

From a punitive reflex to a rehabilitative philosophy: The Turkish Judiciary's cognitive challenge with Article 191 of the Turkish Penal Code

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Abstract

This study analyzes the practical implementation and judicial reception of the paradigm shift introduced by Article 191 of the Turkish Penal Code, which reframed the state's response to drug users from a punitive to a rehabilitative model. Employing a qualitative document analysis, the study thematically analyzes 44 purposively sampled decisions from the Criminal General Assembly of the Court of Cassation issued between 2005 and 2024. Findings reveal that the judiciary's adaptation was a complex process marked by initial cognitive resistance, procedural confusion, and the development of counter-principles. Key results include the judiciary's creation of an "incurable offender" profile to set limits on rehabilitation through risk assessment, and the emergence of a "ripple effect" that gave users a unique legal status by interacting with other legal institutions. The study concludes that a significant gap exists between the "law in books" and "law in action," highlighting that the success of legal reforms depends not only on legislative text but also on the adaptive capacity of the judicial system and a holistic anticipation of systemic consequences.

Keywords: drug policy, forensic psychology, judicial discretion, rehabilitative justice, Turkish Penal Code

Main points

- Article 191 of the Turkish Penal Code has transformed the judge's role from a mere "legal technician," who only identifies the crime and imposes a sentence, to a "case manager" who assesses the defendant's social profile and potential for treatment to prescribe the most suitable rehabilitation plan.
- The judicial system faced significant challenges in adapting to the new rehabilitation-centered philosophy and moving away from its entrenched punitive habits. Particularly in the initial period, courts struggled to grasp the abstract benefit of the new law, where a sentence might not be executed if treatment is completed, and erroneously considered a concrete "monetary fine" under the old law as more favorable.
- While the judiciary has adopted the rehabilitation philosophy over time, it has also developed a counter-principle for "offenders who persist in committing crimes," demonstrating that this philosophy is not limitless. The Criminal General Assembly of the Court of Cassation has legitimized lower court decisions that bypass the treatment option and impose direct prison sentences, citing the defendant's past noncompliance and criminal records.
- Decisions for treatment and probation under Turkish Penal Code Article 191 have been found to create a "ripple effect," influencing not only the specific case but also other institutions within the criminal justice system. Notably, because these decisions are not considered finalized "conviction judgments," they have served as a "protective shield" for defendants during the probation period of a Suspension of the Pronouncement of the Judgment.

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Introduction

Drug-related offenses constitute one of the most complex and multifaceted problem areas confronting modern legal systems. The policies adopted by states to combat this issue are fundamentally shaped by two different philosophical approaches: the punitive justice model, which views the drug user primarily as an “offender” who must be punished, and the rehabilitation-oriented justice model, which regards the user as a “patient” who should be treated and reintegrated into society. Which of these two approaches a legal system places at its core fundamentally determines not only the type of sanction imposed on the offender but also the role of the judge, the manner in which evidence is interpreted, and the functioning of the criminal justice system as a whole.

With the new Turkish Penal Code (TPC), Law No. 5237, which entered into force in 2005, and the subsequent amendments made to its Article 191, Türkiye has undertaken a radical paradigm shift in its approach to drug users. Abandoning the largely punitive reflexes of the former TPC era, the lawmaker has removed imprisonment as a primary and automatic consequence for offenders who “possess drugs for personal use.” Instead, it has adopted “treatment and probation” as the default sanction. On a theoretical level, this regulation is a revolutionary step, shifting the Turkish legal perspective on the user from a punitive standpoint to a restorative and rehabilitative philosophy.

However, the reflection of philosophical changes enacted in legal texts into judicial practice—which possesses deep-rooted habits and an entrenched mindset—is not always a linear and seamless process. There is typically a significant time and adaptation period between a law’s enactment and the full internalization of its spirit by all layers of the system. This process becomes even more complex in regulations such as TPC Article 191, which grant judges new roles (such as case management) and wide discretionary powers (like imposing a direct sentence instead of treatment). Consequently, the potential tension between the legislator’s ideal of rehabilitative justice and the judicial practice’s capacity and established reflexes to adapt to this ideal emerges as a core problematic worthy of investigation.

This study aims to understand how this philosophical transformation, as reflected in the legal text, has found its reception in the practice of the High Court, what kinds of adaptation difficulties and mindset conflicts it has generated, and how the judicial mind has interpreted and internalized this new institution. In line with this primary objective, this paper will focus on the decisions of the Criminal General Assembly of the Court of Cassation (CGAC) to answer the central research question: “How has the judiciary undergone a cognitive trial in processing the rehabilitative philosophy introduced by TPC Article 191?” The study will not content itself with merely describing legal regulations; it aims to decipher the reasoning patterns, cognitive biases, newly developed profiles, and implicit assumptions reflected in the High Court’s decisions from a forensic psychological perspective.

