

Judicial problems and solutions for observation crimes committed through IT systems

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Suggested Citation:

Güngör, B. (2023). Judicial problems and solutions for observation crimes committed through IT systems. *International Journal of New Trends in Social Sciences*, 7(1), 54–65. <https://doi.org/10.18844/ijss.v7i1.9031>

Received from January 15, 2023; revised from March 25, 2023; accepted from May 27, 2023.

Selection and peer review under the responsibility of Prof. Dr. Ana Carvalho Campina, Universidade Fernando Pessoa, Porto, Portugal.

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Abstract

With the development of technology and the introduction of the Internet and information systems in every aspect of our lives, new regulations have been made in our laws, with the anticipation that these systems will gain a dangerous dimension with the use of these systems by individuals for committing crimes. Information crimes are regulated in the Turkish Penal Code No.5237. However, some crimes regulated the Turkish criminal law can be committed by information systems, although they are not regulated separately as cybercrimes. This study aims to deal with the issue of obscenity crime, which is one of these types of crime and is of great importance since its definition may change over time, and it is commonly committed through information systems. This study will focus on the most common situations we encounter in practice in terms of obscenity crime. The researcher makes explanations with the Supreme Court Decisions by addressing the problems that arise in terms of Criminal Procedure Law.

Keywords: Cybercrime, eroticism, informatics, information technology, obscenity, pornography;

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1. Introduction

With the development of technology, the use of the Internet has increased to a great extent, and accordingly, the form of communication between individuals in society has intensified. This degree of integration of social life and information technologies has enabled crimes to be committed quickly through information systems (Zagloul et al., 2022). For this reason, it has become a difficult task in legal systems to define the limits of the regulations made to deter crimes in the face of rapidly developing information technologies.

1.1. Conceptual framework

1.1.1. Obscenity

When the dictionary meaning of the concept of obscene is examined, it is seen that it is defined as 'obscene, obscene, inappropriate' in the current Turkish Dictionary of the Turkish Language Association (Turkish Language Association, n.d.). The word obscene is derived from the Arabic word 'Hücnat' and in dictionaries; it is described as 'decency, confusion, vulgarity, vileness, bad behaviour' (Cevat, 2013). Although there are various definitions, there is no unity in the definition of the concept of obscenity in the literature. Since it is a concept that changes over time, a clear definition cannot be made. The boundaries of the concept of obscenity will be determined by judicial decisions. It can be stated that the judge's personal opinion playing such an important role in the appraisal of the concrete case regarding the determination of obscenity may constitute a violation of the principle of 'equal punishment for equal crime' (Şaban, 2008).

In the decision of the Supreme Court Penal General Assembly, numbered 2014/603, Principle, 2015/66 and dated 24.03.2015, it was emphasised that obscenity, which is a normative concept, can vary from society to society and even within the same society, depending on social values (Lexpera, 2019). It has been stated that the determination of the obscenity phenomenon should be based on the general norms of society and the rules of behaviour regarding the democratic social order rather than the value judgments of a certain segment of society.

1.1.2. Eroticism

The meaning of the concept of eroticism is stated in the Turkish Dictionary of the Turkish Language Association as the state of being intensely fond of sexual feelings and desires. The term erotic is derived from the French word 'Eros' and its meaning is defined as 'related to love, describing love, sexually attractive' (Cevat, 2013). However, the concept of eroticism is also used for works that do not contain violence, do not approach people in a degrading way, and present sexual behaviours as normal and acceptable. This concept expresses sexual intercourse indirectly and bodily nudity in an artistic sense of aesthetics (Veli, 2009). Although the dictionary meaning of the word erotic is 'related to sexual love, arousing sexual feelings, sexy love or desire', the adjective erotic primarily evokes nudity in our minds. It covers the ritual behaviours of kissing, touching and transitioning to sexual intercourse, starting with the gradual undressing in the early stages of nudity (Cengiz, n.d.).

1.1.3. Pornography

The word pornography has passed into our language from French and is described as 'obscene publication or picture, indecent book or picture'. In this sense, its broadcast is in the foreground rather than sexuality in pornography (Erbaşı, 2007). What is a crime under our law is pornography, erotic publications are not (Cevat, 2013). The concept of obscenity also includes the concepts of erotica and pornography. Not every obscene and erotic thing is pornographic. But every pornographic thing is also obscene and/or erotic (Ince et al., 2021; Meseddi et al., 2021).

