

QUESTIONNAIRE ON CRIMINALIZATION AND PROSECUTION OF RAPE

Definition and scope of criminal law provisions

- 1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.*

TURKISH CRIMINAL CODE NO. 5237

Sexual assault

Article 102- (1) A person violating the physical integrity of another person through sexual acts shall be punished by five to ten years' imprisonment upon the victim's complaint. If it does not exceed the molestation level, the sexual act shall be punished by two to five years' imprisonment.

(2) In the event that the act was committed through the insertion of an organ or other objects into the body, such act shall be punished by not less than twelve years' imprisonment. Should such act be committed against a spouse, investigation and prosecution shall be conditional upon the victim's complaint.

(3) In the case that the crime is committed;

- a) Against a person who is unable to defend themselves for physical or mental reasons,
- b) By abusing the power granted by public duty or a relationship of guardianship or service,
- c) Against a person who is a relative by blood or marriage up to and including the third degree, or by a stepfather, stepmother, half-sibling, adoptive parent or foster child,
- d) By force of arms or by more than one person acting together,
- e) By taking advantage of the convenience offered by settings where people must live together, the punishments prescribed in the above paragraphs shall be increased by one-half of themselves.

(4) In the event that the force and violence resorted to for sexual assault give rise to the aggravated consequences of the crime of intentional injury, the provisions relating to intentional injury shall also apply.

(5) In the event that the crime causes the death or vegetative state of the victim, such crime shall be punished by aggravated life imprisonment sentence.

Sexual abuse of children

Article 103- (1) A person sexually abusing a child shall be punished by eight to fifteen years' imprisonment. If it does not exceed the molestation level, the act of sexual abuse shall be punished by three to eight years' imprisonment. In the event that the victim is under twelve years of age, the

punishment may not be less than ten years in the case of abuse, and not less than five years in the case of molestation. In the event that the perpetrator of the crime which did not exceed the molestation level is a child, investigation and prosecution shall be conditional upon the victim's, their guardian's or custodian's complaint. The term sexual abuse shall mean;

a) All kinds of sexual acts committed against children who are under fifteen years of age, or whose ability to perceive the legal meaning and consequences of the act has not developed in spite of not being under fifteen years of age,

b) Sexual acts committed against other children based only on force, threat, deception or any other reason affecting the will.

(2) In the event that the sexual abuse was committed through the insertion of an organ or other objects into the body, such act shall be punished by not less than sixteen years' imprisonment. In such case, if the victim is under twelve years of age, the punishment may not be less than eighteen years.

(3) In the case that the crime is committed;

a) By more than one person acting together,

b) By taking advantage of the convenience offered by settings where people must live together,

c) Against a person who is a relative by blood or marriage up to and including the third degree, or by a stepfather, stepmother, half-sibling or adoptive parent,

d) By persons acting as guardian, tutor, teacher, caretaker, foster parent or providing healthcare services, or who are responsible for protection, care or supervision,

e) By abusing the power granted by public duty or a relationship of service, the punishments prescribed in the above paragraphs shall be increased by one-half of themselves.

(4) In the case that sexual abuse is committed through the use of force or threat against the children specified in sub-paragraph (a) of paragraph one or by force of arms against the children specified in sub-paragraph (b) thereof, the punishment prescribed in the above paragraphs shall be increased by one-half of themselves.

(5) In the event that the force and violence resorted to for sexual abuse give rise to the aggravated consequences of the crime of intentional injury, the provisions relating to intentional injury shall also apply.

(6) In the event that the crime causes the death or vegetative state of the victim, such crime shall be punished by aggravated life imprisonment sentence.

Sexual intercourse with minors

Article 104 - (1) A person engaging in sexual intercourse with a child over fifteen years of age, without resorting to force, threat or deception shall be punished by two to five years' imprisonment, upon complaint.

(2) In the event that the crime is committed by a person who is prohibited from marrying the victim, ten to fifteen years of imprisonment shall be imposed, without the need for a complaint.

(3) In the event that the crime is committed by a person who has assumed the duty of pre-adoption care for a child they intend to adopt, or who is responsible for the protection, care and supervision within the scope of a foster-family relationship, punishment shall be imposed pursuant to the second paragraph, without the need for a complaint.

