

### Question 9.a.

The child who has been subject to the abuse of parent within the circle of trust is taken immediately under protection in accordance with the Child Protection Law No. 5395. In accordance with the provision under article 7 paragraph 7 of the Law No. 5395 on Child Protection Law that “In addition to ruling decisions for protective and supportive measures regarding children that are in need of protection, the court shall also have the authority to decide with regard to custody, guardianship, curatorship, alimony and personal contact, in accordance with the provisions of the Turkish Civil Code dated 22.11.2001 and numbered 4721,” the courts may divest the right of custody of a parent, about whom a criminal case has been brought before the court but has not yet concluded, and restricts the rights of this parent for visiting and accommodating the child.

Article 426 of the Turkish Civil Code titled “Representation” under the title “Circumstances Requiring the Curatorship” provides for that “The guardianship shall appoint a representative curator ex officio or upon request of the concerned in the following circumstances or other circumstances specified by law if:

1. A person of full age is unable to do their own urgent work or appoint a representative due to a disease, being somewhere else or a similar reason,
2. Interests of the legal representative and those of the minor or person under legal disability are conflicting,
3. There is an obstacle in the way of the legal representative fulfilling his/her duties.”

Besides,

I- A) Article 7 paragraph 7 of the Law No. 5395 on Child Protection Law titled “Taking Protective and Supportive Court Decisions” sets out that:

“ ...

(7) In addition to ruling decisions for protective and supportive measures regarding children that are in need of protection, the court shall also have the authority to decide with regard to custody, guardianship, curatorship, alimony and personal contact, in accordance with the provisions of the Turkish Civil Code dated 22.11.2001 and numbered 4721.”

B) Article 5 paragraph 1 subparagraph (ç) and subparagraph 3 of the Law No. 6284 titled “The preventive interlocutory injunctions to be ruled by the judge” provide for that:

“ ...

ç) If there is a previous decision to allow having a personal contact, the personal contact shall be conducted with the children together accompanied by a company, it shall be to restricted or revoked completely.

(3) The preventive interlocutory injunctions to be ruled by the judge” that “In addition to the measures identified under this Law, the judge shall be authorized to take a decision on protective and preventive

measures as provided for under the Child Protection Law no. 5395 dated 3/7/2005 and on the issues of guardianship, custody, alimony and personal relation as per the provisions of Law no.4721”.

C) The Turkish Civil Code No. 4721;

1. Article 324 titled “Limitations” states that:

“Each one of mother and father shall be obliged to refrain from damaging the other’s personal contact with the child and preventing education and upbringing of the child.

If the peace of the child is at stake due to personal contact or mother and father use their rights in defiance of their obligation stipulated in paragraph one or they don’t take care of the child as they should or if there are other important reasons, the right to establish personal relationship can be denied or withdrawn.

(Additional paragraph 3 by the Law dated 24/11/2021- No. 7343/Art. 38) If the mother or father to whom custody is entrusted fails to fulfil the requirements of the personal contact arrangement, custody may be changed, provided that it is not contrary to the interests of the child. This issue shall be notified to the parties in the decision on establishing personal contact.”

2. Article 348 titled “In General”,

“If no result is accomplished from the other measures regarding the protection of the child or these measures are predicted to be insufficient, the judge may decide to revoke the custody in the case where:

1. (Amended by the Law dated 1/7/2005- No 5378/Art. 38) the parents cannot fulfill their custodianship duty as required due to inexperience, illness, being at another place or such.

2. the parents do not give the child sufficient care or neglect their responsibilities for him/her.

If custodianship of both the mother and father is abolished, a guardian shall be appointed to the child.

Unless stated otherwise in the judgement, revoking of custodianship shall include all existing children and children to be born.”

3. Article 350 titled “Liabilities of parents where custody is revoked”,

“Where custodianship is revoked, obligations of the parents to meet the children’s care and education expenses shall continue.

If the parents or the child cannot afford to pay these expenses, they shall be borne by the State.

Provisions regarding alimony shall be reserved.”

4. Article 351 titled “Change in condition”,

“Where there is a change in condition, measures regarding the protection of the child shall be required to be adjusted to the new conditions.

If the reason requiring the revoke of guardianship ceases, the judge shall give the custody back upon the request of mother or father or ex-officio.”