

CHAPTER 481**DOMESTIC VIOLENCE ACT**

To make special provision for domestic violence and to make consequential and other amendments to the Criminal and Civil Codes.

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ACT XX of 2005.

Part I**Introductory and Definitions**

1. (1) The short title of this Act is the Domestic Violence Act. Short title.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and for different purposes of this Act.

2. In this Act, unless the context otherwise requires: Definitions.

"the Commission" means the Commission established by article 3;

"domestic violence" means any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other;

"household member" includes:

- (i) persons married or formerly married to each other;
- (ii) persons living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence;
- (iii) persons whose marriage has been dissolved or declared null;
- (iv) parents and their children;
- (v) other adults sharing the same household;
- (vi) persons who are, or have been, formally or informally engaged with a view to get married;
- (vii) persons who are related to each other either by consanguinity or affinity up to the third degree inclusively;
- (viii) persons having or having had a child in common;
- (ix) the child conceived but yet unborn of any one of the persons mentioned in paragraphs (i) to (viii), both inclusive;

*Not yet in force.

"the Minister" means the Minister responsible for social policy.

PART II

Commission on Domestic Violence

Establishment of
the Commission.

3. (1) There shall be a Commission to be known as the Commission on Domestic Violence which shall be composed of a Chairman and not less than four other members appointed by the Minister after consulting such public and private agencies or entities involved in the research, prevention and treatment of domestic violence as the Minister may deem appropriate. A member of the Commission may be re-appointed on the expiration of his term of office.

(2) A person shall not be qualified to hold office as a member of the Commission if he is a Minister, Parliamentary Secretary, a member of or a candidate for election to the House of Representatives, or a member of a local government authority.

(3) Subject to the provisions of this article, the office of a member of the Commission shall become vacant:

- (a) at the expiration of three years from the date of appointment or at such earlier time as may be specified in the instrument by which he was appointed; or
- (b) upon resignation by a letter addressed to the Minister; or
- (c) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(4) A member of the Commission may, at any time, be removed by the Minister after consultation with the other members of the Commission and substituted by another member.

Functions.

4. The Commission shall have the function of advising the Minister on all aspects of domestic violence and in particular on:

- (a) increasing the awareness and understanding of domestic violence and harassment and their consequences and on ways and means to reduce their incidence;
- (b) areas of domestic violence on which research is necessary or desirable;
- (c) strategies to expose domestic violence and to facilitate the intervention of public and private agencies and entities with respect to victims and perpetrators of such violence;
- (d) educating the public on all aspects of domestic violence;
- (e) ways to facilitate communication between public and private agencies and entities involved in action against domestic violence;
- (f) standards for care facilities for victims and perpetrators of domestic violence, including public or

private shelter services or facilities;

- (g) standards and protocols for practitioners;
- (h) procedures for the effective co-ordination on a national level of the activities of public and private agencies and entities engaged in the giving of services on domestic violence issues including support services;
- (i) a comprehensive and co-ordinated plan for the collection of data concerning domestic violence for use by the courts, prosecutors, law enforcement officers, health care practitioners, social workers and other agencies and entities in a manner that protects the identity of victims of domestic violence;
- (j) developing a comprehensive plan for a multi disciplinary approach of active prevention and early intervention;
- (k) specialized training for professional groups involved; and
- (l) consulting and networking with other relevant national and international entities.

5. (1) The Commission shall meet within one month from its constitution and as often as may be necessary or expedient thereafter. Meetings.

(2) The meetings of the Commission shall be called by the Chairman on his own initiative or at the request of any two of the other members of the Commission.

(3) The Commission shall not act unless a quorum consisting of the Chairman and not less than two other members is present.

(4) The decisions of the Commission shall be adopted by a simple majority of the votes of the members present and in the event of an equality of votes the Chairman shall have and exercise a second or casting vote.

(5) Any vacancy among the members of the Commission shall not invalidate the proceedings of the Commission.

(6) Subject to the provisions of this Act, the Commission may regulate its own procedure.

6. (1) By the end of March of the year immediately following the year of its constitution, the Commission shall publish a report of all its activities and shall continue to draw up such a report by the end of March of every year thereafter. A copy of the report shall be sent to the Minister who shall, by not later than four weeks after receipt of the report, lay a copy thereof on the Table of the House so however that if the House is not in session, then such report shall be laid by not later than four weeks after the House resumes its session. Reports.

(2) The report mentioned in subarticle (1) shall, within the period of eight weeks from the date on which a copy thereof is laid on the Table of the House, be discussed by the Social Affairs

Committee of the House of Representatives or any other committee substituting the same.

Persons to assist the Commission.

