

The Ultima Ratio Principle in Criminal Law and the Reform of the Criminal Code of Georgia: Technical Regulation, Proportionality, and Decriminalization

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Abstract

This paper examines the need to reform the Criminal Code of Georgia through the lens of the ultima ratio principle. Criminal law, as the most severe mechanism of state response, should be applied only where the protection of a legal interest cannot be effectively achieved through less restrictive legal instruments, including administrative, civil or disciplinary liability. Disregard for this principle leads to the unreasonable expansion of criminal law, the overloading of criminal provisions, disproportionate liability and the criminalization of conduct whose social harm does not justify criminal-law intervention.

The purpose of the study is to identify both technical and substantive problems within the Criminal Code of Georgia and to justify the main directions of reform. Particular attention is paid to the systematic coherence of the Code, the precision of legal norms, terminological consistency, proportionality of sanctions and the identification of low-harm conduct that may be decriminalized or transferred to another legal regime. The paper emphasizes that reform of the Code should not be limited to technical editing; rather, it requires a substantive reassessment of criminal policy so that criminal law remains an exceptional, last-resort and proportionate form of legal response.

The paper analyzes the risks of overcriminalization, including the inefficient use of law-enforcement and judicial resources, disproportionate interference with individual rights and the weakening of the preventive function of criminal law. Within the study, the principle of proportionality is examined both at the stage of criminalizing conduct and at the stage of determining punishment.

The paper concludes that reform of the Criminal Code of Georgia should be based on three main directions: technical and systematic harmonization of norms, ensuring proportionality of liability and sanctions, and decriminalization of conduct with low social harm. Such an approach would contribute to the development of a more just, effective and modern criminal-law system.

Keywords: *ultima ratio*, proportionality, decriminalization, reform of the Criminal Code, artificial intelligence, overcriminalization.

1. Introduction

Criminal law is the strictest form of the state's coercive power. It is not limited merely to the imposition of punishment: criminal liability entails stigmatization, a criminal record, restrictions on social and

professional opportunities, and, in certain cases, deprivation of liberty. Therefore, in a democratic state, criminal law must be based on strict constitutional, doctrinal, and legal-political criteria. Article 1 of the Criminal Code of Georgia provides that the Code determines the basis of criminal liability, criminal acts, and the corresponding penalties; under the same article, the Code must comply with the Constitution of Georgia and the universally recognized principles and norms of international law.

In this context, the *ultima ratio* principle acquires particular significance. Its practical function is to define the limits of criminal law: only conduct that harms, or creates a real threat to, an important legal interest, and against which other, less restrictive legal mechanisms are insufficient, should be criminalized. In his critique of overcriminalization, Douglas Husak emphasizes that a theory of criminalization is necessary not only to justify new prohibitions, but also to determine which forms of conduct should remain outside the scope of criminal law.

The relevance of this study is determined by three circumstances. First, as a result of numerous amendments, the Criminal Code contains risks related to the proliferation of norms, duplication, vague terminology, and inconsistent sanctions. Second, criminal policy is often characterized by rapid and emotionally driven legislative reactions, which do not always test the effectiveness of alternative legal mechanisms. Third, artificial intelligence creates new risks, although their regulation should not automatically mean the introduction of new criminal offences. The purpose of this paper is to assess, on the basis of the *ultima ratio* principle, the main directions of the technical regulation of the Code, proportional sentencing, decriminalization, and the regulation of risks related to AI. The methodological basis of the research consists of doctrinal-legal, normative, systemic, comparative-legal, and analytical methods.

2. Legal Certainty and Vague Terms

A criminal law norm must be as clear and foreseeable as possible. The principle of legality — *nullum crimen, nulla poena sine lege* — requires that a person be able to reasonably assess in advance the legal consequences of their conduct. This requirement derives both from Article 31(9) of the Constitution of Georgia and from Article 7 of the European Convention on Human Rights. The case law of the European Court of Human Rights links legality to the accessibility and foreseeability of the law; a person must be able, if necessary with the assistance of professional legal advice, to understand which conduct entails criminal liability.

Evaluative terms create a particular problem in criminal law. One example is the term “grave consequence.” On the one hand, such terms are necessary, because criminal law cannot be entirely casuistic and cannot describe every possible factual situation. On the other hand, if such concepts are not defined by law or by stable judicial practice, the risk of arbitrary and unequal application of the law increases. A vague disposition is especially dangerous in criminal law because it directly affects a person’s liberty, reputation, and legal status.

