

## **Peculiarities for Definition of the Essential Conditions of the Agreement Concluded in Favor of the Third Party on the Basis of an Independent Require**

*The Article considers the rule of conclusion of the Agreement in favor of a third party on the basis of an independent demand and reveals the essence thereof. Definition of inter-relation of the rights and duties of the third party entitled on independent demand and the parties of the Agreement concluded in favor of a third party facilitates to establish the limit of the rights of each of them and to substantiate expediency of wide elucidations of the right of the third party in view of provision of proper realization of the objective of the institution of the Agreement concluded in favor of a third party. The hereof manifests the peculiarities of the essential conditions, subject to be taken into account upon conclusion of the Agreement in favor of a third party.*

**Key Words:** *The Agreement concluded in favor of a third party, the third party on the basis of an independent demand, right, acquisition of right, right to impugn, debtor/promisor, creditor/promise, third party.*

### **I. Introduction**

The Agreements are often concluded in the civil legal space, when the right on fulfillment of the subject of the Agreement is granted to the third parties referred by the creditor. The sphere of application of the Agreement concluded in favor of the third party is quite extended. Whereas the Agreement concluded in favor of the third party is not attributed to the separate type of the Agreement, the Agreement concluded in favor of the third party may be of any nature.

The study aims at identification of inter-relation between the rights and obligations of the third party and the parties of the Agreement concluded in favor of the third party and definition whether expression of the will of the third party affects implementation and validity of the Agreement concluded in the favor of the third party.

The Article 351 of the Civil Code of Georgia (hereinafter referred to as CCG) entitles the third party on waiver of the right acquired under the Agreement. In line of the hereof Code, waiver of the third party is expression of unilateral binding will. Validity of expression of unilateral will requires acceptance thereof by the third party. CCG fails to stipulate the reference of the waiver declared by the third party, the addressee of the waiver of the third party; the CCG also fails to define the term and the form of the waiver. It fails to determine when the will expressed by the third party on waiver of the right acquired under the Agreement is to be considered as valid, while it reduces the practical and legal value of the norms regulating the Agreement concluded in favor of the third party.

The study is based on the analysis of the judicial practice and the normative, logical, doctrinal and comparative legal methods.

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The approach provided in the German doctrine is preferably demonstrated for comparison purpose towards the Agreement concluded in favor of the third party, manifesting compatibility of the hereof approaches with the legislation of Georgia.

The Article considers essential conditions of the Agreement concluded in favor of the third party on the basis of an independent require and demonstrates inter-relation of the rights and obligations of the debtor, promisee (creditor) and the third party.

## II. Essence of the Agreement Concluded in Favor of the Third Party

The Agreement, as a rule, is binding for the signatory parties solely, and correspondingly, the parties are equipped with the right on fulfillment of the obligations under the Agreement.<sup>1</sup> The hereof principle is called as the “Privity of Contract”<sup>2</sup> and any Agreement of nature of private law is to be concluded taking the hereof principle into account.<sup>3</sup>

Hence, the Agreement concluded in favor of the third party shall be considered as an exception from the hereof principle.<sup>4</sup>

Agreements are often concluded in the civil legal space, when the third party is equipped with the right on require towards the subject of the Agreement. It means, that in certain events, the will of the parties in binding legal relations may be directed to the debtor to implement fulfillment towards the third party instead of the signatory party and the third party to be equipped with the right on require under the Agreement.<sup>5</sup> This is the case that the concept of the Agreement concluded in favor of the third party has been established by the law and order.<sup>6</sup>

Peculiarity of the Agreement concluded in favor of the third party lies in the fact that the third party is not the signatory party, the third party shall not express the will on conclusion of the Agreement,<sup>7</sup> therefore, the third party acquires the right on require under the Agreement without participating in the Agreement. The basis of requirement thereof is the Agreement concluded between two other parties.<sup>8</sup> In some cases, conclusion of the Agreement in favor of the third party may require the written approval of the third party as stipulated under the law.

All the Agreements with participation of three parties shall not be considered concluded in favor of the third party. The essence of the Agreement concluded in favor of the third party implies that the promisee (creditor) and the debtor equip the third party with the right on require.<sup>9</sup> As creditor, so the third party in favor of whom the Agreement has been concluded may require implementation of the hereof Agreement. Obviously, the hereof fact shall not imply opportunity to simultaneously realize the rights of the creditor and the third party.

<sup>1</sup> *Ahlefeldt F.*, *Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung*, Hamburg, 1938, 7, 8; *Brox H., Walker W-D.*, *Allgemeines Schuldrecht*, 39. Aufl., München, 2015, § 32, Rn.1, 377; *Tsertsvadze L.*, *Contract Law*, Tbilisi, 2014, 215.

<sup>2</sup> “Privity of Contract”.

<sup>3</sup> *Tsertsvadze L.*, *Contract Law*, Tbilisi, 2014, 215.

<sup>4</sup> *Ibid*, 215.

