

COMPARISON OF THE WITNESS'S AND THE DEFENDANT'S TESTIMONIES IN LEGAL DISCOURSE

ABSTRACT

The Georgian criminal procedure system has existed for several years. Initially, the Criminal Procedure Code of February 20, 1998 attempted to regulate the criminal procedure; however, taking into account contemporary developments, the Criminal Procedure Code of 2009 - which remains in force – was adopted to address the criminal justice issues prevailing at the time. Since the criminal procedure is not static, over time, alongside new challenges, it has been shaped by the decisions of the legislative body and the Constitutional Court. It is worth exploring whether the Judgment of the Plenum of the Constitutional Court of Georgia dated December 28, 2021 imposed limitations on the defendant's internationally recognized right against self-incrimination, and whether it effectively equated the defendant with a standard witness. This article specifically addresses the common and distinguishing features of the procedural status of the defendant and the witness, and the peculiarities of their testimonies.

I. INTRODUCTION

The existence of the Georgian criminal procedure dates back several decades. Initially, the Criminal Procedure Code of February 20, 1998 attempted to regulate the criminal procedure; later, taking into account contemporary developments, the currently applicable Criminal Procedure Code was adopted in 2009 to address the criminal law issues that existed at that time. Some problematic issues, however, remain unresolved to this day. Accordingly, in parallel with the development of society, the lawmaking role - traditionally held by the Parliament of Georgia - has also been shaped by the Constitutional Court of Georgia.

Since, alongside the formation of a democratic state, vigilante justice was rejected and the monopoly on punishment of offenders was assumed by the state, the defendant/convict has become the central focus of both the substantive and procedural criminal codes. In an adversarial process, the defendant is provided with specific legal safeguards to protect themselves from unlawful restrictions of their rights and freedoms, unfounded

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and unsubstantiated accusations, as well as unlawful and unfair judgments. Moreover, the defendant must have the opportunity to choose their own defense strategy and present their version of events to the judge without any restrictions.

Until December 28, 2021, both the substantive and procedural parts of criminal law had left open the issue of imposing criminal liability on a defendant for giving false testimony. However, according to the Judgment No. 3/2/1478 of the Plenum of the Constitutional Court of Georgia, the establishment of truth and the protection of the public interest were prioritized over the defendant's protection from self-incrimination.

It is worth examining the common and distinguishing features of the procedural status of the defendant and the witness, the particularities of the testimonies they give, and the dilemma faced by the defendant - whether to exercise the right to remain silent or to tell the truth.

II. LEGAL ANALYSIS OF WITNESS TESTIMONY ACCORDING TO THE CRIMINAL PROCEDURE CODE OF GEORGIA

The witness is of vital importance to the criminal justice system. They constitute the fuel of justice, contributing to the strengthening of fairness. The witness is also referred to as the backbone of the criminal justice system, as they are often the person who possesses the most information about the events of the crime and, in many cases, represent direct evidence of the offense. A witness's testimony assists the court in delivering a fair verdict; therefore, the truthful testimony of a witness is the cornerstone of justice, and the witness is regarded as the "eyes and ears" of the incident.¹ Hence, witness testimonies are of great importance and high value, as they help establish the probable cause of the crime and verify various versions of the events.²

As a rule, any witness is willing to present their perspective on the incident. The witness is one of the key factors considered by the investigation during the examination of the case.³

The legal definition of a witness is provided in Article 3, paragraph 20 of the Criminal Procedure Code of Georgia, according to which a witness is a person who may have knowledge relevant to establishing the circumstances of a criminal case. They acquire the status, rights, and obligations of a witness after being informed about their criminal liability and taking an oath. Accordingly, it is of interest at which stage - investigative or judicial - a person acquires the status of a witness, that is, when the person is warned

¹ Rahul Jaggi, 'Witness Protection' (2020) 18 *Supremo Amicus* 1.

² Jessica Ward, 'Do the Clothes Make the Man - Implications of a Witness' Status in the Determination of Probable Cause' (2001) 28 (6) *Fordham Urban Law Journal* 2012.

