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Third Parties as the Subjects of Civil Justice

The paper considers the development of the third-party institute in civil proceedings and its value for implementation of the right of access to court. It includes comparative analysis of the third parties stipulated in the civil procedures of civil law countries - European Union, Germany, Italy, France and common law countries – UK, USA, Canada and Australia. The article also compares the third persons envisaged in the project "The International Rules of Civil Procedure" of the American Law Institute (ALI) and the International Institute for the Unification of Private Law (UNIDROIT) and in the Civil Code of Georgia.

The paper considers the issue about define the type and quality of influence to be exerted by judgment on persons' rights to involve them in trial in the Civil Procedures Code of Georgia.

The paper suggests introduction of the term „intervention" in the Civil Procedure Law of Georgia and differentiation of the kinds of intervention in accordance with the continental (civil) law reflecting the interference of a third party in the civil proceedings. For avoiding intervention of the persons, whose rights and obligations are not impacted by the judgement, the paper, at stipulation of international practice, recommends introduction of the "amicus curiae" procedural mechanism in Civil Procedure Law.

Key words: *Civil Procedure, third person, intervention, amicus curiae.*

1. Introduction

Civil disputes regularly originating between two parties might complicate[1] and become complex and multiparty. The primary objective of the civil justice is to achieve fair, complete and efficient solution of the dispute, which requires existence of flexible and appropriate legal regulations. In the civil procedures, it is very important properly to define the status, rights and obligations of the persons participating in the proceedings. The institute of a third party provided in the Civil Procedure Law reinforcing the right to fair trial defined by Article 6 of the European Convention on Human Rights is the merit of the national culture of civil procedure. According to the scope of the rights provided for third persons´, it is possible to judge how the legislator defends the rights of the citizens.[2] In addition, the efficient legal defence includes the issues concerning the scope of practice of a third party allowed.[3] Given these circumstances, intervention of a third party in civil proceedings has a special significance.

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1 *Liluashvili T., Khrustali V.,* The Comment to the Civil Procedure Code of Georgia, 2nd ed., Tbilisi, 2007, 168 (in Georgian).

2 *Gottwald P.,* Comparative Civil Procedure, Ritsumeikan Law Review, International Edition, № 22, March 2005, 25, <http://www.ritsumei.ac.jp/acd/cg/law/lex/rlr22/rlr22idx.htm>.

3 *Luke W.*, Die beteiligung Dritter im Zivilprozess, Eine rechtsverglaichende Untersuchung zu Grundfragen der subiektiven Verfahrenskonzentration, Tübingen, 1993, 6.

It is difficult to agree with the opinion of some authors, according to which a third party is considered as surplus, harmful mechanism and is used for a process delay.[4] On the contrary, a third party institute in civil proceedings is one of the valuable resources and its objective performance greatly assures realization of human right - access to a court, guaranteed by Constitution and international acts.

The third party intervention in civil process helps for collection all neseccary materials in one case,[5] also provides full consideration of the case by court and eliminates risk of contradictory decisions. Participation of a third party provides not only to protect the rights quickly and correctly but also saves time of judicial authorities and helps for procedural economy.

The Civil Law of the Soviet period was mostly a part of the public law. The change of social and economic formation put the problem of the legislation optimization on the agenda. After the collapse of the Soviet Union, in Georgia the Civil Law was chosen as the best legal system for the country. The Civil Code of Georgia based on the principles of the Civil (Continental) Law was adopted in 1997. Although the material Law of Georgia relies on the Civil Law principles, in the Civil Procedure Code the existing legal norms for the institute of the third parties are mainly the same as those of the Soviet Union period and do not meet requirements of modern civil society. Against the background of global harmonization, the problem of optimization and harmonization of the Civil Procedure Law is on the agenda again. The more so, according to Article 13th of Association Agreement between the European Union and the European Atomic Energy Community and their Member States and Georgia while cooperating in security and justice, the parties shall focus on the further support to the rule of law including the independence of the Court, access to justice and the right to the fair trial.[6] Increasing pace of internationalization and globalization causes legal, economic, political and/or cultural integration of various parts of the world in larger entities[7]. The integration results in the world-scale harmonization and unification of law and in this rapid process of harmonization, it is important to develop such mechanisms in Georgian legislation, which can succesfully regulate the modern civil realtionship.

