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Stay in the Execution of Penal Sentences due to Illness: Selected Case Reports and a Review of the Legal Framework in Turkey

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Case Report

Abstract

The postponement of penal sentences due to illness is defined in article 16 of Law No. (5275) on the execution of penalties and security measures in Turkey. According to this article, the execution of a penal sentence is carried out if the disease or illness of a convicted criminal is mild and is treatable at a prison clinic or at a public hospital having separate out-patient or in-patient clinics for prisoners. On the other hand, if the convict is suffering from a serious or life-threatening disease and the execution may risk the convict's life, then execution of the sentence is delayed until the convict has suitably recovered. In Turkey, the decision to grant a stay in the execution of a penal sentence is given by the Chief Public Prosecutor's Office on the basis of medical reports

prepared by the specialized health committees of public hospitals and approved by the Council of Forensic Medicine or directly prepared by the Council of Forensic Medicine. According to the law of the Council of Forensic Medicine, these reports are sent to the 3rd Specialization Board of the Council of Forensic Medicine by the Prosecutor's Office and then a medical examination of the applicants is arranged. In the present paper, four cases are presented in order to show the working approach of the Council of Forensic Medicine. The first two cases exemplify medical conditions which entitle an ill convict to a stay in the execution of their prison sentence. The last two cases exemplify medical conditions that do not qualify a convict to be considered for a stay in the execution of their sentence.

Key words: Stay in the execution of sentence, Postponement, Disease, Illness, Forensic medicine.

تأجيل تنفيذ الأحكام الجزائية بسبب المرض: تقارير حالة مختارة ومراجعة الإطار القانوني الخاص بهذه الحالات في تركيا

المستخلص

يتم تعريف تأجيل الأحكام الجزائية بسبب المرض في المادة 16 من القانون رقم (5275) الخاص بتنفيذ العقوبات والتدابير الأمنية في تركيا. ووفقاً لهذه المادة، يتم تنفيذ الأحكام الجزائية الخاصة بالمحكوم عليهم المرضى إذا كان مرضهم معتدل وقابل للعلاج في عيادة السجن أو في المستشفيات العامة التي تحوي عيادات داخلية أو خارجية منفصلة خاصة بالسجناء. ومن ناحية أخرى، إذا كان

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المحكوم عليه يعاني من مرض خطير أو مهدد للحياة وكان تنفيذ الحكم يشكل خطر على حياة المحكوم عليه، فإنه يتم تأخير تنفيذ الحكم حتى يسترد المحكوم عليه عافيته بشكل مناسب. ويصدر في تركيا قرار إرجاء تنفيذ الحكم الجزائي عن مكتب رئيس النيابة العامة على أساس تقارير طبية تعد من قبل لجان صحية متخصصة في المستشفيات العامة وتعتمد من قبل مجلس الطب الشرعي، أو يمكن أن تعد مباشرة من قبل مجلس الطب الشرعي. ووفقاً لقانون مجلس الطب الشرعي ترسل هذه التقارير من قبل مكتب المدعي العام إلى هيئة ثلاثية مختصة في مجلس الطب الشرعي ومن ثم يتم ترتيب إجراء الفحص الطبي للمدانين. تعرض في هذه الورقة أربع حالات بهدف توضيح نهج عمل مجلس الطب الشرعي في تركيا. الحالتين الأوليتين توضح ظروف طبية خاصة تخول إرجاء تنفيذ الحكم الجزائي على المدان. والحالتين الأخيرتين توضح حالات طبية لا تأهل المحكوم عليه بأن يحصل على تأجيل لتنفيذ العقوبة.

الكلمات المفتاحية: تأجيل الأحكام الجزائية، المرض، الطب الشرعي، القانون التركي.

Introduction

In judicial terminology, the execution of a penal sentence means the carrying out of the terms of a conviction handed down in a criminal court by an executing prosecutor. In modern sentencing, punishments with the aim of revenge or humiliation have been replaced with punishments that aim to reform the criminal and make him a civilized member of the society [1]. Thus, the procedures and conditions of sentencing have seen corresponding changes over time as well. The modern law of sentencing seeks to reach two basic goals: to protect the society from crime and criminals as well as to rehabilitate the convict and bring them back into society with a positive and constructive attitude [1]. Therefore, at present, imposing a sentence is more corrective and educatory for the convict rather than being solely for the purposes of revenge [2-3].

