

UNIVERSALITY OF HUMAN RIGHTS, PROTECTION OF DIVERSITY AND OF CULTURAL IDENTITY

This article provides a reconstruction of previous and recent doctrinal positions concerning the relationship between the universality of human rights and cultural diversity. After illustrating the rationale behind the universalist and relativist theses, it is now possible to consider the juxtaposition between the universalism of human rights and the plurality of cultures to have been overcome, in the light of conventional and judicial or quasi-judicial practice of the supervisory bodies of the major international and European human rights conventions. This work aims to highlight the important contribution made by the Italian doctrine in this difficult and politically sensitive matter.

Special attention has been given to the systematization of the conceptual historical evolution of human rights in the international legal order proposed by Focarelli, who classifies them in the four phases of the positivisation, generalization, internationalization and specification. The careful reconstruction of the relationship between universalism and pluralism made by Iovane, Cataldi and Lenzerini makes it possible to acquire a greater awareness of the terms of the problem and to clarify the methods of analysis and the theoretical underpinnings that have led to its overcoming.

In terms of the effectiveness of human rights, we sought, albeit not fully or exhaustively, to illustrate Lenzerini's thesis according to which a specific methodology for classifying the universality of human rights is needed. This methodological approach is based on the different perspectives from which it originates (fundamental, conceptual and structural universalism) and concludes that in its structural aspect no human right, apart from the right to life in the sole hypothesis of the prohibition of genocide, can be considered universal. All human rights are declined, classified and interpreted in different ways according to the cultural traditions of different peoples, ethnic groups and nations. This makes it impossible to reconstruct a priori objective criteria useful for resolving conflicts between the universality of human rights and the plurality of cultures.

Only a case by case evaluation can contribute to what is a continuous interpretative process of "culturalization of human rights".