every time that it establishes rules. Citizenship builds the legal subjectivity. It outlines the *status* indicating rights, duties and legal obligations. Nevertheless, every man and every woman feels the need to obey even to laws other than imposed by the States. Decidedly, there are legal obligations associated with ethnic, cultural and religious membership, which sometimes are opposed to the duties imposed by the state.

Nowadays, people migrating from a European state to another and from other continents to

Europe claim rights that, at least apparently, cannot find recognition because they are extraneous to the legal system in force in the hosting state. The worship of cultural, ethnic or religious precepts build identities based on specific ways of dressing, religious beliefs, eating habits and ways of relating to others, which coexist with others living within the borders of that state, whether they are indigenous/native, or migrants themselves. These new identities represent a challenge for the legal systems of the states, which have to deal with new claims. For instance, the claim to build minarets in a country, such as Switzerland or to dress *burqua* in a country, such as France is unaccustomed to the rights that are usually protected in these countries. Conversely, these new identities, of which migrants are expression, change also the autochthones, who often react building new identity borders, which create barriers between the migrants and the autochthones themselves (Ricca 2013, 30-36).

The aim of this paper will be to focus on how the law manages the phenomenon of strengthening of the identity borders in order to understand what are the solutions that states give to identity making claims. For this purpose, since Europe represents my reference frame, I will first make an overview of the European context starting from the end of the Second World War to these days. Second, I will focus on the causes of strengthening of identity borders, and in particular on the migratory phenomena, which has concerned Europe since the end of the Second World War. Third, I will deal with the reactions, both at EU and single state level to identity making claims. Finally, I will draw some conclusions with the aim to try to suggest new paths within identity making claims.

1. The European historical background

Europe tried to build itself on a strong basis starting from the end of the Second World War, which had brought serious divisions among the states. Indeed, after the war and the totalitarian regimes, the will to look for peace was born and it became concrete through the many steps that gradually brought to the process of European integration (Consorti 2010, 3). In 1946 Winston Churchill, during the speech at the University of Zurich, declared that the only way to overcome the hostilities among states and people caused by the Second World War and to avoid that the atrocities of the War happen again was to create the United States of Europe. His strong belief in the possibility to rebuild the “family of European people” gave birth to the Council of Europe in 1949 (Royer 2010, 4-5). Nevertheless, within the Council of Europe, there were contrasts between those who wanted to keep the sovereignty of single states and those who were favourable to a federal Europe. Since the line of the first group prevailed, the project to build the United States of Europe has never been realized. Therefore, the process of European integration started from a cooperation among states, which at the very beginning was only an economic cooperation.

Indeed, the famous declaration issued on the 9th May 1950 by the French Minister for Foreign Affairs, Robert Schuman, had the aim to create a European Federation based on the common production of coal and steel in order to give birth to an economic development among the states that were in conflict during the war:

La mise en commun des productions de charbon et d'acier assurera immédiatement l'établissement de bases communes de développement économique, première étape de la Fédération européenne, et changera le destin de ces régions longtemps vouées à la fabrication des armes de guerre dont elles ont été les plus constantes victimes.

A year after this Declaration, in 1951, the European Coal and Steel Community was born. This can be considered the origin of the European Union, which was officially born in 1993 with the Maastricht Treaty (called also European Union Treaty). The EEC (European Economic

Community) and the EAEC (European Atomic Energy Community) were born with Roma Treaties, signed in Rome in 1957 and came into force in 1958. These treaties showed the will of building a European integration based in the first place on the economic cooperation among the member states.

Little by little, this cooperation, which at the beginning was only an economic cooperation, became a cooperation which spread to other sectors such as «Common Foreign and Security Policy» (CFSP) and «Police and Judicial Cooperation in Criminal Matters» (PJCC). It realized also a monetary Union thanks to the adoption of the Euro in January 2002. It covered the «European citizenship», too, as defined by article 20 of the Maastricht Treaty: «Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship». Moreover, the principle of subsidiarity, sanctioned in the article 5 of the same Treaty, shows the cooperation between the EU and the Member States.

Nowadays Europe counts two institutional tracks: on the one hand, the track of the European Union, and on the other hand, that of the Council of Europe. Both the European Union and the Council of Europe have their own jurisdictional organs: the European Court of Justice, which is the tribunal of European Union and the European Court of Human Rights, which applies the principles of the European Convention on Human Rights.

Though Europe has achieved many goals along the path of European integration and – in some extent – has overcome the borders among the states winning the national egoisms (Scott 2012, 84), strong conflicts and social tensions spread within its states. Europe has seen the iron fence from August 1961 to November 1989. After the fall of Berlin's wall, the Soviet Union ended because of national identity making claims of Ukraine, Moldavia, Estony, Lettony, Lituany and Bielorrussia, which became independent.

Europe, which has tried to overcome internal borders and at the same time has had to cope with many claims aimed to keep borders, has also endeavored to build a cultural identity. The debate about the possibility to put into the preamble to the European Constitution - signed in Rome on the 29th October 2004, but never entered into force because of lacking ratification - the reference to the Judaic-Christian roots that engaged politicians, Churches and citizens for some years was the evidence of the will to strengthen the European identity (Bottici and Challand 2013, 28). If Europe felt the need to debate about its identity, this meant that Europe felt that its identity was threatened (Strik Lievers 2004, 154-156). The reference to Christian roots as grounds of the European identity was an attempt to build a border between those who identify themselves in the Christendom and those who do not identify themselves in the Christendom. Religion is, indeed, often used to mark identities and build borders. It is not by chance that the debate about identity roots of Europe developed in the years (2004-2006) in which the fear of the *other*, and in particular of Islamic people was strong.