7. The Minister may, whenever the Commission so requests, appoint a person or designate a public officer to assist it, in a consultative capacity, for the purpose of exercising any of its functions under this Act.

Secretary and staff.

8. (1) There shall be a Secretary to the Commission who shall be a person appointed as such by the Minister or a public officer designated by the Minister to perform the functions of Secretary.

(2) The Commission shall also have such other staff as the Minister may deem necessary and appoint or designate as aforesaid.

PART III

Designated Agency

Designated agencies.

9. (1) The Minister shall designate one or more organisations, institutions or other bodies with which arrangements have been made as provided in subarticle (2) as the agency responsible for the provision of preventive, therapeutic and, or treatment programmes for victims and perpetrators of domestic violence.

(2) The Minister shall assign those services to be provided by the designated organisation, institution or other body.

(3) The arrangements referred to in subarticle (1) shall lay down the services which the organisation, institution or other body will be expected to provide for the duration of the arrangements and which shall include the following:

- (a) preventive, therapeutic and, or treatment programmes for victims and perpetrators of domestic violence;
- (b) public help-line facilities for emergency access to specialised support services in those areas related to domestic violence;
- (c) expertise for the assessment of the needs of victims of domestic violence, including the development of a care plan for each referral;
- (d) sheltered accommodation for victims of domestic violence, including in partnership with other organisations, institutions or other bodies providing similar accommodation;
- (e) the compilation and dissemination to interested persons and bodies of documentation on the rights of victims of domestic violence and on the remedies and services available to them;
- (f) the collation of data concerning domestic violence for use by the Courts, prosecutors, law enforcement officers, health care practitioners, social workers and other agencies and entities, in a manner that protects the identity of victims of domestic violence.

(4) (a) The arrangements referred to in subarticle (1) shall

also provide for funding by the Minister of the services agreed upon with the organisation, institution or other body.

- (b) The designated agency shall keep the funds referred to in paragraph (a) separately from the other funds of the agency, which shall keep proper books of account thereof audited by auditors appointed by it with the concurrence of the Minister and which shall moreover be subject to audit by the Auditor General.

(5) The designated agency shall, by not later than three months after the close of each financial year, transmit to the Minister:

- (a) a copy of the annual accounts certified by the auditors;
(b) a report on the operations of the agency during the year.

(6) The report referred to in subarticle (5)(b) shall be laid on the Table of the House by the Minister by not later than six weeks after its receipt, or where the House is during the period not in session by not later than the second week after the House resumes its sittings, and this report shall, within the period of eight weeks from the date on which a copy thereof is laid on the Table of the House, be discussed by the Social Affairs Committee of the House of Representatives or any other committee substituting the same.

(7) Any member, officer, employee or member of staff of a designated agency shall be deemed a public officer for the purposes of article 92 of the Criminal Code.

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PART IV

Amendments to the Criminal Code, Cap.9

10. In article 87(1)(g) of the Criminal Code, hereinafter in this Part referred to as "the principal law", for the words "that person's sex." there shall be substituted the words "that person's sex;" and immediately thereafter there shall be inserted the following new paragraph:

Amendment of article 87 of the Criminal Code. Cap.9.

"(h) if the crime is committed on the person of the father, mother or on any person mentioned in paragraph (h) of article 202."

11. In article 202 of the principal law, immediately after paragraph (g) thereof there shall be inserted the following two new paragraphs:

Amendment of article 202 of the principal law.

"(h) when the crime is committed on the person of:

- (i) the spouse; or
(ii) the brother or sister; or
(iii) a natural ascendant or descendant; or
(iv) another person having or having had a child in common with the offender; or
(v) another person living in the same household as the offender or who had lived with the offender within a period of one year preceding the

offence; or

- (vi) another person who is or had been formally or informally engaged with a view to get married; or
- (vii) other persons who are related to each other by consanguinity or affinity up to the third degree inclusively:

Provided that in this paragraph "spouse" includes the person whose marriage with the offender has been dissolved or declared null;

- (i) when the crime is committed in the presence of, or within hearing distance of a minor."

Amendment of article 221 of the principal law.

12. In subarticle (4) of article 221 of the principal law, for the words "mentioned in article 222(1)(b)." there shall be substituted the words "mentioned in article 222(1)(a) and (b)."

Amendment of article 222 of the principal law.

13. In paragraph (a) of subarticle (1) of article 222 of the principal law, for the words "natural father or mother;" there shall be substituted the words "natural father or mother, or on any person mentioned in article 202(h);".

Substitution of Sub-title IX of Title VIII of the principal law.

14. For the Sub-title immediately before article 249 of the principal law, there shall be substituted the following:

"OF THREATS, PRIVATE VIOLENCE AND HARASSMENT"

Addition of new articles 251A, 251B and 251C to the principal law.

