Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

The 13-Year-Old Syrian Wife and Expectant Mother

Question(s) at stake:

Whether a Syrian husband can be deemed not guilty due to his lack of awareness regarding the unlawfulness of engaging in sexual intercourse with his 13-year-old wife.

Outcome of the ruling:

The error of law was avoidable and therefore the perpetrator did not act innocently.

Topic(s):

- Crime and Punishment under State Law

Keywords:

- Mistake of law
- Sexual abuse (child/adult)

Tag(s):

- Child abuse
- Syria
- Early marriage

Author(s):

- Tellenbach, Silvia (Max Planck Institute for the Study of Crime, Security and Law, Freiburg, Germany)

Country:

Germany

Official citation:

Regional Court Saarbrücken, Judgement of 15 July 2019, 3 KLs 27/18 (LG Saarbrücken, Urteil vom 15. Juli 2019, 3 KLs 27/18)

Link to the decision:

https://recht.saarland.de/bssl/document/NJRE001586212

ECLI:

ECLI:DE:LGSAARB:2019:0715.3KLS27.18.00

Date:

15 July 2019

Jurisdiction / Court / Chamber:

Regional Court Saarbrücken

Remedy / Procedural stage:

First stage (final)

Previous stages:

None

Subsequent stages:

None

Branches / Areas of law:

Criminal law

Facts:

A young Syrian refugee married a 13-year-old girl in 2014 or 2015. He was already living in Turkey at the time of the marriage and had agreed to the marriage proposal made by the girl's family, who were still living in Syria at the time. The families of both spouses involved had taken the necessary official steps, and his father had represented him at the marriage ceremony, as is possible

under Syrian law. A few months later, his wife joined him in Turkey. They lived together in the province of Hatay for some time, and in the autumn of 2015 he had sexual intercourse with her, which resulted in her becoming pregnant and giving birth to a child. The young man has now been charged with child abuse in Germany. It is not clear from the judgment how the prosecution came about, but it is possible that the Youth Welfare Office, which had to take care of the underage wife, filed a complaint.

Ruling:

The court first established the jurisdiction of the German criminal justice system pursuant to Section 7(2)(2) of the German Criminal Code (*Strafgesetzbuch* – StGB) because the offence, though it had occurred abroad, was punishable at the place where it took place; the offender was found to be staying in Germany; and no extradition had occurred. The court found that the defendant's actions were punishable not only in Germany but also in the country where the crime had been committed, namely Turkey. In Germany, the perpetrator's actions constituted aggravated child abuse because of the sexual intercourse that had taken place (Section 176(1) of the new or Section 176(2) of the old version of the German Criminal Code). The Court emphasized the lack of grounds for justification, noting in particular that the consent of the 13-year-old victim was irrelevant. While acknowledging that the defendant may not have had the insight to recognize his wrongdoing, the Court opined that this error could have been avoided had the defendant inquired about the legal situation in Turkey. Consequently, the Court did not acquit him under Article 17(1) but rather granted a sentence reduction under Article 17(2) of the German Criminal Code.

The Court classified the crime as a less serious case under Article 176a(4) of the old version of the German Criminal Code because:

- The victim – who was just under 14 years old – did not see herself as the injured party;

- she had not suffered any negative psychological consequences as a result of the crime and the resulting pregnancy;
- the family had been developing well;
- the offender cared for her and the child and showed an understanding of the injustice he had committed.

These aspects were again taken into account during the sentencing, albeit to a lesser extent because they had already been taken into account in the assessment as a less serious case. On the other hand, the fact that the injured party's childhood and adolescent development had been interrupted by the crime and the pregnancy was an aggravating factor. The Court imposed a total sentence of six months' imprisonment. The Court suspended the sentence. It based this decision on the convicted man's excellent social prognosis, anticipating that he would not engage in future criminal activities.

Main quotations on cultural or religious diversity:

- "When committing the crime, the accused was convinced that he was allowed to have consensual sexual intercourse with the injured party outside his home country after the marriage according to Islamic law, which was also officially recorded in the official family register in Syria, as well as on the basis of her consent, where this is, according to both his statements and those of the injured party's mother, customary.

He therefore lacked understanding of the injustice. However, the accused had already been in Turkey for several months at the time of the crime, so he could and should have inquired about the legal situation there. He cannot rely on the fact that the legal situation with the same content, which he knows and which applies in his home country, has the same content internationally and across borders. It would have been reasonably expected of the school-educated adult defendant to have understood this when exercising his conscience."

