



**Ma.Sc. Naim Meholli\***      **Sabedin Mushica\***

## **DIVERSITY MEASURES ON JUVENILES**

### **ABSTRACT**

The reason for elaborating “Diversity Measures on Juveniles” is that juveniles as a category are very sensitive due to their mental and physical development. The disturbing fact that a considerable number of criminal offences are juveniles, is what lead to choose this topic for elaboration. Thus, finding more adequate measures to impose to this category represents an interest of study in the field of criminal law. This paper, beside the introduction part is divided in two parts which include the conclusions and bibliography.

In the first part of this paper we have mainly elaborated the background of the diversity measures commencing from its establishment. Whereas in the second part of this paper we have elaborated implementation forms of the diversity measures according to our criminal system and juvenile treatment when diversity measures are imposed (enforcement of diversity measures. The final part of this paper contain main findings on Diversity Measures on Juveniles. While by the end of this paper the bibliography used for the purpose of preparing this paper is provided.

Key words: Diversity measures, implementation forms of diversity measures, diversity measures according to our system, juvenile treatment.

### ***Introduction***

Often in every country, the category of younger age known as juveniles are the one committing criminal offences. Young people are current and future of every society, therefore due to the specification characterizing this category it is necessary to find alternative forms of measures to be imposed thus technically it would not be named as criminal sanctions, but as diversity measures.

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\* Sabedin Mushica, candidate for the position of judge.

\* Naim Meholli, candidate for the position of judge.

The necessity of finding this measures arose as a result of social wide effort, that this category of offenders to be excluded from the criminal jurisprudence in order to protect themselves from any possible negative impact of these measures.

Also, given that the age of juvenile's offenders constitutes the stage of development where the juvenile is in the period of rapid development mentally and physically. Exactly for this reason, the society with its mechanisms wants to come to help juvenile offenders in order for him to forgo actions and behaviors that are against the law and for them to be oriented in an appropriate direction for his mental and physical development. For this reason, the diversity measures have been provided and they are free for the criminal element.

Diversity measures represent all modern criminal-procedural systems, while the legal basis derives from the legal provisions and international conventions that refer to human rights and freedoms.

### ***1. Historical development of diversity measures***

The idea of finding the most appropriate measure on the category of juvenile's committing criminal offences is very old. First ideas can be encountered at Dyrkem and Weber on new measures of social reaction towards juveniles with the premise of removing the dose of repression.

Permanent processing of the diversity measures in the contemporary times were made by the Norwegian Nils Cristy. His concepts and ideas represented the initiative for alternative dispute resolution. According to him, the dispute between the victim and the juvenile offender can be resolved through equalizing the compensation claims for the damage caused by the juvenile offender. According to the mentioned author, " the position of state is of a third person, who in an informal procedure intervenes in resolving the dispute between the victim and the juvenile offender".

In the wake of Nil Cristy ideas, many programs were developed in order to avoid juvenile delinquency in orienting the use of guarantees in preliminary criminal procedure, to a better behavior of juvenile offender upon his release from the social or medical institutions and in advising the juvenile's offender and the victim.

Every system represents this model, including the continental law system and the common law system, as a new and progressive approach oriented in two segments: the reduction of crime as phenomenon as a preventive and reintegration of juvenile offenders in the society. Wider implementation of the diversity measures can be found in USA and in Belgium, especially after 1967 under an operational program for prevention of juvenile delinquency.

## ***2. Implementation forms for diversity measures***

Diversity measures can be interpreted in two main forms: simple diversity and diversity with intervention.

Simple diversity applies for juvenile offenders committing lighter criminal offences. This form of diversity is applied in our country as well. According to this principle, state prosecutors are given the opportunity that based on their free will, to decide whether it will initiate the request for diversity measures or any other measures. Diversity with intervention means undertaking one of the educational measures upon the proposal of the state prosecutor or upon the proposal of the judge toward the juvenile offender.

The implementation of diversity measures on juvenile offenders is mainly recommended for cases when they first committed a criminal offence or when they first committed a criminal offence with low risk to the society. These measures represent the sudden reaction of the society towards the juvenile offender by obliging him in fulfilling certain conditions but without court intervention. Thus, these measures make it possible to the juvenile offender to reintegrate where he lives and to take responsibility with the purpose of awareness and regretting his illegal action.<sup>141</sup>

## ***3. Diversity measures on juveniles according to our criminal system***

Like in any society, our country also has foreseen specific measures for the juvenile category which can be applied and in the legal science are known as diversity measures.

