

Question 12

I-A) The Turkish Criminal Code No. 5237;

1- Article 136 titled "Illegally Obtaining or Providing Data" governs that;

"(1) Any person who illegally obtains, disseminates or provides another person with someone's personal data shall be sentenced to a penalty of imprisonment for a term of two to four years.

(2) (Added on 17/10/2019 by Law No. 7188 Art. 17) If the subject of the offence is the declarations and images recorded in accordance with paragraphs five and six of Article 236 of the Criminal Procedure Code, the penalty to be imposed shall be doubled."

2- Article 285 titled "Breach of confidentiality" provides for that;

"(1) (Amended on 02/07/2012 by Law No. 6352 Art. 92) Any person who publicly breaches the confidentiality of an investigation shall be sentenced to a penalty of imprisonment for a term of one to three years and a judicial fine. This offence shall be constituted when:

a) there is a breach of the right to presumption of innocence or breach of confidentiality of communication or the right to privacy by means of disclosing the content of the action carried out at the investigation stage;

b) the disclosure made concerning the content to the action taken at the investigation stage is such as to hinder the reveal of the material fact.

(2) Any person who breaches the confidentiality of decisions and subsequent actions carried out pursuant to those decisions which are taken at the investigation stage or required to be kept confidential in respect of those who are party to the investigation shall be sentenced to a penalty of imprisonment for a term of one to three years and a judicial fine.

(3) Any person who publicly breaches the confidentiality of explanations or images at the hearings required to be held closed by laws or decided to be held closed shall be subject to a penalty in accordance with paragraph one. However, for breaches of confidentiality in relation to a decision which was taken to protect a witness, the breach need not be public.

(4) Where the offences specified in the above paragraphs are committed by a public officer by availing himself of the facility provided thanks to his profession, the sentence to be imposed shall be increased by one-half.

(5) Where, at the stage of investigation or prosecution, any person's image is broadcast in a way which could give the impression that he is guilty of an offence, a penalty of imprisonment for a term of six months to two years shall be imposed.

(6) Reporting the actions carried out during the investigation and prosecution phases as news without exceeding limits set out for reporting shall not constitute an offence."

B) The Criminal Procedure Code No. 5271;

1- Article 236 paragraphs 4 to 8 titled "Hearing of the victim and the complainant" states that;

"...

(4) (Added on 17/10/2019 by Law No. 7188 Art. 22) Statements and submissions of a child or a victim in respect of whom the public prosecutor or the judge deems it necessary to take statements and submissions in a special environment or it is inconvenient to confront with the accused shall be taken by experts in a special environment.

(5) (Added on 17/10/2019 by Law No. 7188 Art. 22) Submissions to be taken, during the investigation phase, from a child who has been a victim of the crimes prescribed in paragraph two of Article 103 of the Turkish Criminal Code shall be taken by experts accompanied by the public prosecutor in centres providing services for such children. Submissions and footages of the victim child shall be recorded. During the prosecution phase, only if it is necessary to take the statement of the minor victim or to carry out any proceedings in order to reveal the factual truth that this procedure shall be conducted in these centres by the court or the delegated judge through the experts. The proceedings laid down in this paragraph shall be conducted by taking the minor victim to the closest centre regardless of jurisdiction and administrative boundaries.

(6) (Added on 17/10/2019 by Law No. 7188 Art. 22) Paragraph five shall also apply to the statements to be taken during the investigation phase from the victims of crimes prescribed in paragraph two of Article 102 of the Turkish Criminal Code. However, consent of the victim shall be sought for the recording of submissions and footages.

(7) (Added on 17/10/2019 by Law No. 7188 Art. 22) Submissions and footages recorded within the scope of paragraphs five and six shall be kept in the case file and shall not be shared with anyone, and necessary confidentiality measures shall be taken.

(8) (Added on 17/10/2019 by Law No. 7188 Art. 22) Submissions and footages recorded within the scope of paragraphs five and six shall be transcribed into written minutes. These minutes shall be submitted to the suspect, the accused, the defendant, the victim, the representative or the legal agent who requests them. These individuals may be allowed to watch the submissions and footages in the presence of the investigation and prosecution authorities provided that their confidentiality is observed.”

2- Article 157 titled “Confidentiality of the Investigation” sets out that;

“(1) Provided that the cases on which the Law has imposed special provisions are reserved, and that the right to defense is not prejudiced, the procedural actions in the investigation phase shall be confidential.”

C) Article 21 of the Press Law No. 5187 titled “Keeping the identity confidential” governs that;

“In periodicals, anyone who discloses the identities of the following individuals shall be sentenced to pay an aggravated fine ranging from 1 billion to 20 billion:

a) News about sexual acts between individuals prohibited from marrying under Turkish Civil Code No. 4721 dated 22.11.2001.

b) Victims who appear in the news regarding crimes mentioned in Articles 414, 415, 416, 421, 423, 429, 430, 435 and 436 of Turkish Criminal Code No. 765 dated 01.03.1926.

c) Victims or perpetrators of crimes under the age of 18.

This fine cannot be less than two billion liras for regional periodicals and ten billion liras for widespread periodicals and internet news websites.”

D) Law on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications No. 5651

1- Article 8/A titled "Removing content and/or blocking access in non-delayable cases" governs that;

"(1) In cases related to one or more of the following: the protection of the right to life and individuals' right to life and property, protection of national security and public order, prevention of crimes committed, or the protection of general health, the judge or in non-delayable cases, the Presidency of the Republic or upon the requests of the related Ministries related to protection of national security and public order, the prevention of crimes committed, or the protection of general health, the President of the Institution may order to block the access and/or remove the content on broadcasting on internet. The decision shall be notified by the President to the access provider and to the relevant content and hosting providers immediately. The decision to remove the content and/or block access shall be implemented immediately and at latest within four hours of the notification of the decision.