Main legal texts quoted in the decision:

- Section 176 para. 1 (version in force from 27 January 2015 to 13 March 2020), 176a para. 2 no. 2, para. 4 (version in force from 27 January 2015 to 13 March 2020), 17 sentence 2, 7 para. 2, 49 para. 1, 56 para. 1 German Criminal Code

Cases cited in the decision:

None

Commentary

The 13-Year-Old Syrian Wife and Expectant Mother

In the years since 2015, the number of people coming to Germany from the Middle East has risen sharply. In the case to be judged here, a refugee from Syria had sexual intercourse with his 13-year-old wife in Turkey, resulting in pregnancy, and was convicted in Germany for this, since children up to the age of 14 are children within the meaning of the German provisions on child abuse (Section 176(1)(2) of the German Criminal Code). While such scenarios have not been prevalent in published case law thus far, this trend may see a shift. Since sexual intercourse with a 13-year-old girl is a criminal offence in Turkey (Article 103 of the Turkish Criminal Code), the offence had to be prosecuted in Germany. The present judgment is one of the relatively rare cases in which the court applies Section 17 of the German Criminal Code (mistake of law). A mistake of law occurs when the offender does not know that a certain conduct is prohibited by law (not necessarily criminal law). If the mistake of law is unavoidable, the offender is not at fault and should not be punished. Conversely, if the mistake is avoidable, the culpability is diminished and the punishment is mitigated. A mistake of law is avoidable if, considering his knowledge and abilities, the perpetrator’s plan should have given him reason to think or inquire about the unlawfulness and if he would thus have come to understand the unlawfulness (Fischer 2025: para. 17, recital 7).

The Court found that the offender – given his background and the traditions of his home country – was not aware of any wrongdoing in relation to the crime and was

convinced that he was allowed to have sexual intercourse with his 13-year-old wife. He therefore made an error of law. He would have been acquitted if the Court had regarded his mistake as unavoidable. But the Court considered his error avoidable. In the Court's opinion, the young man should have enquired about the legal situation in Turkey. But the young couple had been living in Hatay, in the south of Turkey, on the border with Syria. This is the same cultural region that was only divided among different states (Syria, Lebanon, Turkey) after the First World War and the collapse of the Ottoman Empire. Whether it is true that the young man should have seen reason to inquire about the permissibility of sexual intercourse with his 13-year-old wife in Turkey is an open question.

Although sexual intercourse with a child as young as 13 is also punishable under Syrian law (Article 491 of the Syrian Criminal Code), at the time of the couple's marriage in 2014 or 2015 it was possible for a 13-year-old girl to marry with the permission of the judge and her guardian if said guardian was her father or grandfather (Article 18 of the Syrian Personal Status Law until 2019). In Syria, Islamic marriage is the legal marriage for Muslims; there is no other civil marriage. It is not a traditional form of marriage not recognized by the state, as is the case in Turkey. Sexual intercourse is considered an essential part of marriage in Muslim societies, and the judge must consider whether a young bride is mature enough to marry before approving the marriage. All this means that there was not only a conflict between traditional and state law but also between civil and criminal state law.

This may have been one of the reasons why, in 2019, the minimum age for a girl to be married with judicial permission in Syria was raised to 15, aligning it with the age limit for child abuse under Article 491 of the Syrian Criminal Code. Against this background, it seems very difficult to imagine that the error of law was avoidable for the accused. The consequence of the Court's finding that the error was avoidable was a reduced sentence under Section 17(2) in conjunction with Section 49 of the German Criminal Code. The six-month prison term was within the lower range and was suspended in light of the very favourable social prognosis of the offender.

Today, the German Criminal law provisions regarding child abuse are more severe. Engaging in sexual intercourse with a 13-year-old girl now carries a minimum sentence of two years in prison, with the provision for a less serious case being eliminated.

Nonetheless, in a comparable scenario, a court could still potentially reduce the sentence to six months in prison by utilizing the full range of mitigating factors outlined in Section 49 of the German Criminal Code.

Literature related to the main issue(s) at stake:

- Fischer, Thomas (ed). 2025. *Strafgesetzbuch: mit Nebengesetzen*. 72nd ed. München: C.H. Beck.
- Vogel, Joachim and Jens Bülte. 2020. "§17: Verbotsirrtum". In Gabriele Cirener et al. (eds), *Strafgesetzbuch - Leipziger Kommentar*, vol. 1, 1266–1316. 13th ed. Berlin/Boston: De Gruyter.

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