³ Ward, *supra* note 2, 2006.

about criminal liability and takes the oath. In practice, a person acquires the status, rights, and obligations of a witness in court⁴ after taking a religious or non-religious oath, or making a civil affirmation in lieu of an oath,⁵ and after being warned by the judge about criminal liability.⁶ Article 48, paragraph 2 of the Criminal Procedure Code of Georgia obliges the court, prior to administering the oath, to explain to the witness the significance of the oath and to inform them about the criminal liability provided for under Articles 370 (false information; false testimony) and 373 (false accusation) of the Criminal Code of Georgia. The purpose of the oath, in turn, has always been to promote the reliability of witness testimonies.⁷

Article 47 of the Criminal Procedure Code of Georgia additionally defines the range of persons who may be summoned and subsequently questioned in court as witnesses. Such persons include the parties to the criminal proceedings as well as other participants in the process. More specifically, according to the above-mentioned article, when giving testimony in court, the following persons also hold the status of a witness, are granted the rights of a witness, and bear the corresponding obligations: the investigator, the prosecutor, the defendant, the victim, the expert, and the interpreter.

As for the information provided by the witness, according to Article 3, paragraph 24 of the Criminal Procedure Code of Georgia, witness testimony is the information given by a witness in court concerning the circumstances of a criminal case; while, giving testimony, according to the interpretation of the Constitutional Court of Georgia, implies the expression or realization of one's willful element through verbal (oral), written, or any other form of action.⁸ If a witness wishes to testify in court, no one can prevent them from doing so, not even the defendant.⁹

It is important to note that the witness must be aware of their rights and obligations in the criminal proceedings.¹⁰ Article 49 of the Criminal Procedure Code of Georgia defines the rights and obligations of a witness. On the one hand, the witness has the right to: know the reason for their summons; if they do not know or properly understand the language of the criminal proceedings, or if they have a limitation that prevents

⁴ Collective of authors, George Giorgadze (ed.), *Commentary to the Criminal Procedure Code of Georgia* (Meridiani Publishing 2015) 36.

⁵ George Tumanishvili, *Overview of the General Part of Criminal Procedure* (Lawyers' World Publishing 2014) 151.

⁶ Collective of authors, *supra* note 4, 36.

⁷ Svjetlana Dragovic, 'Witness Oath in Criminal Proceedings' (2023) 3-4 *Criminal Justice Issues - Journal of Criminal Justice, Criminology and Security Studies* 80.

⁸ Judgment of the Constitutional Court of Georgia N1/4/809 "Citizen of Georgia Titiko Chorgoliani v. the Parliament of Georgia", 14 December 2018, paragraph 42.

⁹ Mitchell Caldwell and Carlo Spiga, 'Crippling the Defense of an Accused: The Constitutionality of the Criminal Defendant's Right to Testify', (2006) 6 (1) *Wyoming Law Review* 311.

¹⁰ Julia Muraszkievicz, 'The Role of Witness, Expertise, and Testimony' (2016) 28 (1) *International Journal of Refugee Law* 165.

communication without sign language, to testify in their native language or any other language of their choice, and to use the services of an interpreter at the state's expense; to review the record of the investigative action conducted with their participation and request that remarks, additions, or amendments be made to it; to refuse to testify if such testimony would incriminate themselves or a close relative in the commission of a crime; to participate in the conduct of an investigative action; and to request the application of a special protection measure. It is noteworthy that the above-mentioned rights are not exhaustive, and additional rights of the witness are provided in various articles of the Criminal Procedure Code.¹¹ E.g., the witness has the right to use the services of a witness and victim coordinator;¹² the right to benefit from a special protection measure;¹³ the possibility of a closed hearing ordered by the judge based on the right to privacy;¹⁴ and, in cases provided by the Criminal Procedure Code, the possibility to be questioned remotely.¹⁵ On the other hand, the witness is required to: appear upon the summons of the court; answer the questions posed; not disclose any case-related information known to them if the court has warned them about it; maintain order during the court hearing; and not leave the courtroom without the permission of the presiding judge.