Diversity measures were first regulated with the Criminal Law on juveniles which entered into force with the regulation nr. 2004/8 of April 20th, 2004. The law has been replaced and now the diversity measures are regulated with the Juvenile Justice Code which entered into force on July 8th, 2010. The basic principles are foreseen in the preliminary provisions according to which the dignity, freedom of speech, legal help, avoiding the possibility of labeling juveniles must be preserved.

According to new solutions in this regard, the Juvenile Justice Code in chapter IV has foreseen the purpose, conditions for imposition and types of diversity measures.

According to the content of this Code, in its article 16, the purpose of diversity measures is to prevent, whenever possible, the commencement of proceedings against a minor offender, to promote the positive rehabilitation and re-integration of the minor into his or her community and thereby prevent recidivist behavior.

Article 17 of this Code specifies the conditions under which the diversity measures can be imposed: acceptance of responsibility by the minor for the criminal offence; expressed readiness

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<sup>141</sup> Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

by the minor to make peace with the injured party; and consent by the minor, or by the parent, adoptive parent or guardian on behalf of the minor, to perform the diversity measure imposed.

Article 18 of this Code specified which measures can be imposed to the juvenile offender. According to this, these measures are:

- Mediation between the minor and the injured party, including an apology by the minor to the injured party;
- Mediation between the minor and his or her family;
- Compensation for damage to the injured party, through mutual agreement between the victim, the minor and his or her legal representative, in accordance with the minor's financial situation;
- Regular school attendance;
- Acceptance of employment or training for a profession appropriate to his or her abilities and skills;
- Performance of unpaid community service work, in accordance with the ability of the minor offender to perform such work; this measure may be imposed with the approval of the minor offender for a term ten (10) up sixty (60) hours
- Education in traffic regulations and psychological counseling.<sup>142</sup>

Based on the nature, condition of imposition for this measures, we can easily say that our country has embraced a modern system, human and comprehensive and more advance of the diversity measures that can be imposed on the juvenile offender.

#### ***4. Juvenile treatment when imposing diversity measures***

When imposing diversity measures, a bridge of connection between police, prosecutor, juvenile offender, his parent, the damaged party, court and probation service is automatically created.

In this case, the activity with the purpose of implementing the diversity measure is coordinated. In his case, the competent prosecutor invites the juvenile his parent or guardian and his defender.

When imposing the diversity measures the public prosecutor, juvenile judge or panel of judges send the decision and all other motions of the case to the Probation Service to enforce the diversity measures in territory where the juvenile offender has his place of stay.

The supervision of the enforcement of the diversity measures is performed by institutional who imposed that measure. If eventually, the juvenile offender does not fulfill the obligation that derives from diversity measures, the Probation Service will verify the facts and reasons for such failure. To fill the report in conformity with the legal provisions for juvenile, the Probation Service

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<sup>142</sup> Kosovo Juvenile Justice Code 2010 , Article 16, 17, 18

inform the competent public prosecutor and the court that has imposed such diversity measure.<sup>143</sup> If we suppose that the juvenile has fulfilled the obligations deriving from the diversity measures then it could be concluded that the measures has been appropriate and the purpose for this imposing these measures has been achieved.

### **5. Conclusion**

Taking into consideration that we all are witnesses of increasing number of criminal offences, where the criminal offender is a juvenile, in this aspect immediate measures and actions should be taken in order to prevent this phenomenon from happening any longer in our society. Education of new generation is very vague and this is very concerning for our country. Implementing non-criminal measures would be very important and convenient on juvenile offenders, since the possibility of labeling juveniles would be avoided.

Therefore, implementing diversity measures which have a non-criminal character would be the most favorable and adequate method for the juveniles that for the first time confront the law. These measures would have an impact in increasing the juvenile awareness to not repeat the same illegal behaviors in the future. Through these measures, the society reacts towards this criminal phenomenon and makes it possible to apply measures that have erased the repressive element and the purpose of criminal sanction. By applying diversity measures the reintegration is made possible for the juvenile in the environment where he lives by regretting his illegal action.

### **Bibliography**

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<sup>143</sup> Kosovo Juvenile Justice Code 2010, Article 8