

La ‘diversione’ in ambito penale.

Introduzione ad uno studio sulle condizioni di legittimità delle alternative al processo

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Abstract

The research aims to explore and study the legal basis on which it is possible for a State to avoid a criminal process. It is self-evident how many member States, both with a system of compulsoriness and discretionality of criminal prosecution, are going in a direction of a dejurisdictionalisation, renouncing to a process in all the cases where this seems possible and reasonable. Mediation, probation, social works, payment of a fee before a guilt adjudication has been given, are only some examples of diversion. Also in Italy it has been recently provided a form of probation, the first alternative to trial in the ordinary process. This work aims to identify the minimal conditions that are necessary in order to make diversion compatible within a system constructed on the principles of ‘fair trial’ and the ‘due process’, exploring connections with restorative justice and freedom of consent. The problems to solve are many – is it possible to build alternatives to trial that really respect personal freedom, presumption of innocence and the other fundamental rights, in other words, granting, not only a fair trial, but a also “fair diversion”? How manage the ordinary process if the diversion fails? The study aims to give a first contribution in order to answer these questions.