

POSTPONEMENT OF THE PRONOUNCEMENT OF JUDGMENT IN TURKISH LAW AND CONDITIONAL SENTENCING IN RUSSIAN LAW

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Abstract - This study examines the institution of the Postponement of the Pronouncement of Judgment (PPJ) in Turkish criminal procedure law, with particular emphasis on the recent annulment decision of the Constitutional Court and the subsequent legislative amendments by the Turkish Grand National Assembly. PPJ is a procedural mechanism that allows for the deferral of a criminal sentence's pronouncement under certain conditions, enabling its eventual annulment upon successful completion of a probationary period. The institution has sparked significant debate, especially concerning victims' rights and the broader perception of impunity within the criminal justice system.

In its decision dated 1 June 2023 (E. 2022/120, K. 2023/107), the Constitutional Court held that the application of PPJ often occurred without a thorough evaluation of evidence or adequate victim participation, thereby undermining the principle of effective adjudication and failing to ensure sufficient redress for victims. While acknowledging the legislature's discretion in shaping criminal policy, the Court emphasized that such discretion must remain within the constitutional framework. The Court concluded that the application of PPJ, in its then-existing form, disrupted the fair balance between public interests and individual rights, particularly by adversely affecting the right to property and the state's positive obligations under Article 17 of the Constitution. Following the annulment, the legislature re-enacted Article 231 of the Code of Criminal Procedure in 2024 with certain modifications.

The study further elaborates on the procedural requirements for the application of PPJ, including the necessity of full restitution of harm caused to victims, the defendant's lack of prior intentional criminal convictions, and the court's assessment of the defendant's likelihood of recidivism. The article also analyses the procedural consequences of the commission of new offenses or breaches of obligations during the probationary period.

Finally, the paper presents a comparative analysis of the Turkish PPJ system and the conditional conviction (suspended sentence) model under Article 73 of the Russian Federation Criminal Code. Both systems share similarities in their rehabilitative objectives and requirements for compliance with probationary obligations. However, they diverge significantly regarding the formal nature of the conviction and the applicable sentencing thresholds.

Keywords: Postponement of sentence, Restorative justice, Comparative law.

INTRODUCTION

The institution of "Postponement of the Pronouncement of the Judgement" (PPJ) is one of the important mechanisms of Turkish Criminal Procedure Law. It has sparked significant debates, especially in the context of victim rights and perceptions of impunity (Keskin, 2023, s. 118). With its decision in 2023, the Turkish Constitutional Court annulled the specific norm, and the Turkish Grand National Assembly re-legislated it in 2024.

In its decision dated June 1, 2023 (E. 2022/120, K. 2023/107), the Turkish Constitutional Court annulled Articles 231/5 and subsequent paragraphs of the Criminal Procedure Code (CPC). The Court criticized that PPJ decisions were often made without a thorough discussion of the evidence and based on the defendant's consent at the early stages of the trial (Ersoy, 2020, s. 145). This practice was found to undermine the principle of effective trial and to fail to provide sufficient remedies for the victim.

The Court, while acknowledging the legislature's authority to develop crime and punishment policies, emphasized that this authority is limited by the Constitution. As a result, it concluded that the application



of PPJ disrupted the fair balance between public interest and individual rights, and particularly harmed the right to property and the state's positive obligations.

The Constitutional Court defined the purpose of criminal investigation as *“to ensure the effective implementation of the legislative provisions protecting the individual's material and moral integrity and to hold the perpetrators accountable.”* According to the Court, *“The purpose of Article 17 of the Constitution is to ensure the effective implementation of the legislative provisions concerning incidents of death or injury that affect the material and moral integrity of the individual, and to identify and hold the perpetrators accountable. This is not an obligation of result, but rather an obligation to employ appropriate means. Therefore, it is not mandatory that all cases initiated within this scope conclude with a conviction or a specific penal decision”* (Cezmi Demir and others application, § 127).

