

The Use of Artificial Intelligence for the Individualized Justification of Preventive Measures

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Abstract

The use of artificial intelligence in Georgian criminal proceedings is a stretch, because there is not even a fully developed legislative definition of artificial intelligence yet. However, against the backdrop of the rapid development of technologies in the world, Georgia will not be an exception if algorithms find their place in our legislation. The article discusses the issue of decision-making by artificial intelligence when individually justifying a petition for a preventive measure against a detained and unrepresented defendant. Taking into account the current criminal legislation in Georgia, official statistics and practice of satisfying the requested imprisonment, the article expresses the opinion that giving artificial intelligence the ability to make decisions would be beneficial in the context of ensuring human rights and implementing a fair trial. Meanwhile, the right to make a final decision on a preventive measure should still be left to the judge in accordance with his human intelligence and resources, both in relation to detained and free defendants.

Keywords: Justification, Justice, Defendant

Main Sections

According to the Constitution of Georgia, legal proceedings are conducted on the basis of equality and adversarial status of the parties.¹ In accordance with this principle, the subjects participating in the consideration of the case in court, the accuser and the accused, appear as parties. Their recognition as parties means that they are granted equal procedural guarantees to protect their legal rights and interests.² However, the right of the detained accused to independently conduct an investigation is limited. In practice, the accused is not given adequate time and opportunity to independently conduct a parallel investigation and obtain evidence that can be used in his favor.

The adversarial nature and equality of the parties are the most important guarantees of the right to a fair trial guaranteed by the European Convention on Human Rights. ³Equality of the parties, according to the European Court, means that each party must be given a reasonable opportunity to present his or her position, including evidence, under conditions that do not place him or her at a substantial disadvantage compared to his or her opponent.⁴ I believe that a detained defendant who does not have a lawyer does

¹ Constitution of Georgia (as of May 15, 2026), Article 62, Section 5.

² Rukhadze Z. Constitutional Law of Georgia, Batumi, 1999.

³ Article 6 of the European Convention on Human Rights

⁴ Bulut v. Austria, no. 17358/90, ECHR, 22 February 1996, paragraph 47.

not have an equal opportunity compared to a prosecutor to provide the court with the necessary information about his or her personality, family situation, education, employment, property status or other data that are essential for the individual justification of a preventive measure. If information on these issues is retrieved by artificial intelligence and used in the individual justification of a motion for the imposition of a preventive measure, this would be much fairer than the situation in which the detained defendant is currently.

An adversarial criminal trial means that the parties compete with each other and the side that is better prepared wins. This preparation primarily refers to the professionalism of the parties, i.e. the prosecution and the defense. If the prosecution is represented by a professional lawyer, supported by a team of professional investigators, and the defense by a non-professional, detained defendant, there is no doubt that the issue of adversarial proceedings will create a potentially problematic situation when ensuring the rights of the defendant. The statistical data presented above also indicate to some extent the correctness of this position. "The main content of the principle of equality and adversarial proceedings is the separation of the functions of the prosecution and defense from the function of justice and their separation from each other, the provision of equal procedural rights to the parties and the dominant role of the court in decision-making."⁵

The so-called classical model of adversarial proceedings is based on the premise that a criminal trial is a dispute between the state and a criminally liable citizen, which is conducted in court. In such a dispute, both parties are given equal opportunities."⁶ The role of the court in the administration of justice in an adversarial process should be taken into account. The judge in this system is deprived of the opportunity to independently find or request evidence in the case. He is completely dependent on the evidence presented by the parties and only on their basis has the opportunity to create an inner conviction in order to make a legal and fair decision.

In continental litigation, adversarial proceedings are characterized by certain peculiarities. Unlike the Anglo-American legal system, the court is not considered as an arbitrator, as the main "manager" of the process, but actively participates in the examination of evidence. In addition, although the Georgian Civil Procedure Code establishes the so-called classical model of adversarial proceedings, the role of the judge is much weaker than in American law.⁷

The use of artificial intelligence in the application of preventive measures may have both positive and negative sides. However, the degree of positive side is much higher when two circumstances are added to the situation - a detained defendant and a trial without the participation of a lawyer. In the article, we will discuss just such a case. Important issues that must be discussed in this study are the adversarial process, the terminological definition of the parties and the role of the investigator, cases of mandatory protection and the grounds for the use of preventive measures.