Sexual harassment

Article 105 - (1) A person sexually harassing another person shall be punished, upon the victim's complaint, by three months to two years' imprisonment or a judicial fine, and by six months to three years' imprisonment in the case that the crime is committed against a child.

(2) In the case that the crime is committed;

a) By taking advantage of the convenience offered by public duty or a relationship of service or a family relationship,

b) By persons acting as guardian, tutor, teacher, caretaker, foster parent or providing healthcare services, or who are responsible for protection, care or supervision,

c) By taking advantage of the convenience offered by working at the same workplace,

d) By taking advantage of the convenience offered by postal or electronic communication means,

e) Through exposure,

the punishment to be imposed pursuant to the above paragraph shall be increased by one-half of itself. In the case that the victim was forced to quit their job, leave their school or family as a result of such act, the punishment to be imposed may not be less than one year.

CODE OF CRIMINAL PROCEDURE NO. 5271

Custody

Article 91 ...

(4) Provided that it is limited to persons caught in the act; law enforcement chiefs to be identified by civil authorities may decide to keep the person in custody up to twenty-four hours in connection with the crimes indicated in the following sub-paragraphs, and up to forty-eight hours during public incidents that may cause spreading of acts of violence and serious disruption of public order and in connection with crimes committed collectively. In the case that the reason for which the person is taken into custody ceases to exist or upon completion of the procedures; immediately, and in any case by the end of the above durations at the latest, the Public Prosecutor shall be informed of the

procedures carried out, and action shall be taken in accordance with the Public Prosecutor's instructions. Action shall be taken pursuant to the above paragraphs in the event that the individual is not released. However, the individual shall be brought before a judge within no later than forty-eight hours, and within four days in the case of crimes committed collectively. Provisions on custody shall apply also to those taken into custody by law enforcement officers within the scope of this paragraph.

...

b) The following crimes specified under the Turkish Criminal Code No. 5237 of 26/9/2004:

...

3. Sexual assault (article 102),

4. Sexual abuse of children (article 103),

...

Causes for arrest

Article 100 ...

(3) The grounds for arrest shall be considered to be present in the case that there are strong grounds for suspicion that the following crimes have been committed:

a) The following crimes specified in the Turkish Criminal Code No. 5237, dated 26.9.2004;

...

6. Sexual assault (Article 102 except for the first paragraph),

7. Sexual abuse of children (article 103),

...

Intercepting, tapping and recording communication

Article 135 ...

In the case that, during an investigation or prosecution conducted in connection with a crime, strong grounds for suspicion exist based on concrete evidence that a crime has been committed and that it is not possible to obtain evidence in any other manner, the suspect's or accused's communication via telecommunication may be (...) (3) tapped and recorded, and their signal information may be examined, upon a decision granted by a judge or, where a delay would be detrimental, by the Public Prosecutor. The Public Prosecutor shall immediately submit their decision to the approval of a judge, and the judge shall grant a decision within no later than twenty-four hours. The measure shall be immediately lifted by the Public Prosecutor in the case that such duration expires or the judge decides otherwise.

...

(8) Provisions relating to tapping, recording and examining signal information within the scope of this article may apply only in connection with the crimes listed below:

a) Following crimes under the Turkish Criminal Code;

...

4. Sexual assault (Article 102 except for the first paragraph),

5. Sexual abuse of children (article 103),

...

Intervenor's rights

Article 239 - (1) In the cases where the victim or the aggrieved party suffering harm as a consequence of the crime intervenes in the lawsuit, they may request that a lawyer be appointed to them by the bar association in the case of the crime of sexual assault and in crimes punishable by a minimum of more than five years' imprisonment.

(2) In the case that the victim or the aggrieved party suffering harm as a consequence of the crime is a child, is mute and deaf, or is mentally ill to a degree that renders it impossible for them to defend themselves, a request shall not be sought for the appointment of a lawyer.

Conciliation

Article 253...

(3) Conciliation may not be resorted to in the case of crimes against sexual inviolability, even if the investigation and prosecution thereof are conditional upon complaint. The provisions of conciliation shall not apply also in the case that a crime that falls within the scope of conciliation has been committed against the same victim along with another crime that does not fall within the scope of conciliation.