Execution system in which prison sentence terms are relaxed day by day and which aims to release, after serving of the sentence, a person who should be mentally and physically healthy, replace the situations which makes the seriously ill convicts suffer. Delivery of a convict with a serious disease to an appropriate health institution is also one of the "corrective punishment" principles [4-6] and a legal right of the prisoner that is often overlooked. Any prison conditions that have no adverse effect on the state

of a convict's health do not justify a stay in the execution of their sentence. But at the same time, prison conditions that are detrimental to the convict's state of ill health whilst incarcerated must not endanger their life or worsen their health condition. Therefore, reports from qualified and licensed health institutions should include adequate and unquestionable medical proof for either accepting or rejecting the convict's request for a stay in the execution of the prison sentence. This proof must consider the medical diagnosis of the convict's state of health and the prison conditions in which they will be incarcerated. Only then can any estimation of the potential harm to the convict be made.

In Turkey, stay or postponement of the execution of the penalty of imprisonment is defined in Article 16(2) of Law No. 5275 on the Execution of Penal and Security Measures, which enables the stay of execution of a sentence for those whose illness represents a realistic threat to their lives. Article 16(3) in the same statute stipulates that the medical report for the stay of execution is to be issued either by the Forensic Medicine Institute or by a fully-equipped hospital, on condition that the report by the latter receives the official approval of the former. The decision for the stay, based on the report, is made by the resident Chief Public Prosecutor.

According to the Law of the Council of Forensic Medicine, these cases are sent to the 3rd Specialization Board of the Council of Forensic Medicine by the prosecutor's offices, and their medical examinations of convicts are then carried out. According to article 16 of law No 5275, in cases of mild illness, execution of a sentence continues at a public hospital having secured separated sections for prisoners. However, if the execution of the sentence risks the convict's health, it is delayed until the convict has suitably recovered. Decision for the stay in execution of a sentence is given by the Chief Public Prosecutor's Office on the basis of the report prepared by the health committees of general hospitals and approved by the Council of Forensic Medicine or directly prepared by the Council of Forensic Medicine.

In 2011, a total of 667 cases were presented to the 3rd Specialization Board of the Council of Forensic Medicine, requesting a stay in the execution of sentences; and 14 of these cases were evaluated in this context. We thoroughly reviewed all the cases. We have selected four cases to show the working approach of the 3rd Specialization Board of the Council of Forensic Medicine. The first two cases (case 1 & 2) exemplify applicants who, according to our opinion,



were deserving of a stay in the execution of their sentences based on the seriousness of their illnesses. Whereas, the last two cases (case 3 & 4) highlight medical grounds on which the Forensic Medical Board was of the opinion that each convict's medical condition was stable and, therefore, execution of the imprisonment could not be delayed. The main objective of presenting these case reports is to share with the forensic medicine community the experience and working modalities of the 3rd Specialization Board of the Council of Forensic Medicine (Istanbul, Turkey) regarding cases submitted to the board requesting a stay in the execution of prison sentences.

Case 1

A 47-year-old male convict was sentenced for imprisonment. As per the medical records submitted along with his application for a stay in the execution of his sentence, he was being followed up and treated after being diagnosed with Multiple Myeloma (DS stage IIIA kappa) in November 2010. A positron emission tomography (PET) scan, performed in November 2010, revealed a generalized protic image of the skeletal system and a slightly diffused hypermetabolic image of the bilateral humerus head, vertebral column, bilateral costas, pelvis and both femur proximal parts. Lytic lesions were observed in some parts in the lumber using computerized tomography, with a negative uptake of FDG in these parts. A slight increase in FDG uptake was observed in white matter in the posterior of the left frontal lobe of cerebral sections. Plasma cell myeloma was diagnosed on the basis of bone marrow biopsy. He was given 6-cycles of VAD (vincristine, adriamicin, dexamethasone) chemotherapy between December 2010 and June 2011. The patient showed a positive response to chemotherapy, showing partial remissions. He was followed up with monthly zoledronic acid therapy for bone lesions, and an autologous stem cell transplant was planned as post remission therapy. He was re-examined by the Council of Forensic Medicine in June 2011. His clinical examination revealed a blood pressure of 140/90 mmHg and a heart rate of 92 beats/min with no peripheral edema. However, all of his thoraco-lumbar vertebrae were painful. The liver was 2 cm palpable. Since the patient's general condition was not satisfactory, on the basis of his medical reports and clinical examination, he was considered an appropriate candidate to be granted a 6-month stay in the execution of his prison sentence in order to receive autologous stem cell transplantation and to

be given adequate time for recovery.

