

MALTA

ATT Nru XVII tal-2021

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ACT No. XVII of 2021

AN ACT enacted by the Parliament of Malta.

ATT biex jemenda l-Att dwar Vittmi tal-Kriminalità, Kap. 539.

AN ACT to amend the Victims of Crime Act, Cap. 539.

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

16 ta' April, 2021

ATT Nru XVII tal-2021

ATT biex jemenda l-Att dwar Vittmi tal-Kriminalità, Kap. 539.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'ligi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2021 li jemenda l-Att dwar Vittmi tal-Kriminalità u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar Vittmi tal-Kriminalità, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 539.

2. Minnufih wara s-subartikolu (3) tal-artikolu 6 tal-Att prinċipali għandu jiżdied is-subartikolu ġdid li ġej:

Emenda tal-artikolu 6 tal-Att prinċipali.

"(4) Matul investigazzjonijiet kriminali:

(a) intervisti tal-vittmi għandhom isiru mingħajr dewmien mhux ġustifikat wara li jkun sar l-ilment fir-rigward tar-reat kriminali lill-Pulizija Eżekuttiva;

(b) l-għadd ta' intervisti mal-vittmi jkun limitat kemm jista' jkun u l-intervisti jsiru biss fejn strettament meħtieġ għall-iskopijiet tal-investigazzjonijiet kriminali;

(ċ) vittmi jistgħu jiġu akkumpanjati mir-rappreżentant legali tagħhom u minn persuna li jagħzlu huma stess, sakemm il-vittmi ma jkunux irrifjutaw din ir-rappreżentanza, b'mod esplicitu u bil-miktub, jew ma tkunx ittiegħdet deċiżjoni motivata għall-kuntrarju mill-Uffiċjali tal-Pulizija li jkunu qegħdin jinvestigaw, fejn huma jkunu tal-opinjoni li l-persuna magħzula tista' tohloq kunflitt ta' interess fl-investigazzjoni;

(d) eżamijiet mediċi jinżammu għall-minimu u jitwettqu biss meta jkunu strettament meħtieġa għall-iskop tal-proċedimenti kriminali."

Emenda tal-artikolu 7 tal-Att prinċipali.

3. Is-subartikolu (7) tal-artikolu 7 tal-Att prinċipali għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(7) Il-qorti għandha tivvaluta jekk il-vittmi jehtigux interpretazzjoni jew traduzzjoni kif provdut taht is-subartikoli (1) u (2). Il-vittmi jistgħu jikkontestaw id-deċiżjoni tal-qorti li ma jiġux ipprovduti interpretazzjoni jew traduzzjoni."

Żieda ta' artikoli ġodda mal-Att prinċipali.

4. Minnufih wara l-artikolu 10 tal-Att prinċipali għandhom jiżdiedu l-artikoli ġodda li ġejjin:

"Dritt għal rimborż ta' spejjeż.
L.S. 9.12.

10A. Bla ħsara għar-Regolamenti dwar Skema għal Kumpens għal Ħsara kkawżata mill-Kriminalità, il-vittmi li jipparteċipaw fil-proċedimenti kriminali għandu jkollhom il-possibbiltà li jiġu rimborżati għall-ispejjeż li jkunu garrbu b'riżultat tal-parteeċipazzjoni attiva tagħhom fi proċedimenti kriminali, f'konformità mar-rwol tagħhom fil-proċedimenti kriminali rilevanti. Il-kondizzjonijiet jew ir-regoli proċedurali li bihom il-vittmi jistgħu jiġu rimborżati għandhom jiġu determinati mill-Ministru responsabbli għall-ġustizzja.

Dritt għall-protezzjoni tal-privatezza.

10B. Il-Ministeru jew kwalunkwe entità jew aġenzija oħra li l-Ministru jista' jahtar għal dak l-għan għandhom jieħdu matul il-proċedimenti kriminali miżuri xierqa biex jiproteġu l-privatezza, inklużi karatteristiċi personali tal-vittma meqjusa fil-valutazzjoni individwali kif provdut taht l-artikolu 12, u xbihat tal-vittmi u tal-membri tal-familja tagħhom."

Emenda tal-artikolu 11 tal-Att prinċipali.

5. Minnufih wara s-subartikolu (2) tal-artikolu 11 tal-Att prinċipali għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(3) Meta vittma tkun residenti ta' Stat Membru li ma jkunx Malta, il-Pulizija Eżekuttiva għandha tiegħu dikjarazzjoni

mingħand il-vittma immedjatament wara li jsir l-ilment dwar ir-reat kriminali.