1.2. Purpose of study

While the current Turkish laws define certain crimes as cybercrimes, some other crimes that can be committed through information systems are not defined. The focus of the study is the crime of obscenity specified in Article 226 of the Turkish Penal Code No. 5237. This article deals with a different

type of crime in each paragraph. Before examining these crime types, the meanings of obscenity, eroticism and pornography and how they should be handled will be emphasised. After explaining the meaning and scope of the acceptance of obscenity as a crime within the framework of the Turkish Penal Code, the material and moral elements of the crime of obscenity and other related crimes, cases of attempt, protected legal interests, illegality and sanctions will be discussed in detail. Finally, the judicial problems that arise when obscenity crime is committed through information systems and possible suggestions for the solution of these problems will be discussed.

2. Materials and Method

This study follows a descriptive method. Data used for this study were secondary data and they were drawn from the Turkish penal code and criminal law. Other materials were sought from previous researchers and all used resources were duly referenced to acknowledge the source. To ensure that ethical guidelines are followed, this research ensured that no human, laws or regulations were harmed or disregarded.

3. Results

3.1. Obstacle crime

‘The crime of obscenity’ is regulated by Article 226 of the law, which is in the seventh section of the crimes against public morality, which is regulated in the third part of the crimes against society. In the content of the regulation, crimes of child pornography, sexual intercourse with animals or dead human bodies by using violence or in an unnatural way are included in international law.

Article 226 of the Turkish Penal Code No. 5237 (see Appendix A). It is seen that a different crime is regulated in each paragraph of the obscenity crime. It is also possible that the actions taken in the occurrence of these crimes can be carried out using information systems.

The article of the law contains more complex regulations compared to the generally clear and understandable structure of the Turkish Penal Code. This complexity requires the people involved in the implementation to first determine what the provision means and then to make the provision, which puts the practitioners in a difficult situation. Since the concept of obscenity does not have a clear definition and is a relative concept, this situation is also reflected in judicial decisions.

When the Supreme Court Decisions are examined, the unnatural expression in paragraph 4 of the article is ‘Article 226/4 of the TCK’. The term ‘unnatural’ in the article defines relationships that do not have a place in the sexual life of individuals, are humiliating or are not accepted as natural by the society in general. The images of anal or oral, homosexual or group sexual intercourse that cannot be evaluated alone appear to be highlighted (Court of Cassation 18, n.d.). In addition, it is stated in the decisions that an expert report should be obtained about the images seized from the accused and considered to be obscene, and it should be determined whether children are used in these images, whether there is a type of relationship with animals, dead human bodies or unnatural sexual behaviours by using violence in their content.

The expression ‘unnatural way’ in the law has been interpreted as follows by the Constitutional Court: ‘Although it can be thought that it may differ from person to person or from society to society when the text of the law is evaluated as a whole and the legal benefit to be protected is taken into consideration, the said behaviours can be treated with violence, with animals’. It is understood that it refers to sexual behaviours that cannot be accepted as a natural way in all democratic social orders, such as sexual behaviours on a dead human body or that have a negative effect on the moral standards of a democratic society, and even reach the level where it is considered a crime in itself. The applicant requested the annulment of the expression ‘unnaturally’ in Article 226/4 of the Turkish Penal Code on the grounds that it is contrary to Articles 12, 17, 20 and 42 of the Constitution (Resmigazete, 2015). As a result of the examination, the court stated that criminal sanctions for storing products containing ‘unnatural’ sexual behaviour are a purposeful sanction in protecting the general morality of society and providing the public interest. For this reason, it rejected the request by a majority of votes, ruling that

there was no contradiction. The Constitutional Court accepts that obscenity is a complex and ambiguous concept, and also points out that the quality of the work should be handled with a holistic and sensitive approach (Faruk, 2019).

In a decision on the individual application, the court stated that ‘Especially when obscenity, which is a complex and ambiguous phenomenon, is considered as a requirement of this holistic approach principle, the evaluations of the judiciary will depend on the characteristics of the art field or the work, the context in which the obscene parts are expressed, the identity of the author, the time of writing. It should not be overlooked that it should be done by looking at its purpose, the identities of the people it addresses and their aesthetic understanding, the possible effects of the work and all other expressions in the work as a whole’. He stated that every effect was taken into account in the introduction of the concept.

If we are to classify, TPC Article 226/1 crimes related to the dissemination of obscene products, Article 226/2 crimes related to the dissemination of obscene products through the press, Article 226/3 crimes related to child pornography, 226/4 crimes related to violent pornographic products or animal pornography and Article 226/5 regulates the crimes of dissemination of pornographic products through the media. In our law, in terms of the crime of obscenity, Law No. 1117 on the Protection of Minors from Malicious Publications, Press Law No. 5187, Turkish Radio and Television Law No. 2954, Law No. 6112 on the Establishment and Broadcasting of Radio and Televisions, Regulation of Broadcasts on the Internet and Fighting Against Crimes Committed Through These Broadcasts, it is seen that regulations are included in the Law on the Police, the Law No. 2559 on Duties and Powers of the Police.