Case 2

According to his hospital records and medical reports, this applicant was a 71-year-old male who suffered from weight loss and diarrhoea. Abdominal ultrasonography and MRI revealed a suspicious mass in the gall bladder and peritoneal carcinomatosis, respectively. An omentum biopsy was ordered and the results showed epithelioid mesothelioma. Since the peritoneal mesothelioma is resistant to chemotherapy, supportive treatment was suggested. His life expectancy was estimated to be 3-6 months. His medical examination conducted in September 2010 at the Council of Forensic Medicine, showed that he had respiratory distress and his general condition was bad. His breathing sounds were decreased in sub regions with tachycardia and scrotal edema. According to the reports and clinical examination, he was found appropriate for the postponement of the execution of his prison sentence for three months. After three months, he was examined again and his health condition had deteriorated. Based upon his clinical examination and deteriorating health condition, he was given a 6-month stay in the execution of his sentence.

Case 3

This was a 48-year-old male patient who had esophagus varicose and erosive gastritis (portal hypertension?). According to the report of the Training and Research Hospital Examination Board, he had non-insulin dependent diabetes mellitus, chronic viral hepatitis B (without delta agent) and cirrhosis. The hospital ordered a fresh endoscopy which showed esophageal and gastric varices and erosive gastritis. He was diagnosed with decompensated liver cirrhosis Child-Pugh score b, MELD (model for end-stage liver disease) score of 12 related to Hepatitis B (Figure 1-2), type 2 Diabetes Mellitus, varicosele and portal hypertension. Abdominal ultrasonography revealed a rough granular image in liver parenchyma, portal hypertension, splenomegaly and intrabdominal free fluid. Further examinations showed Hepatitis B positivity and liver cirrhosis (Child-Turcotte-Pugh Score A) diagnosis secondary to Hepatitis.

There was no conjunctival icterus, spider angioma, telangiectasis or dupuytren's contracture. A grade 2/6 systolic murmur was noted at the top, the liver was 2 cm bigger than costa curve, Traube's space was closed, spleen



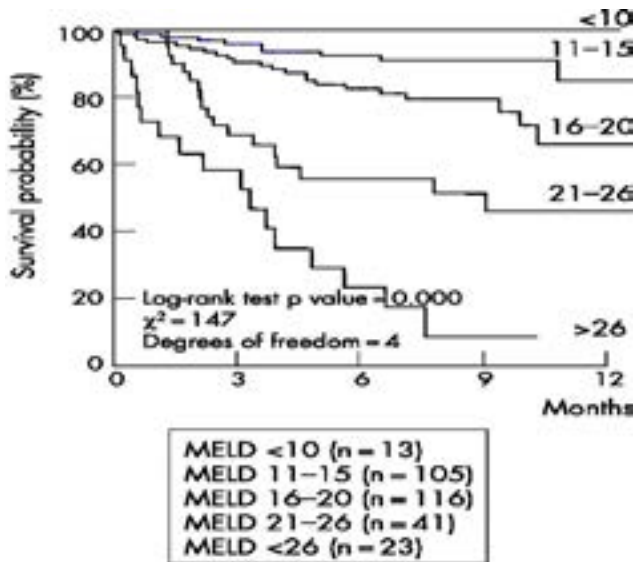


Figure 1- Survival probability for MELD score

was 2 cm bigger than costa curve, and no acid was detected. Peripheral pulses were taken and no edema in periphery was seen. According to the Council of Forensic Medicine's examination, his condition was treatable during the prison sentence; therefore, his request for a stay in the execution of his sentence was rejected upon the condition that he be provided with regular visits to a government hospital.

Case 4

This convict was a 64-year-old male who was diagnosed with severe chronic obstructive pulmonary

disease (COPD), airway stenosis, senility, bilateral kidney stones and bilateral sensorineural hearing loss (SHL). A pulmonary function test (PFT) showed a forced vital capacity (FVC) of 60%, a forced expiratory volume in one second (FEV1%) of 40% and FEV1/FVC was 53%. Arterial blood gas (ABG) analysis showed a pH of 7.4, PO₂: 67.5 and PCO₂: 28.4 (Table-1). Table-2 shows a comparison of FEV1, FVC and FEV1/FVC values of a healthy person and a person who has COPD.

The ultrasonography of the urinary system revealed multiple stones: a renal stone 17 mm in size in the middle of the right kidney, another (16 mm) at the top pole of the left kidney, two 6 mm stones which widened the calyces in the middle; and several parapelvic cysts in left kidney, the biggest of which was 18 mm in diameter, were detected. The blood analyses were all normal. His chest examination showed a longer than normal expirium with generalized sibilant rales. He had tachycardia, no organomegaly, no cyanosis, no edema and no signs of any type of psychiatric syndrome. His audiogram showed a mild and moderate sensorineural hearing loss in the right and the left side, respectively, with severe sensorineural hearing loss in the left side relating to high pitched sounds. According to the examination conducted by the Council of Forensic Medicine, his general health condition was found to be moderate and treatable in the prison. Therefore, his request for a stay in the execution of the prison sentence was denied upon the condition that he receives regular treatment in the prison clinic.

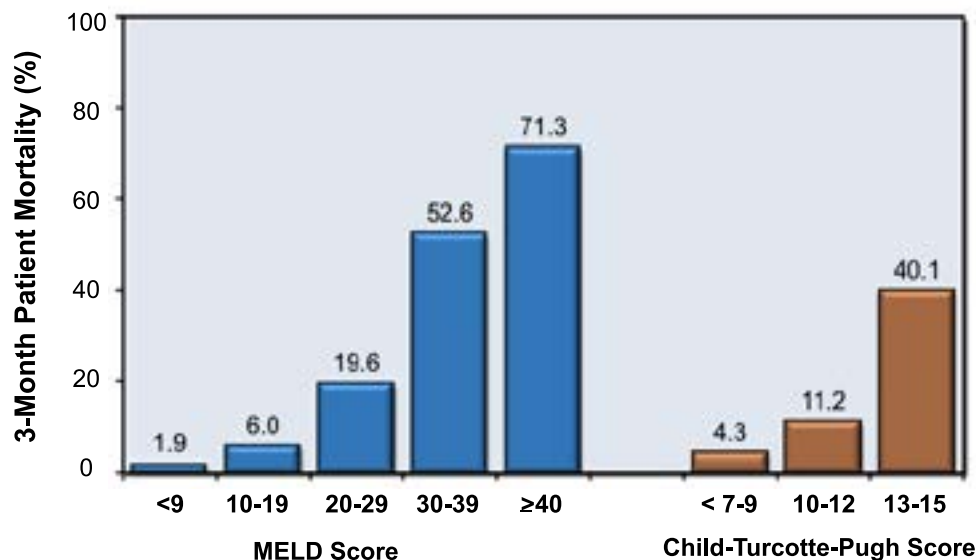


Figure 2- Time of encephalopathy, acid, bilirubin, albumin, prothrombin for Child score

Table 1- FEV₁, FVC and FEV₁/FVC of a healthy person and a COPD patient

Severity	FEV ₁ /FVC after bronchodilator	FEV ₁ (%) as Predicted
Risky	>0.7	>80
Mild COPD	<0.7	>80
Moderate COPD	<0.7	50-80
Severe COPD	<0.7	30-50
Very severe COPD	«0.7	<30

FEV₁%; forced expiratory volume per second, percentage of predicted value; FVC: forced vital Capacity

Table 2-GOLD Spirometric Criteria for COPD Severity

	FEV ₁	FVC	FEV ₁ /FVC
Normal	4.150	5.200	80%
COPD	2.350	3.900	60%

Discussion

Crime is an act against the norms of a society. These norms are defined by a legal institution which also safeguards and protects these norms through law enforcement agencies and a well-structured judicial system. Sentences are imposed to punish criminals for the act of crime they committed, pacify and protect society from their crime and criminal behaviour and, at the same time, dissuade them from future criminal acts and rehabilitate them through educational and correctional programs during their imprisonment. Execution of punishment means the legal action by which the basic order of a court judgment of conviction is implemented, and is carried out by the state agencies charged with the execution of judicial judgments. Execution of sentences can be postponed (stay of execution) under certain circumstances.