(4) Meta vittma tkun residenti ta' Stat Membru li ma jkunx Malta, il-vittma għandha tirrikorri sa fejn ikun possibbli għad-dispożizzjonijiet dwar vidjokonferenzi u konferenzi telefoniċi stabbiliti fil-Konvenzjoni dwar l-Assistenza Reċiproka f'Materji Kriminali bejn l-Istati Membri tal-Unjoni Ewropea tad-29 ta' Mejju 2000 (1) bl-għan li jinstemgħu vittmi li jkunu residenti barra mill-pajjiż."

6. L-artikolu 12 tal-Att prinċipali għandu jiġi sostitwit bl-artikolu ġdid li ġej:

Sostituzzjoni tal-artikolu 12 tal-Att prinċipali.

"12. Il-Ministeru jew kull entità jew aġenzija oħra li l-Ministru jista' jahtar għal dan l-għan għandu jipprovdi:

(a) biex jiġi żgurat li l-vittmi jirċievu valutazzjoni individwali u f'waqtha, skont dan l-Att, u biex jiġi ddeterminat jekk u sa liema punt huma jibbenefikaw minn miżuri speċjali f'dan l-Att minhabba l-vulnerabbiltà partikolari tagħhom. Il-vittma tista' titlob li tiġi intervistata minn persuna tal-istess sess;

(b) għall-valutazzjoni individwali u f'waqtha tal-vittmi li jkunu sofrew minn reati severi, inklużi reati mwettqin bi preġudizzju jew bi skop diskriminatorju li jistgħu b'mod partikolari jkunu relatati mal-karatteristiċi partikolari tagħhom, u tal-vittmi li r-relazzjoni tagħhom ma' u d-dipendenza tagħhom fuq l-awtur ta' ksur jagħmluhom partikolarment vulnerabbli bħal:

- (i) minorenni;
- (ii) vittmi tat-terroriżmu;
- (iii) vittmi tal-kriminalità organizzata;
- (iv) vittmi tat-traffikar tal-bnedmin;
- (v) vittmi ta' vjolenza abbażi tas-sess;
- (vi) vittmi ta' vjolenza f'relazzjoni mill-qrib;
- (vii) vittmi ta' vjolenza sesswali;
- (viii) vittmi ta' sfruttament jew atti kriminali ta' mibegħda; u
- (ix) vittmi b'diżabbiltajiet:

Iżda l-valutazzjoni individwali għandha, b'mod partikolari, tqis il-karatteristiċi personali tal-vittma, it-tip jew in-natura tal-att kriminali u ċ-ċirkostanzi tal-att kriminali;

(ċ) servizzi ta' appoġġ għall-vittmi li għandhom, tal-anqas, jipprovdu:

(i) informazzjoni, parir u appoġġ rilevanti għad-drittijiet tal-vittmi inkluż dwar l-aċċess għal skemi nazzjonali ta' kumpens għal danni ta' reat kriminali, u dwar ir-rwol tagħhom fil-proċedimenti kriminali inkluż fit-thejjja għall-attendenza fil-proċess;

(ii) informazzjoni dwar jew referenza diretta għal kwalunke servizz ta' appoġġ rilevanti fis-sehħ;

(iii) appoġġ emottiv u, fejn disponibbli, psikoloġiku;

(iv) parir marbut ma' kwistjonijiet finanzjarji u prattiċi li jqumu mill-att kriminali;

(v) sakemm ma jkunx ipprovdut mod ieħor minn servizzi pubbliċi jew privati, parir relatat mar-riskju u l-prevenzjoni ta' vittimizzazzjoni sekondarja u ripetuta, ta' intimidazzjoni u ta' ritaljazzjoni;

(vi) kura medika skont is-sistema tal-kura tas-saħħa nazzjonali sakemm din il-kura tkun meħtieġa;

(vii) miżuri ta' protezzjoni, b'attenzjoni partikolari għar-riskju ta' intimidazzjoni u ta' ritaljazzjoni u l-ħtieġa li jiġu protetti d-dinjità u l-integrità fiżika, inkluż waqt l-interrogazzjoni u meta jagħtu x-xhieda tagħhom;

(viii) kenn jew kwalunkwe akkomodazzjoni temporanja adatta għal vittmi li għandhom bżonn post sikur minhabba riskju imminenti ta' vittimizzazzjoni sekondarja u ripetuta, ta' intimidazzjoni u ta' ritaljazzjoni; u

(ix) appoġġ immirat u integrat għal vittmi bi htigijiet speċifiċi, bħal vittmi ta' vjolenza sesswali, vittmi ta' vjolenza abbażi tas-sess u vittmi ta' vjolenza f'relazzjonijiet mill-qrib, inklużi appoġġ fi trawma u konsultazzjoni;

(d) għall-involviment mill-qrib tal-vittma fit-tweqqi ta' valutazzjonijiet individwali li għandhom iqisu x-xewqat tal-vittmi dwar jekk ma jkunux jixtiequ jibbenefikaw mill-miżuri speċjali provduti f'dan l-Att;

(e) għall-aġġornament tal-elementi li jiffurmaw il-bażi tal-valutazzjoni individwali matul il-proċedimenti kriminali."