Within the framework of reform, evaluative terms should be subject to systematic audit. Where an evaluative concept constitutes an essential element of an offence, the legislator should define minimum

objective criteria, such as the scale of harm, the number of victims, the irreversibility of the consequence, the importance of the protected legal interest, the duration of the conduct, the degree of harm to the public interest, or the systematic nature of the act. Such an approach does not eliminate evaluative terms, but limits their arbitrary use and strengthens legal certainty.

3. Harmonization of Sanctions and AI-Based Sentencing Audit

The sanctions provided in the Code should be reviewed through a unified matrix. The aim of reform should not be merely to amend individual articles in isolation; rather, an internal comparison of the Code is necessary in order to determine whether the penalties prescribed for different offences are proportionate in relation to one another. Conduct of similar gravity should be subject to relatively proportionate sanctions, while more serious infringements of legal interests should trigger a stricter legal response. In the sentencing model of England and Wales, the seriousness of an offence is assessed, among other factors, by reference to harm and culpability, which provides a useful comparative framework.

A sentencing matrix may include the following components: the importance of the protected legal interest; the harm caused or expected; the danger posed by the conduct; the form and intensity of culpability; repetition; organization; abuse of professional or official position; vulnerability of the victim; the number of victims; and the possibility of an alternative, less restrictive response. Such a matrix would help identify whether conduct posing a lower level of danger is punished more severely than substantially more serious infringements.

In modern conditions, artificial intelligence may be used in the creation of such a sentencing matrix, but only as an auxiliary analytical instrument. AI can generate a profile for each article of the Code, including the protected legal interest, the form of conduct, culpability, the minimum and maximum sanction, aggravating circumstances, penalties actually imposed in judicial practice, and comparison with other similar offences. On the basis of these data, it becomes possible to identify imbalances, duplication, excessively severe sanctions, or sanctions that are practically unused. However, AI must not become an automatic determinant of punishment: in the field of criminal law, the final decision always requires a normative assessment by humans, the legislature, and the judiciary.

4. Decriminalization and Fixed Monetary Thresholds

Decriminalization does not mean the creation of a legal vacuum. It means transferring specific conduct into a less restrictive legal regime — administrative, civil, disciplinary, or special regulatory. Decriminalization is justified when the conduct is not violent, does not create a high degree of public danger, the harm is compensable, and the victim can be protected through another legal mechanism. For this purpose, it is advisable to develop a “decriminalization test,” which would assess the importance of the legal interest, the degree of harm, the effectiveness of alternative liability, the social consequences of a criminal record, and the proportionality of investigative and judicial resources.

An important example for this test is Article 188 of the Criminal Code of Georgia — negligent damage or destruction of another person’s property, if the act caused significant damage. According to the note to the relevant chapter of the Code, significant damage is deemed to be the value of property exceeding 150 GEL.

This means that even the accidental damage of an item worth 151 GEL may formally become subject to criminal assessment if negligence and causation are established. Such an outcome is questionable from the standpoint of the *ultima ratio* principle: as a rule, the real interest of the victim is satisfied through compensation for damage, whereas criminal prosecution produces disproportionate stigma and the risk of a criminal record.

Against the background of changing financial and economic realities, the static nature of fixed monetary thresholds is also problematic. The same amounts — 150 GEL or 100,000 GEL — do not carry the same economic significance in different years. According to data from the National Statistics Office of Georgia, the consumer price index increased repeatedly between 2014 and 2025, including annual average indicators of 109.6 in 2021 and 111.9 in 2022. Accordingly, thresholds that may have been relevant in the past may today prove too low. A similar review is necessary with respect to Article 218, which concerns intentional evasion of taxes in a large amount; existing thresholds should be regularly assessed in light of business turnover, inflation, and the actual harm caused to the state's fiscal interest.

Possible reform models include: a substantial increase in fixed thresholds; an indexation mechanism through which monetary thresholds are periodically revised; or a mixed model, where qualitative criteria are added to the monetary amount — intent, systematic conduct, repetition, organization, vulnerability of the victim, and substantial harm to the public interest. The mixed model appears to be the most balanced, because the monetary amount alone cannot always determine the criminal-law significance of conduct.

5. Technical Simplification of the Code and Grouping of Articles

One part of the technical regulation of the Code may be the consolidation or organization into unified groups of articles that protect the same legal interest but differ from one another only by mitigating, aggravating, or special circumstances. Such an approach reduces duplication of norms, strengthens transparency in legal qualification, and promotes consistency in the system of sanctions.

A relevant example is the chapter on offences against life. Under the current Code, the following offences are regulated as separate articles: intentional homicide committed in a sudden state of strong emotional disturbance; homicide committed by exceeding the limits of necessary defence; homicide committed by exceeding measures necessary for apprehending an offender; and intentional killing of a newborn child by the mother. All these offences concern the same highest legal interest — human life — although liability is reduced on different mitigating grounds: emotional state, exceeding the limits of defence, exceeding the legitimate aim of apprehension, or a special bio-social condition.