3.1.1. Material elements of crime

3.1.1.1. The perpetrator of the crime

In the legal regulation of the crime of obscenity, there is no special provision regarding the perpetrator of the crime. In this case, within the scope of Article 37 of the Turkish Penal Code, the person who commits the action specified in the definition of the crime is considered the perpetrator of the crime. This provision is also valid for the crimes regulated in paragraphs 1, 3 and 4 of Article 226 of the TPC, so the perpetrator of these crimes can be any person.

According to the regulation made in the Press Law No. 5187, the perpetrator of the crime of distributing obscene materials by means of the press and broadcasting means is determined as the publisher or the publisher. If the distribution of obscene material takes place on the Internet, the people who carry out the distribution action through information systems will be the perpetrators of the crime of ‘dissemination of the obscene product through the press’ specified in the second and fifth paragraphs of the 226th article of the TCK.

3.1.1.2. Victim of crime

Considering the place where the crime is regulated in the law, it is seen that the victim of the crime is society in general. In terms of crimes defined in paragraphs 1 and 4 of Article 226 of the TCK, the victim of the crime is society. However, using the expressions ‘a child’ or ‘in places where children can enter and see’ in subparagraphs a and b of paragraph 1 of Article 226 of the TPC, it is stated that the crime specifically targets children. This shows that the child is stated as the victim of the crime directly in the a and b clauses of the TCK 226/1 and indirectly in the c and f clauses. In the third paragraph of Article 226 of the TCK, it is stated that the subject of the crime is an obscene product that focuses on the child.

3.1.1.3. Movement

Subparagraph a of the first paragraph of Article 226 of the TCK regulates those various actions such as showing, reading, reading or listening to materials containing obscene images, texts or words that constitute a crime. It is sufficient to have committed any of these acts for the crime to occur. A single crime still occurs if a single or multiple acts are committed. For example, while the act of reading an

obscene text to a child constitutes a crime, a single crime occurs when both reading and making it read are performed together.

Subparagraph b of the first paragraph of Article 226 of the TCK states that actions such as displaying, displaying, reading, having them read, saying or making people say, obscene images, texts or words in places where children can enter or see them or in a way that can be seen, constitute a crime. If these actions are carried out through the press or broadcast, the crime specified in Article 226/2 of the TCK occurs. Likewise, if such materials are openly displayed on the Internet in a way accessible to children, a crime situation will arise in which this action is committed over information systems.

Subparagraph c of paragraph 1 of Article 226 of the TCK is a regulation that includes not only children but also adults and is formed by the act of selling or renting obscene products in such a way that their content can be understood. Subparagraph d of paragraph 1 of Article 226 of the TCK regulates that acts such as offering products for sale, selling or renting out of the shopping areas reserved for the sale of obscene products constitute a crime. Subparagraph e of paragraph 1 of Article 226 of the TCK regulates that it is a crime to give or distribute these products free of charge, except for the sale of obscene products. Subparagraph f of paragraph 1 of Article 226 of the TCK regulates that the act of advertising obscene products constitutes a crime. Advertising can be done through the press, as well as over the Internet.

For the crime specified in the text of TCK 226/1 to take place, it is necessary to make the child watch or listen to the obscene content through the information system or to have the obscene content available to the child. In this case, the crime can be committed by active actions such as making the child watch or listen to the obscene content, or by not taking the necessary measures to prevent the child from accessing the obscene content (Taşkin, 2008).

In the text of the article, it is primarily aimed to protect the child from content that is considered obscene in every way, in this regard, it is stated in Article 9 of the European Cybercrime Convention (see Appendix B). It is seen that it is organised in parallel with 'Crimes Related to Child Pornography'. While the term 'child pornography' is defined in detail in paragraph 2 of the Convention as sexually explicit acts by a minor, sexually explicit acts by a minor or realistic images depicting a minor performing sexual acts, the concept of obscenity is not defined in the text of Article 226. It is considered that discretion is left to law enforcement (Ermeydan, 2018).

While the first sentence of paragraph 3 of Article 226 of the TPC regulates the crime of obscenity against children, it does not specify any restrictions on the form, conditions of obscene products or the way and purpose of production of these products. In this section, the term 'obscene product' includes pictures, films, videos, photographs, graphics, images, sculptures, cartoons, animations and similar visual or audio products, as well as written works such as lyrics, novels and stories, in which the child is used as an obscene element.

It is known that pornographic materials, in which graphics and animations are used instead of real children, are used to encourage children to sexual activities rather than sexual satisfaction (DeLisi et al., 2021; Şerife, 2003). Cartoons or animations that look like children are sanctioned under Article 226/3 of the TCK.