2. The Third Parties in the Harmonization and Unification Process

The researchers of the comparative civil procedures had several attempts to unify the existing civil procedural law. Harmonization of the civil law was preceded by adoption of the conventions[8],[9],[10]while

4 *Prikhodko I.A.,* Access to Justice in Arbitration and Civil Litigation. St. Petersburg .: Publishing House of S.-Petersburg state. University, 2005, 345 - 347; Ibid, Problems of Participation of Individuals in the Arbitration process // Arbitration practice, 2005, 29 (in Russian).

5 *Kurdadze S, Khunashvili N.,* Civil Procedure Law of Georgia, Meridiani, Tbilisi, 2012, 123 (in Georgian).

6 Association Agreement between the Aeuropean Union and European Atomic Energy Community and their Member State, of the one Part, and Georgia, of the other part 27.06.2014, ratified 18.07.2014, Effective 01.07.2016.

7 *Van Rhee C.H.,* Harmonisation of Civil Procedure: An Historical and Comparative Perspective, in: *Van Rhee C.H., Kramer X.E. (eds.),* Civil Litigation in a Globalising World, The Hague: T.M.C. Asser Press/Springer, 2012, 39-63.

8 1905 Convention on Civil Procedure, Hague Conference on Private International Law, 17.06.1905.

the first attempt of unification was the innovative project of Marcel Storme in Europe[11] in 1994, which implied visionary search for civil procedural principles combining civil and common law learning and experience.[12] The mentioned principles were adopted in 1988 in Rio de Janeiro.[13]

The next attempt of harmonization was in 1997 – the American Institute of Law (ALI) launched a project Principles and Rules of the Transnational Civil Procedure shared by the international institute for the Unification of Private Law (UNIDROIT) in 2000. The principales were introduced in 2004. The goal of the mentioned project was to unify the achievements of the common law and civil law and to create a "peaceful law" combining the common and civil laws. The model principles are created in case some specific norms are inapropriate for different cultures. Those principles have an important role in the science of civil procedure. It is important to follow these principles, otherwise it can be considered as an ignorance of the procedures".[14]

Intervention of a third party is regulated by the 12th principle – Multiple Claims and Parties. According to the second point, a person with a substantial interest in the subject matter of dispute may apply for intervening. The court itself or by motion of a party, may notice and invite a person with sufficient interest for intervention. Invitation for intervention is a favorable opportunity for a third party to intervene in the proceedings. Under the Article 5.3, the court itself or on motion of the parties may demand from the invited person to prove such an interest. Before invitation for intervention the court shall consult with the parties**.**[15] In Georgian Civil Procedures the court does not have the right of invitation.

Also**,** the impulse for spontaneous harmonization and unification of existing and future systems of civil procedure is the current legal, economic, political and cultural integration of the EU countries.[16] It is possible to create uniform principles of European Civil Procedure based upon Article 6 of the European Convention of Human Rights and the comparative studies. [17] European Union member states should maintain fundamental procedural guarantees of criminal and civil proceedings.[18] Article 6 of the

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9 1954 Convention on Civil Procedure, Hague Conference on Private International Law.

10 1968 Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Hague Conference on Private International Law.

11 *Storme M.,* Approximation of Judiciary Law in the European Union, Nij, Dortrecht, 1994, 67.

12 *Storme M.,* Towards a Justice with a Human Face, The First International Congress on the Law of Civil Procedure Faculty of Law – State University of Ghent, 1977. <https://books.google.ge>.

13 Abuse of Procedural Rights: Comparative Standards of Procedural fairness, International Association of Procedural Law International Colloquium, Tulane Law School New Orleans, Louisiana edited By Michele Taruffo, Kluwer Law International, 27-30 October 1998, 192.

14 *Andrews N.*, Fundamental Principles of Civil Procedure: Order Out of Chaos, University of Cambridge, UK, 2012, 21, <www.springer.com>.

15 *Joint ALI/UNIDROIT Working Group* on Principles and Rules of Transnational Civil Procedure, Principles of Transnational Civil Procedure Appendix: Rules of Transnational Civil Procedure (A Reporters' Study) UNIDROIT 2005 – Study LXXVI – Doc. 13, Rome, January 200, 37, <http://www.unidroit.org/>.

16 *Van Rhee C.H.,* Harmonisation of Civil Procedure of Civil Procedure: An Historical and Comparative Perspective, Maastricht University, School of Law, 2011, 9, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1876329>.