<sup>5</sup> *Medicus D., Lorenz S.*, *Schuldrecht I, Besonderer Teil 20.*, neubearbeitete Auflage, München 2012, Rn. 804, 409; *Ahlefeldt F.*, *Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung*, Hamburg, 1938, 8.

<sup>6</sup> *Ahlefeldt F.*, *Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung*, Hamburg, 1938, 8.

<sup>7</sup> *Chanturia L.*, *Comment to the Civil Code of Georgia*, Vol. III, Tbilisi, 2001, 215.

<sup>8</sup> *Ibid*.

<sup>9</sup> *Kroffholler J., Florian I., Heiden M.*, *Comment to the Civil Code of Germany*, Tbilisi, 2014, Vol. 1, 233.

The Agreement, without participation and consent of the third party, entails the right on require towards the latter, so conclusion of the Agreement to the detriment<sup>10</sup> of the third party is not envisaged under either Georgian or German legislation. Neither the judicial authority considers the Agreement of such type as admissible.<sup>11</sup>

### **III. The Rule of Conclusion of the Agreement in Favor of the Third Party on the Basis of an Independent Require**

#### **1. Concept and the Form of the Agreement Concluded in Favor of the Third Party**

According to the current legislation, the Agreement shall be considered concluded in favor of the third party, where the parties agree on implementation for the third party not participating in conclusion of the Agreement and hence, equipping the third party with the right on independent require of implementation of the Agreement without participation therein on the basis of the Agreement peculiarly.<sup>12</sup> The Contractual Agreements shall be dissociated therefrom, where implementation is fulfilled for the third party but the third party does not enjoy the right on independent require towards the subject of the Agreement.<sup>13</sup> In this event, the third party is to expect benefits<sup>14</sup> but has no right on independent requirement. Correspondingly, the right on require of the Agreement is not granted to the third part but the signatory party, making the reservation in favor of the third party.<sup>15</sup> The Agreements concluded in favor of the third party are categorized into two following groups according to the legal perspective of the third party towards implementation under the Agreement: Agreements without independent require of the third parties and the Agreements with independent require of the third parties.<sup>16</sup> They are called genuine and non-genuine<sup>17</sup> agreements.<sup>18</sup>

Upon genuine agreement concluded in favor of the third party, that is – upon the agreement granting the right – the third party acquires the right from the agreement on require towards the debtor.<sup>19</sup>

We deal with non-genuine agreement concluded in favor of the third party, when the debtor is right, implements fulfillment of obligation towards the third party but the latter is not entitled to require fulfillment of the obligation.<sup>20</sup> It means that the agreement fails to entail the independent require therefor<sup>21</sup> and hence, he/she is the party to expect benefits.<sup>22</sup>

<sup>10</sup> “Vertrag zu lasten Dritter”.

<sup>11</sup> *Medicus D., Lorenz S.*, Schuldrecht I, Besonderer Teil 20., neubearbeitete Auflage, München 2012, Rn. 804, 409; *Joussen J.*, Schuldrecht I, Allgemeiner Teil 3., überarbeitete Aufl., 2015, Rn. 1147, 358; *Chanturia L.*, Comment to the Civil Code of Georgia, Vol. III, 2001, 220.

<sup>12</sup> *Ahlefeldt F.*, Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung, Hamburg, 1938, 8.

<sup>13</sup> Ibid.

<sup>14</sup> *Chanturia L.*, Comment to the Civil Code of Georgia, Vol. III, 2001, 215.

<sup>15</sup> *Ahlefeldt F.*, Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung, Hamburg, 1938, 8.

<sup>16</sup> *Chanturia L.*, Comment to the Civil Code of Georgia, Tbilisi, Vol. III, 2001, 214; Decision of October 9, 2003 № 3C-AD-J-03 of the Chamber of the Administrative and Other Category Cases of the Supreme Court of Georgia.

<sup>17</sup> “Echter und unechter Vertrag zu Gunsten Dritter”.

<sup>18</sup> *Brox H., Walker W-D.*, Allgemeines Schuldrecht, 39. Aufl., München, 2015, § 32, Rn.2, 3, 378; *Chechelashvili Z.*, Contract Law, Tbilisi, 2010, 85; *Ahlefeldt F.*, Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung, Hamburg, 1938, 8.

<sup>19</sup> *Brox H., Walker W-D.*, Allgemeines Schuldrecht, 39. Aufl., München, 2015, § 32, Rn.2, 3, 378; *Chechelashvili Z.*, Contract Law, Tbilisi, 2010, 85.

<sup>20</sup> Ibid.

<sup>21</sup> *Chanturia L.*, Comment to the Civil Code of Georgia, Vol. III, Tbilisi, 2001, 214.

<sup>22</sup> Decision of October 9, 2003 № 3C-AD-J-03 of the Chamber of the Administrative and Other Category Cases of the Supreme Court of Georgia.