Material and Methods

This study was designed according to the “document analysis” method, a qualitative research design that allows for the examination of texts and documents in social science and legal research. Document analysis aims to systematically review existing records and documents to identify specific themes, patterns, and meanings (Bowen, 2009). The primary rationale for selecting this design is the nature of the research problem: examining the adaptation process of the judicial mindset to a new legal philosophy introduced by TPC Art. 191 is best achieved through the analysis of primary and official documents, such as the decisions of the Court of Cassation. Through this design, the High Court’s logic of reasoning, its implicit assumptions, and its stance on the philosophical transformation have been deciphered from the texts it has produced.

The data set for this research consists of the decisions of the CGAC, which are publicly available on the official website of the Republic of Türkiye Court of Cassation (www.yargitay.gov.tr). The primary reason for selecting CGAC decisions is that this assembly is the final authority that resolves differences in case law among the chambers of the Court of Cassation and issues the highest-level precedential decisions. This characteristic provides an ideal ground for observing the evolution of the judicial mindset and the ultimate legal synthesis reached.

The data collection and sample selection process included the following steps:

1. The public case law search engine of the Court of Cassation was utilized.
2. To create the data pool, the phrase “possessing drugs for personal use,” which is the focal offense of the research, was used as a keyword.
3. The search yielded a total of 81 CGAC decisions ruled between 2005 and 2024. From this pool of 81 decisions, the “purposive sampling” method, frequently used in qualitative research, was employed to select the final analysis sample. Purposive sampling involves the deliberate selection of cases that are most relevant to the research purpose and contain the richest information for a detailed study (Patton, 2015). Accordingly, the following inclusion criteria, aligned with the focus of this study, were established: a) The decision must contain a discussion regarding the application, interpretation of, or hesitations about the treatment and probation measures stipulated under TPC Art. 191. b) It must provide data on how the judiciary interprets the new rehabilitative philosophy by making a “more favorable law” comparison between the old and new codes. c) It must discuss the limits and justifications of the judge’s “discretionary power” (e.g., the profile of the “incorrigible offender”). d) It must include an assessment of the interaction of TPC Art. 191 with other institutions of criminal law, such as the HAGB (hükmün açıklanmasının geri bırakılması, or the suspension of the pronouncement of the judgment).

Based on these criteria, 44 CGAC decisions deemed most suitable for the research purpose constituted the final analysis sample. In the analysis of this sample of 44 CGAC decisions, "thematic analysis," a qualitative data analysis technique, was used. Thematic analysis is a flexible method used to identify, analyze, and report significant themes and patterns within a data set (Braun & Clarke, 2006). The analysis was conducted with an "inductive approach," meaning that themes were derived directly from the data rather than imposing a pre-existing theory onto the data. The analysis process consisted of the following stages:

1. All decisions were read carefully multiple times to understand the essence of the case, the differences in opinion between the lower courts, the Chambers of the Court of Cassation, the CGAC, and the final outcome.
2. Each decision text was examined line-by-line, and expressions considered relevant to the transformation process of the judicial mindset (e.g., "considering the concrete fine as more favorable," "incorrigible personality," "has no discretionary power," "treatment is a right," "the decision does not have the nature of a final judgment," etc.) were marked, and brief codes were created for them.
3. The generated codes were grouped according to their relationships with one another. In this grouping process, themes, which are broader and more meaningful categories, were developed by abstracting the codes. For instance, codes such as "error in applying the more favorable law," "cognitive inertia," and "preference for a concrete sentence" formed the main theme of "Cognitive Resistance to the New Philosophy." Similarly, the codes "criminal record," "noncompliance with treatment," "unreformable personality," and "discretionary power" were consolidated under the main theme "The Limits of the Rehabilitative Philosophy."
4. The identified themes were reviewed again to test their consistency across the entire data set. In this final stage, the process explaining the transformation of the judicial mindset, presented in the "Findings" and "Discussion" sections, was finalized.

The scientific validity and reliability of this qualitative study were supported by several strategies. The validity of the study is based on the fact that the analyzed data set (CGAC decisions) is public, verifiable, and constitutes a primary source. This allows other researchers to access the same data and corroborate the findings. The reliability and objectivity of the study were ensured by the systematic and principled approach followed in the data analysis. The fact that the themes and the final model were derived inductively from the decision texts themselves, rather than from the researcher's personal assumptions, reinforces the data-driven nature of the analysis. The emphasis on recurring and consistent themes across different decisions demonstrates that the results are not coincidental but reflect an established reasoning pattern of the High Court.