When Article 226/3 of the TCK is examined, it is seen that two separate acts are included in the definition of crime. According to the first definition, the crime is formed by the use of children in the production of products containing obscene images, writings or words, and the second is by committing one of the acts of bringing these products into the country, duplicating them, offering them for sale, selling, transporting, storing, exporting, keeping or making them available to others.

As a result of the examination of Article 226/4 of the TPC, it is understood that this crime can be committed with the realisation of one of the elective acts specified. Such acts are to produce, bring into the country, offer for sale, sell, transport, store, make available to others and make available texts,

sounds or images that contain sexual acts performed using violence, with animals, on a dead human body or in an unnatural way.

Accepting the act of possession as a crime means interference in the private lives of individuals. Considering that individuals have the right to freely pursue their sexual lives, penalising an individual for the act of having them on their personal computer would be an interference with their freedom (Lankford, 2021; O'Hara et al., 2020). However, within the scope of Article 226/3 of the TCK, the act of keeping children for the protection of children can be considered a crime. However, we can state that within the scope of Article 226/4, possession should not constitute a crime as long as individuals do not spread it. In addition, the act of possession within the scope of Article 226/3 of the TCK is considered as possession done intentionally and for individual purposes. If an individual downloads a product over the Internet for the sole purpose of watching, there is no crime since the act of possession does not continue for a certain period. For example, while the act of keeping portable memories such as CDs, DVDs and USBs constitutes a crime, obscene products that are not recorded on the hard disk but found on the computer, in which children are present, cannot be considered within the scope of possession and do not constitute a crime.

When Articles 226/2 and 226/5 of the TCK are examined, the act in the definition of the crime is the publication or mediation of obscene images, texts or words through the press and broadcast. For example, in terms of broadcasts made via the Internet, it is possible to mention that the collective usage providers commit the crime of mediating the publication. The main problem here is that if the obscene product is publicly published on the Internet, it can be said that it is processed through the press. However, if it is published in a group of certain people, it cannot be said that the press is processed through broadcasting (Kararara, 2007).

3.1.2. *The spiritual element of crime*

Obscenity is a crime that can be committed intentionally, and it cannot be committed by negligence. In the decision of the 18th Penal Chamber of the Court of Cassation, dated 12.04.2017 (Court of Cassation 18, n.d.), with the decision numbered 2016/143, 2017/4237, *'They stated that the accused had told the victim that he had made the victim watch explicit films and showed his genitals. In the report prepared as a result of the interview between the victim and the social worker during the investigation phase, on 05.04.2006', 'the victim stated that his father masturbated by watching porn CDs, he thought he was sleeping, he was watching the events by pretending to sleep, his father did not earn money and he did not love his father much because he did not buy toys for himself'*.

It has been observed that since there is no definite evidence as to whether the accused was intentional or not, he was sentenced with insufficient research and justification. As a result of this situation, the provision was overturned. At this stage, it is understood that the careless behaviour of the father was not accepted at a sufficient level to constitute the crime. This situation enables us to conclude that the crime cannot be committed by negligence.

3.1.3. *Legal value protected by crime*

According to subparagraphs a and b of paragraph 1 of Article 226 of the TCK, acts aimed at spreading obscene products constitute a crime and this situation aims to protect children in particular. In this context, it is aimed to prevent children from being affected physically and emotionally. In general, the legal interest that this crime aims to protect is the morality of society. In addition, the privacy of individuals' private lives is also protected within the scope of this crime.

3.1.4. *Attempt*

The crime of obscenity is considered a dangerous crime and therefore the attempted stage does not apply to this crime (Niehaus & Krause, 2023). Since the consequences of the obscenity crime occur together with the act, the case of attempt does not occur. In the first part of this study, the concept of obscenity and its relationship with pornography and eroticism are emphasised, and the basic elements that are important in the formation of the crime of obscenity are mentioned. In the continuation of the

study, obscenity crimes committed through computer systems, the judicial problems encountered in these cases and solutions to these problems will be examined.

3.1.5. Participation

The first paragraph, second paragraph, fourth paragraph, and fifth paragraph of Article 226 of the TCK do not show any specialities in terms of participation. Even though Article 226/3 of the TCK does not show any characteristics in terms of participation as a rule, requesting an obscene product, the subject of which is a child, to store or keep, can be considered as incitement to crime or incitement to commit a crime (Özbek, 2009).

