

I assent.

(L.S.)

GEORGE VELLA
President

6th February, 2024

ACT No. V of 2024

AN ACT to further amend the Criminal Code, Cap. 9 and to make provision with respect to matters ancillary thereto.

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. (1) The short title of this Act is the Criminal Code (Amendment No. 2) Act, 2024 and this Act shall be read and construed as one with the Criminal Code, hereinafter referred to as "the Code".

Short title and scope.

Cap. 9.

(2) The scope of this Act is to transpose Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

2. In article 21 of the Code, the words "saving the provisions of article 7." shall be substituted by the words "without prejudice to the provisions of article 7:" and immediately after there shall be added the following new proviso:

Amendment of article 21 of the Code.

A 42

"Provided that where a person who was under eighteen (18) years of age at the time of the commission of the offence is convicted of an offence in accordance with articles 204A, 204B, 208, 208A or 208C and the court is satisfied that the said person was a victim of sexual abuse and was compelled to commit the said offence, the court may, upon conviction, decide not to impose any punishment on the person convicted."

Addition of new article to the Code.

3. Immediately after article 209A of the Code there shall be added the following new article:

"Competent authority may decide not to prosecute victims who are minors or exemption from punishment.

209B. In the case of offences in accordance with articles 204A, 204B, 208, 208A or 208C, the competent authority may decide not to institute criminal proceedings for any of the mentioned offences against a minor at the time of the commission of the offence where the said authority is satisfied that such minor was a victim of sexual abuse and was compelled to commit the offence. In the case when the said criminal proceedings are instituted, the competent authority may also in the course of the criminal proceedings request that any victim who is a minor as aforesaid shall not be subjected to punishment upon conviction and in such case the court shall uphold the said request of the authority."

Amendment of article 346 of the Code.

4. Immediately after sub-article (3) of article 346 of the Code there shall be added the following new sub-article:

"Statements by vulnerable witnesses.

(4) Any minor, or victim of a sexual offence, or vulnerable victim or witness shall have the said interview and any statement made by him recorded by audio-visual means when interviewed by the police in the course of an investigation:

Provided that for the purposes of this sub-article, any audio-visually recorded interview or statement shall be admissible as evidence in any trial before a court of criminal judicature concerning the offence to which it relates."

Amendment of article 347A of the Code.

5. In article 347A of the Code, the words "Without prejudice to the two preceding articles" shall be substituted by the words "Without prejudice to the provisions of sub-articles (1), (2) and (3) of article 346".

Amendment of article 391 of the Code.

6. In sub-article (3) of article 391 of the Code, the words "under the age of sixteen years" shall be substituted by the words "under the age of eighteen (18) years".

7. Article 646 of the Code shall be amended as follows:

Amendment of
article 646 of
the Code.

(a) in the second proviso to sub-article (2) thereof, the words "is a minor under sixteen years of age" shall be substituted by the words "is a minor under eighteen (18) years of age"; and

(b) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(3A) An audio-visually recorded interview or statement of a minor, of any victim of a sexual offence, or of any vulnerable victim or witness made in accordance with sub-article (4) of article 346 shall be admissible as evidence:

Provided that where the person so interviewed or who makes the statement gives evidence *viva voce* as a witness before a court during a trial, the said evidence shall be given by video conference from a place other than the courtroom where the trial is being held and shall be recorded by audio-visual means."

8. Sub-article (1) of article 55 of the Police Act shall be substituted by the following new sub-article:

Consequential
amendment to
the Police Act.
Cap. 164.

"(1) Any minor, or victim of a sexual offence, or vulnerable victim or witness shall have the said interview and any statement made by them recorded by audio-visual means when interviewed by the police in the course of an investigation:

Provided that for the purposes of this sub-article, any audio-visually recorded interview or statement shall be admissible as evidence in any trial before a court of criminal judicature concerning the offence to which it relates and the provisions of sub-article (3A) of article 646 of the Criminal Code shall apply to *viva voce* evidence given by such person during the trial."

A 44

Passed by the House of Representatives at Sitting No. 202 of the
31st January, 2024.

ANĠLU FARRUGIA
Speaker

ELEANOR SCERRI
Clerk of the House of Representatives