The decision emphasized both the state's positive and negative obligations, underscoring the principle of protecting individuals from all forms of danger, threats, and violence. In summary, by virtue of Article 17 of the Constitution of the Republic of Turkey, the state has a duty to *“ensure the effective implementation of legislative provisions concerning incidents of death or injury that affect the material and moral integrity of the individual and to identify and hold the perpetrators accountable.”* The Court frequently emphasized *“ensuring the enforcement of the sentence”* and *“deterrence.”*

1. Re-enactment of Article 231 of the Criminal Procedure Code

The Constitutional Court, on the grounds that the deficiencies indicated in its previous decisions had not been rectified by the legislator, and that the implementation of PPJ failed to prevent arbitrary practices, found the relevant provision to be contrary to Articles 13, 17, 35, and 36 of the Constitution and annulled it. The legislator (the Turkish Grand National Assembly) subsequently re-enacted the provision.

Article 231

(5) If the penalty imposed at the end of the trial for the offense charged is imprisonment of two years or less or a judicial fine, the court may decide to postpone the announcement of the verdict. Provisions related to reconciliation remain reserved. Postponement of the announcement of the verdict means that, except for confiscation provisions, the established verdict shall have no legal consequences for the accused.

(6) In order to postpone the announcement of the verdict:

- a) The accused must not have been previously convicted of an intentional crime.
- b) The court must form the opinion, based on the accused's personal characteristics and behavior during the trial, that he or she will not commit another crime.
- c) The damage suffered by the victim or the public as a result of the offense must be fully compensated by restitution, restoration to the previous state, or indemnification.

(7) In a decision to postpone the announcement of the verdict, the imposed imprisonment shall not be suspended or converted into alternative sanctions if it is a short-term sentence.

(8) If a decision is made to postpone the announcement of the verdict, the accused shall be subject to a probation period of five years. During this period, a decision to postpone the announcement of the verdict cannot be rendered for another intentional offense committed by the accused. Within this period, for a duration not exceeding one year as determined by the court, the accused may be subjected to probation measures, including:

- a) Attending a vocational training program to acquire a profession or skill if the accused does not have one;
- b) Working under the supervision of another person practicing the same profession or skill in a public institution or privately, if the accused has a profession or skill;
- c) Being prohibited from going to certain places, being required to attend certain places, or fulfilling any other obligation determined by the court. During the probation period, the statute of limitations shall be suspended.

(9) If the accused fails to immediately fulfill the condition specified in subparagraph (c) of the sixth paragraph, a decision to postpone the announcement of the verdict may also be rendered, provided that the accused fully compensates the damage caused to the victim or the public by paying in monthly installments during the probation period.



(10) If no new intentional crime is committed and the probation conditions are complied with during the probation period, the postponed verdict shall be annulled, and a decision of dismissal shall be rendered.

(11) If the accused commits a new intentional crime or violates the probation obligations during the probation period, the court shall announce the verdict. However, the court, taking into account the circumstances of the accused who could not fulfill the imposed obligations, may decide that a portion of the sentence, up to half, shall not be enforced or, if the conditions are met, may suspend the imprisonment or convert it into alternative sanctions and establish a new conviction. An objection may be lodged against the announced or newly established verdict. The objection authority may only conduct a review limited to the conditions specified in this paragraph.

(12) Without prejudice to the provisions of the third paragraph of Article 272, an appeal may be filed against the decision to postpone the announcement of the verdict. The provisions of Article 286 shall apply to decisions rendered by the regional court of appeal. Without prejudice to the provisions of the third paragraph of Article 272, if the decision to postpone the announcement of the verdict is rendered by the regional court of appeal or the Court of Cassation acting as a first instance court, an appeal may be filed. The decision and verdict shall be reviewed for procedural and substantive legality in the appeal and cassation stages.

(13) A decision to postpone the announcement of the verdict shall be recorded in a dedicated system. These records may only be used for the purposes specified in this article and only by the public prosecutor, judge, or court in connection with an investigation or prosecution.

(14) The provisions of this article concerning the postponement of the announcement of the verdict shall not apply to offenses contained in the revolutionary laws protected under Article 174 of the Constitution.

