

Question 10

The Turkish Criminal Code No. 5237;

1- Article 125 titled "Insult" provides for that:

"(1) Any person who attributes an act, or fact, to a person in a manner that may offend that person's honour, dignity or prestige, or attacks someone's honour, dignity or prestige by swearing shall be sentenced to a penalty of imprisonment for a term of three months to two years or a judicial fine. To be culpable for an insult made in the absence of the victim, the act should be committed in the presence of at least three further people.

(2) Where the act is committed by means of an oral, written or visual medium message addressing the victim, the penalty stated in the above paragraph shall be imposed.

(3) Where the insult is committed:

a) against a public official due to the performance of their public duty;

b) because of declaring, altering or disseminating their religious, political, social or philosophical beliefs, thoughts, or convictions, or practising in accordance with the requirements and prohibitions of a religion he belongs to; or

c) where the subject matter is deemed sacred to the religion the person belongs to, the penalty to be imposed shall not be less than one year.

(4) Where the insult is committed in public, the penalty to be imposed shall be increased by one sixth.

(5) Where an insult is directed at the public official who work as a committee, because of their duties, the offence shall be deemed to have been committed against the all members of that committee. However, in these circumstances the provisions of the article concerning successive offences shall be applied."

2- Article 267 titled "Slander" provides for that:

"(1) Any person who accuses another person of committing an act contrary to law in order to secure the implementation of an administrative sanction or the commencement of an investigation and prosecution by submitting a complaint or notification to the relevant authorities or through the press or broadcasting, despite the fact the person knows the other person did not commit such act shall be sentenced to a penalty of imprisonment for a term of one to four years.

(2) Where the act of slander is committed by manufacturing evidence in respect of an offence, then the penalty shall be increased by one half.

(3) Where security measures, other than detention or arrest, have been imposed upon the victim as a result of the accusation and an acquittal is declared by the court on account of innocence or a decision not to prosecute has been taken, the penalty to be imposed by the aforementioned paragraphs shall be increased by one half.

(4) Where the victim, about whom an acquittal judgement or a decision not to prosecute has been taken for the ground that they have not committed the charged act, has been taken under custody or

detained, the offender shall be additionally subject to the offence of deprivation of liberty as an indirect offender.

(5) Where the victim has been sentenced to aggravated life imprisonment, or life imprisonment, the offender shall be sentenced to a penalty of imprisonment for a term of twenty to thirty years.

(6) Where the execution of the victim's sentence of imprisonment has begun, the penalty to be imposed according to paragraph five shall be increased by one half.

(7) (Abolished)

(8) The statute of limitations for the offence of slander shall start from the date on which the victim is declared innocent.

(9) Where the offence of slander is committed through the press or broadcasting, then the conviction of the offender shall be announced through the same or equivalent press or broadcasting organs. The cost of such announcement shall be borne by the convicted person."

Both offences governed under the Code No. 5237 are offences which may be committed intentionally. The intention, as specified under article 21 of the Code, is to carry out the elements of the offence in the legal definition by knowing and wilfully. In this regard, for the constitution of the insult offence, it is necessary to accuse a person with a concrete act or fact that may offend the honour, reputation and dignity of a person or to attack the honour, reputation and dignity of a person by swearing. For the constitution of the slander offence, it is necessary to accuse a person with an unlawful act by filing a report or complaint to the competent authorities or through the press and publications in order to ensure that an investigation or prosecution is initiated or an administrative sanction is imposed on the person, even though the offender knows that they have not committed the act. Therefore, it is considered that the acts of a person who notifies the child sexual abuse or sexual exploitation with good intentions, in other words, who exercises their right to legal complaint does not constitute the mentioned offences (since the intention, the moral element of the offence, does not constitute).

Article 278 of the Turkish Criminal Code No. 5237 titled "Failure to report an offence" under the Book II titled "Special Provisions" governs that:

"(1) Whoever fails to report an offence that is being committed to the competent authorities shall be sentenced to a penalty of imprisonment for a term of up to one year.

(2) Whoever fails to report to the competent authorities an offence which has been committed but where it is still possible to contain its consequences shall be sentenced according to the provisions of the aforementioned paragraph.

(3) Where the victim is a minor under fifteen years of age, a mentally or physically handicapped person, or a pregnant woman, the sentence to be imposed pursuant to the aforementioned paragraphs shall be increased by one-half." The offence governed under the mentioned article is a negligent offence, as well as a concrete danger offence. Anyone could be the offender of this offence.

Article 279 of the Turkish Criminal Code titled "Failure by a public officer to report an offence" provides for that:

"(1) Any public officer who fails to report an offence, which requires a public investigation and prosecution, or delays in reporting such offence, to the relevant authority, after becoming aware of

such offence in the course of his duty, shall be sentenced to a penalty of imprisonment for a term of six months to two years.

(2) Where the offence is committed by a judicial law enforcement officer, the penalty to be imposed according to aforementioned paragraph shall be increased by one-half.”,

Article 280 of the Turkish Criminal Code titled “Failure by a member of the medical profession to report an offence” provides for that:

“(1) Any member of the medical profession who fails to report an offence, or delays in reporting such offence, to the relevant authority after becoming aware, in the course of his duty, of any evidence demonstrating that an offence may have been committed shall be sentenced to a penalty of imprisonment for a term of up to one year.