...

2. Based on the wording of those provisions, is the provided definition of rape:

- a. Gender specific, covering women only **YES/NO**
- b. Gender neutral, covering all persons **YES/NO**
- c. Based on the lack of consent of victim **YES/ NO**
- d. Based on the use of force or threat **YES/ NO**
- e. Some combination of the above. **YES / NO**
- f. Does it cover only vaginal rape? **YES /NO**
- g. Does it cover all forms of penetration? **YES/NO.**

If yes, please specify.

In the section entitled 'Crimes Against Sexual Inviolability' of the Turkish Criminal Code, every act committed against sexual inviolability is considered a crime, and the commitment of the act by

means of inserting an organ or other object into the body has been additionally stipulated as a major form of such crime that requires a more severe punishment.

- h. Is marital rape in this provision explicitly included? YES / NO**
- i. Is the law silent on marital rape? YES/NO**
- j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO**
- k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO** (although the definition of marital rape does not exist in the law, punishment is imposed pursuant to the general provisions of the law depending on its manner of occurrence, and whether or not it involves violence and sexual assault etc.)

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

Pursuant to the Law No. 6284 on Protection of Family and Prevention of Violence Against Women, injunction decisions are granted upon request of a victim of any type of violence or anyone who is in danger of being a victim of violence, including rape, without the need for producing evidence (without proof).

4. What is the legal age for sexual consent?

Not to be over the age of 15

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

Where the crime of sexual abuse stipulated under Article 103 of the Turkish Criminal Code does not exceed the level of molestation; in the case that the perpetrator of such crime is also a child (under 18 years of age), investigation and prosecution have been rendered conditional upon the victim's, their guardian's, or custodian's complaint.

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

A person committing the basic form of the crime of sexual assault shall be punished by five to ten years' imprisonment upon the victim's complaint. In the case that the act is committed by means of

inserting an organ or an object into the body, the term of imprisonment may not be less than twelve years.

The punishment shall be increased one-fold in the case that the major forms of the crime indicated in the law (Article 102/3 of the Turkish Criminal Code No. 5237) have been committed. Life imprisonment shall be imposed in the case that the victim enters a vegetative state or dies.

The punishment to be imposed in the case of the sexual abuse of a child is eight to fifteen years' imprisonment. In the event that the victim is under twelve years of age, the punishment may not be less than ten years. In the event that it is committed through the insertion of an organ or other objects into the body, it shall be punished by not less than sixteen years' imprisonment. In such case, if the victim is under twelve years of age, the punishment may not be less than eighteen years. The punishment shall be increased by one-half of it in the case that the major forms of the crime indicated in the law (Article 103/3 of the Turkish Criminal Code No. 5237) have been committed. Life imprisonment shall be imposed in the case that the victim enters a vegetative state or dies.

A person engaging in sexual intercourse with a child over fifteen years of age, without resorting to force, threat or deception shall be punished by two to five years' imprisonment, upon complaint. The punishment to be imposed in the case that the major forms of the crime indicated in the law (Article 104/2-3 of the Turkish Criminal Code No. 5237) have been committed is ten to fifteen years' imprisonment.

7. *What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?*

Pursuant to the Law No. 6284 on Protection of Family and Prevention of Violence Against Women, it is possible for victims to receive temporary monetary aid. No decision of conviction is required for such aid.

The victim is also entitled to seek 'non-pecuniary damages' from civil courts.

Aggravating and mitigating circumstances

8. *Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?*

- a. *Is rape by more than one perpetrator an aggravating circumstance? YES/NO***
- b. *Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO***
- c. *Is rape by spouse or intimate partner an aggravating circumstance? NO***

9. **Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO** If yes, please specify

10. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO** If so, at what stage and what are the consequences?

a. **Regardless of the law, is reconciliation permitted in practice? YES/NO** and what is the practice in this regard?

11. **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO** If yes, please specify.

The prosecution of a crime is rendered conditional upon the spouse's complaint in the case that the act of sexual assault is committed against a spouse.

If the crime of the sexual abuse of a child does not exceed the level of molestation and the perpetrator is a child, investigation and prosecution are conditional upon the victim's, their guardian's, or custodian's complaint.

In the crime of sexual intercourse with minors too, investigation and prosecution shall be conducted upon complaint.