2. A Brief Overview of the PPJ Institution

As a result of criminal proceedings, a judgment is reached and a verdict is rendered regarding the defendant. This verdict must correspond to one of the outcomes specified in Article 223 of the Criminal Procedure Code (CPC). The judgment that the court may render includes acquittal, dismissal of the case, conviction, imposition of security measures, rejection of the case, and dismissal due to lapse of time (Centel and Zafer, 2022, 6). Additionally, the institution of suspension regulated (Hakeri, 2016, 36) in Article 51 of the Turkish Penal Code (TPC) may be applied.

The institution of Postponement of the Announcement of the Verdict (PPJ) in Turkish Criminal Procedure Law provides for the deferral of announcing the conviction decision under certain conditions and its annulment at the end of a specified probationary period. It is regulated under Article 231 of the CPC. This practice primarily aims to reintegrate first-time offenders into society and reduce the burden on penal institutions (Centel and Zafer, 2022, 515).

According to the prevailing opinion in the doctrine, Article 51 of the TPC is considered a criminal procedure institution. However, some authors argue that suspension is an institution of penal enforcement law (Unlu, 2018, 8). Those who regard suspension as an enforcement institution argue that a suspension decision implies that the sentence is considered to have been executed (Denizhan, 2006, 222). The PPJ institution has been described as a kind of “stay” decision. Through an PPJ decision, the verdict against the defendant is not announced, and the defendant is ordered to comply with certain obligations during the probation period. If the defendant behaves properly during the probation period, at the end of that period, the case is dismissed. During the probation period, the court’s decision remains in abeyance (Toroslu and Feyzioğlu, 2019, 412).

Although it has been criticized that the defendant is subjected to supervision or sanctions without a final conviction, the Constitutional Court has previously ruled that this institution serves the interests of the defendant, society, and public order, and that the supervision is appropriate to its purpose; it further held that the legislature’s discretion to use this means of combating crime and criminality was consistent with the Constitution (Constitutional Court 2007/42 E. 2009/50 K. 12.3.2009 T.). The PPJ institution has been designed as a restorative justice mechanism, similar to suspension and conciliation. Such mechanisms aim to remedy the victim’s harm (Akbulut, 2018, 32). The PPJ decision is intended to ensure that the defendant strictly adheres to societal norms and is deterred from committing further crimes by the possibility that the stayed judgment may be announced. Moreover, the defendant is protected from the negative conditions of prison. It has been noted that custodial sentences—especially short-term sentences—do not produce the desired deterrent effect and that new alternative sanctions are therefore needed (Othmani, 43). The purpose of PPJ is to give the defendant a second chance by suspending the execution of the sentence (Toroslu and Feyzioğlu, 2019, 311).



According to Article 231/6 (a) of the CPC, in order to render a decision to postpone the announcement of the verdict (PPJ), the defendant must not have previously been convicted of an intentional crime. In our opinion, this provision assumes a legal presumption that a person who has previously been convicted of an intentional crime cannot be presumed unlikely to reoffend. The regulation makes no distinction as to the type of sentence previously imposed. Based on a literal interpretation of the provision, it does not matter whether the previous sentence imposed on the defendant was imprisonment or a judicial fine. A final conviction for an intentional crime prevents the rendering of an PPJ decision. However, the Court of Cassation has ruled that a previously imposed judicial fine does not prevent an PPJ decision from being rendered in the event of reoffending. If a judicial fine was previously imposed on the defendant but the sentence was not suspended or deferred, then an PPJ decision can still be rendered for a subsequent offense. This situation reveals an inconsistency.

It is also irrelevant whether the previous sentence imposed on the defendant has been executed. If the previous conviction was for an intentional crime but the conviction was expunged from the criminal record due to fulfillment of the statutory conditions for expungement, then the previous conviction is not taken into account.

In its decision numbered 2011/3-479 E. and 2012/145 K., the General Criminal Assembly of the Court of Cassation held that “if the statutory conditions for expungement of the criminal record entry forming the basis of the previous conviction have been met, it is unlawful to deny the defendant the benefit of an PPJ decision on the grounds of a prior conviction. If the statutory conditions for expungement have been met, the fact that the criminal record still shows the conviction is irrelevant, and the defendant is entitled to an PPJ decision.”