Ethical Considerations

This research did not require ethics committee approval as it is based on the secondary analysis of official documents (court decisions) that are public and accessible to everyone, and no direct study was conducted with human participants. Throughout the study, the principles of scientific research and publication ethics were adhered to.

Results

This section thematically analyzes the reception of the new philosophy concerning drug users, introduced by Article 191 of the TPC No. 5237, within Turkish judicial practice. It explores the adaptational challenges encountered during this process and the resulting transformations in the judicial mindset, based on an examination of the decisions of the CGAC (Table 1).

The analyzed decisions clearly reveal that with TPC Art. 191, the legislator aimed for a radical paradigm shift concerning the drug user. As clearly defined in Case File 2, this shift is a transition from the punitive approach, which sees the user as an "offender," to a therapeutic/restorative approach that defines them as a "patient" or an "individual in need of help." This new philosophy emphasizes that the primary sanction is not imprisonment, but "treatment and probation" aimed at reintegrating the individual into society. This philosophical transformation also fundamentally alters the role of the judge. The judge is no longer expected to be merely a "legal technician" who identifies the crime and imposes a sentence, but also to write the most appropriate rehabilitation prescription by assessing the defendant's social and economic profile, level of addiction, and potential for treatment compliance. A practical reflection of this new role is seen in the situation analyzed in Case File 6. In this decision, it is understood that the law positions the judge as a "case manager" by granting the authority to choose between different sanction options (such as treatment only, or sentence with treatment) based on the defendant's profile (for instance, being young and a first-time offender versus having a history of resistance to treatment).

The reviewed decisions clearly show that the judicial system's adaptation to the new and abstract philosophy of TPC Art. 191, by breaking away from its entrenched and punitive habits, has been an arduous and time-consuming process. The greatest difficulty in grasping the new philosophy was experienced in determining the "more favorable law." It was found that courts could not fully comprehend the abstract and future-oriented major benefit of the new law, where a sentence might not be executed at all if treatment is complied with. The most striking example of this was observed in a children's court decision examined in Case File 3. In this decision, the court erroneously deemed a concrete "monetary fine" under the old law as more favorable than the treatment and probation measure of the new law. In the analysis of the decision, this preference was assessed as a typical reflection of a deep-rooted "cognitive inertia" and the primacy of concrete thinking over abstract thought. That this cognitive error was not exclusive to local courts was proven when a Criminal Chamber of the Court of

Table 1. Thematic analysis of the 44 analyzed criminal general assembly of the court of cassation decisions by year

File No.	Year of Decision	Subject of Dispute (Main Theme)	Prominent Forensic Psychology Concept / Judicial Principle	Direction of Final Verdict
44	2005	The timing of effective remorse ("before" vs. "after" official discovery)	Legal definition of the moment of "official discovery"; proactive vs. reactive remorse	Reversal (to correct the type of remorse applied)
41	2006	The requirement for effective remorse that the assisted crime be equivalent to or more severe than the perpetrator's own crime	"Principle of equivalence"; analysis of protected legal interest; cost-benefit analysis	Affirmation (denial of effective remorse)
42	2006	A TPC Art. 191/2 treatment decision not constituting a violation of a prior HAGB decision	The "user" label as a protective shield; the priority of the rehabilitation philosophy	Reversal (HAGB cannot be pronounced)
-43	2006	Inability to establish conviction based on the testimony of a single unreliable witness	Corroboration of the principles of "implicating another" and "in dubio pro reo"; analysis of corroborating evidence	Reversal (In favor of user status)
38	2011	The legal nature of possessing drugs upon being brought to prison under arrest	Context transforming intent (passive possession vs. active intent to bring in)	Reversal (classification as an attempt)
39	2011	The inadmissibility of using a preventive search warrant for a judicial search based on specific criminal suspicion	Unlawful evidence; distinction between preventive search vs. judicial search	Reversal (acquittal and incomplete investigation)
35	2012	Conviction based on a general "street dealer" profile assumption without concrete evidence	Prohibition of assumption-based profiling; defendant's denial cannot be interpreted against them	Reversal (in favor of user status)
36	2012	The prevalence of precision scales as evidence over the defendant's plausible defense	Precision scales as "decisive evidence"; synergy of evidence; a clean record does not grant absolute protection	Affirmation (trafficking offense)
37	2012	The requirement to prove each act of alleged serial sales individually in a case with multiple allegations	"Retail" analysis vs. "wholesale" approach; avoiding the cognitive contamination effect	Reversal (for severing the acts)
28	2013	The use of the defendant's own statement about his usage amount as evidence against him	Turning the defendant's statement into evidence against him; Analysis of digital traces	Affirmation (importation offense)
29	2013	The legal status of a synthetic drug not on the official list of banned substances at the time of the crime	Teleological and scientific legality vs. Formalistic legality; Interpreting the legislator's intent	Affirmation (in favor of conviction)
30	2013	The legal nature of a lower court's "resistance" decision against a reversal by the Court of Cassation	Doctrine of de facto compliance; Judicial hierarchy and the psychology of communication	Procedural reversal (case returned to the chamber)
31	2013	Evaluation of the defendant's mother's contradictory statements (initial report vs. court testimony)	Analysis of witness motivation ("moment of desperation" vs. "protective instinct")	Affirmation (trafficking offense)
32	2013	Determining the ownership of multiple drug packages found at a complex crime scene	"Evidence dissociation" technique; The power of a neutral witness's testimony	Affirmation (trafficking offense)
33	2013	The defendant's criminal profile (modus operandi) outweighing his cooperative behavior (voluntary surrender)	The power of a profile to interpret other evidence; Hierarchy of evidence	Affirmation (trafficking offense)
34	2013	A defendant, proven not to be a user by a report, being caught with cannabis plants and processed cannabis	Logical analysis ("why possess if you don't use?") vs. Formal analysis ("each crime is separate")	Reversal (in favor of user status)
26	2014	Weighing of conflicting evidence (packaging, quantity, fleeing, profile) for and against the defendant	Synergy of evidence and the power of holistic analysis; Difference in judicial philosophy	Affirmation (trafficking offense)

Note: CGAC = Criminal General Assembly of the Court of Cassation; HAGB = Suspension of the pronouncement of the judgment; TPC = Turkish Penal Code.

Table 1. Continued

File No.	Year of Decision	Subject of Dispute (Main Theme)	Prominent Forensic Psychology Concept / Judicial Principle	Direction of Final Verdict
27	2014	A search conducted without a prosecutor's order after criminal suspicion has been established	"Fruit of the poisonous tree" doctrine; The absolute threshold of legality before "intent reading"	Reversal (in favor of acquittal)
25	2016	The legal re-classification of a defendant's crime after violating probation that was granted based on a "user" status	The fragility of the "user" label; Acquired rights vs. material truth	Reversal (to reclassify as trafficking)
24	2017	The failure to concretely establish a moment of sale despite technical and physical surveillance	"Retail" analysis of the evidence chain; Legally invalid witness testimony (TPC Art. 148/4)	Reversal (in favor of user status)
19	2018	Whether to grant a new chance of treatment to a "user" defendant who previously failed to comply with it	The judge's discretionary power and the development of the "incurable defendant" profile	Affirmation (in favor of direct punishment)
20	2018	The philosophical debate on imposing direct prison sentences on defendants with a history of relapse and noncompliance	Rehabilitation idealism vs. judicial realism (risk analysis)	Affirmation (in favor of direct punishment)
21	2018	The evidentiary value of contradictory witness testimonies that were later recanted	Weighing the reliability of the first statement vs. the later statement; Conscientious conviction	Affirmation (in favor of conviction)
22	2018	A defendant, acquitted of a drug charge, being convicted for using someone else's identity at the start of the investigation	Formalistic interpretation vs. teleological interpretation; The primacy of intent at the time of the act	Affirmation (conviction under TPC Art. 268)
23	2018	The nature of the act of being caught with drugs at a prison entrance	Context defining intent; Active concealment vs. passive forgetfulness	Affirmation (trafficking Offense)
14	2019	The lack of direct evidence of sale despite strong circumstantial evidence (hidden stash, economic profile)	Inferential logic vs. the search for direct proof; Strong suspicion ≠ Conclusive proof	Reversal (in favor of user status)
15	2019	Whether a confession made at the moment of capture qualifies as "effective remorse"	Pragmatic vs. rule-based interpretation of the concept of "effective remorse"	Procedural reversal (merits not addressed)
16	2019	The scope of review for a prosecutor's objection to a court's "user" designation	The role of the prosecutor (the system's "trafficker radar"); The "second opinion" mechanism	Procedural reversal (regarding scope of objection)
17	2019	The failure to establish a physical link (no fingerprints) between the drugs and the defendants despite a detailed tip-off	Hierarchy of evidence (scientific proof > narrative coherence); Narrative completion bias	Reversal (in favor of user status)
18	2019	A statement of "I am a user" aimed at concealing a trafficking offense not constituting effective remorse	Deciphering a "strategic confession" and deceptive tactics; Intent-focused analysis of remorse	Affirmation (denial of effective remorse)
12	2020	Interpretation of a recanted witness testimony and the act of "growing one's own drugs"	A recanted testimony losing its evidentiary value; The principle of "Producer ≠ Trafficker"	Reversal (in favor of user status)
13	2020	A lower court's resistance by creating a "street runner" narrative to fill evidence gaps	Narrative reasoning vs. the search for concrete evidence	Reversal (in favor of user status)
10	2021	The failure to establish the elements of a "trafficking" offense despite a high quantity of drugs	The CGAC's three-pronged test (behavior, manner of possession, quantity)	Reversal (in favor of user status)

Note: CGAC = Criminal General Assembly of the Court of Cassation; HAGB = Suspension of the pronouncement of the judgment; TPC = Turkish Penal Code.