17 *Gottwald P.*, Comparative Civil Procedure, Ritsumeikan Law Review, International Edition, № 22, March 2005, 33, <http://www.ritsumei.ac.jp/acd/cg/law/lex/rlr22/rlr22idx.htm>.

18 *Kramer X.E., van Rhee C.H.,* Civil Litigation in a Globalising World, T.M.C.Asser press, The Hugue, The Netherland, 2012, 50, <www. Asserpress.nl>.

European Convention on Human Rights is the highest peak of the hierarchy of the norms of the Civil Procedure Law in European countries and not only there. It creates the basis for legal balance of human rights, which is granted to individuals intervening in the civil procedure and, in this case, to a third party intervened in accordance with the rules defined by European law as follows: According to Article 40 of the Statute of the European Court of Human Rights the member states can participate in the proceedings. The right is given to organizations, agencies, and other individuals who can show "an interest in the result of a case submitted to the Court."[19]

According to the Case law of the EU Courts, "an interest in the result of a case submitted to the Court" will exist if the intervener's legal position or an economic situation might actually be directly affected by ruling" , while a person's interest in one of the pleas raised by a party to the proceedings succeeding or failing is insufficient for intervention.[20] In Georgian law it is not underlined whether what kind of interest is sufficient for a person to interevene the proceedings. According to Article 89, all interested persons without an independent claim may apply to a court to allow him/her to intervene as a third party if the court decision may affect his/her rights and duties with respect to one of the parties. "All interested persons" is a very wide notion, the more so, there is no definition of whether how the decision can affect his/her rights. This ambiguty implies the probability of intervening an irrelevant person in the proceedings. Consequently, it would be reasonable to consider the existence of economic or legal interest as the precondition of intervention.

EU. Law does not directly differentiate the third parties with independent claims but recognizes a participant similar to a third party without independent claims. The Court defines the limits of participation in the proceedings allowing a third party to intervene in support of any party.[21] EU law provides intervention of associations as a third party. Under the EU case-law, as a rule, an association is allowed to intervene if the results of the proceedings affect the collective interests of the association. This means that unlike the physical persons, the associations do not need to show that the results of the court's decision directly affect their legal position or economic conditions or those of any member. On the contrary, it is considered that they are interested in intervention, if their interests coincides the interests of the majority of its members and if their intervention will allow the court to better assess the risks of the situation. It is considered that this approach is more flexible somehow compensating the strict view point concerning the intervention of physical persons.[22]

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19 *Eliantonio M., Backes Ch.W., van Rhee C.H., Spronken T.N.B.M., Berlee A.,* Standing up for your right(s) in Europe, A Comparative study on Legal Standing (Locus Standi) before the EU and Member States' Courts, Directorate-General for Internal Policies, Policy Department, Citizen′s Rights and Constitutional Affairs, Legal Affairs, 2012.36. <www.europarl.europa.eu/.../IPOL-JURI_ET(2012)462478_EN.pdf>.

20 Ibid.

21 Statute of the court of Justice of the European Union (Consolidated version),< http://curia.europa.eu>.

22 *Eliantonio M., Backes Ch.W. van Rhee C.H., Spronken T.N.B.M., Berlee A.,* Standing up for your right(s) in Europe, A Comparative study on Legal Standing (Locus Standi) before the EU and Member States' Courts, Directorate-General for Internal Policies, Policy Department, Citizen′s Rights and Constitutional Affairs, Legal Affairs, 2012, 36, <www.europarl.europa.eu/.../IPOL-JURI_ET(2012)462478_EN.pdf>.

3. The Third Parties in the Legal System of EU Member States

In continental (Civil Law) system of civil procedures, an independent procedural institute named "intervention principal" was developed in the period of canon law.[23] In the Civil Procedure Codes of every German-speaking countries the involvement procedure is referred to as "intervention" and provide almost similar regulations about intervention of a third party in the proceedings: a person claiming for better right on the subject of dispute, proceedings on which is already going on between other parties, has the right to prove his claim against both parties during current procedure (Hauptintervention - the principal intervention).[24] If a third person has a legal interest in support of one of the parties of the proceedings, he has the right to intervene in the dispute to help that party (Nebenintervention - auxiliary intervention)[25]. Also, the Regulation (Streitverkündung) recognizes the case, where a party intends to lay claim to a third party. Both German and Austrian Civil Procedures contain the regulations of the Der pratendententenstreit (claimants' dispute) or Urheberbenennung in the case, where the party claims for the property, or for enjoying the right on behalf of a third party.[26]