Accordingly, a unified article model may be considered — “Homicide under Mitigating Circumstances” — in which each case would be formulated as a separate paragraph. This would not eliminate the doctrinal specificity of the individual offences, but would place them within a unified conceptual framework. At the same time, such consolidation requires caution: technical simplification must not lead to the loss of the distinct legal nature of each act. AI-based textual analysis may assist the legislator in identifying similar and repetitive dispositions, although the final decision must be based on criminal-law doctrine and constitutional assessment.

6. Regulation of AI in the Criminal Code

The development of artificial intelligence poses new challenges to criminal law. AI can simulate voice, image, video, documents, identity, and behavioral profiles in ways that are not always fully covered by traditional offence definitions. However, not every risk related to AI should become a new criminal offence. The EU AI Act approaches the regulation of artificial intelligence through a risk-based model and aims to ensure safe, fundamental-rights-compliant, and human-centered AI. The Council of Europe's 2024 Framework Convention also emphasizes that the entire lifecycle of AI systems must comply with human rights, democracy, and the rule of law.

For Georgia, a mixed model is advisable. First, the creation, dissemination, or threat of dissemination of synthetic intimate images without a person's consent may be considered as an independent offence where the act substantially harms dignity, private life, or reputation. Foreign experience is developing in this direction: in 2025, the United Kingdom announced a package aimed at criminalizing the creation of sexually explicit deepfakes; in the United States, the Take It Down Act concerns the prohibition of the dissemination of non-consensual intimate images and deepfakes and imposes removal obligations on platforms; South Korea took an even stricter approach in 2024 by criminalizing the possession or viewing of sexually explicit deepfake material.

Second, the use of AI may be added to existing offences as a qualifying or aggravating circumstance where it increases the scale of harm, the number of victims, the degree of organization, or the difficulty of detection. This may apply to fraud, extortion, forgery of documents, violation of private life, electoral offences, creation of false evidence, unlawful biometric identification, and acts committed against critical infrastructure. A new independent offence should be created only when existing provisions do not cover the new risk and the conduct involves a high level of public danger.

Third, in the fields of electoral processes, justice, biometric surveillance, and critical infrastructure, criminal liability should be defined only for serious, intentional, and high-risk cases. For example, the submission of AI-generated false evidence to a court may be assessed as an aggravated form of misleading justice, while the unlawful use of real-time biometric surveillance should fall within the scope of criminal law only where it is mass-scale, discriminatory, or involves abuse of public authority. All other AI-related violations should remain within administrative, civil, data protection, or special regulatory regimes.

Conclusion

The reform of the Criminal Code of Georgia should be based not on the expansion of repressive policy, but on the rationalization of the role of criminal law. In a state governed by the rule of law, criminal law should not be viewed as a universal mechanism for resolving social, economic, technological, or administrative problems. It represents the strictest form of state coercive power and, accordingly, its use is justified only in cases where the importance of the protected legal interest, the public danger of the conduct, the degree of harm, and the insufficiency of alternative mechanisms jointly justify criminal-law intervention.

From this perspective, the *ultima ratio* principle should become not only a theoretical proposition, but also a practical standard for reforming the Criminal Code. This principle requires that criminal liability be used

only when the protection of a legal interest through other — civil, administrative, disciplinary, regulatory, or restorative — mechanisms is impossible or clearly insufficient. Such an approach protects both individual liberty and dignity and the authority of criminal law itself, because overly broad criminalization ultimately diminishes the legitimacy and effectiveness of criminal law.

The reasoning developed in this paper demonstrates that the reform of the Criminal Code of Georgia should proceed in several interrelated directions. First, it is necessary to increase the degree of legal certainty of norms. A criminal law norm must be clear, foreseeable, and capable of uniform application by law-enforcement bodies and courts. Evaluative terms, such as “grave consequence,” should not remain undefined concepts that create opportunities for broad and unequal interpretation. Their existence in criminal law is inevitable in certain cases, but they must be clarified either by legislation or through stable and consistent judicial practice. Otherwise, the risks of arbitrary application of the law, unforeseeable liability, and violation of legal certainty arise.

The second important direction is the harmonization of the system of sanctions. The sanctions of the Code should not be assessed through the isolated analysis of individual articles, but on the basis of a unified sentencing matrix. Conduct of the same or substantially similar gravity should be subject to relatively proportionate sanctions, while acts posing different levels of public danger should not be punished with the same degree of severity. Sanctioning policy should be based on systematic criteria: the importance of the protected legal interest, the degree of harm or danger, the form of culpability, the manner of committing the act, repetition, organization, the vulnerability of the victim, and the degree of harm to state or public interests. Only such an approach can ensure the formation of a proportionate, consistent, and fair system of sanctions.

