

Turkey

R. Barış Atladı

A. Consent as a Ground of Justification

This chapter deals with consent in sexual offenses. This topic has been problematic in Turkish law. Social, religious, and moral values have directly affected the criminal law on this subject as well as its implementation both today and in the past. Below, an attempt will first be made to introduce the consent of the concerned person as provided for in the Turkish Penal Code (TPC) as a general ground of justification; the subject will then be considered in detail with regard to sexual offenses.

The notion of “consent of the concerned person” was not mentioned in the former Turkish Penal Code (no. 765) of 1926. However, consent has been regulated explicitly as a ground of justification in Art. 26 para. 2 of the TPC of 2005:

“Art. 26 (2) No penalty shall be imposed in respect of any act committed as a result of the declared consent of another person, provided that such person has the full authority to give the consent.”

According to this provision, the consent of the concerned person renders any otherwise criminal act justifiable if the conditions mentioned in the provision are satisfied. The general conditions as to the validity of consent will be discussed here briefly before we will turn to the issue of justification by consent in the context of sexual offenses.

I. Capability to consent

The primary and fundamental condition for a valid declaration of consent is the person’s capability to consent. In Turkish criminal law doctrine and practice, the capability to consent is not linked to the age of majority, which the Turkish Civil Code sets at 18 years, but to a person’s ability to comprehend the purview and the consequences of his consent to the relevant act. However, the TPC explicitly defines the victim’s age regarding the validity of consent to sexual acts (see below). In judicial practice, the

condition to have attained the age of 15 years, which applies to valid consents to sexual acts, is also used for other crimes, for instance, “deprivation of liberty” (Art. 109 TPC). This practice contradicts the general structure of capacity to consent. As will be explained in detail below, the capability to give consent to sexual acts is generally set at 18 years. With regard to younger persons, their capability depends on the nature of the sexual act. Whereas minors under the age of 15 years cannot validly consent to any sexual act, young persons between 15 and 18 years can consent to sexual acts other than sexual intercourse.

II. The Existence of a Personal Right that can be Disposed of

For consent to be a valid justification, it must concern a personal right of which the person concerned can dispose. For instance, the right to life cannot be disposed of, since Turkish law does not permit euthanasia. Even though sexual acts are, in principle, considered as absolutely disposable rights, the legislature has restricted the disposition of these rights depending on a person’s age.

III. Declaration of Consent

For consent to be a valid justification, it must be declared explicitly or tacitly at the latest at the moment when the act is committed, and the existence of consent must continue during the whole time when the act is committed. While theoretically this rule also applies to sexual offenses, Turkish practice has adopted an approach in favor of the perpetrator if an initially declared consent is later withdrawn.

IV. Act Corresponding to the Declared Consent

For the perpetrator’s act to be justifiable due to consent by the concerned person, the act must correspond to the scope of the consent. An intentional failure to correspond to the consent will lead to full criminal liability, whereas a negligent disregard of the limits of consent will engender liability for a negligent offense if such an offense exists (Art. 27 para. 2 TPC). In sexual offenses, exceeding the limits mostly occurs in connection with the withdrawal of consent.

B. *Sexual Offenses in the Turkish Penal Code and the Relevance of Consent*

I. *Sexual Offenses in the TPC and their Reform*

The former TPC of 1926 had directly transferred provisions of the Italian Criminal Code (Codice Zanardelli) into Turkish law. In that Code, which was amended several times, sexual offenses were defined in the chapter on crimes against moral values of the society and the family order. Moral and religious rules rather than individual and sexual freedom thus formed the background of the criminal offense definitions. For example, fornication was treated as a crime, while sexual abuse within a marital relationship was deemed an offense against the family order. The former TPC's focus on public morality remained intact until the new TPC entered into force. In the new TPC, which was influenced by the German Criminal Code, sexual offenses appear in the chapter on offenses against individuals and are defined as offenses against sexual integrity. It should be pointed out, however, that especially in light of judicial practice, one cannot conclude that sexuality is now approached from the aspect of freedom and that the attitude of male domination has been abandoned.