A stay in the execution of a sentence is a court order to temporarily suspend the execution of a court judgment or other court order(s). A stay can be granted automatically by the operation of law or conventionally, when the prosecution and the defendant both agree that no execution shall occur for a certain period. The stay in the execution of a prison sentence is based on two factors: 1) The ethical and legal justification of releasing a subset of prisoners with life-threatening illnesses, and 2) The financial burden on society in incarcerating such persons when this outweighs

the benefits of a stay in the execution of their sentence [7]. Due to the increasing numbers of older prisoners, prison overcrowding, rises in the number of in-prison deaths, and the soaring medical costs of the criminal justice system, correctional and public policy experts are calling for broader use of the compassionate release of prisoners [8-10].

The State Medical Board investigates and evaluates each and every application submitted for a stay in the execution of a sentence very carefully by looking at:

- i. The general health condition of the convict,
- ii. results of all the hospital investigations performed recently, and whether these results are in line with the disease or not,
- iii. the current status of the disease, whether the disease is under control or can be controlled with the current or a superior medication, and
- iv. the possibility of recovery and life expectancy if the disease cannot be controlled or cured.

A final decision is made on the following grounds:

- i. Stay is refused if proper diet and prescribed treatment can be provided in the prison. For cases which are predisposed to acute conditions, such as heart attack, stroke or renal failure, execution of the sentence continues in a prison where a doctor and infirmary exists.



Table 3-Summary of the four cases

Case	Major Disease	Medical Board Decision
Case 1	Multiple Myeloma (stage ds IIIa kappa)	Stay was granted for 6-months.
Case 2	Peritoneal mesothelioma	Stay was granted for 3-months, extendable to a maximum period of 6-months.
Case 3	Non-insulin dependent diabetes mellitus, chronic viral hepatitis B (without delta agent), cirrhosis	Stay was denied, with regular treatment in the prison and controlled hospital visits when required.
Case 4	Severe chronic obstructive pulmonary disease (COPD), airway stenosis, senility, bilateral kidney stones and bilateral sensorineural hearing loss	Stay was denied, with regular treatment in the prison clinic.

- ii. Stay is granted if a convict has a serious or life-threatening illness and the prison does not have adequate facilities for treatment, or if the convict requires post-operative rehabilitation which cannot be provided in the prison. Stay is also granted in cases where recovery is not possible or cases in which life expectancy is very short and death may occur at any time.

Medical history and hospital records should fulfil all the conditions required for granting a stay in the execution of a prison sentence. Lastly, the application is reviewed by the State Medical Expertise and a decision of approval or rejection is granted. Those whose sentence will be postponed have to be terminally ill or have limited motor functions, and their presence in the society must not pose a threat to the community [7,10-11].

A stay in the execution of a prison sentence is also enforced to decrease the financial burden of medical treatment on the state. In the USA, between 1982 and 2006, there was a 271% increase in the prison population, a 481% increase in prisoners aged ≥ 55 years, and a 660% increase in expenses of federal and state prisons [12-13]. Expenditures, particularly medical expenditures, allocated for prisoners aged 55 and above are three times more than for younger prisoners [14]. Although postponement of a prison sentence due to a serious disease or illness may not reduce the expenditures significantly, considering factors like expenses for patient care, transporting and security, it can, however, reduce psychological damage to the patient and also the expenses to some extent [11].

The number of convicts who apply for a stay in the

execution of their prison sentences due to a serious illness is not certain because of the death of convicts/prisoners during the processing of their applications. That is why very few prisoners with terminal illnesses benefit from the option of postponement of execution. Organizing and implementing a well-designed program for illness-associated postponement of execution can reduce the application processing time as well as save the lives of prisoners suffering from life-threatening illnesses [7].

Diseases like advanced heart, lung or liver failure, or central nervous system diseases like dementia, are common among prisoners; but, in order to gain access to hospital care, individuals must have a prognosis of survival less than 6 months or must have a functional disability [15-17]. But defining functional disability or prognosis of survival is not an easy task. Moreover, in some diseases, functionality can continue until the final days of life [18]. Considering this situation, some patients whose execution can be postponed die during the application process. On the other hand, some patients can live more than the prognosis of survival and can endanger the security of society, if released. That is why guidelines and procedures must be defined and prepared very carefully in order to prevent these deaths and to prevent convicts from endangering society [7].

Poor cognitive functions, having no one to help or to communicate with, having no awareness of the execution postponement process, and low socio-economic status are the most important points to be considered [19-20]. A number of innovative health care and public health programs should be designed and implemented in order to



respond to the increasing number of elderly jail inmates. Larger jails with well-equipped hospitals are needed to provide long-term care for inmates with serious and chronic illnesses [20].

Note

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