⁵ Akubardia, I., Equality of Parties and the Role of the Judge in Competitive Litigation, see Mzia Lekveishvili's 85th Anniversary Collection, 2014, p. 130;

⁶ Gutsenko K., Golovko, L. Filimonov, B., Criminal Law Process of Western States, 2007, p. 13;

⁷ Akubardia I., Some Aspects of the Georgian Model of Competition, Journal "German-Georgian Criminal Law Journal", August, 2016, p. 13

Georgian criminal procedural legislation and the Constitution of Georgia ensure the priority of human freedom and only in exceptional cases consider it permissible to use imprisonment against a defendant when he is still considered innocent, although he enjoys all the rights of the accused.⁸

The accused may not be sentenced to imprisonment if the objectives of the measure of restraint can be achieved by using another, less severe measure of restraint.⁹ However, based on statistical data, it can be assumed that in practice, imprisonment is used more often than it might be motivated by extreme necessity. Even more interesting is the percentage of justification of the prosecutor's motions for the use of a measure of restraint against the accused. In January 2026, 67.2% of the total number of motions for the imposition of imprisonment were satisfied by the courts of first instance.¹⁰ In February, 71.0% of the motions for the imposition of imprisonment were satisfied by the courts.¹¹ However, in March, these data are not reflected in the official document.¹²

According to the Criminal Procedure Code of Georgia, there are three grounds for applying a preventive measure: the threat of absconding, the threat of destruction of evidence, or the threat of committing a new crime. It is sufficient for only one substantiated reason to exist for the court to apply any type of preventive measure to the accused, including the most severe preventive measure - imprisonment. In relation to the existence of all three of these threats, with the help of artificial intelligence, it is possible for the court to obtain more and more reliable information than an investigator would have obtained, especially given the limited time frame, when the accused was first presented to the court, or the prosecutor would have provided to the court, regarding the circumstances of the case or the personality of the accused, in conditions where the accused is detained and the lawyer defending his interests does not participate in the case. Procedural legislation considers the investigator, together with the prosecutor, to be the party to the prosecution.¹³

This effectively eliminates the independence of the investigator, although this issue goes beyond the scope of this article. Accordingly, I will only emphasize that the evidence that will be submitted to the court by the prosecution will in fact be presented only to strengthen the position of the prosecution. At the same time, the prosecutor is not obliged to present evidence useful to the accused in court. Or to separately consider in the motion for the imposition of a preventive measure the issue of which evidence can be used to protect the interests of the accused. The adversarial process raises the issue in this way and emphasizes the possibility of the accused to have a lawyer if he wishes, and in his absence, the accused himself to obtain evidence and present it in court, like the prosecutor. And, in practice, when imposing a preventive measure, in the absence of a defense party and in the case of a detained defendant, the possibility of bringing evidence useful to the defense party to court is almost zero.

⁸ "Criminal Procedure Code of Georgia" (Date of adoption: October 9, 2009), as of May 15, 2026, Article 5 and the presumption of innocence provided for in Article 31, Part 5 of the Constitution of Georgia.

⁹ "Criminal Procedure Code of Georgia" (Date of adoption: October 9, 2009), as of May 15, 2026; Article 198, Part 1, Part 4; Article 38, Paragraph 12;

¹⁰ Unified Report on Criminal Justice Statistics Reporting Period - January 2026, pp. 34-35

¹¹ Unified Report on Criminal Justice Statistics Reporting Period - February 2026, p. 34

¹² Unified Report on Criminal Justice Statistics Reporting Period - March 2026

¹³ "Criminal Procedure Code of Georgia" (Date of adoption: October 9, 2009), as of May 15, 2026; Article 3, Parts 5-7;

In this situation, there is a solution, which is the mandatory involvement of a lawyer in the criminal process when the defendant does not have a defense lawyer for some reason. However, when the legislator considered the issue of regulating mandatory defense by the Criminal Procedure Code, I think that the issue of saving procedural costs and resources was given priority over protecting the rights of the defendant and ensuring an adversarial process. The basis for saying this is the legislative records, according to which there are two ways to involve a lawyer in criminal proceedings. In one case, the legislator determines the cases when the participation of a lawyer is mandatory, if the defense is not carried out by agreement, i.e. the accused has not hired a private lawyer at his own expense. These cases are, for example: if the case is considered by a jury, if a plea agreement is concluded, etc.¹⁴ And the second way, that a lawyer is involved in the case through the treasury rule, i.e. the state covers the remuneration for his work in the case, is determined only if the accused is a socially vulnerable person.¹⁵