II. *The Legal Interest Protected by Sexual Offenses*

The definition of the legal interest protected by sexual offenses reflects the perspective of society and law on sexual freedom and also determines the scope of application of these offenses. As has been mentioned above, the TPC of 1926 prioritized the value of public morals and regulated sexual offenses in this context, whereas the TPC of 2005 treats them as part of the crimes against individuals. Although this change appears to denote a paradigm shift, in fact, paternalist and patriarchal approaches have endured when the new TPC was being drafted. This fact is manifested in certain offenses against sexual integrity. For example, the official Materials on the crime of sexual assault on an adult person (Art. 102 TPC) read as follows¹: "Acts which constitute the qualified version of a sexual assault offense may be committed against the spouse. The marital union burdens spouses not only with the duty of loyalty but also with the mutual duty to satisfy each other's sexual desires. However, even in a marital union, it is

1 Official Reasons on TPC of 2005, <https://www5.tbmm.gov.tr/sirasayi/donem22/yil01/ss664m.htm> (accessed August 24, 2022).

certain that there are medical and legal boundaries concerning demands for the satisfaction of sexual desires. Any acts performed on the spouse which constitute the qualified version of the sexual assault offense and violate such boundaries require penal sanction. However, the initiation of an investigation and criminal proceedings are subject to a complaint of the victim.” Although the official statement of reasons is not binding for the application of the law, it demonstrates that Turkish law does not focus on the protection of individual sexual autonomy when dealing with intrafamilial sexual assault.

A public morals approach toward sexual freedom and integrity manifests itself also in relation to sexual harassment (Art. 105 TPC). When defining sexual harassment, the official statement of reasons to this article declares: “Sexual harassment refers to a sexual disturbance of the victim contrary to moral purity.” In determining whether an act is against moral purity, the courts rely on the concept of “average public morality”. Therefore, relatively normal acts which are not treated as an offense in many jurisdictions are considered sexual harassment in Turkey.

A paternalist approach is dominant also with regard to sexual acts against minors. This approach leads to outcomes contrary to criminal law theory. For example, Art. 104 TPC raises the question of who is the victim and who is the perpetrator of consensual sexual intercourse by minors between the ages of 15 and 18; moreover, the definition of the legal interest protected by this crime is incompatible with criminal law principles as well as foreign legislation on the subject. Evidence for the paternalistic and moralistic approach that still prevails is also provided by the interpretation of Art. 116 TPC concerning the protection of the residence. Whereas the consent of a resident generally negates the wrongfulness of entering someone else’s residence, paragraph 3 of that article provides that the consent of a minor is not sufficient for justification if it concerns entrance for the purpose of performing sexual acts. This is true even if the minor’s consent to the sexual act is valid; the visitor is then still liable for punishment for illegal entering.

III. Assessment of the Consent of the Concerned Person

As mentioned in the general explanation, consent of the concerned person leads to the justification of an otherwise criminal act. With regard to certain crimes, however, consent negates even the commission of the offense itself (see, e.g., Arts. 90 para. 4, 99 para. 1, 116 para. 1, 132 para. 3 TPC). With regard to sexual offenses, the general opinion regards consent

as a ground of justification. But in offenses that require overcoming the victim's opposition (e.g., Arts. 102, 103 para. 1-b, 105), it is clear that the other person's consent eliminates the existence of force, threats, and fraud, which are parts of the crime definition. Therefore, the consent of the concerned person negates the typicality of these sexual offenses, as has been explained in legal literature.²

In each sexual offense, consent is subject to different validity conditions and has different effects on the punishability of the act. Therefore, the effects of consent must be examined separately for each sexual offense. Sexual offenses under the TPC are classified into two categories, depending on whether they require physical contact. Crimes with physical contact are sexual assault (Art. 102 TPC), child molestation (Art. 103 TPC), and sexual intercourse with persons below the legal age of consent (Art. 104 TPC). By contrast, sexual harassment (Art. 105 TPC) does not require physical contact.