3.1.6. Assembly

In Article 226 of the Turkish Penal Code, there are various actions listed under different paragraphs or within the same paragraph. The fact that all of these actions take place within the framework of a single event means the occurrence of a single crime. For example, the action of ‘displaying the obscene product in places where children can enter’ and the action of ‘offering it for sale’ specified in subparagraph c of the first paragraph of Article 226 of the TPC constitute a single crime, even if they occur separately.

The actions listed in the third paragraph of Article 226 of the TCK are optionally specified. Therefore, the fact that each of these acts was carried out separately does not mean that there is more than one crime. For example, the existence of a single crime is mentioned when the perpetrator first stores the obscene product and then makes it available to others. This ensures that the upper limit, rather than the lower limit, is taken into account in the assessment of the penalty. In addition, there may be a case of intellectual agitation. Different paragraphs of Article 226 of the TCK can be realised with the same action. For example, if a person has both child and animal pornography on his computer, according to Article 44 of the TCK, the more serious of the crimes he commits, that is 226/3 of the TCK. The penalty in the article must be applied.

If the act committed in the formation of the obscenity crime is also a crime in another law, two separate crimes will also occur. For example, in the act of including an obscene product on a CD without a banderol, there are two separate acts, since it constitutes the crime of possessing a work without a banderol in the Law on Intellectual and Artistic Works.

3.2. Commitment of the crime of observation through information systems

According to the 2020 data published by the Turkish Statistical Institute on 25.08.2020, while the rate of Internet usage was 79.0% in the 16–74 age group in 2020, it was observed that 90.7% of the households had access to the Internet from home (Turkey Statistical Institute, 2020). With the continuous development of information technologies and their involvement in almost every area of our lives, it can be said that these technologies are used by almost everyone everywhere and in every field when we look at the statistics on usage rates.

Especially in the second paragraph of the crime of obscenity regulated in Article 226 of the TCK, publishing or mediating the publication of obscene images, texts or words, and in the fifth paragraph, the content of the products that are the subject of the crimes in the third and fourth paragraphs of the article and which are within the scope of the absolute prohibition in terms of obscenity. In cases where it is published or mediated through the press and broadcasting, or where children can see, listen or read, the crime of obscenity will be committed by using information systems.

In the decision of the 12th Criminal Chamber of the Court of Cassation, dated 21.03.2018, numbered 2017/3888, Decision 2018/3191 (Lexpera, 2018)

... the obscene photo of the 15-year-old victim, who provokes and abuses sexual desires and offends the common sense of decency and the established rules of decency, in the WhatsApp group of children like him, and allows them to see this image, the child dragged into crime. /5. He also committed the crime of obscenity defined in the article and paragraph...

In the concrete incident given in the form of the obscene image, it was ensured that the obscene image was seen through WhatsApp, which is the communication application on the phone, so it was ruled that the crime of obscenity was committed by using the information system. However, while the article is stated as being processed through the press, it is seen that in practice, if it is processed via WhatsApp, a penalty is given according to this provision. They have kept up with the crimes committed with the information technologies that make our lives easier and have become easily committed. If it is interpreted here that the obscene image constitutes the crime of harassment, the legislator has foreseen that the penalty will be aggravated if the sexual harassment crime is committed via telephone or the Internet, within the scope of Article 105 of the TCK.

The legal regulation regarding what kind of actions and behaviours are obscene in terms of obscenity, which is examined within the scope of the types of crimes that can be committed through information systems in the TPC, is not included. Its definition and clarification are important in terms of applying equal punishment to equal crime within the framework of equality and justice principles, and all responsibility should not be left to the practitioners. There appears to be a gap in the law in this regard. Since this legal gap will lead to many inequalities in practice, it should at least be regulated as a separate crime type, taking as an example the relevant article of AKSSS titled 'Crimes related to child pornography', which I mentioned above. Despite this shortcoming, TPC Article 226 is used in child pornography crimes in practice. Regarding the perpetrator of the acts defined in Article 226 regarding child pornography, reasons such as privacy of private life or use of the right to information cannot be mentioned (Özen & Baştürk, 2011). In its decisions, the Court of Cassation considered that downloading images of child pornography to one's computer, even for personal purposes, is sufficient for the formation of the crime (Murat, 2020).

First of all, while the use of information systems has increased so much in the commission of crime, the subject of committing obscenity crime through information systems should be regulated as a separate article in terms of Turkish Criminal Law. Another problem in the application is the application of a ban on access to websites due to the crime of obscenity. The issue here is the uncertainty about what will be considered obscene and an access ban decision will be made. For example, the ban on access to the world-famous video-sharing website 'Vimeo', which was imposed by the decision of the Istanbul 10th Criminal Court of Peace, dated 8 January 2014 and numbered 2014/23 D, seems to have been imposed for this reason, but it is a political decision (Taşkın, 2016).