7. Minnufih wara s-subartikolu (3) tal-artikolu 14 tal-Att prinċipali għandu jiżdied is-subartikolu ġdid li ġej:

Emenda tal-artikolu 14 tal-Att prinċipali.

"(4) Meta l-vittma tkun minorenni, hi għandha titqies li għandha htigijiet speċifiċi ta' protezzjoni minhabba l-vulnerabbiltà tagħha għal vittimizzazzjoni sekondarja u ripetuta, għal intimidazzjoni u għal ritaljazzjoni. Biex jiġi stabbilit jekk u sa liema punt huma jibbenefikaw minn miżuri speċjali kif provdut taht dan l-Att, it-tfal vittmi għandhom ikunu soġġetti għal valutazzjoni individwali kif provdut fl-artikolu 12."

8. Minnufih wara l-artikolu 14A tal-Att prinċipali għandu jiżdied l-artikolu ġdid li ġej:

Żieda ta' artikolu ġdid mal-Att prinċipali.

"Dritt għall-protezzjoni ta' vittmi bi htigijiet speċifiċi ta' protezzjoni waqt il-proċedimenti kriminali. Kap. 164.

14B. (1) Mingħajr preġudizzju għal-*locus standi* u drittijiet tal-parti leża, għad-dispożizzjonijiet tat-Titolu II tat-Taqsima III tal-Att dwar il-Pulizija u għad-drittijiet tad-difiża u skont id-diskrezzjoni ġudizzjarja, vittmi bi htigijiet speċifiċi ta' protezzjoni li jibbenefikaw minn miżuri speċjali identifikati bħala riżultat ta' valutazzjoni individwali kif provdut fl-artikolu 12 jistgħu jibbenefikaw mill-miżuri provduti f'dan l-Att. Miżura speċjali prevista wara l-valutazzjoni individwali m'għandhiex tkun disponibbli jekk restrizzjonijiet operazzjonali jew prattiċi jagħmlu dan impossibbli, jew fejn ikun hemm htieġa urġenti li tiġi interrogata l-vittma u jekk dan ma jsirx tkun tista' ssir hsara lill-vittma jew persuna oħra jew tista' tippregudika l-kors tal-proċedimenti.

(2) Il-miżuri li ġejjin għandhom ikunu disponibbli matul l-investigazzjonijiet kriminali għal vittmi bi htigijiet speċifiċi ta' protezzjoni identifikati skont l-artikolu 12:

(a) interrogazzjonijiet mal-vittma jiġu mwettqa f'binjiet imfasslin jew addattati għal dak l-iskop;

(b) interrogazzjonijiet mal-vittma jiġu mwettqa minn jew permezz ta' professjonisti mharrġa għal dak l-iskop;

(ċ) l-intervisti kollha tal-vittma jitwettqu mill-istess persuni sakemm dan ma jmurx kontra l-amministrazzjoni tajba tal-ġustizzja;

(d) l-intervisti kollha mal-vittmi ta' vjolenza sesswali, vjolenza abbażi tas-sess jew vjolenza f'relazzjonijiet mill-qrib, sakemm ma jsirux minn prosekutur jew persuna li tippresjedi l-Qorti, isiru minn persuna tal-istess sess bħall-vittma, jekk il-vittma tkun tixtieq hekk:

Iżda l-kors tal-proċedimenti kriminali ma jiġix ippregudikat."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 447 tat-13 ta' April, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE VELLA
President

16th April, 2021

ACT No. XVII of 2021

AN ACT to amend the Victims of Crime Act, Cap. 539.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

1. The short title of this Act is the Victims of Crime (Amendment) Act, 2021 and this Act shall be read and construed as one with the Victims of Crime Act, hereinafter referred to as "the principal Act".

Short title.

Cap. 539.

2. Immediately after sub-article (3) of article 6 of the principal Act there shall be added the following new sub-article:

Amendment of article 6 of the principal Act.