Table 1. Continued

File No.	Year of Decision	Subject of Dispute (Main Theme)	Prominent Forensic Psychology Concept / Judicial Principle	Direction of Final Verdict
11	2021	The legal nature of a treatment order under TPC Art. 191/2 and the proper appeals process (appeal vs. objection)	The legal status of the “user” (not a convict, but a “defendant in process”)	Reversal (to be reviewed via objection)
2	2022	The error of imposing a direct prison sentence on a “user” defendant when TPC Art. 191 should have been applied	The shift from punitive to therapeutic justice (Paradigm shift)	Reversal by extraordinary Procedure (in favor of treatment)
3	2022	The failure to recognize the new TPC as more lenient for a child defendant and the error of mixed application	Cognitive inertia; the prevalence of concrete thinking over abstract thinking	Reversal (to correct fundamental errors)
4	2022	The error of joining a drug case with another crime and the repetition of the “lenient law” mistake	The judicial isolation of the “user” profile; systemic cognitive resistance	Reversal (to correct errors)
5	2022	The evidence being deemed insufficient for a “trafficking” charge despite a tip-off and multiple packages	Hierarchy of evidence (abstract tip-off vs. lack of concrete evidence); the evidentiary value of cooperation	Reversal (in favor of user status)
6	2022	The unjustified use of discretionary power in choosing a sanction for a “user” defendant	The requirement of justification; the transparency of the judicial “black box”	Reversal (to provide justification)
7	2022	The evidentiary value of a confession that contradicts material facts and is later recanted	The reliability test for a confession; prohibition of character judgment; confirmation bias	Reversal (in favor of acquittal)
8	2022	Whether to confiscate the symbolic amount of proceeds obtained from the crime	The reflex to destroy the economic motive of a crime; distinction between punishment vs. security measure	Affirmation (in favor of confiscation)
9	2022	The reliability of an accomplice’s statement motivated by the hope of “effective remorse”	Analysis of witness/accuser motivation; skepticism toward “implicating another”	Reversal (in favor of acquittal)
1	2023	The validity of evidence obtained as a result of an unlawful search	Procedural justice vs. consequentialism; confirmation bias (from the defendant’s profile)	Affirmation (in favor of conviction)

Note: CGAC = Criminal General Assembly of the Court of Cassation; HAGB = Suspension of the pronouncement of the judgment; TPC = Turkish Penal Code.

Cassation repeated the same mistake, as seen in Case File 4. This situation is a symptom of how slowly and difficultly the new philosophy was understood, even at the highest echelons of the judiciary.

The failure to fully comprehend the legal nature of the new institution led to significant confusion and procedural debates within the system. As discussed in detail in Case File 11 and Case File 16, whether the “treatment and probation” decision issued under TPC Art. 191/2 was a final “judgment” ending the case or an “interim ruling” suspending the proceedings was long debated. The uncertainty over whether to resort to “cassation appeal” or “objection” against these decisions is an indicator of the “adaptation pains” the system experienced in fitting this new, hybrid model into existing procedural molds. Indeed, the CGAC concluded this debate in its final decisions

in Case File 11 and Case File 16, ruling that these decisions have the nature of a “suspension order” and are subject to the legal remedy of “objection.”

While the judicial system has embraced the rehabilitation philosophy over time, it has also developed a body of case law demonstrating that this philosophy is not an unlimited right and that the system’s punitive reflexes are reactivated, especially in the face of offenders who “persist in committing crimes.” This approach is most clearly seen in Case File 19 and Case File 20, where the CGAC upheld lower court decisions that cited the defendant’s past noncompliance and criminal records. In these decisions, the CGAC emphasized that the amendment by Law No. 5560 grants the judge “discretionary power” and that the court is not an “automaton.” It was accepted that the judge could evaluate the defendant as

a whole, with their past, criminal record, and behavioral patterns. As a result of this holistic evaluation, the courts' bypassing of the treatment option and imposing direct prison sentences with characterizations like "incorrigible personality" or "unreformable" was seen as a legal and sufficiently justified use of the judge's discretionary power. These decisions prove that rehabilitation is viewed not as an unconditional right, but as an "opportunity" that can be revoked if abused.

It was determined that the diagnosis of a "user" and the subsequent decisions under TPC Art. 191 create a "ripple effect" that influences not only the specific case but also other institutions of the criminal justice system. The most concrete example of this is the interaction between the institution of Suspension of the Pronouncement of the Judgment (HAGB), examined in Case File 42, and a decision under TPC Art. 191/2. In Case File 42, the CGAC ruled that a treatment order issued under TPC Art. 191/2 is not a finalized "conviction judgment" in the sense of the Code of Criminal Procedure (CMK), but rather, by its legal nature, a "suspension order." As a direct consequence of this interpretation, it was accepted that a defendant who receives a treatment order during their HAGB probation period has not yet fulfilled the condition of "committing a new intentional crime" required to revoke the HAGB. Thus, the treatment decision effectively served as a "protective shield" for the defendant, preventing the execution of a sentence for another crime. This situation shows that the "user" label grants the defendant a special legal status and privilege not possessed by other offenders.

Discussion

The normative reform introduced by Article 191 of TPC aimed not only at a paradigm shift in criminal policy towards drug users but also at a comprehensive transformation of the operational mechanisms of the Turkish criminal justice system, the judicial role, intra-systemic institutional relations, and even judicial philosophy. The findings of this study reveal that although TPC Art. 191 aims for a rehabilitation-centered criminal policy on a normative level, its implementation in practice presents a fragmented and resistant landscape that does not fully align with this philosophy. The discussion will be conducted on three levels in this context: (1) the philosophical and psychosocial foundations of judicial decision-making processes, (2) the professional formation and institutional limitations of the implementing actors, and (3) the systemic and unpredictable ripple effects of the reform.

The Transformative Phases of the Judicial Mindset: A Chronological Analysis of the Decisions

The 44 analyzed CGAC decisions, spanning a period of approximately 18 years from 2005 to 2023, offer the opportunity to examine the trajectory of the rehabilitation philosophy introduced by TPC Art. 191 in judicial practice through three main phases:

Phase 1 (2005–2011): Establishment, Confusion, and the Determination of Foundational Principles

This period covers the immediate aftermath of the legal reform and is the phase in which the judicial system first confronted the new philosophy, thus experiencing the most "confusion" and the greatest effort to "establish principles." The decisions from this period focused on creating the very alphabet of a new legal language. Foundational and constituent interpretations—such as the definition of the critical moment of "official discovery" in effective remorse in File 44 (2005), the "principle of equivalence" to prevent the abuse of this remorse in File 41 (2006), and the "protective shield" status of a TPC Art. 191 decision against a HAGB in File 42 (2006)—were made during this time. Procedural and jurisdictional struggles, such as drawing the sharp line between a "preventive search" and a "judicial search" in File 39 (2011), also reflect the growing pains of this era. In this phase, the judicial mindset is in a "learning" process, trying to understand, define, and integrate the new philosophy into the existing system while grappling with both philosophical and technical difficulties.

Phase 2 (2012–2018): The Development of Doctrines and the Drawing of Boundaries

This is a "maturation" phase where the foundational principles have settled, and the CGAC began to develop new doctrines through more complex cases, thereby drawing the boundaries of the rehabilitation philosophy. The most definitive development of this period is the transformation of judicial risk analysis into a doctrine. The decisions in File 19 (2018) and File 20 (2018) established that a judge could use their "discretionary power" to impose a direct prison sentence on defendants who had repeatedly rejected treatment opportunities. This marks a turning point where the idealism of rehabilitation was balanced with judicial realism and public order concerns. Similarly, the decision in File 25 (2016), which stated that a defendant's "user" label could be revoked for violating probation, is a pragmatic defense mechanism developed by the system. In this phase, the judicial mindset is no longer merely interpreting the law but is in an active "shaping" role, producing new profiles ("incorrigible defendant") and doctrines ("fragile label") according to the needs of practice.

Phase 3 (2019–2023): The Application of Established Precedents to Complex Cases

This most recent phase is a period of "mastery," in which the CGAC has largely established its core doctrines and meticulously applies these established principles to cases with extremely complex and ambiguous evidentiary structures. The fact that recent decisions such as File 2, 3, and 4 (2022) are still correcting lower court errors on the most fundamental issues (paradigm shift, lenient law error) shows that the

“pedagogical” role of the CGAC continues. In this period, decisions like File 9 (2022) and File 7 (2022) demonstrate how sophisticated the analysis of evidence has become, with in-depth logical and psychological analyses replacing simple formulas. The CGAC’s explicit articulation of its own three-pronged test in File 10 (2021) proves that a certain level of consistency and predictability has now been achieved.

This historical evolution in the judicial mindset can be examined in more depth under the following thematic headings.