15. Immediately after article 251 of the principal law there shall be inserted the following new articles:

"Harassment. 251A. (1) A person who pursues a course of conduct:

- (a) which amounts to harassment of another person, and
- (b) which he knows or ought to know amounts to harassment of such other person,

shall be guilty of an offence under this article.

(2) For the purpose of this article, the person whose course of conduct is in question ought to know that it amounts to harassment of another person if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.

(3) It is a defence for a person charged with an offence under this article to show that:

- (a) his course of conduct was pursued for the purpose of preventing or detecting crime; or
- (b) his course of conduct was pursued under any enactment, regulation or rule, or to comply with any condition or requirement imposed by any person under any enactment; or

(c) in the particular circumstances the pursuit of the course of conduct was reasonable.

(4) A person guilty of an offence under this article shall be liable to the punishment of imprisonment for a term from one to three months or to a fine (*multa*) of not less than one thousand liri and not more than two thousand liri, or to both such fine and imprisonment:

Provided that the punishment shall be increased by one degree where the offence is committed against any person mentioned in article 222(1).

Causing others to fear that violence will be used against them.

251B. (1) A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions, and shall be liable to the punishment of imprisonment for a term from three to six months or to a fine (*multa*) of not less than two thousand liri and not more than five thousand liri, or to both such fine and imprisonment.

(2) For the purpose of this article, the person whose course of conduct is in question ought to know that it will cause another person to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this article to show that:

- (a) his course of conduct was pursued in the circumstances mentioned in article 251A(3)(a) or (b); or
- (b) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

Interpretation of articles 251A and 251B.

251C. In articles 251A and 251B references to harassing a person include alarming the person or causing the person distress."

16. In article 331 of the principal law, for the words "no criminal action shall lie" there shall be substituted the words "no criminal proceedings may be instituted except on the complaint of the injured party", and immediately after the words "of the person" there shall be inserted the words "or with a threat to kill or to inflict bodily harm."

Amendment of article 331 of the principal law.

Addition of new article 382A to the principal law.

17. Immediately after article 382 of the principal law there shall be added the following new article:

"Restraining Orders.

382A. (1) Without prejudice to its powers under the provisions of the following articles of this Subtitle, where the court considers it expedient to do so for any of the purposes mentioned in article 412C(1), it may, in passing judgment against the accused, together with any punishment to which it may sentence the offender, make an order (hereinafter referred to as a "restraining order") which may give effect to any thing provided in subarticle (3) of the said article 412C.

(2) A restraining order shall remain in force for such period, not exceeding three years, as specified by the court which may order that such period shall commence to run from the date of expiration or remission of the punishment. The provisions of article 412C(6) shall *mutatis mutandis* also apply to a restraining order.

(3) If without reasonable excuse the offender contravenes any prohibition or restriction imposed upon him by an order under this article, he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of one thousand liri or to imprisonment not exceeding six months or to both such fine and imprisonment."

Amendment of article 383 of the principal law.

18. In subarticle (2) of article 383 of the principal law, for the words "five liri" there shall be substituted "fifty liri" and for the words "one hundred liri" there shall be substituted the words "one thousand liri".

Addition of new articles 412C and 412D to the principal law.

19. Immediately after article 412B of the principal law there shall be added the following new article:

"Protection Orders.

412C. (1) Where a person (hereinafter in this article and in article 412D referred to as "the accused") has been charged or accused with an offence before the Court of Magistrates whether as a court of inquiry or as a court of criminal judicature, the court may, on reasonable grounds, for the purpose of providing for the safety of the injured person or of other individuals or for the keeping of the public peace or for the purpose of protecting the injured person or other individuals from harassment or other conduct which will cause a fear of violence, issue a protection order against the accused.

(2) A protection order may impose any restrictions or prohibitions on the accused that appear to the court necessary or desirable in the circumstances in order to give effect to any of the purposes mentioned in subarticle (1).

(3) Without limiting the nature of the orders which may be made under subarticle (1), a protection order may do all or any of the following:

- (a) prohibits or restricts the accused from approaching or following the movements of the injured person or any other individual specified in the order; or
- (b) prohibit or restrict access by the accused, for a period not exceeding six months or until final judgement, to premises in which the injured person, or any other individual specified in the order, lives, works or frequents even if the accused has a legal interest in those premises; or
- (c) prohibit the accused from contacting or molesting the injured person or any other individual specified in the order.