The right to defense is guaranteed by the Constitution of Georgia.¹⁶ Under the current procedural legislation of Georgia, the participation of a lawyer in the process is not always mandatory, which means that the process can be conducted without a lawyer. The literature expresses the opinion that “in order to ensure equality of parties, the participation of a lawyer should be mandatory from the investigation stage in all categories of cases in which the accused does not plead guilty, especially if he is a prisoner”.¹⁷

I believe that if the lawyer does not participate in the hearing on the imposition of a preventive measure, in order to ensure the protection of human rights, take into account the principle of justice and ensure a fair trial, the decision made by artificial intelligence will be more objective, since it will provide individual justification for the factual circumstances of the case and the formal grounds of international, European human rights law and court decisions, more quickly, objectively and fairly.

Today, only imprisonment and bail are actively used. Bail secured by imprisonment is also often used. The introduction of artificial intelligence into practice may also contribute to the active use of other types of preventive measures. For example, according to official statistics, out of a total of 750 preventive measures imposed by first instance courts in January 2026, 431 were custodial, or 57.5%, and 319 were non-custodial, or 42.5%. The share of bail imposed among non-custodial preventive measures was 99.7%.¹⁸ In February, out of a total of 935 preventive measures imposed by first instance courts, 610 were custodial, or 65.2%, and 325 were non-custodial, or 34.8%. The share of bail imposed among non-custodial preventive measures was 99.1%.¹⁹

In light of the adversarial principle and considering that the right to defense of the accused is ensured only in exceptional cases at the expense of the state, the positive aspects of using artificial intelligence for

¹⁴ “Criminal Procedure Code of Georgia” (adopted on 9 October 2009), as of 15 May 2026, Article 45;

¹⁵ “Criminal Procedure Code of Georgia” (adopted on 9 October 2009), as of 15 May 2026, Article 46; Law of Georgia “On Legal Aid”, (adopted on 19/06/2007), as of 15 May 2026; Article 2, subparagraph “g”;

¹⁶ Constitution of Georgia, Article 31, Part Three.

¹⁷ Mskhiladze, L., The Role of the Defense in Competitive Legal Proceedings, Journal “Advokati” No. 3-4 (2014), 59, 62.

¹⁸ Unified Report on Criminal Justice Statistics Reporting Period - January 2026, p. 36

¹⁹ Unified Report on Criminal Justice Statistics Reporting Period - February 2026, p. 36

individual justification of a preventive measure may outweigh the negative aspects, which is why its implementation in the Georgian justice system as soon as possible would be welcome.

Conclusion

Based on the research conducted, we can conclude that the introduction of artificial intelligence, granting it the right to make decisions, for the individual justification of a preventive measure and its specific type determination, when the accused is detained and does not have a human rights lawyer, is welcome and will be a step forward, in the context of justice, protection of human rights and a fair trial. The following circumstances gave us the basis for making this conclusion:

1. Georgia operates an adversarial system, which does not give the court the authority to obtain evidence. Only the parties obtain and present evidence in court.
2. Mandatory protection is not always a guaranteed right for the accused. Especially when a person is detained and has limited opportunities to obtain evidence useful to him. The prosecutor represents the prosecution in criminal proceedings and is not obliged, based on the principle of adversarial proceedings, to present evidence useful to the defense in court.
3. When preventive measures are considered in court, only the prosecution may be represented by professional lawyers, and the defense may be represented by a non-professional defendant. This would jeopardize justice in the context of an adversarial process.
4. I believe that the motion to impose a preventive measure received by artificial intelligence, despite the possible problematic issues that may potentially exist in practice, will better protect the rights of a detained defendant who is brought to court without a defense attorney than is currently the case under the current legislative framework.
5. After the individual justification of the preventive measure by artificial intelligence, the final decision will still depend on the judge. Accordingly, those possible ethical or moral issues that may not be fully analyzed by artificial intelligence will still remain the subject of human resource assessment. And, of course, the judge will make a decision in accordance with both the reasoning provided by artificial intelligence and his own views and inner beliefs.

The research presented in the article is a novelty, which I hope will arouse the desire for more in-depth research and will interest scientists working in the field of criminal law. Also, the legislator may take into account the reasoned opinion in the article and, by making appropriate amendments to the law, by introducing the use of modern technologies, refine and make criminal procedural legislation, as well as the rights of the accused, fairer.

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