The Criminal Procedure Code defines the criteria for the admissibility of a witness's testimony as evidence.¹⁶ The witness must be able to accurately perceive, retain, and recall the facts, and when giving testimony, they must indicate the source of the information provided.¹⁷ Since the information has been obtained from an unknown source and its verification is difficult, in this case, the evidence should serve to establish the specific circumstances of the case, rather than rely on assumptions.¹⁸

It should be noted that the Criminal Procedure Code distinguishes between direct testimony and indirect (hearsay) testimony of a witness. The direct testimony of a witness can be considered as the testimony of a person who "personally saw, heard, or otherwise became aware of" information relevant to the case.¹⁹ Hearsay evidence constitutes a testimony of a witness that is based on information conveyed by another

¹¹ Collective of authors, *supra* note 4, 209.

¹² Article 581, the Criminal Procedure Code of Georgia <<https://matsne.gov.ge/ka/document/view/90034?publication=163>> [last accessed on 11 March 2024].

¹³ Articles 67-68, the Criminal Procedure Code of Georgia <<https://matsne.gov.ge/ka/document/view/90034?publication=163>> [last accessed on 11 March 2024].

¹⁴ Article 182, the Criminal Procedure Code of Georgia <<https://matsne.gov.ge/ka/document/view/90034?publication=163>> [last accessed on 11 March 2024].

¹⁵ Article 243, the Criminal Procedure Code of Georgia <<https://matsne.gov.ge/ka/document/view/90034?publication=163>> [last accessed on 11 March 2024].

¹⁶ Tumanishvili, *supra* note 5, 159.

¹⁷ Article 75, the Criminal Procedure Code of Georgia <<https://matsne.gov.ge/ka/document/view/90034?publication=163>> [last accessed on 11 March 2024].

¹⁸ Mikheil Mamniashvili, 'Classification of Evidence and Its Types', Collection of Works Dedicated to the 80th Anniversary of Professor Shota Papiashvili (Lawyers' World Publishing 2015) 235.

¹⁹ Tumanishvili, *supra* note 5, 212.

person,²⁰ i.e., the information became known to the witness through another individual.²¹ As of today, hearsay evidence can be regarded as admissible only if the person providing the testimony indicates the source of the information in such a way that the source can be identified and its actual existence verified. Furthermore, during the substantive hearing of the case in court, hearsay evidence is admissible only if it is corroborated by other evidence that does not constitute hearsay.²² Prior to June 14, 2013, during the substantive hearing of a case in court, hearsay evidence could be corroborated by any other piece of evidence. However, following the legislative amendment, hearsay is corroborated by other evidence that is not itself hearsay.²³ By its decision of January 22, 2015, the Constitutional Court of Georgia declared it unconstitutional to render a conviction or to recognize a person as an accused solely on the basis of hearsay evidence.²⁴

The Criminal Procedure Code provides for exceptions to the obligation to testify, which are set out in Articles 49 and 115 of the Criminal Procedure Code of Georgia. According to these provisions, a witness has the right to refuse to give testimony that would incriminate themselves or their close relatives. Article 50 of the Criminal Procedure Code of Georgia lists the persons who, on the one hand, are not under the obligation to testify, and, on the other hand, grants the court the authority to release a witness from the duty to testify.

Based on all of the above, witness immunity, as a criminal procedure law institution, is a set of legal (exceptional) norms that grants certain categories of witnesses the right to refuse to testify. These categories of persons are divided as follows: Persons who, as a rule, cannot be questioned as witnesses in criminal proceedings; 2. Persons who, as a rule, may be questioned as witnesses but have the right to refuse to testify; 3. Persons whom the court may exempt from the obligation to testify.

The objective and subjective understanding of witness immunity is limited to its division into two groups: a) the right not to incriminate oneself; b) the right to refuse to testify. According to the right against self-incrimination, witness immunity can be classified as either absolute (imperative) immunity or relative (dispositive) immunity. In the case of absolute immunity, the witness has a legal right to refuse to testify. A person with a physical or mental disability who is unable to properly comprehend and retain

²⁰ Irine Urushadze, *Hearsay Testimony as Evidence in Criminal Proceedings - A Study of the Practice of General Courts* (2015) 8.

