

## Question 16

### Victims of Crime Act

#### **-Assistance, support and protection to victims who are minors**

#### **14. Where a victim is identified as a minor and:**

(a) the holders of parental responsibility are precluded from representing the said minor as a result of a conflict of interest between the said holders and the minor; or

(b) where the minor is unaccompanied or separated from the family; or

(c) there is, or there may be, **a conflict of interest between the minor and the holders of parental responsibility, the Court shall, ex officio, or upon a request by the prosecution or upon an application by any person, appoint a child advocate in terms of the Code of Organization and Civil Procedure or an advocate for legal aid, to represent the interests of the minor,** and the provisions of article 10 shall apply.

(2) A child advocate appointed in terms of the Code of Organization and Civil Procedure or an advocate for legal aid, as the case may be, may be appointed in any case if the Court considers that this is in the best interests of the minor.

(3) Where the age of the victim is uncertain and there are reasons to believe that the victim is a minor, the victim shall for purposes of this Act be presumed, saving proof to the contrary, to be a minor

(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.

#### **-Appointment of a support person during proceeding**

14A. (1) Where a victim is identified as a minor, the Court shall, upon the request by the prosecution or upon an application by any person, appoint a support person, in terms of the Code of Organization and Civil Procedure, to assist the minor throughout the entire court proceedings, as well as for a suitable period of time following the conclusion of the court proceedings, as may be necessary: Provided that in the absence of any such request the court may order such appointment ex officio, as appropriate:

Provided further that the Court shall in the appointment of a support person take into consideration the gender of the minor.

(2) For the purposes of this article, the term "support person" refers to a specially trained expert in family and child matters. (3) The functions of the support person shall include, inter alia:

(a) guiding and assisting the minor in a sensitive manner during the judicial proceedings, and if necessary, after the justice process;

(b) the provision of general emotional support to the minor;

(c) advising the Court as to whether therapy or counselling is necessary both during and after the judicial process; (d) liaising with the minor's parents or legal guardians, family members, and advocate, as appropriate; (e) informing the minor about the proceedings at Court and discuss, in a sensitive manner, his role during the proceedings;

(f) advising or requesting the Court on the issuing of protection orders both during and after the judicial process, as appropriate;

(g) monitoring the adherence to Court orders by perpetrators following the conclusion of the judicial proceedings;

(h) monitoring the relationship between the minor and the perpetrators, both during and after the judicial process, as appropriate;

(i) liaising with the appropriate agencies and, or professionals to ensure that the necessary counselling and, or treatment is provided, as appropriate;

(j) advising or requesting the Court to issue any special measures as may be necessary in the minor's best interest.

### **Right to protection of victims with specific protection needs during criminal proceedings**

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 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;

(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

### **CAP.602.MINOR PROTECTION (ALTERNATIVE CARE)**

"Children's Advocate" means a lawyer appointed in terms of regulation 3 of the Civil Court (Family Section), the First Hall of the Civil Court and the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations,

18. (1) The Director (Child Protection) may, by application, request that the Court issue a protection order for a minor in accordance with what is provided in article 19

4) Upon receiving an application according to this article, the Court shall appoint a Children's Advocate and it shall immediately thereafter appoint the application to be heard within ten working days, while also ordering the immediate notification of the date of the hearing to the Director (Child Protection), to the parent or parents of the minor depending on the circumstances of the case, to the **Children's Advocate as appointed by it, and, if applicable, to the tutor and, or curator.**

Provided that the service mentioned in sub-article (4) shall take place immediately by court executive officers in accordance with article 67 of the Code of Organization and Civil Procedure:

20. (1) When the Director (Child Protection) has reasonable information which leads him to be convinced that the minor is suffering significant harm or when no legal guardian is present to care for the minor, the Director (Child Protection) may, with the assistance of the Executive Police, immediately proceed towards the removal of the minor from the place in which such significant harm is being occasioned, and this without any need of any form of authorisation.

(2) Without delay, and in any case not later than forty-eight (48) hours of having taken action according to sub-article (1), the Director (Child Protection) shall file an application with the duty Magistrate for the provisional validation or revocation of the removal of the minor as therein referred:

Provided that the **duty Magistrate shall appoint a Children's Advocate upon receiving the application so that he may follow the proceedings thereof**