In order to evaluate the legality of the ban on access to a website on the grounds of obscenity, it is necessary to evaluate the main differences between the three basic concepts of eroticism, pornography and obscene. Although the Constitutional Court (1987) did not fully reveal what should be understood by obscenity, he applied some criteria as to what is obscene and what is pornography. In summary, the decision:

'As in Western law, the need for clarity on the concept of obscenity for a long time in our country is the reason for these details. It can be said with certainty that obscene publications have nothing to do with artistic and cultural life. On the contrary, obscene is a violation of public interest, public morals, and general health, and there is a state of infringement. Penal measures and sanctions are undoubtedly necessary for public order and benefit. For this reason, the amended article 426 of the Turkish Penal Code is not unconstitutional in terms of both the arrangement of the subject and the fines foreseen.'

Within the scope of Law No. 5651 on the Regulation of Broadcasts Made on the Internet and Combating Crimes Committed Through These Broadcasts, sanctions are regulated against crimes committed via the Internet and social media. Within the scope of Articles 8 and 9 of the Law, it can be requested to block access to the broadcasts on the Internet and to remove the broadcast subject to the crime by the access provider. The content provider of the website containing obscene content or the Criminal Judgeship of Peace may be requested to remove the content and block access. The Criminal Judgeship of Peace decides on the application within 24 hours at the latest, without holding a hearing. Against this decision, an appeal can be made within 7 days in accordance with the provisions of the Criminal

Procedure Law No. 5271. Decisions to block access given by the Criminal Court of Peace are sent directly to the Access Providers Association and the decision is sent by the association to the access provider, and the decision to block must be fulfilled immediately, within 4 hours at the latest. If a decision has been taken for an Internet address and it is in question to be published on other Internet addresses, the requester can make a request directly to the Association of Access Providers. The said situation is notified to the access provider by the Association and it must be fulfilled immediately, within 4 hours at the latest, as per the decision to be blocked by the access provider.

Blocking access to a website or content is not a sure way, and it is possible to access blocked content with VPN and similar applications. Therefore, it seems that the decision to block access has no functionality in practice. It is also one of the problems in practice that it is necessary to accept that the crimes committed using information systems are also committed in the places where the broadcast with obscene content is reached, other than the place where it is made. In this case, in the fifth paragraph of the 12th article of the Criminal Procedure Code No. 5271 (see Appendix C) the provision contained herein can be applied by analogy.

4. Conclusion

The concept of ‘obscenity’, which is the basic concept of the crime of obscenity, and the related concepts of ‘eroticism’ and ‘pornography’ should be defined clearly and clearly, and regulation should be made especially for obscenity crimes committed through information systems in the face of rapidly developing technology. This is in line with the need to eliminate confusion in practice and to ensure that everyone can be judged equally. Therefore, the definition of obscenity must be included in the text of the article.

In addition, Article 226/1 of the TPC should make a special arrangement if the perpetrator is the mother, father or the person responsible for the upbringing of the child and should state this as a reason for impunity. Within the scope of the article, especially child pornography crime, violence and animal pornography crimes should be regulated as qualified cases. This situation reduces the importance of crimes. For these crimes committed over information systems, a separate regulation is required with a new article that defines which actions fall within the scope of this crime and regulates the sanction. It is possible to state that the problems will be solved with the new regulations. Within the scope of Law No. 5651 on Regulating Broadcasts Made on the Internet and Combating Crimes Committed Through These Broadcasts, studies should also be carried out on the functionality of sanctions against crimes committed via the Internet and social media.

References

- Cengiz, Ö. (n.d.). *Sexuality, obscenity, eroticism and pornography in television broadcasts*. Retrieved April 27, 2021, from <http://www.dorduncukuvvetmedya.com/arastirma/cengiz.htm>
- Cevat, Ö. (2013). *The concept of obscenity*. Retrieved March 28, 2021, from <https://archive.li/mWYit#selection-259.0-275.137>
- Constitutional Court. (1987). *Constitutional Court 11.02.1987 date; 1986/12 E., 1987 K. in its decision*. Retrieved April 10, 2021, from https://anayasa.gov.tr/media/4942/kd_23.pdf
- Court of Cassation 18. (n.d.). *Decision of the Criminal Chamber dated 01.07.2020 and numbered 2019/11887 Basis, decision no. 2020/8388*. Retrieved April 25, 2021, from <https://www.lexpera.com.tr/ictihat/yargitay/18-ceza-dairesi-e-2019-11887-k-2020-8388-t-1-7-2020>
- DeLisi, M., Drury, A. J., & Elbert, M. J. (2021). Frequency, chronicity, and severity: New specification of adverse childhood experiences among federal sexual offenders. *Forensic Science International: Mind and Law*, 2, 100051. <https://www.sciencedirect.com/science/article/pii/S2666353821000084>
- Erbaşı, A. A. (2007). Child pornography. *Istanbul Bar Association Journal*, 81(4), 1615.
- Ermeydan, D. (2018). *Informatics crimes in the Turkish penal code*. Çağ University.

- Faruk, Y. T. (2019). Literary works in terms of the unlawfulness element of the crime of obscenity. *Ankara Bar Association Journal*, 77(4), 82.
- Ince, C., Yücel, M., Albertella, L., & Fontenelle, L. F. (2021). Exploring the clinical profile of problematic pornography use. *CNS Spectrums*, 26(6), 648–657. <https://www.cambridge.org/core/journals/cns-spectrums/article/exploring-the-clinical-profile-of-problematic-pornography-use/B7EA439CF53ECC5BE1209F594CCF0494>
- Kararara. (2007). *5th Criminal Chamber of the Court of Cassation decision no. 2007/9856 of the Criminal Chamber, decision no. 2007/6957, dated 01.10.2007.* <https://www.kararara.com/yargitay/5cd/k1293.htm>
- Lankford, A. (2021). A sexual frustration theory of aggression, violence, and crime. *Journal of Criminal Justice*, 77, 101865. <https://www.sciencedirect.com/science/article/pii/S0047235221000854>
- Lexpera. (2018). *Decision of the 12th Penal Chamber of the Court of Cassation, dated 21.03.2018, numbered 2017/3888, decision 2018/3191.* Retrieved April 3, 2021, from <https://www.lexpera.com.tr/ictihat/yargitay/12-ceza-dairesi-e-2017-3888-k-2018-3191-t-21-3-2018>
- Lexpera. (2019). *Decision of the 18th Penal Chamber of the Supreme Court of Appeals, no. 2019/11887, decision no. 2020/8388, dated 01.07.2020.* Retrieved April 22, 2021, from <https://www.lexpera.com.tr/ijihat/yargitay/18-ceza-dairesi-e-2019-11887-k2020-8388-t-1-7-2020>
- Meseddi, N., Bouhamed, M., Bouattour, O., Chamseddine, A., Charfeddine, F., Aribi, L., & Aloulou, J. (2021). Pornography cyberaddiction and impulsivity among medical Tunisian students. *European Psychiatry*, 64(S1), S578–S578. <https://www.cambridge.org/core/journals/european-psychiatry/article/pornography-cyberaddiction-and-impulsivity-among-medical-tunisian-students/17146CC28A28D0CA1A989AD3714F8B50>
- Murat, V. D. (2020). *IT Crimes and Internet Communication Law, CD. 06.07.2010, M.2010/2024, K.2010/6003* (pp. 533–535). Seçkin Publishing.
- Niehaus, S., & Krause, A. (2023). Threats to scientifically based standards in sex offense. Proceedings: Progress and the interests of alleged victims in jeopardy. *Monatsschrift für Kriminal Strafrechtsreform.* <https://www.degruyter.com/document/doi/10.1515/mks-2023-0018/html>
- O’Hara, A. C., Ko, R. K., Mazerolle, L., & Rimer, J. R. (2020). Crime script analysis for adult image-based sexual abuse: A study of crime intervention points for retribution-style offenders. *Crime Science*, 9, 1–26. <https://link.springer.com/article/10.1186/s40163-020-00130-9>
- Özbek, V. Ö. (2009). *Offense of obscenity* (1st edition). Seçkin Publishing.
- Özen, M., & Baştürk, İ. (2011). *Informatics-Internet Criminal Law*. Adalet Publishing House.
- Resmigazete. (2015). *Decision of the Constitutional Court, dated 01.04.2015 and numbered 2014/118 and decision no. 2015/35, Official Gazette no. 29330 dated 18.04.2015.* Retrieved April 30, 2021, from <https://www.resmigazete.gov.tr/eskiler/2015/04/20150418.pdf>
- Şaban, C. T. (2008). *Informatics crimes*. Beta Press.
- Şerife, Ç. (2003). Questions regarding child pornography debates. *Journal of Communication Research*, 1(2), 78. Retrieved April 28, 2021, from <http://dergiler.ankara.edu.tr/dergiler/23/668/8516.pdf>
- Taşkın, Ş. C. (2016). *Internet access bans*. Seçkin Publishing.
- Taşkın, Ş. C. (2008). *Information crimes* (1st edition). Beta Publishing.
- Turkey Statistical Institute. (2020). Household information technologies usage survey. [https://data.tuik.gov.tr/Bulten/Index?p=Hanehalki-Information-Technologies\(IT\)-Usage-Research-2020-33679](https://data.tuik.gov.tr/Bulten/Index?p=Hanehalki-Information-Technologies(IT)-Usage-Research-2020-33679)
- Turkish Language Association. (n.d.). *Current Turkish dictionary.* <http://sozluk.gov.tr/>
- Veli, Ö. Ö. (2009). *The crime of obscenity*. Seçkin Yayıncılık.
- Zagloul, N. M., Farghaly, R. M., ELKhatib, H., Issa, S. Y., & El-Zoghby, S. M. (2022). Technology facilitated sexual violence: A comparative study between working and non-working females in Egypt

before and during the COVID-19 pandemic. *Egyptian Journal of Forensic Sciences*, 12(1), 21. <https://link.springer.com/article/10.1186/s41935-022-00278-2>

Appendices

Appendix A

Article 226 of the Turkish Penal Code

In subparagraph a of paragraph 1 of the article, 'Gives a child products containing obscene images, writings or words or shows, reads, reads or makes him listen to them' in subparagraph b 'Displays, reads, reads, sings or makes them sing in places where children can enter or see them or publicly display, in a way that can be seen' in subparagraph c 'Offers these products for sale or rent in such a way that their contents can be known' in subparagraph d 'These products, except for shopping places for the sale thereof, offering for sale, selling or renting' in subparagraph e 'Giving or distributing these products free of charge in addition to or in connection with the sale of other goods or services' in subparagraph f 'Persons who advertise these products' shall be punished with imprisonment from six months to two years and a judicial fine. In the second paragraph of the article, a regulation is made as follows: 'A person who publishes or mediates the publication of obscene images, writings or words by means of press and publication shall be punished with imprisonment from six months to three years and a judicial fine up to five thousand days'. Paragraph 3 of the Article states: 'Whoever uses children, representative images of children or persons posing as children in the production of products containing obscene images, writings or words shall be punished with imprisonment from five years to ten years and a judicial fine of up to five thousand days. Whoever introduces, reproduces, offers for sale, sells, transports, stores, exports, possesses or makes available to others such products shall be punished with imprisonment from two years to five years and a judicial fine of up to five thousand days. Paragraph 4 of the Article provides that 'whoever manufactures, introduces, offers for sale, sells, transports, stores, makes available to others or possesses products containing writings, sounds or images relating to sexual acts committed with violence, animals, on the dead human body or in an unnatural way, shall be punished with imprisonment from one year to four years and a judicial fine up to five thousand days'. In paragraph 5 of the Article, it is stated that 'Whoever publishes or mediates the publication of the contents of the products in the third and fourth paragraphs by means of press and publication or enables children to see, listen or read shall be punished with imprisonment from six years to ten years and a judicial fine up to five thousand days'. In paragraph 6 of the article, there are regulations as follows: 'Due to these crimes, special security measures shall be provided for legal persons'.

Appendix B

Article 9

Article 9 of the Convention on Crimes Committed in the Virtual Environment of the Convention on Cybercrime of the European Union, which was opened for signature by the Council of Europe on 23.11.2001 and approved by Turkey on 10.11.2010 and approved by Law No. 6533, which was published in the Official Gazette dated 22.04.2014 and entered into force, titled Crimes Related to Child Pornography Article 9 – Crimes Related to Child Pornography 1. Each Party shall, in accordance with its domestic law, take the necessary legislative or other measures to ensure that the following acts are made intentionally and unjustly so that this is considered a crime: (a) The production of child pornography for distribution through another computer system. (b) Enabling the acquisition of child pornography through a computer system. (c) Distribution, transmission or transmission of child pornography through a computer system. (d) Providing child pornography through a computer system, for oneself or another person e. Ownership of child pornography on a computer data storage medium or a computer system.

Appendix C

Competent court Article 12

(1) The jurisdiction to hear the case belongs to the court of the place where the crime was committed. (2) The court of the place where the last act of execution was made in the attempt, where the interruption took place in uninterrupted crimes, and where the last crime was committed in successive crimes is authorised. (3) If the crime has been committed with a printed work published in the country, the jurisdiction belongs to the court of the place where the work is published. However, if the same work is published in more than one place, if the crime occurred in the printing of the work outside the publication centre, the court of the place where the work was published is also authorised for this crime. (4) In the crime of defamation, the investigation and prosecution of which is dependent on the complaint, if the work was distributed in the victim's place of residence or residence, the court of that place is also authorised. If the victim is detained or convicted other than the place where the crime was committed, the court of that place is also authorised. (5) The provision of the third paragraph of this article is also applied for audio-visual broadcasts. If the audio-visual broadcast was heard or seen in the victim's residence and place of residence, the court of that place is also authorised.