(4) Before making an order, the court shall take into account:

- (a) the need to ensure that the injured person or other individual specified in the order is protected from injury or molestation; and
- (b) the welfare of any children or any dependants who may be affected by the order; and
- (c) the accommodation needs of all persons who may be affected by the order, in particular of the injured person, his children and his other dependants; and
- (d) any hardship that may be caused to the accused or to any other person as a result of making the order; and
- (e) the accused's willingness or otherwise to submit to such treatment as the court may deem appropriate; and
- (f) any other matter that, in the circumstances of the case, the court considers relevant:

Provided that particular attention shall be given to the matters in paragraphs (a), (b) and (e).

(5) A protection order shall remain in force for a period, not exceeding three years, specified by the court, but can be revoked or extended for further periods.

(6) A party to the proceedings in which an order has been made under this article or any other individual mentioned in the order, may apply to the court at any time for the extension, variation or revocation of the order and after all the parties have had an opportunity to be heard the court shall, in determining whether to extend, vary or revoke an order, have regard to the matters specified in subarticle (4).

(7) If without reasonable excuse the accused contravenes any prohibition or restriction imposed upon him by an order under this article, he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of one thousand liri or to imprisonment not exceeding six months or to both such fine and imprisonment.

(8) The court may also order that any arm proper or arm improper, as defined in article 64, be deposited with the Court's registrar.

Treatment
Orders.

412D. (1) Together with or separately from a protection order under article 412C, and provided the court is satisfied that proper arrangements have been made or can be made for treatment, the court may make an order (hereinafter in this article referred to as a "treatment order") requiring a person to submit to treatment subject to the conditions which the court may deem appropriate to lay down in the order:

Provided that where any person is convicted with an offence, a treatment order by the court may be made with or without the consent of the convicted person and in the case of a person accused with an offence, a treatment order may only be made with the consent of the accused.

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(2) The treatment may be of any of the kinds specified in article 7(5) of the Probation Act.

(3) The provisions of article 412C(5) and (6) shall apply to an order under this article.

(4) If at any time during the period that the order is in force it is proved to the satisfaction of the court that the person has failed to comply with any of the requirements or conditions of the order, the court may impose on such person a fine (*ammenda*) not exceeding five hundred liri."

Amendment of
article 543 of the
principal law.

20. In paragraph (d) of article 543 of the principal law, for the words "or the community in general." there shall be substituted the words "or the community in general;" and immediately thereafter there shall be inserted the following:

"(e) in the case of any offence involving domestic violence:

Provided that for the purposes of this paragraph "domestic violence" shall have the same meaning assigned to it by article 2 of the Domestic Violence

Act:

Provided further that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim of an offence involving domestic violence to request the court to stay proceedings against the alleged perpetrator, and when such a request is made the court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of any minors involved, and shall cause such request and decision to be registered in the records of the case."

21. The proviso to article 544 of the principal law shall be substituted by the following two provisos:

Amendment of article 544 of the principal law.

"Provided that where any of such crimes is accompanied with public violence, domestic violence as defined in article 2 of the Domestic Violence Act, or with any other offence affecting public order, criminal action shall be taken independently of the complaint of the private party:

Provided further that where in the case of a crime accompanied by domestic violence the criminal action has been taken independently of the complaint of the private party, the provisions of the second proviso of article 543(e) shall also apply in such case."

PART V

Amendments to the Civil Code, Cap.16.

22. For subarticle (2) of article 37 of the Civil Code, hereinafter in this Part referred to as "the principal law", these shall be substituted with the following:

Amendment of article 37 of the Civil Code. Cap.16.

"(2) The application containing the demand referred to in the proviso to subarticle (1) shall be duly appointed for hearing by the court and shall be served on the respondent together with the notice of such hearing:

Provided that where domestic violence is involved, the said application shall be appointed within four days and the court may, of its own motion before or after hearing the parties, issue a protection order under article 412C of the Criminal Code and, or a treatment order under article 412D of the same Code and the provisions of those articles shall *mutatis mutandis* apply to an order issued under this article as if it were an order issued under the corresponding article of the said Code:

Provided further that for the purposes of this article and of article 39, "domestic violence" shall have the same meaning assigned to it by article 2 of the Domestic Violence Act."

Addition of article
39 of the principal
law.

23. Immediately after article 38 of the principal law there shall be inserted the following article:

"Protection and Treatment Orders in lawsuit for personal separation. 39. Where a law suit for personal separation has been filed by either spouse and evidence of acts of domestic violence has been produced, the court may, either on an application of one of the parties or on its own motion in order to protect the safety of the parties involved or in the best interests of the child or children or of any other minor dependants of any of the spouses, issue a protection order under article 412C of the Criminal Code and, or a treatment order under article 412D of the same Code and the provisions of those articles shall *mutatis mutandis* apply to an order issued under this article as if it were an order issued under the corresponding article of the said Code."

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of the said Code."