(2) The decision of the President given upon the requests of the President of the Republic or the ministries concerned to remove the content and/or block access shall be submitted by the President within twenty-four hours to the approval of the judge of the criminal court of peace. The judge declares their decision within forty-eight hours; otherwise, the decision shall be abolished automatically.

(3) Decisions on blocking access granted under this article shall be executed by the methods of blocking access to the content in the form of a publication, section, part (URL, etc.) of the violation. However, if the infringement cannot be prevented by technically banning access to the infringing content or preventing access to the related content, it may be ruled to block access to the whole website.

(4) The President shall file a criminal complaint to the Chief Public Prosecutor's Office against those who create and disseminate internet content that constitutes an offence in the scope of this article. The information necessary to reach the offenders of these offenses shall be provided to judicial authority by the content, hosting, and access providers upon the judge's decision. The responsible person of content, hosting and access, who does not provide such information, shall be sentenced by a judicial fine from three thousand days up to ten thousand days unless the offence does not constitute another offence which requires heavier punishment.

(5) Administrative fine from fifty thousand Turkish Liras up to five hundred thousand Turkish Liras shall be imposed by the President to the content providers and hosting providers about access providers that fail to comply with the decision to remove the content and/or block access in accordance with this article."

2- Article 9 titled "Removal of Content from Broadcasting and Access Blocking" provides for that;

"(1) The real and legal persons, institutions and organizations claiming that their personality rights are violated due to the content published on the internet may ask to the content provider, or to the hosting provider if they cannot reach the content provider, to remove the contents from the broadcasting by using warning method, and may also request to remove the content and/or block access to the content by applying directly to the judge of the court of peace.

(2) Requests of persons claiming violations of their personality rights due to content published on the Internet shall be responded by the content and/or hosting provider within twenty-four hours at the latest.

(3) In line with the requests of those whose personality rights are violated due to the contents of the publication made on the internet, judges may decide to remove the content and/or to block access to the content mentioned in the scope of this article.

(4) The judge shall make their decision to block access under this article mainly by means of blocking access to the content in the form of a publication, section, part (URL, etc.) in which the violation of the right of personality takes place. Unless it is compulsory, it may not be decided to block access to the entire publication on the website. However, if the judge believes that the violation cannot be prevented by means of blocking the access by specifying the URL address, he may also decide to block access to the publication at the entire website, provided that the reason is stated.

(5) Decisions by the judge to remove the content and/or to block access under the scope of this article shall be sent directly to the Association.

(6) The judge concludes the application made under the scope of this article at the latest within twenty-four hours without conducting a hearing. This decision may be objected in accordance with the provisions of the Criminal Procedure Code numbered 5271 dated 4/12/2004.

(7) The judge's decision shall become automatically null and void if the content, which was subject to access blocking, is removed from broadcasting.

(8) The requirements of decision to remove the content and/or to block access submitted to the relevant content, hosting, and access provider by the Access Providers Association shall be implemented immediately and within four hours of notification by the relevant content, hosting, and access provider.

(9) In the event that the publication regarding the violation of the personal right subject to the decision of removal of the content and/or blocking access ruled by the judge within the scope of this article is published on other internet addresses, this decision shall also be applied to these addresses if the person concerned applies to the Association. The objection against the acceptance of the application by the Association shall be made to the judgeship who issued the decision. The provision of this paragraph shall not apply to decisions to block access to the entire publication on the website.

(10) Upon the request of an individual, whose personal rights have been violated due to the content of an online broadcast, a judge may rule that the applicant's name not be associated with the website in question. The ruling shall indicate which search engines the Access Providers Association will notify.

(11) The responsible persons of content, hosting and access, who does not fulfil the decision of the judge of the court of peace in accordance with the conditions stated in this article and within the due period, shall be sentenced to a judicial fine from five hundred days up to three thousand days."

3- Article 9/A titled "Blocking access to content due to the privacy of private life" sets out that;

"(1) Persons who claim that their right to privacy is violated due to the content of a broadcast on the Internet may apply directly to the Institution and request the implementation of the measure to block access to the content.

(2) This request shall contain the full address (URL) of the publication that caused the violation, an explanation of aspects violating the right, and information to prove identity information. If the information is missing, the request shall not be processed.

(3) The President shall immediately notify the Association of such request for implementation; access providers shall immediately fulfil this request within four hours at the latest.

(4) Blocking access shall be implemented by blocking access to the content (in the form of URL) concerning the broadcast, section, part, picture, video that violates the right to private life.

(5) Persons who request the blocking of access shall submit their request to block access on the grounds that their right to private life is violated due to the content of the broadcast on the internet to the final decision of the judge of criminal court peace within twenty-four hours starting from their initial first request. The judge shall announce their decision by evaluating whether the right to private life has been violated because of the content published on the internet within forty-eight hours at the latest and send it directly to the Authority; otherwise, the measure of the access blocking shall become null and void automatically.

(6) The President may object against this decision rendered by the judge accordance with the provisions of Code numbered 5271.

(7) The judge's decision shall automatically become null and void if the content, which was subject to access blocking, is removed from broadcasting.

(8) In non-delayable cases subject to the violation of the right to private life, the Institution shall block access directly upon the order of the President.

(9) In the scope of paragraph 8 of this Article, the President's decision to block access shall be submitted to the judge of the court of peace within twenty-four hours for the approval. The judge shall declare their decision in forty-eight hours."