"(4) During criminal investigations:

(a) interviews of victims shall be conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the Executive Police;

(b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;

(c) victims may be accompanied by their legal representative and a person of their choice, unless the victims would have refused such representation, in an explicit manner and in writing, or unless a reasoned decision has been made to the contrary by the investigating Police Officers, wheresoever they are of the opinion that the person chosen may create conflict of interest in the investigation;

(d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings."

Amendment of article 7 of the principal Act.

3. Sub-article (7) of article 7 of the principal Act shall be substituted by the following new sub-article:

"(7) The court shall assess whether victims need interpretation or translation as provided for under sub-articles (1) and (2). Victims may challenge the court's decision not to provide interpretation or translation."

Addition of new articles to the principal Act.

4. Immediately after article 10 of the principal Act there shall be added the following new articles:

"Right to reimbursement of expenses. S.L. 9.12.

10A. Without prejudice to the Criminal Injuries Compensation Scheme Regulations, victims who participate in criminal proceedings shall have the possibility to be reimbursed for the expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal proceedings. The conditions or procedural rules under which victims may be reimbursed shall be determined by the Minister responsible for justice.

Right to protection of privacy.

10B. The Ministry or any other entity or agency which the Minister may designate for that purpose shall take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under article 12, and images of victims and of their family members."

Amendment of article 11 of the principal Act.

5. Immediately after sub-article (2) of article 11 of the principal Act there shall be added the following new sub-articles:

"(3) Where a victim is a resident of a Member State other than Malta, the Executive Police shall take a statement from the victim immediately after the complaint with regard to the

criminal offence is made.

(4) Where a victim is a resident of a Member State other than Malta, the victim shall have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (1) for the purpose of hearing victims who are resident abroad."

6. Article 12 of the principal Act shall be substituted by the following new article:

Substitution of article 12 of the principal Act.

"12. The Ministry or any other entity or agency which the Minister may designate for the purpose shall make provision:

(a) to ensure that victims receive a timely and individual assessment, in accordance with this Act, and to determine whether and to what extent they would benefit from special measures in this Act due to their particular vulnerability. The victim may request to be interviewed by a person of the same sex;

(b) for the timely and individual assessment of victims who suffered from severe crimes, including crimes committed with a bias or discriminatory motive which could in particular, be related to their particular characteristics, and victims whose relationship to and dependence on the offender make them particularly vulnerable such as:

- (i) minors;
- (ii) victims of terrorism;
- (iii) victims of organised crime;
- (iv) victims of human trafficking;
- (v) victims of gender-based violence;
- (vi) victims of violence in a close relationship;
- (vii) victims of sexual violence;
- (viii) victims of exploitation or hate crime; and
- (ix) victims with disabilities:

Provided that the individual assessment shall, in particular, take into account the personal characteristics of the victim, the type or nature of the crime and the circumstances of the crime;

(c) victim support services which shall, as a minimum, provide:

(i) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(ii) information about or direct referral to any relevant specialist support services in place;

(iii) emotional and, where available, psychological support;

(iv) advice relating to financial and practical issues arising from the crime;

(v) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation;

(vi) medical treatment in accordance with the national healthcare system for as long as such treatment is necessary;

(vii) protection measures, paying particular attention to the risk of intimidation and retaliation and the need to protect the dignity and physical integrity, including during questioning and when testifying;

(viii) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation; and

(ix) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling;

(d) for the close involvement of the victim in the carrying out of individual assessments which shall take into account the wishes of the victims as to whether they do not wish to benefit from the special measures provided for in this Act;

(e) for updating of the elements that form the basis of the individual assessment throughout the criminal proceedings."

7. Immediately after sub-article (3) of article 14 of the principal Act there shall be added the following new sub-article:

Amendment of article 14 of the principal Act.

"(4) Where the victim is a minor he shall be presumed to have specific protection needs due to his vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under this Act, child victims shall be subject to an individual assessment as provided for in article 12."

8. Immediately after article 14A of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Right to protection of victims with specific protection needs during criminal proceedings. Cap. 164.

14B. (1) Without prejudice to the *locus standi* and rights of the injured party, the provisions of Title II of Part III of the Police Act and to the rights of the defence and by virtue of judicial discretion, victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in article 12, may benefit from the measures provided for in this Act. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is a an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with article 12:

(a) interviews with the victim being carried out in premises designed or adapted for that purpose;

(b) interviews with the victim being carried out by or through professionals trained for that purpose;

A 310

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a person presiding the Court, to be conducted by a person of the same sex as the victim, if the victim so wishes:

Provided that the course of the criminal proceedings will not be prejudiced."

Passed by the House of Representatives at Sitting No. 447 of the 13th April, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA