[TR] Court’s Ruling on Pornography

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Pendik (a district in Istanbul) 4 th Criminal Court of First Instance has recently ruled on a case concerning an obscenity offence which is indictable according to Article 226 of the Turkish Penal Code (TPC). Although this ruling is not final, it is significant because it attempts to define the concept of “unnatural sexual acts”.

Article 226 TPC criminalises certain acts relating to obscene materials. According to section (d) of the first paragraph, the offering for sale, selling and renting of obscene materials at places other than shops designated to sell these types of materials, shall merit imprisonment from six months to two years and a judicial fine. The fourth paragraph of this Article imposes a sentence from one to four years and up to five thousand days of judicial fine for producing, importing, offering for sale, selling, shipping, storing, making available for the use of others or possessing products in written, audio or visual form which are related to sexual acts conducted with the use of violence, with animals (zoophilia), on corpses (necrophilia), or by other unnatural acts.

In the case concerned the defendant had offered 125 CDs of pornographic content for sale and was eventually charged with having violated Article 226 TPC. The defendant was found guilty under Article 226, paragraph 1, section (d) TPC for supplying obscene materials at a place other than a shop designated to supply and sell these materials.

In this context the Court discussed the meaning of the term “unnatural sexual acts”. The two disputed matters that the Court focused on were content displaying sexual intercourse between two parties of the same sex or between more than two parties.

The Court referred to the equality principle and the right to private life provisions of the Turkish Constitution, Articles 8 and 14 of the ECHR, Article 13 of the EU-Treaty, Article 1 of Directive 2000/78/EC and the case law of the ECHR. It found that sexual intercourse between adults of the same sex or between more than two persons may be regarded as unorthodox or even shocking by the public, but are not banned by any laws and therefore cannot be construed as “unnatural”. The Court stressed that the term “unnatural sexual acts” should be interpreted in a narrow manner.

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There is currently no information available as to whether this case was appealed. According to Turkish law, cases decided by courts of first instance have no binding effect on other courts.

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