The Second Part, Second Chapter of the Turkish Criminal Code sets forth the Circumstances that Remove or Reduce Criminal Liability. However, it is necessary to note that no reason of lawfulness shall cause the perpetrator's act to go unpunished in the context of sexual crimes.

a. **if the perpetrator marries the victim of rape? YES/NO**

b. **if the perpetrator loses his "socially dangerous" character or reconciles with the victim? YES/NO**

Prosecution

12. **Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO**

13. **Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**

14. **Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women? YES/NO**

15. **Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children? YES/NO**

16. Please provide information on the statute of limitations for prosecuting rape.

There is a statute of limitations of 15 (fifteen) years for filing a lawsuit.

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.

According to the general principles of our criminal law, a crime must have been proven without any room for doubt in order that a punishment may be imposed on an accused. Instruments of proof such as medical reports, expert's reports, witness testimonies, telephone call records, video images etc. must be submitted to the court in order to prove that a crime has been committed.

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify

Art. 233, 234, 235, 236 ...Among these in particular are; requesting that a lawyer be appointed by the bar association in the case that they do not have an attorney in the case of crimes of sexual assault and crimes punishable by a minimum of more than five years' imprisonment; seeking legal remedy against rulings that concluded a case, provided that they have participated in the case. An attorney is appointed without the need for a request in the event that the victim is under eighteen years of age, is mute or deaf, or is disabled to the degree of not being able to communicate their needs, and does not have an attorney. In the case that the victim is heard as a witness, provisions regarding witness testimony shall apply, except for those regarding administering of an oath. A child or a victim who has suffered mentally as a consequence of the crime committed may be heard once as a witness during the investigation or prosecution relating to such crime. Circumstances constituting compelling grounds for establishing the facts remain reserved. A specialist who is an expert in the field of psychology, psychiatry, medicine or education shall be present while taking the witness testimony of victims who are children or other victims who have suffered mentally as a consequence of the crime committed, etc.

War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity? YES/NO

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

Statutes of limitations under Article 77/f-g-h do not apply to crimes committed against humanity.

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

It has been stipulated within the scope of crimes against humanity. Art. 77

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

Data

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

In 2018, under the category of crimes committed against sexual inviolability, the highest number of public actions was filed with respect to the crime of sexual harassment with a rate of 52.4%, while the smallest number was with respect to the crime of sexual intercourse with minors with a rate of 3.7%.

When the numbers of crimes in the cases filed for the crime of *sexual assault* are examined, it is seen that;

The number of crimes in the filed cases was 7355 in 2015, 6446 in 2016, 6621 in 2017, and 7602 in 2018.

The number of crimes in resolved cases, on the other hand, was 8019 in 2015, 6525 in 2016, 5874 in 2017, and 6709 in 2018.

When the numbers of crimes in the cases filed for the crime of *sexual abuse of children* are examined, it is seen that;

The number of crimes in the filed cases was 16957 in 2015, 15051 in 2016, 16348 in 2017, and 18290 in 2018.

The number of crimes in resolved cases, on the other hand, was 18825 in 2015, 14635 in 2016, 14394 in 2017, and 15850 in 2018.

Other

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

The testimonies and statements made by the victims of sexual assault which may appear to be contradictory,

Their failure to remember an important aspect of the incident (although this is one of the usual and expected consequences of assault),

Prosecutors' and judges' failure to take into consideration scientific research and opinions during the legal proceedings.

The foregoing may be considered as circumstances that may cause these crimes to go unpunished by being interpreted against the victim.

In the cases where "direct" proofs of rape such as marks of violence or eye witnesses are absent, difficulties are sometimes encountered in practice in proving the crime; the competent authorities fail to examine all the facts and rulings are made without evaluating the conditions surrounding the incidents.

In the bills of indictments issued and the rulings made, the victims' private lives and their conduct before and after the incident, and the perpetrators' private lives and their conduct before and after the incident may also be frequently brought up in the trial stage.

In sexual assault cases, the facts such as the victims being women and children and individuals with a poorer socio-economic or educational status and the perpetrators being respectable/politically and economically influential individuals of the society such as teachers and/or supervisors/employers can also be considered to be among the obstacles under this article.