(2) A member of the medical profession shall include physicians, dentists, pharmacists, midwives, nurses and other persons who provide health services.”,

As seen, in accordance with articles 278, 279, and 280 of the Turkish Criminal Code, the persons who have been informed about the offence are obliged to report the offence.

In this framework, where the suspect of sexual exploitation or another person insults, asserts slander or claims a similar accusation against the person who have reported the suspicion about sexual exploitation, there are regulations in our country to ensure that indictment is not drawn up concerning the person, who have reported the sexual exploitation claim with good intention, and the person is not prosecuted.

Firstly, where the the Public Prosecutor does not consider the proceedings of the prosecutor’s office necessary because of the nature of denunciation and complaint, a decision may be ordered for not initiating an investigation. This order is called as the decision of non-requirement of investigation. In the following cases, the decision of non-requirement of investigation may be ruled:

In the event that the act subject to the denunciation or complaint submitted to the prosecutor’s office is found out explicitly, without the requirement of any inquiry, that it does not constitute any offence, then the decision of non-requirement of investigation is ordered. In the event that the denunciation or complaint submitted to the prosecutor’s office is in an abstract and general nature, the decision of non-requirement of investigation is ordered. In the case of ordering the decision of non-requirement of investigation, the person who is reported does not receive the capacity of suspect since the investigation has not initiated against this person.

Besides, where the possibility to prosecute the suspected person or the evidence to create the sufficient suspicion is not found as a result of the investigation conducted by the Public Prosecutor, it is not considered necessary to bring case before the criminal court. This issue is governed under article 172 paragraphs 1 and 2 of the Criminal Procedure Code titled “Decision not to prosecute” that “(1) The public prosecutor shall decide not to prosecute in cases where, as a result of the investigation phase, the collected evidence does not support a suspicion sufficient to justify bringing the public case before the court or where there is no possibility for prosecution. This decision shall be notified to the person suffered by the offence and the suspect who has given his statement and been interrogated. The decision shall indicate the right to object, time-limits for objection and the authority to apply to.

(2) After the decision not to prosecute has been ordered, no public case shall be brought before the court on the basis of the same act, unless new evidence sufficient to create the suspicion or the criminal judgeship rules on this issue.”

In addition, where the prosecution phase is initiated against the suspect, the acquittal decision is to be ruled based on the concrete incident in accordance with article 223 paragraph 2 of the Criminal Procedure Code No. 5271 titled “Concluding of the trial and the judgement” that “(2) A judgment of acquittal shall be rendered if:

- a) The charged conduct has not been defined as an offence in the laws;
- b) It has been proven that the charged offence has not been committed by the accused;
- c) The perpetrator has no intent or negligence regarding the charged offence;
- d) Although the charged offence has been committed by the accused, if there is a ground that makes the conduct legal;
- e) It has not been proven that the charged offence was committed by the accused.

In addition, article 267 of the Turkish Criminal Code governs the offence of slander as follows:

“(1) Any person who accuses another person of committing an act contrary to law in order to secure the implementation of an administrative sanction or the commencement of an investigation and prosecution by submitting a complaint or notification to the relevant authorities or through the press or broadcasting, despite the fact the person knows the other person did not commit such act shall be sentenced to a penalty of imprisonment for a term of one to four years.

(2) Where the act of slander is committed by manufacturing evidence in respect of an offence, then the penalty shall be increased by one half.

(3) Where security measures, other than detention or arrest, have been imposed upon the victim as a result of the accusation and an acquittal is declared by the court on account of innocence or a decision not to prosecute has been taken, the penalty to be imposed by the aforementioned paragraphs shall be increased by one half.

(4) Where the victim, about whom an acquittal judgement or a decision not to prosecute has been taken for the ground that they have not committed the charged act, has been taken under custody or detained, the offender shall be additionally subject to the offence of deprivation of liberty as an indirect offender.

(5) Where the victim has been sentenced to aggravated life imprisonment, or life imprisonment, the offender shall be sentenced to a penalty of imprisonment for a term of twenty to thirty years.

(6) Where the execution of the victim’s sentence of imprisonment has begun, the penalty to be imposed according to paragraph five shall be increased by one half.

(7) (Abolished)

(8) The statute of limitations for the offence of slander shall start from the date on which the victim is declared innocent.

(9) Where the offence of slander is committed through the press or broadcasting, then the conviction of the offender shall be announced through the same or equivalent press or broadcasting organs. The cost of such announcement shall be borne by the convicted person.”

For the constitution of the slander offence, it is necessary to accuse a person with an unlawful act by filing a report or complaint to the competent authorities in order to ensure that an investigation or prosecution is initiated or an administrative sanction is imposed on the person, even though the offender knows that they have not committed the act. Besides, for the act of the accused to constitute the offence of slander, it is necessary that the accused has acted with special intent and fulfils the principle of typicality of the offence of slander governed under the legal norm. Otherwise, it is clear that the accused will be acquitted of the charged offence of slander and will not be sentenced.