²¹ Collective of authors, *supra* note 4, 265.

²² Article 76, The Criminal Procedure Code of Georgia <<https://matsne.gov.ge/ka/document/view/90034?publication=163>> [last accessed on 11 March 2024].

²³ Article 73, the Law of Georgia “On Making Amendment to the Criminal Procedure Code of Georgia”, 14 June 2013. *Legislative Herald of Georgia*, 741-II.

²⁴ Judgment of the Constitutional Court of Georgia N1/1/548 “Citizen of Georgia Zurab Mikadze v. the Parliament of Georgia”, 22 January 2015. Paragraph III.

the essential circumstances of the case may not be questioned as a witness. Relative (dispositive) immunity applies when the witness has the option to choose, specifically, the right to refuse to testify. This type of immunity extends to the defendant.²⁵

It is noteworthy that Article 47 of the Criminal Procedure Code of Georgia grants the status of a witness to the victim as well as to the defendant when giving testimony; however, Article 370 of the same Code refers separately to the victim and the witness. Therefore, substantive criminal law distinguishes between a witness (the so-called witness in the narrow sense) and a victim-witness (the so-called witness in the broad sense). The opposite reasoning is developed in the Judgment of the Plenum of the Constitutional Court of Georgia dated 28 December 2021. The Constitutional Court of Georgia interprets the term “witness” to also encompass the defendant when providing testimony in the interest of self-defense. Consequently, the defendant is faced with a choice between exercising the right to remain silent or giving self-incriminating testimony under the risk of criminal liability.²⁶ In such a case, the question arises as to why the legislator chose to distinguish the victim-witness from the “classical” witness. It is noteworthy that Article 370 of the Criminal Code of Georgia, while referring to the witness and the victim, does not mention the giving of false testimony by the defendant.²⁷ Moreover, Article 74 of the Criminal Procedure Code of Georgia clearly differentiates the testimony given by the defendant from that of other witnesses and treats the conduct of the defendant during testimony in a different manner.²⁸ Due to this conduct, there is no legal basis for holding the defendant criminally liable, nor for equating their legal status with that of other participants.

Accordingly, due to the procedural status of the defendant and the witness, they are participants in the proceedings with distinctly different legal positions.²⁹

III. LEGAL ANALYSIS OF THE DEFENDANT'S TESTIMONY UNDER THE CRIMINAL PROCEDURE CODE OF GEORGIA

The defendant is the cornerstone of criminal proceedings. According to Article 3, paragraph 19 of the Criminal Procedure Code of Georgia, a defendant is a person against whom there is a reasonable presumption that they have committed a crime defined by the Criminal Code of Georgia. The status of the defendant implies a special procedural position, as the acquisition of this status grants the defendant specific rights

²⁵ Magda Tatishvili, ‘Witness Immunity in Criminal Procedure’ (2019) 1 Journal of Law (TSU) 157-158.

²⁶ George Tumanishvili, ‘False Testimony as a Ground for the Defendant's Criminal Liability’ (2023) 1 German-Georgian Criminal Law Journal 13-14.

²⁷ Tumanishvili, *supra* note 5, 208.

²⁸ *ibid*, 14.

²⁹ Lili Mskhiladze, ‘The Defendant's Right to Testify’ (2016) 4 (52) 16 Justice and Law 7.

and obligations. It is noteworthy that Article 38 of the Criminal Procedure Code of Georgia concerns the rights and obligations of the defendant; however, in practice, it addresses only the rights, with no mention of obligations.³⁰ A person acquires the status of a defendant upon the initiation of criminal prosecution. According to Article 167, paragraph 1 of the Criminal Procedure Code of Georgia, criminal prosecution commences either upon the detention of a person or upon their recognition as a defendant (if the person has not been detained). Accordingly, a person acquires the status of a defendant either through detention or by being formally recognized as an accused.

In criminal law, it remains of utmost importance that the defendant is properly and lawfully informed of the accusation - specifically, what charges are brought against them, what rights they have, and how those rights may be exercised. The defendant must always have the opportunity to defend themselves in court - whether by remaining silent or by giving testimony. They have this right, and it must never be taken away. This also includes, at a minimum, the right to question witnesses testifying against them, to give testimony, and to be represented by a lawyer.³¹ No person is obligated to give testimony against themselves in a criminal case during proceedings held in the courtroom.³² The right to remain silent is a fundamental right of the defendant; however, it is also their right to testify, even if the testimony is self-incriminating.³³

According to Article 74 of the Criminal Procedure Code of Georgia, the testimony of the defendant is the information provided by them in court regarding the circumstances of the criminal case. According to Paragraphs 2 and 3 of the same article, giving testimony is the defendant's right. The defendant's refusal to testify or the act of giving false testimony may not be considered as evidence confirming their guilt.

The rights of the defendant are guaranteed by the Constitution of Georgia. According to Article 31, paragraph 4, the defendant has the right to summon witnesses in their defense and to question them under the same conditions as the prosecution's witnesses; while according to Paragraph 11 of the same article, no one is obligated to testify against themselves or against their relatives, the scope of whom is defined by law.

The fundamental rights of the defendant are further reinforced by the Convention for the Protection of Human Rights and Fundamental Freedoms. According to Article 6, paragraph 1 of the Convention, any person, in the determination of their civil rights and obligations or of any criminal charge against them, is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The court judgment is pronounced publicly; however, the press and public may

³⁰ Badri Niparishvili, 'The Defendant's Choice between the Right to Testify and the Right to Remain Silent' (2020) 1 (65) 20 Justice and Law 10.

³¹ Caldwell and Spiga, *supra* note 9, 212.

³² Dianne K. LeVerrier, 'Self Incrimination' (2000) 16 (2) Touro Law Review 701.

³³ Caldwell and Spiga, *supra* note 9, 311.

be excluded from all or part of the trial in the interests of morality, public order or national security in a democratic society; also, where the interests of minors or the protection of the private life of the parties require so, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

According to Article 6, paragraph 3d of the Convention, everyone charged with a criminal offence has, as a minimum, the following rights: to examine or have examined witnesses against them and to require the attendance and examination of witnesses on their behalf under the same conditions as witnesses for the prosecution.

Professor G. Tumanishvili considers the defendant not only as an active subject of the proceedings but also as a source of evidence in both the narrow and broad sense. He attributes the defendant's testimony to the narrow understanding of evidence, while the samples obtained through investigative actions conducted in relation to the defendant, in professor's opinion, are associated with the broad understanding of evidence.³⁴ Generally, the information provided by the defendant serves as a basis for the thorough examination and assessment of the relevant circumstances.³⁵ It is important to note that "the defendant's testimony depends on their subjective will and does not constitute mandatory or indispensable evidence in a criminal case."³⁶ The status of the defendant releases them from the obligation to actively cooperate with criminal justice authorities. Furthermore, any discussion of the defendant naturally brings up the right to remain silent. According to Article 38, paragraph 4 of the Criminal Procedure Code of Georgia, the defendant may exercise the right to remain silent at any time; and if the defendant chooses to do so, this may not be considered as evidence of their guilt.

It is important to note that the defendant may choose to refuse to testify without providing any reason or logical explanation. In such cases, no assumptions should be made as to why the defendant decided to exercise the right to remain silent. There are defendants whose silence genuinely defies logic and appears entirely inexplicable and out of context. If the defendant cannot be questioned, their silence may be the result of a sense of guilt. It's noteworthy that the defendant's silence may under no circumstances be used against them as evidence of having committed the crime. Even the defendant's own confession cannot serve as the sole basis for a conviction unless it is corroborated by other supporting evidence in the case. It would be incorrect to claim that everyone who exercises the right to remain silent should be considered guilty. The right to remain silent is an important safeguard of liberty. The conclusion that a person who remains silent is guilty is logical only when other specific circumstances of the case point to the same.³⁷

³⁴ Tumanishvili, *supra* note 5, 206-207.