Practice Caught between Legal Formalism and Judicial Pragmatism

The persistent errors in determining the “most favorable law” and the tendencies to lean towards punishment instead of rehabilitation in the application of TPC Art. 191 should be evaluated not merely as technical application problems, but as symptoms of a deep philosophical division regarding the fundamental orientation of the judiciary. While legal formalism accepts the law as a predictable, fixed set of rules, judicial pragmatism prioritizes the legislator’s purpose, the social consequences, and the function of the normative regulation (Dülger, 2017; Dworkin, 1988). Particularly in the examined case examples, the preference of some judges for a more familiar and measurable sanction like a “monetary fine” over an abstract “treatment benefit” can be seen as an expression of a search for formalist security. This reflex, while offering “legal certainty” to the individual, carries the risk of disregarding the dynamic and purposive spirit of the law (D’Amato, 2010).

At this point, the normative guiding role played by the CGAC points to the pedagogical capacity of high courts in the context of common law. The practice of producing “instructive precedents” to break the resistant attitudes of lower courts and even some of its own chambers demonstrates the central role of high courts in the evolutionary nature of law (Segal & Spaeth, 2005; Türkölmez, 2019). In this context, it is observed that the high court attempts to resolve the philosophical conflict in the system not only with technical precedents but also with a value-oriented “attitudinal model” approach (Segal & Spaeth, 2002).

The Evolving Judicial Role and the Challenge of Practitioner Preparedness

The implementation of TPC Art. 191 has precipitated a paradigm shift in the judicial function. The judge is no longer merely a “norm technician”—an impassive arbiter who identifies a crime and applies a predetermined penalty. Instead, they are thrust into the complex roles of a “social engineer” and a “case manager,” tasked with the sophisticated evaluation of extra-legal variables such as the defendant’s socioeconomic history, the severity of their addiction, and their prognostic capacity for rehabilitation. This transformation fundamentally challenges the classical Weberian ideal of the judge as a detached automaton, repositioning them as an active, engaged decision-making subject who must interpret and act upon a rich psychosocial context (Barry, 2023; Weber, 1978).

However, this radical redefinition of the judicial role has not been met with a corresponding evolution in professional training. A review of the pre-service curriculum at the Justice Academy of Türkiye reveals a conspicuous absence of essential competencies such as addiction psychology, clinical risk assessment, comparative treatment modalities, and multidisciplinary case management (Justice Academy of Türkiye, n.d.). This gap imposes a substantial cognitive and professional burden on practitioners. Consequently, judicial decisions regarding referral to treatment are often predicated not on validated assessment tools but on discretionary judgments rooted in subjective intuition and incomplete data (Bystranowski et al., 2022). This strongly suggests that the professional socialization of judges has failed to integrate the necessary psychosocial skills. Therefore, for the reform’s rehabilitative philosophy to truly penetrate everyday judicial practice, a structural reorientation of the judicial mindset is imperative, supported by a robust and sustained investment in institutional capacity-building (Friedman, 2019).

Actuarial Justice, Risk Assessment, and the Specter of Offender-Based Punishment

A notable trend in the appellate case law is the justification for denying rehabilitation based on a defendant’s prior criminal record or history of noncompliance with treatment. This signals a judiciary that is increasingly adopting a “risk management” perspective. This approach aligns seamlessly with the principles of “actuarial justice,” a dominant paradigm in modern criminology that focuses on managing and classifying populations based on calculated future risk, thereby structuring the penal system around goals of prediction and administrative efficiency rather than individualized justice (Feeley & Simon, 1992).

Within this framework, the judicial gaze shifts from the committed act itself to the perceived “risky” character of the person who committed it. This represents a perilous slide away from the bedrock principle of “act-based criminal liability” (*Tatstrafrecht*), where punishment is tied to the specific offense, towards “offender-based criminal liability” (*Täterstrafrecht*), where the sanction is tailored to the identity, history, and perceived future dangerousness of the individual (Tezcan et al., 2024). A critical future challenge will be to establish objective, transparent, and contestable criteria for these risk assessments to safeguard against arbitrary and discriminatory outcomes.

In this light, the ethical guidelines from the Council of Europe (2024) on the use of AI in judicial systems offer a crucial warning: algorithmic decision-support systems, with their allure of objectivity, must be strictly confined to an advisory role, ensuring that the human judge remains the ultimate arbiter of the decision (Javed & Li, 2024). The nascent efforts in Türkiye, supported by TÜBİTAK, to develop domestic risk assessment algorithms must therefore be scrutinized with extreme care as this global trend takes local form (The Scientific and Technological Research Council of Türkiye, 2024).