2. Migratory flows in the European context

In this European context, the phenomenon of immigration can be seen as a fundamental factor of change since the end of the Second World War. Three trends of migration affected Western Europe. The primary wave of immigration – between 1950s and 1973-74s – was based on labour exigences connected to the needs of Western European economic reconstruction. Most migrants were men. On the other hand, the second wave – between 1970s and 1980s – was characterized by the needs of family reunion. This phenomenon caused the increase of women and children migrants. Finally, the third wave – after the fall of Berlin wall – was characterized by the arrival of asylum seeking migrants and migration defined by state policies as illegal (Geddes 2003, 17; Pries and Pauls 2013, 3-4).

Between 1989 and 1998 Western Europe received about 1,650,000 immigrant people every year. This number includes both migrants coming from Eastern European countries and non-European countries. In order to make a comparison, the USA, which is the country considered the land of migration par excellence, received, in the same period 1,000,000 people per year. Since the end of 1980s, the increase of migratory flows has been the principal cause of the total increase of population. Conversely, in the same years, Europe did not see significant increases of natural population that is people born from European states' citizens (Solivetti 2004, 80).

The current situation shows that at the beginning of 2012 the foreign migrated population within EU was 20,7 million (4,1% of the entire European population). In 2011 at least 1,7 million of people coming from non-EU countries immigrated into a European state while 1,3 million of people who lived in a EU state immigrated into another European state.

Because of the above mentioned migratory flows and of other phenomena linked to globalization, on the one hand space can be considered nowadays "without" borders, (it has, indeed, a global dimension), but on the other hand, it can be considered "with" borders because of the local dimension which is emphasized by identity making claims and the presence of minority groups.

The importance of the local dimension emerges also from a spacial and physical perspective. Indeed, it is common to see both in the big cities and in the small European towns, streets or boroughs where only Chinese, Japanese, Africans or Indians live and have their shops and their sacred places. This means that the minority groups who live in European states tend to build

their communities with boundaries and live within them. The presence of spaces where only migrants live has brought to identify them as *ghetto* boroughs, considered as the evidence of social marginalization. The autochthones, in many cases, do not want to have relationships with people who live in these boroughs and tend not to go there. The cohabitation between migrants and autochthones represent one of the main challenge of contemporary multicultural society.

3. The reaction of legal orders to identity making claims

What I would like to focus on is the reaction of the European legal systems to the requests emerging from our growing culturally diverse society. The presence of people coming from different backgrounds, which, from a sociological point of view, is often a source of conflicts, represents a relevant challenge for the law. The European states' legal systems have elaborated constitutional principles, which are able to recognize the fundamental rights of the individuals, such as the freedom of conscience and of religion. On this basis, European legal systems should recognize some – obviously not all – identity making claims. Instead, they often answer to identity making claims merely banning specific behaviours of people who belong to the minority groups or denying the rights that they ask. The ban to wear *burqua* (that is the full-face veil) in all public places, which came into force in 2010 in France is an evidence of how a behaviour, which is in many cases inspired by a cultural and religious tradition (Fiorita 2008, 3-4) is considered as adverse to the principles of the legal order, and specifically, to the principle of *laïci*
té.

The fact that a woman may choose to wear

burqua

autonomously without any imposition by men who dominate her is irrelevant for the French law: women cannot wear

burqua

not even if they like it because this way of dressing is “clearly incompatible with the constitutional principles of freedom and equality” (Ferrari 2012, 62).

The Swiss referendum which, in 2009, banned the building of minarets (Pacillo 2012, 337-338; Nussbaum 2012, 54-57) is another example of the tendency of the states to reject some claims of minority groups. Though Switzerland is not a member state of European Union, it is a state in the European space and it shares the same cultural and juridical traditions of the other European states. For this reason, the request to build minarets of Islamic minority who live in its borders is unaccustomed to the rights, which are usually claimed and protected by the Swiss legal system.

These two examples show that the European states have some difficulties to manage the identity making claims coming from minorities. States often use the law to build borders between the needs of the minority groups and those of the autochthones and to stress the differences among them.

Conclusions

Since identity making claims make less strong the national state borders and build new identities within the borders of the states, it is the moment in which states have to rethink of the meaning of their fundamental principles in order to use them for assuring a better cohabitation

among human beings in the contemporary multicultural society. The strong changes which interested and still interest Europe need to be managed through long-term solutions based on a dialogical and reciprocal respect between majority and minorities, thus between citizens and immigrants. Obviously, this should be done by respecting the constitutional framework of the European states.

Therefore, probably the future is a non-border future where the “global constitutionalism gives the rights without land protection and guarantee” (Rodotà 2013, 3). However, global constitutionalism cannot be without local dimension. This current period, indeed, is the period in which everything is expanding within the global dimension, but at the same time everything is becoming smaller within the local dimension.

The law, thanks to its pragmatic approach, could provide a new model for the cohabitation of people who claim different rights (Seligman 2009, 2896) among which many are inspired by cultural, ethnic and religious rules and are – at least apparently – incompatible with the fundamental principles of European states. The paths to reach this goal are many and so far unexplored. Nevertheless, in any case, the first step should start from listening to the needs both of people who belong to minority groups and of the autochthones. Indeed, the importance of “embrace our teeming, colliding, irksome diversity thinking and at the same time to insist on a set of values that binds us together” (Obama 2004, x) should be the starting point of every reflection on how the law could realize a better accommodation of needs of human beings.

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