The Civil Procedures of Georgia does not specify the above-mentioned action with a special term, only the persons intervening the initiated proceeding are called the "third parties". The term "third party" is of technical character, because it is the third in order.[27] The degree of interest of the third parties and relation to the object of the proceedings – the subject matter of dispute can be different. Accordingly, the law specifies two different kinds of the intervention: the third parties with independent claims, which intervene the proceedings together with the original parties of the dispute and asserts an independent claim for the subject matter of the dispute, and the third parties without independent claims, which intervene the proceeding in support of a plaintiff or the defendant and do not assert an independent claim for the subject matter of the dispute. If considered separately, they are two completely different subjects under one term of the Civil Procedure Law both in terms of intervention and in terms of the scope of rights. The common thing for the both forms is that those parties intervene in the ongoing dispute between other persons. Therefore, they are united under a common term „third parties". In Georgian legislation the term „third party " comes from Civil Procedure Code of the Soviet time, which in its turn comes from the Russian legislation. In Russia, the legal status of the third parties was formed in 1863, in the period of the so-called „Discussion", for adoption of the Civil Procedure Charter in 1864. Articles 653-655 of the Charter were about intervening third parties in a civil cases.[28] Based on the foregoing, it

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23 *Gorelov M.V.,* Third parties in Civil Procedures from the View of Centuries, Arbitration and Civil Procedures. 2012, №2, 41-43 (in Russian).

24 *Oberhammer P., Domej T*., Germany, Switzerland, Austria (CA. 1800-2005), European Traditions in Civil Procedure, Interseria Antwerpen – Oxford, 2005,103-106.

25 *Baur f., Grunsky W.,* Zivilprozeßrecht, Zehnte, uberarbeitete Auflage, Luchterhand, 2000, 102-104.

26 *Oberhammer P., Domej T*., Germany, Qwitzerland, Austria (CA. 1800-2005), European Traditions in Civil Procedure, Interseria Antwerpen – Oxford, , 2005,103-106.

27 *Melnikov A.A.,* The Course of Civil Procedure Law of Soviet Union, Theoretical base of Civil Justice, Book 1, Publishing House „Science", 1981, 236 (in Russian).

28 Judicial Statutes of the Russian Empire , 1864. Influence on modern legislation of Lithuania. Poland. Russia. Ukraina, Finland (To the 150th Anniversary of the Judicial Reform 20,11, 2014), 50, <http:// civil.consultant.ru/reprint/books/115/3.html#img4>, (in Russian).

would be appropriate if the Georgian Civil Procedure Code establishes the term "intervention" denoting involvement in the proceeding.

In the legal system of every EU member states the third parties can intervene the civil proceedings, if they have a sufficient interest in that and satisfy the main requirements of the principal parties of the civil proceedings. In most legal systems, the intervention is possible at any stage of a proceeding before the arguments is ended the same way as it was in the original version of the Civil Procedure Code of Georgia allowing intervention before ruling. In most legal systems, a third party not intervening the proceedings, may file a third-party opposition against the ruling, which they consider to be critical for their legal position.[29]

In the Civil Procedure Code of the Federal Republic of Germany the instutute of the third parties has an important place. The rules and terms of intervention of the third parties in the civil proceedings is regulated by Chapter 3 of the Code. Intervention of a third party is admissible if the party is interested in the result of the case. The result of the dispute is also important for legal relations or can have an economic and ideological effect on the proceeding. The intervention is possible only in case they can prove the above said.[30]

Section 64 of the Civil Procedure Code of the Federal Republic of Germany specifies the form of intervention, which is similar to that of the third party with independent claim: "Anyone asserting a claim to the object or the right regarding, which a legal dispute is pending between other person, either as a whole or in part shall be entitled, until a final and binding judgement has been handed down on that dispute, to assert his claim by filing a complaint against both of the parties with the court before which the legal dispute became pending in the proceedings in the first instance."[31]

Unlike our legislation, German Civil Procedure determines the time of intervention of a third party before ruling. Besides, the mentioned Section provides another important difference: according to the German law the third party shall assert his claim against both parties, while the Georgian Civil Procedure Code provides to assert a claim against both or to one of the parties. This means that German legislators do not share the position of those scientists, who consider that during the proceeding of a dispute in the court a third party may assert an independent claim only against one party without any claim against the other .[32]

As for the second kind of intervention, which is called an auxilarry intervention (Die Nebenintervention) and which is similar to that of the third parties without an independent claim, it is defined by

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29 *Eliantonio M., Backes Ch.W., van Rhee C.H., Spronken T.N.B.M., Berlee A.,* Standing up for your right(s) in Europe, A Comparative study on Legal Standing (Locus Standi) before the EU and Member States' Courts, Directorate-General for Internal Policies, Policy Department, Citizen′s Rights and Constitutional Affairs, Legal Affairs, 2012, 36, <www.europarl.europa.eu/.../IPOL-JURI_ET(2012)462478_EN.pdf> .