Even if the defendant has a previous final conviction for a crime committed through negligence, an PPJ decision can be rendered for the new offense. Likewise, if the defendant was previously convicted of a crime committed through negligence, an PPJ decision can be rendered for a new offense committed intentionally. An ongoing trial for an intentional crime does not prevent the rendering of an PPJ decision. Furthermore, an PPJ decision can be rendered for a defendant who was previously convicted of an offense committed through either simple or conscious negligence (Centel and Zafer, 2022, 765).

If the defendant was previously subjected to a security measure such as treatment, care, or a prohibition from going to certain places, this does not preclude the rendering of an PPJ decision for a new offense. The court is not obliged to impose a probation measure, and the type and implementation of probation measures are at the court’s discretion (Sahin and Gokturk, 2016, 197). Indeed, even the threat of announcing the verdict during the five-year probation period is considered by some to be a unique probation mechanism aimed at preventing reoffending.

3. Compensation of the Victim’s Damages Arising from the Offense and The Court’s Assessment of the Defendant’s Likelihood to Reoffend

The PPJ is designed as a restorative justice institution. Conceptually, restorative justice is not an alternative solution within the criminal justice system but rather a complementary (Dogan, 2005, 49) mechanism.

It is clear that the PPJ primarily benefits the defendant (Kildan, 2009, 151). Nevertheless, in a state governed by the rule of law, the victim’s damages cannot be overlooked. For this reason, in order to render an PPJ decision, the damages suffered by the victim, complainant, or any person harmed by the offense must be fully compensated. Often, victims of crime prefer compensation of their damages over the punishment of the perpetrator. Naturally, the state cannot remain indifferent to the harm suffered by victims. However, the victim’s response has only been allowed to the extent of continuing their complaint and claiming compensation. Anything beyond that has been considered an infringement on the state’s right and duty of rehabilitation (Erem, 1984, 167).

According to the General Criminal Assembly of the Court of Cassation’s decision numbered 2008/11-250 E. and 2009/13 K., “if the exact amount of damage caused by the offense cannot be determined, the judge should estimate the damage and decide on the defendant’s request for an PPJ decision based on whether the defendant has paid the estimated amount of damage.” Sometimes, determining the damage may require technical expertise that exceeds the general knowledge of the judge. In such cases, the judge should order an expert examination to estimate the approximate amount of damage and, based on the outcome, decide whether to grant the PPJ decision.

The explanations regarding damage refer to material and tangible damages only; moral damages and consequential damages are not considered within this scope. Indeed, in its decision numbered 2012/42821, the 2nd Criminal Chamber of the Court of Cassation ruled that “if the complainant in an insult case cannot prove the existence of damage based on documents, moral damage cannot be considered as ‘damage incurred.’ Therefore, as there is no damage to be remedied, an PPJ decision should be granted.” If no damage exists as a result of the offense or if the offense itself does not constitute a damage offense, an PPJ decision may be granted without requiring the condition of compensation.

4. The PPJ Decision and New Offenses Committed During the Probation Period

If an PPJ decision is rendered, the defendant shall be subject to supervision during the probation period, as stipulated in Article 231/8 of the CPC. The probation period is set at five years in the law. For children, however, a probation period of three years is prescribed under Article 23 of the Child Protection Law.

If a defendant subject to an PPJ decision does not commit a new offense and complies with the supervision obligations during the five-year period (Gungor and Okuyucu Ergun, 2016, 1963), the court shall dismiss the case at the end of the period. An appeal may be filed against the decision of dismissal in accordance with the general provisions. However, if the defendant commits an intentional offense during the probation period, the court shall announce the previously suspended verdict. When the defendant commits a new offense, the court conducting the new trial (if it imposes a sentence and does not acquit the defendant) shall notify the court that had rendered the PPJ decision. When the PPJ decision is announced due to a new offense, the sentence shall not be converted into alternative sanctions or suspended. If the defendant does not commit a new offense but fails to comply with the imposed supervision obligations, the court shall again announce the previously suspended verdict. However, in such a case, the court announcing the verdict may decide that a portion of the sentence—up to half—shall not be executed. In this context, if the conditions are met, the court may suspend the imprisonment or convert it into alternative sanctions for the defendant who has not committed a new offense but has violated supervision conditions.