1. *Sexual Assault*

The crime of sexual assault can be committed against persons who have attained the age of 18 years. According to the general commentary on the TPC and the doctrine, Art. 102 TPC protects the individual's sexual integrity, the right to his or her body, and sexual preferences. Contrary to the former Penal Code, social values such as good manners or morals are no longer the protected legal interest.³ It is suggested that since the prohibition of sexual assault is to protect individual freedom, the objectively expressed consent of the concerned person is recognized as a valid justification.

Doctrine and practice recognize an exception to the punishability of sexual assault (Art. 102 TPC) with regard to married couples. According to this view, a sexual assault that does not involve the insertion of an organ or other object into the body cannot be committed between spouses, regardless of the spouse's consent.⁴ The Supreme Court held that a husband who pulled his wife close and kissed her against her will did not commit a

2 *Fabri Gökçen Taner*, *Türk Ceza Hukukunda Cinsel Özgürlüğe Karşı Suçlar (Offenses Against Sexual Freedom in Turkish Criminal Law)*, 120.

3 *Mehmet Emin Artuk and Ahmet Gökçen*, *Ceza Hukuku Özel Hükümler (Criminal Law Special Provisions)*, 379.

4 *Artuk and Gökçen* (note 3), 383.

crime.⁵ The Court reasoned that according to Art. 102 para. 2 TPC the prosecution of a spouse for sexual assault with penetration of the body requires the victim's complaint, while other forms of sexual assault are not mentioned at all in this provision.⁶ According to another view, even Art. 102 para. 2 TPC (sexual assault with penetration of the body) cannot be committed against a spouse, based on the reasoning mentioned above.⁷ According to this approach, only sexual assaults which exceed the medical and legal boundaries should be punished as crimes against the family order. From the perspective of autonomy and human rights, this view, which is based on concepts of male domination, patriarchy, and the sanctity of the family, cannot be accepted. Notably, some authors state that even sexual assault without penetration can be committed against one's spouse. They claim that the only purpose of Art. 102 para. 2 TPC is to provide for the necessity of a complaint if the assault occurred within the family. According to this view, Art. 102 para. 1 TPC already provides that the crime is prosecuted upon complaint, and therefore the word "spouse" need not necessarily be mentioned separately.⁸ It should be noted that the conservative approach dominant in Turkish society and the tendency of criminal justice agencies to protect families considerably complicate prosecutions of sexual offenses committed against one's spouse.

In practice, a patriarchal perspective often prevails. Her lifestyle, her relationship status, and her past relations with the perpetrator are held against a woman who complains of having been victimized, the acts go unpunished, and this reinforces her helpless status. The Supreme Court, in its settled case-law, relies on concepts such as "the existence of hostility between the victim and the defendant", "contradictions between the victim's statements and the ordinary course of life", and "the victim failing to report the case for a long time without just cause" in order to put the victim's statements into doubt and to mark them as untrue, concluding that sexual intercourse must have occurred with the woman's consent.⁹ Patriarchal views can also have the reverse effect, however. Many courts evaluate conflicting evidence in sexual offense cases on the assumption that a woman would not want to label herself a victim of a sexual offense

5 Supreme Court, 14th Criminal Chamber, Judgment 2014/1689.

6 *Artuk and Gökçen* (note 3), 383.

7 *Mahmut Koca and İlhan Üzülmöz*, Türk Ceza Hukuku Özel Hükümler (*Turkish Criminal Law Special Provisions*), 327.

8 *Taner* (note 1), 92; *Ali Kemal Yıldız*, 5237 sayılı Türk Ceza Kanunu (*Turkish Penal Code no. 5237*), 213.

9 *Taner* (note 1), 263.

and thereby impair her status without cause; hence a woman who does take that step should be believed. Courts thus tend to override the maxim *in dubio pro reo* based on social moral rules and conventional wisdom.

Prevailing moral and religious standards in Turkish society regarding sexual freedom and autonomy also have an impact on the crime of prostitution (Art. 227 TPC). Although committing an act of prostitution has not been defined as a crime, those who are engaged in prostitution are defined as “persons who have been lured into prostitution”, and Art. 227 para. 8 TPC provides treatment and psychological therapy for prostitutes.