The Material Constraints: Infrastructure, Geography, and Social Perception

The practical viability of TPC Art. 191 is contingent not only on judicial will but also on material and social realities. The existing institutional infrastructure for rehabilitation presents a major obstacle. Current data reveal a stark geographical disparity, with specialized treatment centers like AMATEM and YEDAM (AMATEM is a centre that provides outpatient and inpatient treatment services for individuals aged 18 and over who have alcohol or substance use disorders. YEDAM is a centre that provides free psychological and social support to individuals experiencing problems related to tobacco, alcohol, substance abuse, internet, and gambling.) heavily concentrated in major metropolitan areas, leaving rural and less-developed regions critically underserved (Republic of Türkiye Ministry of Health, n.d.; YEDAM, n.d.). This logistical bottleneck creates a *de facto* inequality of access, where a judge's decision may be constrained not by legal principle but by the simple non-availability of a treatment facility, causing the system to default to punitive outcomes.

Compounding this structural deficit is the powerful influence of social perception. A pervasive public and media narrative, which frames probationary and alternative measures as a form of "impunity" for criminals (General Directorate of Prisons and Detention Houses, 2025), exerts considerable informal pressure on judicial actors. This climate of public opinion can sway judges towards more traditional, punitive decisions to avoid public criticism. The indirect but potent effect of this social pressure is the erosion of the reform's legitimacy. This underscores the necessity of a proactive, concerted strategy to ensure the judiciary is not left isolated. This requires strategic public communication and educational campaigns designed to build societal understanding and cultivate trust in rehabilitative justice.

Systemic Reverberations and the Autopoietic Nature of Law

The influence of TPC Art. 191 has extended far beyond its immediate target of drug offense litigation, creating systemic ripple effects throughout the entire body of criminal law. A prime example is its interaction with the institution of the Suspension of the Pronouncement of the Judgment (HAGB). The legal stipulation that a treatment order under Art. 191/2 does not constitute a formal "conviction" and created a novel legal status, which in turn directly impacted the applicability and interpretation of HAGB. This phenomenon perfectly illustrates the principles of Luhmann's systems theory, which posits law not as a static hierarchy of rules but as a dynamic, self-referential system that constantly produces and reproduces its own elements through internal operations (Luhmann, 2004).

As conceptualized by Teubner (1993) in his theory of "autopoietic law," legal interventions rarely produce clean, isolated outcomes. Instead, they create unforeseen "structural couplings" and "systemic reverberations"—or "spillover

effects"—across the entire legal field. The experience with TPC Art. 191 serves as a powerful case study in this regard. It demonstrates the imperative for future legislative design to move beyond mere legal-doctrinal coherence and to integrate sophisticated methodologies such as systems analysis, predictive modeling, and genuinely multidisciplinary perspectives to better anticipate and navigate the complex, emergent behavior of the legal system (Elrick, 2020).

Limitations and Suggestions for Future Research

Like any scientific study, the results and generalizability of this research have certain limitations stemming from the nature of the method and data set used. The first and most significant limitation is that the study is a document analysis based on the public, written decision texts of the CGAC. While this method is exceptionally powerful for deciphering the formal and justified reasoning of the High Court, it may not fully reveal all the implicit assumptions, personal conceptions of justice, or systemic pressures present at the moment of the judge's final decision. In addition, the fact that the sample consists of CGAC decisions means that the findings are based on cases that are legally the most controversial and exceptional. Therefore, while the conclusions reached in this study indicate the principled orientations at the "pinnacle" of the system, they do not claim to fully reflect the everyday and routine judicial practice in first-instance courts. Finally, as the research primarily focuses on the evolution of the "judicial mindset," the influence of other actors in the criminal justice system, such as prosecutors, lawyers, and law enforcement, was excluded from the scope.

The methodological and focal limitations of this study also provide a fertile ground for future research in the field. Accordingly, to complement this text-based analysis, field research involving interviews with first-instance and appellate court judges and prosecutors could reveal the unwritten dynamics of "law in action" and how practitioners perceive the new legal philosophy. Similarly, to balance the exceptional nature of CGAC decisions, quantitative analyses conducted on a large sample of case files from first-instance courts could statistically demonstrate the application rates of TPC Art. 191 and how these rates vary according to different variables. To complement the "top-down" perspective of this study with a "bottom-up" one, experience-focused qualitative studies with individuals who have been subjected to treatment and probation under TPC Art. 191 would provide invaluable data for understanding the system's success and how the rehabilitation process is perceived by the offenders themselves.

Author contributions

Conception and design: N.H.; Data acquisition: N.H.; Data analysis: N.H.; Data interpretation: N.H.; Drafting of the manuscript: N.H.; Critical revision of the manuscript: N.H. The author reviewed the results, approved the final version of the manuscript, and agreed to be accountable for all aspects of this study.

Ethical approval

Ethics committee approval and informed consent were not required for this study.

Data availability statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.

Conflict of interest

The author declares that this study was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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The author declares that no generative AI or AI-assisted technologies were used in the writing or preparation of this study.

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