

### Question 20.h.

Paragraph 3 of Article 20 entitled “Privacy of personal life” of the Constitution no. 2709 of the Republic of Türkiye reads “Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.”

Article 153 entitled “Defense counsel’s authority to examine the case file” of the Criminal Procedure Code no. 5271 reads as follows:

“(1) The defense counsel may examine the full content of the case file at the investigation phase and may take a copy of the documents of his choice without paying any fees.

(2) Where it is likely to endanger the aim of the investigation, the authority of the defense counsel to examine the full content of the case file or to have a copy of the documents may be restricted upon request by the public prosecutor. Such a decision may be rendered only in relation to the investigations conducted into the following:

a) Of the offences laid down in the Turkish Criminal Code no. 5237 dated 26/09/2004:

1. Intentional killing (articles 81, 82, 83),
2. Sexual assault (article 102 except for paragraph one),
3. Sexual abuse of children (article 103),
4. Production and trade of narcotics or psychotropic substances (article 188),
5. Establishing an organization to commit crimes (article 220),
6. Offences against the security of the State (articles 302, 303, 304, 307, 308),
7. Offences against the Constitutional Order and the functioning of this Order (Articles 309, 310, 311, 312, 313, 314, 315, 316),
8. Offences against the secrets of the State and Espionage (Article 326, 327, 328, 329, 330, 331, 333, 334, 335, 336, 337)

b) Offences of arms smuggling defined in the Law no. 6136 and dated 10/07/1953 on the Firearms and Knives and Other Tools (article 12)

c) Offence of embezzlement defined in Article 160 of the Banking Law no. 5411 and dated 19/10/2005.

d) Offences defined in the Anti-Smuggling Law no. 5607 and dated 21/03/2007.

(3) Provisions of paragraph two shall not apply to the records of the submissions provided by the individual or the suspect who has been arrested, as well as the written expert opinions and the records of other judicial proceedings during which the above mentioned individuals are entitled to be present.

(4) The defense counsel may examine the full content of the case file and all the secured elements of evidence, beginning with the date of approval of the indictment by the court; he may take copies of all the records and documents without any fee.

(5) The representative of the victim, too, shall enjoy all the rights provided by this Article.”

Article 157 entitled “Confidentiality of the investigation” reads “(1) Without prejudice to the situations otherwise governed by the Law and to the right of defense, the procedural operations at the investigation stage are confidential”.

In paragraph (5) and the continuing paragraphs of Article 236 of the Criminal Procedure Code No. 5271, titled “Hearing the victim and the claimant”, it is stipulated that: “(5) (Added on 17/10/2019 by the Law No. 7188/Art. 22) The statements of children who are victims of the offences regulated in the second paragraph of Article 103 of the Turkish Criminal Code during the investigation phase shall be taken by experts under the supervision of the Public Prosecutor at the centers providing services for them. Statements and images of the victim child shall be recorded. In the prosecution phase, where it is necessary to take the child’s statement or take another action in order to reveal the material fact, this process shall be carried out by the court or the delegated judge to be assigned by the experts in these centers. The procedures specified in this paragraph shall be carried out by taking the victim child to the nearest center regardless of the jurisdiction and territorial boundaries.

(6) (Added on 17/10/2019 by the Law No. 7188/Art. 22) The provision of the fifth paragraph shall also be applied in terms of the statements of the victims of the offences regulated in the second paragraph of Article 102 of the Turkish Criminal Code during the investigation phase. However, the recording of statements and images shall be subject to the victim’s consent.

(7) (Added on 17/10/2019 by the Law No. 7188/Art. 22) Statements and images recorded within the scope of the fifth and sixth paragraphs shall be kept in the case file, shall not be given to anyone and necessary precautions shall be taken for their confidentiality.

(8) (Added on 17/10/2019 by the Law No. 7188/Art. 22) Statements and images recorded within the scope of the fifth and sixth paragraphs shall be converted into a written report. The report in question shall be given to the suspect, accused, defense counsel, victim, attorney or legal representative who requests it. Statements and images may be watched by these persons under the supervision of the investigation and prosecution authorities, by protecting their confidentiality.”

Article 134 entitled “Violation of the privacy of personal life” of the Turkish Criminal Code no. 5237 reads as follows:

“(1) Any person who violates the privacy of another person’s personal life shall be sentenced to a penalty of imprisonment for a term of one to three years. Where the violation of privacy occurs as a result of recording images or sounds, the penalty to be imposed shall be doubled.

(2) (Amended on 02/07/2012 by Law no. 6352 Art. 81) Any person who unlawfully discloses the images or sounds of another person's private life shall be sentenced to a penalty of imprisonment from a term of two to five years. Where such data are published in the press or broadcasted, the penalty to be imposed shall be the same."

Article 135 entitled "Recording of the personal data" reads as follows:

"(1) Any person who illegally records personal data shall be sentenced to a penalty of imprisonment for a term of one to three years.

(2) Where the personal data relate to another person's political, philosophical or religious opinions, their racial origins; their illegal moral tendencies, sex lives, health or relations to trade unions, the penalty to be imposed in accordance with paragraph one shall be increased by one-half."

Article 136 entitled "Illegally giving or obtaining of the personal data" reads as follows:

"(1) Any person who illegally gives to another, disseminates or obtains 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."

Article 137 entitled "Qualified version" reads as follows:

"(1) Where the offences defined in the above articles are committed:

a) by a public official misusing his power derived from his public post; or

b) by benefiting from the privileges derived from a profession or trade;

the penalty to be imposed shall be increased by one-half. "

Article 138 entitled "Non-destruction of data" reads as follows:

"(1) Any person who fails to destroy data in accordance with the prescribed procedures before the expiry of the legally prescribed period for destruction shall be sentenced to a penalty of imprisonment for a term of one to two years.