2. Child Molestation

Like sexual assault under Art. 102 TPC, the crime of child molestation (Art. 103 TPC) requires some physical contact with the victim. According to Art. 103 TPC, only minors can be victims of child molestation. The term “minor” is defined in Art. 6 TPC as any person who has not reached the age of 18 years. The age of giving valid consent can be inferred from Art. 103 para. 1, subpara. a-b: Victims of child molestation can be persons younger than 15 years. Consent by children of this age group to any sexual act irrespective of its graveness and quality is legally invalid under any circumstances. But minors who are 15 years or older can also be victims of the crime under Art. 103 TPC if they “lack the ability to understand the legal (!) meaning and consequences” of relevant sexual acts. With good reason, doctrine and practice commonly hold that the term “legal meaning and consequences” does not refer to criminal law dogmatic. To be criminal, any sexual act against minors who have attained the age of 15 must have been committed “by force, threat, fraud, or any other means that affects the willpower”, in line with Art. 103 para. 1-b TPC. In other words, any consensual sexual act with a healthy minor between 15 and 18 years is punishable only if force, threats, or fraud have been used before or during such activities. However, consent by a minor will be recognized only for acts that do not amount to sexual intercourse (Art. 104 TPC).

Regarding Art. 103 TPC, the definition of the terms “force, threats, and fraud” is not ambiguous, but questions are raised by the alternative “any other reason that affects the willpower”. Examples cited in practice and doctrine refer to the victim being unconscious, asleep, under hypnosis, drunk, or drugged. The fact that the young person was offered money does

not generally affect her willpower,¹⁰ but a false offer of money can amount to fraud.¹¹ With regard to force or threats, judicial practice tends to presume that a victim who fails to offer physical resistance to a sexual act can be considered to have consented; mere verbal protest is not deemed sufficient because the opposite view might lead to problems of proof. Acts of resistance such as crying out and calling for help may, however, be considered as significant evidence of a lack of consent. But a woman is deemed to have consented if she refrained from putting up an amount of physical resistance that could have prevented the sexual act in light of the accompanying circumstances.¹² The following excerpt from a Supreme Court judgment is illustrative of the courts' approach: "... it follows from the facts that, in a room where five persons were present, the accused held the victim by her leg and pulled her inside, but the victim remained silent. The grandmother who saw the event did not interfere. In the domestic environment, the victim was seen lying under the accused under a blanket. The victim nevertheless did not oppose the defendant, remained silent, and did not ask for help from those who were in the room then; no force was exerted in the event...".¹³ There is no doubt that such an approach leads to secondary victimization of sexual offense victims, in particular those of intrafamilial sexual molestation. Such acts fall in a broad "grey area" in the framework of social structure and conventional attitude. The courts' approach, therefore, leads to many molestation cases going unpunished. In Turkey, most intrafamilial molestation cases are prosecuted only if the victim becomes pregnant or some legal conflicts arise between family members.

On the other hand, the present legislation on sexual molestation of minors leads to the criminalization of some consensual sexual acts between minors. At first sight, the legislation might be considered to represent a comprehensive approach toward the protection of minors' sexual freedom and integrity; but in fact, it leads to negative effects on the formation of gender identity and pedagogy. Under Art. 103 TPC, any sexual act, even without physical contact, between two minors under the age of 15 years will entail criminal responsibility for both. Since criminal responsibility in Turkey sets in at the age of 12 years, the criminal law covers any instance of sexual acts between minors if at least one of them is 12 years or older.

10 Nurullah Kantarcı, Reşit Olmayanla Cinsel İlişki Suçu (*Sexual Offense Against Minor*), 176.

11 Supreme Court, 14th Criminal Chamber, Judgment 2013/11802.

12 Supreme Court, 14th Criminal Chamber, Judgment 2014/10136.

13 Supreme Court, Assembly of Criminal Chambers, Judgment 1999/240.

There have in fact been cases where both minors were punished; in other cases, only the boy or the minor who was more active was taken to be the perpetrator. This practical experience as well as the unreasonably severe sanctions for sexual molestation (8 to 15 years imprisonment for molestation that does not include penetration of the body; 16 to 20 years imprisonment for molestation involving the insertion of an organ or another object into the body) led the legislator, in 2016, to enact a basic version of this crime, called sexual harassment, with a sentence range of three to eight years imprisonment. At the same time, the legislature required a victim's complaint for prosecution for sexual molestation without penetration.