The third direction should be the revision of outdated monetary thresholds. Fixed monetary criteria existing in the Code, which may once have corresponded to economic reality, may no longer reflect the real socio-economic significance of the conduct today. Treating damage exceeding 150 GEL automatically as “significant damage,” especially in the context of negligent conduct, creates a risk of overly broad application of criminal law. Periodic review is also necessary with respect to monetary thresholds used in economic and tax offences, including the large-amount criteria in the context of tax evasion. Fixed amounts change their real value over time against the background of inflation, rising prices, wages, business turnover, and changes in the purchasing power of the national currency. Therefore, a systematic audit of monetary thresholds is advisable, as well as their linkage to objective economic indicators or to a mechanism of periodic review.

The fourth direction is a thoughtful and differentiated policy of decriminalization. Decriminalization does not imply the creation of a legal vacuum or disregard for the interests of victims. It means the proper selection of a legal response. If conduct is not violent, does not cause high-intensity harm, is not associated with significant public danger, and the victim can be protected through compensation, an administrative sanction, mediation, or a special regulatory mechanism, criminal liability should not be used. In such cases, criminal law becomes an excessively severe and disproportionate instrument. Therefore, within the framework of reform, it is advisable to develop a “decriminalization test,” under which each offence would

be assessed according to the importance of the legal interest, the degree of harm, the effectiveness of alternative liability, the social consequences of a criminal record, and the proportionality of investigative and judicial resources.

The technical simplification of the Code is also of particular importance. In a Code that has been amended many times over the years, duplicated, overlapping, or structurally inconsistent norms may accumulate. Therefore, reform should include not only the correction of individual sanctions, but also a review of the internal architecture of the Code. Articles related to the same legal interest, but distinguished by different mitigating or aggravating circumstances, may be grouped into a more logical and transparent structure. For example, in offences against life, grouping homicides committed under mitigating circumstances within a unified normative category would contribute to the systemic coherence of the Code, simplify legal qualification, and strengthen proportionality in sanctions. Such an approach does not mean the elimination of the doctrinal specificity of specific offences; on the contrary, it means placing them into a clearer, unified structure that is more easily understood by those applying the law.

The development of artificial intelligence is a new and complex challenge for the Criminal Code of Georgia. Through AI, it is possible to simulate voice, image, video, text, documents, identity, and decision-making processes in ways that do not always easily fit into traditional legal categories. However, against the background of technological development, the expansion of criminal law should not be based on technological panic. Every new risk should not automatically become a new criminal offence. Conduct committed through the use of AI should be assessed according to its real harm, intent, scale, number of victims, impact on fundamental rights, and degree of public danger.

The introduction of new independent offences is justified only in areas where existing norms clearly fail to ensure effective protection of human dignity, private life, identity, the integrity of elections, justice, or public safety. Such areas may include the creation or dissemination of synthetic intimate images without a person's consent, unlawful appropriation of a person's identity through AI, misleading justice through artificially created evidence, manipulation of electoral processes, and intentional use of AI systems against critical infrastructure. In other cases, however, it is more proportionate to add qualifying elements to existing offences or to strengthen the administrative-regulatory framework. For example, the use of AI may be treated as an aggravating circumstance in cases of fraud, extortion, document forgery, violation of private life, or computer-related offences, where it increases the scale, organization, or difficulty of detection of the offence.

At the same time, AI may be used not only as an object of regulation, but also as an auxiliary analytical instrument for reform. With appropriate safeguards, AI-based analytical models may assist the legislator in creating a normative map of the Code, identifying duplicated norms, detecting disproportionate sanctions, comparing similar offence definitions, and analyzing outdated monetary thresholds. However, such a system must not become an automatic source of legal decision-making. Determining criminal policy requires human normative, constitutional, and value-based assessment. The role of AI must be auxiliary, transparent, explainable, and subject to human control.

Ultimately, the main task of reforming the Criminal Code of Georgia should be to simplify the criminal law system, make it more transparent, proportionate, and compliant with human rights. The Code should become clearer, more internally coherent, and better adapted to contemporary challenges. To achieve this objective, it is necessary to implement the *ultima ratio* principle in practice, increase legal certainty, harmonize the system of sanctions, revise outdated economic thresholds, decriminalize conduct of low public danger, and regulate AI-related risks in a differentiated manner. Such an approach will create a Criminal Code that simultaneously protects public safety, the interests of victims, individual liberty, dignity, and the fundamental principles of the rule of law.

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