³⁵ Mamniashvili, *supra* note 18, 234.

³⁶ Collective of authors, *supra* note 4, 256.

³⁷ Helga Zandberg, 'The Right to Avoid Self-Incrimination and the Concealment of a Defendant's Criminal Past' (2010) 8 (1) Dartmouth Law Journal 3.

Legal systems determine whether silence may be interpreted as indicative of guilt in each respective country. In various legal systems that conceal the defendant's criminal record or prior convictions, the question of whether the defendant's refusal to testify indicates guilt must be determined individually in each case. In general, three main reasons are cited to explain a defendant's silence: first, the defendant is guilty and does not wish to commit perjury; second, the defendant rejects the court, does not recognize its jurisdiction, and refuses to testify on principle; third, the defendant intends to protect a guilty third party who would be exposed by their testimony. It is evident that the defendant is guilty if the second and third motivations do not apply. In such a case, the defendant may choose to testify only after hearing all the prosecution witnesses and concluding that remaining silent is pointless and ineffective. Moreover, the defendant does not experience pressure when testifying in court, as might be the case during police interrogation. In court, the defendant has a final opportunity to explain themselves, and the refusal to make use of this opportunity may, in a sense, indicate a sense of guilt. If the defendant refuses to testify because they reject the authority of the court or wish to protect a third party who is guilty, such a decision does not necessarily indicate guilt; however, such situations are exceptional.³⁸

According to Article 47 of the Criminal Procedure Code of Georgia, when giving testimony in court, the status of a witness - along with the corresponding rights and obligations - also applies to the investigator, the prosecutor, the defendant, the victim, the expert, and the interpreter. The above may, for the purpose of giving testimony, place the defendant within the rights and obligations of a witness and, accordingly, may require the application of the warning procedure regarding criminal liability for giving false testimony, as provided by Article 48, paragraph 2 of the same Code. Although the same section also provides for the obligation to issue a warning regarding liability for refusal to testify, this does not constitute the subject of the present dispute. There is no doubt that the Criminal Procedure Code prohibits drawing negative conclusions from the exercise of the right to remain silent; still, the issue remains problematic.³⁹ It is worth considering whether the dilemma "either remain silent or tell the truth" imposes a limitation on the rights of a witness, especially those of the defendant.⁴⁰

When the defendant is questioned as a witness in court, they are subject to the obligation to take an oath;⁴¹ however, treating the defendant's testimony in the same manner as that of other witnesses is incorrect. The defendant's testimony is often unique and singular, as there may be no eyewitnesses to the commission of the crime and no one to contradict the defendant's account. The defendant is the only witness in criminal proceedings

³⁸ Zandberg, *supra* note 37, 2.

³⁹ Niparishvili, *supra* note 30, 11.

⁴⁰ Patricia J Kerrigan, 'Witness Preparation' (1999) 30 (4) *Texas Tech Law Review* 1367.

⁴¹ Mskhiladze, *supra* note 29, 7.

who has an absolute right to testify. Moreover, the defendant must not be denied the right to influence the judge and the jury, to create a certain impression regarding a particular event or circumstance.⁴² Imposing liability on the defendant for giving false testimony as a witness to some extent restricts their ability to choose a defense strategy and to develop a version of events that may ultimately lead to an acquittal. The Criminal Procedure Code grants the defense the authority to determine what type of evidence to present. Under such conditions, the defendant must be given the opportunity to provide the court with only such information, and in such a form, as is beneficial to their case, and should not be obligated to give exhaustive and precise testimony on all factual circumstances.⁴³

No one should be obligated to testify against themselves, and the deprivation of this right is impermissible under the law.⁴⁴ There is an opinion that the defendant should not be subjected even to cross-examination.⁴⁵ In 1866, at the initiative of the Massachusetts legislature, the defendant was granted the opportunity to preserve their own “secrets.” The only obligation of the defendant is to remain passive. With regard to false testimony, the defendant may give false statements at any time in the course of their defense.⁴⁶