The law also provides for aggravation of the offense if force or threats of force are used against a person younger than 15 years or younger than 18 years and lacking perception or willpower. With regard to any victim younger than 18 years, the use of a weapon leads to more severe penalties. The same applies where the perpetrator is in a relationship of supervision or influence, including within the family, over the minor victim (Art. 103 para. 3 TPC).

3. *Sexual Intercourse with persons under 18 years*

Perhaps the most problematic provision with regard to the role of consent concerns the punishability of consensual sexual intercourse between young persons older than 15 but younger than 18 years. Debates have arisen as to the legal interest protected by this provision. Although the doctrine predominantly argues that the minor's sexual integrity and freedom are the legal interest protected, it should be noted that this offense has been placed among the laws that are to protect public morals and prevent premarital sexual intercourse, based on social concerns.¹⁴ Moreover, in a legal system in which one can be granted permission by a court to marry at the age of 16, it is impossible to understand that sexual intercourse based on the consent of a minor older than 15 years is a criminal act that can be prosecuted upon complaint. In enacting this provision, the legislature has evidently been moved by moral and social concerns. In my opinion, the high age threshold for sexual intercourse, which differs from many other jurisdictions, cannot be reconciled with the *ultima ratio* function of criminal law. I believe that this provision reflects the moralistic approach

14 *Kantarci* (note 10), 95.

dominant in Turkish society as well as the legislature's paternalistic attitude toward the stability of gender identity.

In addition, this provision raises issues as to its content. Sexual intercourse for the purposes of this provision has been defined as the insertion of a man's sexual organ into a woman's vagina or man's or a woman's anus. Neither oral sex nor lesbian sex¹⁵ of any kind falls under the definition of this crime. The Turkish legislature generally seems to adhere to the stereotype of male activity and female passivity. Another issue raised by this offense concerns the situation where both persons involved in sexual intercourse are in the 15 to 18 age category. This situation has led to intensive debates as to who should be treated as the perpetrator and who should be regarded as the victim. The doctrine predominantly argues that the party who persuades the other person to engage in sex should be treated as the active party, whereas judicial practice tends to treat the young man as the perpetrator. Another issue concerns the impact of being granted majority has on the applicability of this provision. Majority can be declared by court decision as early as at the age of 15 years and can also be obtained through marriage, which is possible at 16 years. There is agreement that the right and obligation to have sexual relations in marriage provides a justification (Art. 26 para. 1 TPC) for sexual acts with one's spouse even if he or she is younger than 18 years. But the issue remains debated with regard to persons who have been granted majority by court decision and then have intercourse with persons not their spouse. In my opinion, consent that is declared by a young person granted majority should be recognized. But the question remains whether intercourse conducted without the young person's consent falls under sexual assault (Art. 102 TPC) or molestation of children (Art. 103 TPC).

For offenses that are only prosecuted upon complaint, the question arises whether a minor who has become a victim may file the complaint herself. The Supreme Court has answered that question in the affirmative. Yet, some authors as well as the Military Chambers of the Supreme Court¹⁶ take the paternalistic view that it is not the minor herself but her parents that are entitled to make a complaint.