30 *Baur F., Grunsky W.,* Zivilprozeßrecht, Zehnte, uberarbeitete Auflage, Luchterhand, 2000, 102.

31 Гражданское процесуальное уложение Германии, от 30 января 1877 г, в редакции от 12 сентяьря 1950 г, с измменениями и дополненями, внесенными до 30 ноября 2005 г, Wolters Kluwer , Москва, 2006 (in Russian).

32 *Ильинская И.М.,* Участие Третьих Лиц в Советском Гражданском Процессе. Государственное издательство юридической литературы, Москва, 1962 (in Russian).

Section 66 of the Civil Procedure Code of the Federal Republic of Germany, under which: (1) Anyone who has a legitimate interest in one party prevailing over the other in a legal dispute pending between other parties may intervene in the proceedings in support of the party. The auxilarry intervener cannot become an independent party, neither friends of the main party of the dispute except the auxilarry party. He cannot change or withdraw the complaint, neither to file a counterclaim support or to end the proceeding with plea bargaining.[33] Pursuant to 70 article the auxilarry intervener needs to present to the court the written document with all requisits defined for claims, while Georgian legislation recognizes the oral application too.

Curent system of the French Civil Procedural Law originated from the French *Code de procédure civil* of 1806. According to the Code, the parties were considered to be free in deciding how they would conduct their case.[34] Today, the problem of intervention of persons in the procedure is regulated by Section II, French Code of Civil Procedure, 1975,[35] which defines the so-called interlocutory claims. According to Article 66 of the Civil Procedure Code the purpose of intervention is to allow a third party to join a lawsuit engaged between the originating parties. The same Article specifies the types of intervention: voluntary, where the claim emanates from a third party; a non-voluntary, when the third party is summoned by a party (to join the lawsuit). [36] Under the French Civil Procedural Law the interlocutory appeal for intervention shall contain the claims and arguments of a party, applying and presenting accessory documents. [37] In France, the procedure is pending upon intervention of a third party.[38]

In Italy, Articles 105 and 106 of the acting Civil Procedure Code regulate the types of intervention of the third parties, and Articles from 267 to 270 define the necessary procedures of intervention. The latter fact shows that for Italian lawmakers the intervention institute is of high importance. According to Italian court practice, each can intervene in a process voluntarily or involuntarily. [39] Voluntary intervention is divided into three categories: 1. intertvento principale – where the claim is against the legal dispute *causa petendi* or *petitum*;[40] 2. intervento litisconsortile – when the intervener asserts claim against one of the parties for a part of the subject matter of dispute; 3. Intervento adesivo dipendente – where a third party intervenes after demand one of the parties or for self defense. In such a case the intervener shall have his interest. According to Article 268 of the Italian Code of Civil Procedure,

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33 *Baur F., Grunsky W.,* Zivilprozeßrecht, Zehnte, uberarbeitete Auflage, Luchterhand, 2000, 103.

34 *Van Rhee C.H.,* Harmonisation of Civil Procedure of Civil Procedure: An Historical and Comparative Perspective, Maastricht University, School of Law, <https://papers.ssrn.com/sol3/papers. cfm? abstract_ id=1876329>, 2011, 13.

35 French Code of Civil Procedure, 1975, Mise A jour Legifrance Le 15 sept. 2003, <http://www.legifrance. gouv.fr/html/codes_traduits/ncpcatext.htm>.

36 Ibid.

37 *Wijffels A.,* French Civil Procedure (1806-1975), European Traditions in Civil Procedure, Interseria Antwerpen – Oxford, 2005, 25.

38 *Cadiet L.,* Introduction to French Civil Justice System and Civil Procedural Law, Ritsumeikan Law Review, №28, 2011, 358.

39 Codice di procedura civile, Libro I, Titolo IV, agg. al 11/03/2013, 105, <http://www.altalex.com/>.

40 *Cappelletti M., Perillo J.M.,* Civil Procedure in Italy. Springer-Science+Business Media B.V, 1965.

intervention is allowed before the parties draw conclusions.[41] However, it should be noted that according to Article 165 of the Italian Code of Civil Procedure, in case of the dispute on the author's rights the author may intervene at any stage of the proceeding in order to defend his rights.[42] According to Article 106 of the Italian Code of Civil Procedure, mandatory intervention can be under the order of any party or the Court.[43]

4. Institute of Intervention in the System of Common Law

The distinctions in Civil Procedural systems of today's world are explained in different historical approaches to Civil Procedure, which might be called the families of Common Law and Civil Law[44]. In addition to great difference between these two principal families there are also some distinguished features within the families, which can be identified if we compare, for example, the Procedure Laws of England, Wales and even USA. However, comparison of the present Procedure Law of England with the European Continental Procedure Law shows some similarities too. [45]

In the countries of the common law the intervention cycle consisists of three main steps: the first one is the thrashhold, when the Court makes decision whether to hear from a certain intervening person or not; at the second stage the judge is hearing from the intervened parties analyzing the hearing; at the final stage the Court's point of view concerning the intervened parties is reflected in the decision.[46] In the countries of the common system of law it is considered that there are at least three reasons for allowing the person to intervene: accuracy, affiliation and acceptebility. Accuracy implies hearing from the interveners of both parties even if they cannot provide any additional information. Provided with objectively useful information the Court will be able to make more accurate decision. Affiliation implies that the interveners can provide the Court with the best arguments for certain partisan interests. And acceptebility implies that the interveners, are allowed to have their voices heard by the Court.[47]

The statistical data show that intervention is highly important in England. Namely, in 2015, out of 79 cases of the Highest Court the intervention was allowed in 38 cases. And intervention for public interest is considered to be the greatest merit of the proceedings, because it allows the Court to learn

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41 *Grossi S., Pagni M.C.,* Commentary on the Italian Code of Civil Procedure, Oxford.2010, 247.

42 Copyright Litigation Jurisdictional comparisons, General Editors: Thierry Calame, Lenz & Staehelin & Massimo Sterpi, Studio Legale Jacobacci & Associati, Second edition, Thomson Reuters, 2015, 538. <http://tilleke.com/sites/default/files/2014_Dec_European_Lawyer_Copyright_Litigation_Vietnam.pdf.>.

43 Codice di Procedura Civile, Libro I, Titolo IV, agg. al 11/03/2013, 106, <http://www.altalex.com/>.

44 *Van Rhee C.H.,* Civil Procedure, Elgar Encyclopedia of Comparative Law, 2nd ed., <www.academia.edu >, 2012, 140-156, <www.academia.edu>

45 Joint ALI/UNIDROIT Working Group on Principles and Rules of Transnational Civil Procedure, Principles of Transnational Civil Procedure Appendix: Rules of Transnational Civil Procedure (A Reporters' Study) UNIDROIT 2005 – Study LXXVI – Doc. 13, Rome, January 200, 37, <http://www.unidroit.org/>.

46 *Alarie B.R.D., Green A.J.*, Interventions at the Supreme Court of Canada: Accuracy, Affiliation and Acceptance, Osgoode Hall Law Journal, vol. 48, num: 3/4(Fall, Winter), 2010, <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1086&context=ohlj>.

47 Ibid.

more arguments compared to those provided by the parties in a concrete case. [48] While it was 100 years ago when the Highest Court of the USA declared that intervention of the non-parties prevents "failure of justice".[49] In recent years, 85% of cases proceeds with intervention. [50]

Australia is also among the countries based on Anglo-Saxon common law, where intervention is rare for its Courts.[51] However, in the recent decade, changes in the approach of law proffesionals to the public interest caused the increase of the amicus curiae role.[52]

In Canada, there is an unprecedented rate of interventions. In 2000 - 2008 years there were 1583 interventions allowed, i.e. about 176 interventions per year, and for half of them the applications had been filed. Historically, the rules were unclear and any interested party was allowed to intervene. In 1980, the Supreme Court of Canada clearly defined existing rules and established a new practice. For intervention a party shall file an application that will be considered by a judge or the Court registrator depending on the circumstaces. The intervention application shall show the interest of the party, including the results and causes of nonintervention whether how intervention can help the court.