On the other hand, there is a view that allowing false testimony would lead to an accumulation of false and useless statements in criminal proceedings that also creates the risk that jurors may cease to believe any testimony given by defendants in general.⁴⁷

The right to testify is a repeatedly recognized right of the defendant. Therefore, restricting the defendant to testifying solely in the capacity of a witness and within that limited framework, during the substantive hearing of a case in court, must be regarded as an impermissible restriction of the defendant's universally recognized right.⁴⁸ If an individual is deprived of their rights, and the state is, conversely, given the opportunity to use the right to remain silent against the defendant - thereby unjustly causing harm through its own actions - such a trial should never be allowed to proceed, even to the slightest degree.⁴⁹

A number of courts have emphasized that the right to remain silent, similar to the right to testify, is one of the essential rights within a fair trial. A fair trial encompasses the rights of a person deprived of liberty to be heard and to give testimony. The restriction of these rights constitutes a grave violation of the European Convention on Human

⁴² Caldwell and Spiga, *supra* note 9, 126.

⁴³ Niparishvili, *supra* note 30, 11.

⁴⁴ Calvert, ‘Testimony of the Accused’ (1887) 11 (4) *Virginia Law Journal* 194.

⁴⁵ *ibid*, 195.

⁴⁶ ‘Testimony of Person Accused of Crime’ (1867) 1 (3) *American Law Review* 443-449.

⁴⁷ *ibid*, 450.

⁴⁸ Niparishvili, *supra* note 30, 11.

⁴⁹ Brian Kurbjeweit, ‘The Privilege against Self-Incrimination: Is the Court Chipping Away at our Most Precious Right’ (2000) 9 (2) *Widener Journal of Public Law* 195.

Rights. Moreover, it is universally recognized that no piece of evidence presented by the defense, including the testimony of a defense witness, carries the same weight as the testimony of the defendant themselves.⁵⁰

In conclusion, it can be stated that, due to their respective legal statuses, the defendant and the witness are fundamentally distinct procedural figures, and equating the testimony of the defendant with that of a witness (unless it reflects the defendant's own will) must be regarded as a violation of the defendant's rights.⁵¹ The doctrinal analysis of the rights and obligations of the defendant and the witness makes it clear that the procedure established by the Criminal Procedure Code of Georgia for questioning the defendant in the capacity of a witness restricts the defendant's rights⁵² - a position that was further reinforced by the Judgment of the Plenum of the Constitutional Court of Georgia dated 28 December 2021.⁵³

IV. CONCLUSION

In conclusion, one may state that, due to their respective legal statuses, the defendant and the witness are fundamentally distinct procedural figures, and equating the testimony of the defendant with that of a witness (unless it reflects the defendant's own will) must be regarded as a violation of the defendant's rights. With issuing the Judgement of the Plenum of the Constitutional Court of Georgia on 28 December 2021, the defendant's internationally recognized right against self-incrimination was further restricted. This demonstrates that the Constitutional Court has established a new legal reality, leaving numerous issues in judicial practice unresolved. By equating the defendant with an ordinary witness, the Court has placed the defendant in a constrained position, offering only two options: to remain silent or to tell the truth. However, even the exercise of the right to remain silent risks being interpreted as a concealed response.

One of the Constitutional Court's key responsibilities is to eliminate procedural deficiencies within the justice system instead of creating new, artificial barriers - an approach that contradicts the universally recognized international principles and standards. Ultimately, it can be said that the privilege against self-incrimination is one of the most fundamental rights in criminal proceedings, based on the presumption of innocence. The privilege against self-incrimination specifically prohibits exerting pressure on an individual to provide testimony, in any form, against themselves. The defendant, due to their special legal status, must not be equated with a witness and must not be placed in the position of having to choose between exercising the right to remain silent or telling the truth.

⁵⁰ Caldwell and Spiga, *supra* note 9, 115.

⁵¹ Niparishvili, *supra* note 30, 11.

⁵² Mskhiladze, *supra* note 29, 7.

⁵³ Judgment of the Plenum of the Constitution Court of Georgia N3/2/1478, 28 December 2021.