Another issue associated with this crime arises when a person has consensual sexual intercourse with a minor above the age of 15 who has run away from home. The Supreme Court held that this act was not covered by the offense of kidnapping and detention of a child (Art. 243 para. 3 TPC),

15 See Supreme Court, 14th Criminal Chamber, Judgment 2014/5373.

16 Supreme Court, Assembly of Military Chambers, Judgment 2007/44.

arguing that minors who have attained the age of 15 are free to go where they please for any purpose, hence their consent must be deemed lawful. But the legislature thereupon amended Art. 243 TPC, which now declares that a person who has intercourse with a minor of 15 years who had left his home without having notified his legal representatives or obtaining their consent is guilty of sexual intercourse with a person below the age of consent as well as of kidnapping or detention of a child.¹⁷

4. *Sexual Harassment*

Sexual harassment is an offense that significantly reflects the moralistic views of the public. As mentioned above, an act constitutes sexual harassment if it is “contrary to moral purity”. This evidently is an ambiguous concept. Therefore, although the doctrine does not require sexual motives for being guilty of sexual harassment, the Supreme Court is inclined to regarding as sexual harassment certain acts which would be viewed as neutral in other jurisdictions, such as a dating proposal or a declaration of love. For instance, sending SMS messages that included “I love you”¹⁸ or “Hi, how can I get you and win your heart?”¹⁹ were treated as sexual harassment. But the victim’s consent operates as a ground of justification with respect to sexual harassment, as emphasized in several decisions of the Assembly of Criminal Chambers of the Supreme Court.²⁰

C. *Consent in Turkish Criminal Procedural Law*

The issues mentioned above on the validity of consent to sexual crimes also give rise to legal problems in evidence law. Theoretically, consent (not based on fraud) by the parties to a sexual act must exist from the first moment of such act and continue during the whole act.²¹ Yet, it is difficult to establish in practice whether consent was declared. Courts take the perspective of protecting the woman in cases where the sexual act between the

17 Supreme Court, 14th Criminal Chamber, Judgment 2014/12496.

18 Supreme Court, 14th Criminal Chamber, Judgment 2015/9257.

19 Supreme Court, 18th Criminal Chamber, Judgment 2019/14439.

20 E.g., Judgment 2014/446.

21 Therefore, acts such as stealing, which are controversial in other jurisdictions, are treated as criminal under Turkish law since they are not covered by the woman’s original consent.

perpetrator and the victim was not based on intimacy and a relationship existing prior to such act. In several decisions, the Supreme Court argued, in that respect, that a woman “would not tell lies to the detriment of her chastity”²² because she would thereby place herself in a difficult position in society. Likewise, the victim’s statements can be taken to be credible if she “lacks reasonable or grave cause to slander the accused”.²³ These arguments show that the courts are more influenced by public moralistic views than by general rules of criminal evidence. As a result of this tendency, courts have found that the woman consented to sexual intercourse on such shaky grounds as “contradictions in the victim’s statements and her statements being contrary to the ordinary course of life”, “following from the victim’s allegations that she intends to excuse her situation in front of the community”, “the victim denying the case for a long time without just cause”, etc. When courts use a moralistic approach and base their findings on certain features of the victim, in particular, her lifestyle, way of dressing, alcohol use, and past extramarital sexual intercourse, this is bound to lead to secondary victimization of the woman concerned. It should also be noted that courts tend to refer to moralistic community standards predominantly in cases where the victim had initially consented but then withdrew her consent. If the initial declaration of consent is at issue, however, the possibility of withdrawal is not taken into account.

The main issue with regard to proving sexual crimes is the fact that many involuntary sexual acts are never brought before the courts. Many women or minors who became victims of sexual assault and molestation never disclose their trauma. This is due to problems that may follow from being labeled a victim of sexual crime in society as well as from the patriarchal approach predominantly adopted by police and prosecutors. These problems arise, in particular, in cases of intrafamilial sexual assault, minor victims of child molestation, and voluntary adolescent intercourse. Intramarital sexual assaults tend to be reported only where a divorce is imminent, and molestation of children becomes known only if the girl became pregnant and is seeking an abortion. Cases of intercourse between teenagers often become known to the authorities when the young person involved claims that she was raped in order to protect herself. Given this haphazard way of investigating and prosecuting such crimes, it cannot be said that there exist criminal justice or social mechanisms that can adequately protect victims of sexual assault.