In the countries based on the common law system, a non-party may participate in proceedings in two different ways: as an intervener and as an amicus curiae. Intervention is interpreted as the proceeding, where the Court allows a third party, who was not the original party in the proceedings, to become the party by joining the plaintiff or the defendant.[53] As for the institute of the amicus curiae brief, it is also recognized by above-mentioned 13th principle of the model principles of ALI/ UNIDROIT, according to which a written submission concerning the important legal issues may be received from third persons with the consent of the Court, upon consultation with the parties. The Court may invite such a submission. The parties shall have the opportunity to submit written comment addressed to the matters contained in such a submission before it is considered by the Court.[54] The above mentioned institute is an important mechanism in the proceedings of the public issues.

It should be noted that the institute of amicus curiae was introduced in the Administrative Procedure Code of Georgia under the law of July 2015, which was added by Article 161 - amicus curiae brief. Introduction of such mechanisms as „amicus curiae brief" in the Civil Procedure Code would be

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48 Third Party Interventions in the Public Interest, Freshfields Bruckhaus Deringer LLP, May 2016, <https://justice.org.uk/events/assist-court-third-party-interventions-public-interest/>.

49 Cf Krippendorf v Hyde and another [1884] USSC 59; 110 US 276 at 285 (1883), January 28, 1884.

50 *Kearney J. D., Merrilli Th.W.,* "The Influence of Amicus Curiae Briefs on the Supreme Court", (2000), 148 U. Pa. L. Rev. 743.

51 *Willmott L., White B., Cooper D.*, Interveners or Interferers: Intervention in Decisions to Withhold and Withdraw Life-Sustaining Medical Treatment, Sydney Law Review, Vol. 27, 2005, 598, <https:// sydney.edu.au/law/slr/slr27_4/Willmott.pdf>.

52 *Kenny S.,* Justice, "Interveners and amici curiae in the High Court" (FCA), 1997, FedJSchol 1, 2. <www.fedcourt.gov.au>.

53 West's Encyclopedia of American Law, 2nd ed., Copyright 2008 The Gale Group, Inc. <http://legal-dictionary.thefreedictionary.com/intervention>.

54 Joint ALI/UNIDROIT Working Group on Principles and Rules of Transnational Civil Procedure, Principles of Transnational Civil Procedure Appendix: Rules of Transnational Civil Procedure (A Reporters' Study) UNIDROIT 2005 – Study LXXVI – Doc. 13, Rome, January 200, 37, <http://www.unidroit.org/>.

reasonable as it would reduce the number of the irrelevant third parties such as different organizations. Also, the legal reason and status of participation of the parties in the proceedings would be more accurate, and a third party with no material interest in the court decision would not be allowed to intervene as a party without independent claims.

5. Conclusion

Development of the institute of a nonparty intervention in the proceedings and transition to the model of the Continental (Civil) Law would be an important step towards harmonization of the Procedure Law with the European Law. During the work on legislative changes it is especially important to take into consideration the Georgian national character. Therefore, based on the synthesis of transnational principles and the national values, the legislators can be given the following recommendations to take into consideration in prospect:

- It would be reasonable to take into consideration the international practice approaches and in the Civil Procedure Code define the degree of interest of a party to be entitled as an intervener in the proceedings. Also, it would be a step towards harmonization to introduce the notion of „intervention" and to differentiate the types of intervention as follows:

a) Intervention for assertion of an independent claim (third party with an independent claim);

b) Auxiliary intervention in support of a party for further defense of his material interests (third party without an independent claim);

c) Intervention in support of the Court and/or for defending the public interests (in case the ruling can affect realization of the public interests).[55]

- Also, It would be reasonable to define terminologically the interveners according to their meaning:

a) Third party – a person asserting an independent claim against a party(s) in the Court during the proceedings;

b) Auxiliary intervener – a person intervening the proceedings in support of a party in order to defend his material interests and to prevent the prospective dispute;

c) Amicus curiae - a person intervening the proceedings in support of the Court and/or for defending the public interests. They are interested in prevention of infringement of public interests upon defending the private interests.

The above said differentiation would be useful for proper disposition of the participants in the proceedings and also would define the degree of interest of the third parties in the result of ruling. Excluding their confusion, the Court would be able to make a fair decision. In addition, in the global process of harmonization, it is very important for Georgian Civil Procedure Law to be in harmony with the international approaches.

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