(2) If the subject of the offence is the data that needs to be eliminated or destroyed according to the provisions of the Criminal Procedure Code, the penalty to be imposed shall be doubled."

Article 139 entitled "Complaint" reads "(1) Excluding the offences of recording of personal data, illegally obtaining or giving personal data and non-destruction of data, the commencement of an investigation and prosecution for the offences listed in this Part are subject to complaint".

Article 140 entitled "Imposition of security measures on legal entities" reads as "(1) Security measures specific to legal entities shall be imposed where offences defined in the above articles are committed by legal entities".

Article 1 entitled "Object and purpose" of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, to which our country became party by signing it on 28 January 1981, reads "The purpose of this Convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ("data protection").

Paragraph a of Article 2 entitled "Definitions" reads "For the purposes of this Convention: (a) 'personal data' means any information relating to an identified or identifiable individual ('data subject')".

Article 5 entitled "Quality of data" reads as follows:

"Personal data undergoing automatic processing shall be:

- (a) obtained and processed fairly and lawfully;
- (b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
- (c) adequate, relevant and not excessive in relation to the purposes for which they are stored;
- (d) accurate and, where necessary, kept up to date;
- (e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored."

Article 1 entitled "Purpose" of the Personal Data Protection Law no. 6698 reads "(1) The purpose of this Law is to protect fundamental rights and freedoms of persons, particularly the right to privacy, with respect to processing of personal data and to set forth obligations, principles and procedures which shall be binding upon natural or legal persons who process personal data".

Paragraph 1 Article 3 entitled "Definitions" reads as follows:

"(1) For the purposes of this Law:

....

- d) "Personal data" means any information relating to an identified or identifiable natural person,
- (e) "Processing of personal data" means any operation - such as collection, recording, storage, protection, alteration, adaptation, disclosure, transfer, retrieval, making available for collection, categorization, preventing the use thereof - which is performed on personal data, wholly or partially

by automated means or by non-automated means provided that they form part of a data filing system.”

Article 5 entitled “Conditions for processing personal data” reads as follows:

“(1) Personal data shall not be processed without explicit consent of the data subject.

(2) Personal data may be processed without seeking the explicit consent of the data subject only in cases where one of the following conditions is met:

a) It is expressly provided for by the laws.

b) It is mandatory for the protection of life or physical integrity of the person himself/herself or of any other person, who is unable to explain his/her consent due to the physical disability or whose consent is not deemed legally valid.

c) Processing of personal data of the parties of a contract is necessary, provided that it is directly related to the establishment or performance of the contract.

ç) It is mandatory for the data controller to comply with his/her legal obligation.

d) Personal data have been made public by the data subject himself/herself.

e) Data processing is mandatory for the establishment, exercise or protection of any right.

f) Processing of data is mandatory for the legitimate interests pursued by the data controller, provided that this processing shall not violate the fundamental rights and freedoms of the data subject.”

Article 26 entitled “Privacy” of the Regulation on the Implementation of the Protective and Supportive Measures Imposed in accordance with the Child Protection Law which entered into force upon publication in the Official Gazette dated 24/12/2006 and no. 26386 reads “(1) In all processes relating to the imposition and implementation of protective and supportive measures for children, any information belonging to the child and his/her relatives such as the child’s ID, address, photographs, traumas experienced, and the reports and documents including such information shall be kept confidential except for the child’s attorney. The principle of confidentiality shall be respected in correspondence”.

In the Article 5(1c) titled “Basic Principles” of the Legal Support and Victim Services Regulation; it is stipulated that; “The confidentiality of the personal data obtained during the provision of the service and the reports issued are protected within the scope of the provisions of the relevant legislation. These data cannot be given to any institution or person except for the cases stipulated in the relevant legislation.”

Again, in the Circular of “Investigations on Crime Committed Against Sexual Immunity” dated 31.10.2022 and No. 170/1; the following issues and those need to be considered while conducting investigations are included;

“ ...

14- By protecting the privacy of the victim and the child in these investigations, prevention of the negative effects of the act on their future, and complying with the principle of confidentiality of the investigation in line with the presumption of innocence,

15- Taking legal action against those who illegally share the evidence or images related to the investigation file or cause this happen,

...”

On the other hand, the “Social Media Working Group” was established under the Ministry of Family and Social Services with the Approval dated 25.08.2017 and No. 92246 in order to identify the risks that children may encounter through digital media and to carry out preventive studies.

Social Media Working Group plays an important role in the execution of both the institutional and inter-agency intervention process for the content on the internet where children are or may be exposed to neglect and abuse, or that may adversely affect the development of children.

In the institutional sense; upon the determinations as a result of the social media scans made by the Working Group, the Directorate General for Legal Services at the Ministry's headquarter makes an application to the judicial authorities to request the blocking/removal of content, and a criminal complaint is filed regarding the matters that constitute a crime.

As seen, the security of the personal information and data in our country is under the guarantee of all relevant laws, primarily under the Constitution of the Republic of Türkiye and governed in details in accordance with explicit provisions. In this context, it is guaranteed that all kinds of information belonging to the child and their relatives, such as the identity, address, photos, traumas experienced by the child, and reports, documents and records containing this information should be kept confidential, and correspondence should be carried out in accordance with the principle of confidentiality, except for the child's lawyer in all processes of different institutions involved in coordination and cooperation regarding child sexual abuse. The protection of personal data is guaranteed in accordance with the provision of Article 20 of the Constitution of the Republic of Türkiye stipulating that “Everyone has the right to demand respect for his/her private and family life. Privacy of private or family life shall not be violated.”