In its decision numbered 2014/25119, the 2nd Criminal Chamber of the Court of Cassation confirmed that if the defendant commits a new offense during the probation period, the previously suspended verdict must be announced, and that when the PPJ decision is revoked and the verdict is announced, the sentence cannot be converted into alternative sanctions or suspended. In the same decision, the Court of Cassation also ruled that if the defendant does not commit a new offense but violates the supervision obligations, the sentence may be suspended or converted into alternative sanctions.

5. Comparative Legal Evaluation: Turkey and Russia

Although the institution of Postponement of the Announcement of the Verdict (PPJ) under Turkish Criminal Law and the conditional sentence (условное осуждение) under Russian Criminal Law share structural and functional similarities, their legal techniques and implementation differ. The practices of both countries are compared in the table below.

Element	Turkey (PPJ)	Russia (Conditional Sentence)
Legal Basis	CPC Article 231	RF Criminal Code Article 73
Sentence Limit	≤ 2 years imprisonment or a judicial fine	Up to 8 years imprisonment in general
Court Discretion	Not mandatory; at the discretion of the court	Not mandatory; at the discretion of the court
Nature of Conviction	Verdict is not rendered; announcement is deferred	Verdict is rendered; execution is deferred
Supervision Period	5 years (for adults)	6 months to 3 years
Victim's Damages	Must be compensated (if material damage exists)	Considered but not mandatory

Conditional sentence (условное осуждение) is an institution under the Russian Federation Criminal Code (RFCC) that allows for the postponement of the execution of a prison sentence under certain conditions,



subjecting the offender to a supervision period during which the offender must comply with specified obligations. This practice aims to facilitate the offender's reintegration into society.

Article 73 of the RFCC sets out the legal framework for conditional sentences. According to this provision, when a court sentences a defendant to imprisonment, it may defer the execution of the sentence by rendering a conditional sentence decision, provided that the conditions specified in the law are met. This decision is made subject to the offender demonstrating good behavior and complying with the specified obligations during the supervision period.

Article 73 of the RFCC is titled "Conditional Sentence". The provision states: "When a court sentences a person to imprisonment, it may defer the execution of the sentence by rendering a conditional sentence decision. This decision is contingent upon the offender demonstrating good behavior and complying with the specified obligations during the supervision period". The provision also states that the offender may be subject to certain obligations during the supervision period. In this respect, the practice is similar to that in Turkish law. According to Article 73 of the RFCC, if the offender violates the obligations or commits a new offense during the supervision period, the court may order the execution of the previously suspended sentence. If, at the end of the supervision period, the offender has fulfilled the obligations and demonstrated good behavior, the court may waive the execution of the sentence entirely.

There are various evaluations on this subject in the academic literature. In order to increase the effectiveness of the practices of deferring the sentence and the probation period, it is suggested to make changes to Article 80 of the Criminal Code of the Russian Federation (Balasanov, 2023). Similarly, (Urusov, 2020) also states that making the practice of replacing the sentence with a lighter one conditional will contribute to ensuring justice in the event that convicts violate their obligations.

CONCLUSION

The primary aim of punishment is to rehabilitate the offender in a way that prevents them from reoffending. The PPJ institution in Turkish law has been designed as a restorative justice mechanism, taking into account the negative effects of imprisonment. By postponing the announcement of the verdict, the possibility that the suspended sentence might be announced serves as a deterrent, discouraging the offender from reoffending. It is observed that Article 73 of the RFCC was established with the same rationale.

There are both similarities and differences between the PPJ institution under Turkish Criminal Law and the conditional sentence practice in Russia. Both systems grant the court the authority to defer the execution of the sentence under certain conditions, giving the defendant a supervision period during which they must comply with specified obligations.

While the PPJ decision in Turkey postpones the announcement of the conviction, in Russia's conditional sentence practice, the conviction is rendered, but the execution of the sentence is postponed.

In Turkey, the maximum sentence limit for which an PPJ decision can be rendered is set at two years of imprisonment or a judicial fine. However, under Article 73 of the RFCC, a conditional sentence can be rendered for sentences of up to eight years' imprisonment. Despite the difference in sentence limits, in both countries, the decision is at the discretion of the court.

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