

Question 5.a.

Of the Turkish Criminal Code no. 5237;

1- Article 103 entitled "Sexual abuse of children" reads as follows:

"(1) Any person who sexually abuses a minor shall be sentenced to a penalty of imprisonment for a term of eight to fifteen years. Where the sexual abuse has remained at the level of molestation, the person shall be punished by a penalty of imprisonment for a term of three to eight years. Where the victim has not completed twelve years of age, the penalty to be imposed shall not be less than ten years in the case of abuse and not less than five years in the case of molestation. Where the offender of the offence which remained at the level of molestation is also a minor, conducting an investigation and prosecution shall be subject to a complaint by the victim, a parent or a guardian. Sexual abuse means:

a) any act of a sexual nature against a minor who has not completed fifteen years of age or, though having completed fifteen years, lacks the competence to understand the legal meaning and consequences of such an act;

b) sexual acts conducted against any other minor with the use of force, threat, deception or any other method which affects the willingness of the child.

(2) Where the sexual abuse occurs as a result of the insertion of an organ or other object into the body, a penalty of imprisonment for a term of not less than sixteen years shall be imposed. Where the victim has not completed twelve years of age, the penalty to be imposed shall not be less than eighteen years.

(3) Where the offence is committed:

a) with the cooperation of more than one person;

b) by taking advantage of places where people are compelled to live collectively;

c) against a person of blood relationship or kinship by marriage, including third-degree blood relationship, or by step-mother, step-father, step-sibling or adoptive parent;

d) by a guardian, tutor, trainer, teacher, nanny, a protective family or by a health service provider, or by persons responsible for care or observation;

e) by misusing the influence derived from a position in a public office or a service relationship;

the penalties imposed in accordance with the paragraphs above shall be increased by one-half.

(4) Where the sexual abuse is committed against a minor described in paragraph one (a) by force or threat, or against a minor described in paragraph one (b) by using weapons, the penalty to be imposed in accordance with the above paragraphs shall be increased by one-half.

(5) Where any force or violence, used with the aim of sexual abuse, leads to any aggravated injury on account of its consequences, the provisions of intentional injury shall be applied as well.

(6) Where the offence leads the victim to enter a vegetative state, or die, a penalty of aggravated life imprisonment shall be imposed."

2- Article 104 entitled "Sexual intercourse with a minor" reads as follows:

"(1) Any person who enters, without any force, threat or deceit, into sexual intercourse with a minor who has completed fifteen years of age shall be sentenced to a penalty of imprisonment for a term of two to five years, upon complaint.

(2) Where the offence is committed by a person, who is prohibited to marry the victim, the offender shall be punished by a sentence of imprisonment for a term of ten to fifteen years, without any preconditions of filing of a complaint.

(3) Where the offence is committed by the prospective adoptive parent of the minor, during the pre-adoptive placement of the minor, or when a person assumed the protection, care and custody of the minor or within the context of a protective family, the offender shall be punished under paragraph two above, whether a complaint has been filed with the court or not."

3- Article 105 entitled "Sexual harassment" reads as follows:

"(1) Any person, who harasses sexually another person, shall be punished by a penalty of imprisonment for a term of three months and two years or by a judicial fine, upon the complaint of the victim; where the act is committed against a minor, the perpetrator shall be punished by a penalty of imprisonment for a term of six months to three years.

(2) Where the offence is committed:

a) by taking advantage of one's public office or position or of a family relation;

b) by a guardian, tutor, trainer, teacher, nanny, a protective family or by a health service provider, or by persons responsible for care or observation;

c) by taking advantage of working at the same workplace;

d) by taking advantage of the convenience provided by postal or electronic communications;

e) by exhibition;

the penalty imposed for the offences under the above paragraph shall be increased by one-half. If this act has caused the victim to leave his work, school, or family, the sentence to be imposed shall not be less than one year."

Accordingly, it comes out from the analysis of the above-given provisions that the offences laid down in Article 103 entitled "Sexual abuse of children" of the Code are investigated ex officio. No complaint is required for those offences. However, in case of sexual abuse against a minor which has remained at the level of molestation, where the offender is also a minor, investigation and prosecution of such offence are subject to the complaint by the victim, a parent or a guardian.

On the other hand, while Article 104 entitled "Sexual intercourse with a minor" of the Code provides that any person who enters, without any force, threat or deceit, into sexual intercourses with a minor who has completed fifteen years of age shall be punished, it clearly stipulates that investigation and prosecution shall be conducted without any preconditions of filing a complaint in cases where the offence is committed by a person who is prohibited to marry the victim or by the prospective adoptive parent of the minor, during the pre-adoptive placement of the minor or within the context of a protective family.

Article 105 entitled “Sexual harassment” of the Code, in turn, regulates acts of sexual harassment committed against a child by a guardian, tutor, trainer, teacher, nanny, a protective family or by a health service provider, or by persons responsible for care or observation, or by taking advantage of one’s public office or position or of a family relation as versions requiring aggravation of the penalty. In such cases, investigation into and prosecution of the offence are not subject to a complaint but are conducted ex officio.