22 Supreme Court, Assembly of Criminal Chambers, Judgment 2009/128.

23 Supreme Court, 5th Criminal Chamber, Judgment 2010/714.

D. Consent in Criminal Policy, Criminology and Victimology

Turkish lawyers and society at large engage in intense debates on how to deal with sexual offenses. Under the influence of many publications on the subject in the media and social media, the Turkish legislature amended the relevant provisions of the criminal law in 2014 and 2016. The gist of these changes was an increase in sentence levels for some sexual offenses and the introduction of new crime definitions with severe sentences, such as incestuous intercourse (Art. 104 para. 2 TPC). Sex offenders receive high sentences, and they cannot be released before having served three quarters of their sentence (which is a greater portion than in ordinary crime). Moreover, the legislature passed a new regulation providing for the chemical castration of sex offenders. This was however later stricken by the Council of State. It appears that the legislature opted for combatting sexual crime by increasing sanctions. But this approach failed to lower the rate of sexual offenses committed; and the stricter rules on serving sentences also failed to reduce recidivism.

The conservative and family-oriented patriarchal attitude that presently dominates Turkish society makes it difficult for many victims of sexual crime to find recognition. They can hardly expect that their complaints will even be adequately considered by public agencies. From a victimological viewpoint, it should be pointed out that learned helplessness poses a problem in Turkey, in particular with respect to victims belonging to the lower economic strata.

On the other hand, punishing sexual intercourse at an early age may raise certain issues in light of social and conventional reality in Turkey. Setting the age threshold for consent to sexual intercourse relatively high (if no complaint was made by the victim, by the attainment of the age of 15 years) can lead to punishment of young persons who are parties to a *de facto* existing partnership that is unproblematic from a conventional perspective (generally imam marriage). A draft law proposed in 2016 intended to eliminate this problem by providing that perpetrators of child molestation without using force or threat (consensually) committed before 16 November 2016 would not be punished or a sanction would cease to be executed if the perpetrator married the victim. The social reaction to this proposal was mostly negative, and the draft law was not enacted. The reason for the social rejection of the proposal lies in the reality of child brides who are forced to marry without their consent. The proposal had not limited the rule of impunity to cases of a small age difference between the perpetrator and the victim. The rejection of the draft law appears well-founded because there unfortunately still exists the reality that female children

are forced, against their will, to marry much older males in a religious ceremony. This custom is due to the socio-economic conditions in Turkey, the suppressed sexual identity development, and parents' recognized authority that enables them to make decisions in the name of their children. In fact, parents who oversee or encourage such marriages should be punished as perpetrators, by virtue of their status as guarantors, whereas in practice, such persons are not punished or punished only for assisting forced marriages. Some authors even suggest that the rule on mistake of law (Art. 30 para. 4 TPC) should apply to parents who allow such relationships (based on imam marriage) at an early age. By contrast, the age of consent to sexual acts between peer minors in Turkey is set extremely high. This leads to grave problems for adolescent parties in sexual relationships.

E. Conclusion and Assessment

The subject of sexuality and consent to sexual acts must be regarded as completely deadlocked in Turkish social and legal system. On the one hand, still-existing moralistic and religion-based attitudes in some parts of society allow for sexual intercourse at an early age so long as a religious marriage has been conducted; on the other hand, the same parameters are rigorously and strictly denied when sexual intercourse among minors occurs without a religious marriage. This split attitude is based on a paternalistic-moralistic approach. As for the legal order, in the course of secularization with the establishment of the Republic, the age of consent for sexual acts was set high to protect minors and to prevent them from becoming mere objects for sexual acts. To achieve this goal, severe sanctions for sexual molestation and incest offenses were prescribed. Yet, in my opinion, these measures are insufficient for preventing child molestation. Moreover, these legal rules have been implemented in a conservative and moralistic way, with the effect that peer adolescents were sent to prison for consensual sexual acts. A patriarchal and moralistic attitude also prevails in the legal enactment and its implementation with regard to marital sexual assaults. The emergence of a liberal socio-legal regulation of sexual behavior in Turkey is not likely to be realized as long as the social perspective towards consent to sexual acts and autonomy does not change.