The Agreement concluded in favor of the third party with peculiarity expressed in existence of the right on independent require of the third party, is called in German law as “the agreement on implementation for the third party”<sup>23, 24</sup>

The Agreement concluded in favor of the third party is not a separate type of the agreement.<sup>25</sup> Any typical and atypical<sup>26</sup> agreement<sup>27</sup> (deed of purchase, lease, rent, contractor’s agreement etc.)<sup>28</sup> including the public legal agreement<sup>29</sup> can be concluded in favor of the third party as with so without an independent require.

The Agreement concluded in favor of the third party is not a trilateral agreement.<sup>30</sup> Accession of the third party to the Agreement or any other type of co-participation is not necessary for emergence of his/her right in the Agreement,<sup>31</sup> non-acceptance of participation thereby shall not serve the basis for annulment of the hereof Agreement.<sup>32</sup>

In the event of accession of the third party to the Agreement shall not be considered as the Agreement concluded in favor of the third party. In this event, the third party himself/herself becomes the signatory party. Hence, the Agreement concluded in favor of the third party is evidently considered as the bilateral Agreement.<sup>33</sup>

The general rules shall apply to the form of the Agreement concluded in favor of the third party. Namely, the Agreement is of the free form other than the events if the special form is stipulated under the law.<sup>34</sup>

## 2. Definition of the Agreement

### 2.1. Acquisition of the Right by the Third Party

The Agreement in favor of the third party shall not unconditionally provide the rights of the third party. In line with the Article 349 of the Civil Code of Georgia, the Agreement concluded in favor of the third

<sup>23</sup> “Verträge auf Leistung an Dritte”.

<sup>24</sup> *Ahlefeldt F.*, *Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung*, Hamburg, 1938, 8.

<sup>25</sup> Palandt O., *Grüneberg Ch.*, BGB, 74. Aufl, München 2015, §328, Rn. 1, 559; Jauernig, *Stadler A.*, BGB, Kommentar, 15. Aufl, München 2014, 475.

<sup>26</sup> “Typenfremde Verträge” - agreement not attributed to any type of agreements regulated under the law and neither is the result of merger or modification of the agreements regulated under the law; see about typical and atypical agreements: *Larenz K.*, *Lernbuch des Schuldrechts, zweiter Band, Besonderer Teil*, München 1994, 60-65; *Medicus D.*, *Lorenz S.*, *Schuldrecht II, Besonderer Teil 17.*, neubearbeitete Auflage, 2014, 398-393; *Lohman H.*, *Vertragsrecht, Buch 2, Verpflichtungsverträge*, Stuttgart, Berlin, Köln, Mainz, 1978, 244-260; *Below K.,-H.*, *Bürgerliches Recht, Schuldrecht, Besonderer Teil*, Wiesbaden 1978, 191-209; *Eckert J.*, *Schuldrecht, Besonderer Teil*, Kiel 2000, 189-191; *Ernst A.*, *Schuldrecht Besonderer Teil I*, München 1998, 7-9.

<sup>27</sup> *Medicus D.*, *Lorenz S.*, *Schuldrecht I, Besonderer Teil*, 20., neubearbeitete Auflage, München 2012, Rn. 804, 409; *Brox H.*, *Walker W-D.*, *Allgemeines Schuldrecht*, 39. Aufl., München, 2015, § 32, Rn. 8, 380; *Chechelashvili Z.*, *Contract Law*, Tbilisi, 2010, 86.

<sup>28</sup> *Chanturia L.*, *Comment to the Civil Code of Georgia, Vol. III*, Tbilisi, 2001, 217.

<sup>29</sup> *Palandt O.*, *Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 1, 559.

<sup>30</sup> Jauernig, *Stadler A.*, BGB, Kommentar, 15. Aufl, München 2014, § 328, Rn.1, 475; *Jürgen H.*, *Der echte Vertrag zugunsten Dritter als Rechtsgeschäft zur Übertragung einer Forderung*, Münster, 1983, 14.

<sup>31</sup> *Jürgen H.*, *Der echte Vertrag zugunsten Dritter als Rechtsgeschäft zur Übertragung einer Forderung*, Münster, 1983, 14; *Jauernig, Stadler A.*, BGB, Kommentar, 15. Aufl, München 2014, § 328, Rn. 8, 475.

<sup>32</sup> Decision of the Chamber of Civil, Industrial and Bankruptcy Cases of the Supreme Court of Georgia of March 19, 2003 № 3j-1492-02.

<sup>33</sup> *Jürgen H.*, *Der echte Vertrag zugunsten Dritter als Rechtsgeschäft zur Übertragung einer Forderung*, Münster, 1983, 14; *Jauernig, Stadler A.*, BGB, Kommentar, 15. Aufl, München 2014, § 328, Rn. 8, 475.

<sup>34</sup> *Brox H.*, *Walker W-D.*, *Allgemeines Schuldrecht*, 39. Aufl., München, 2015, § 32, Rn. 9, 380; *Chechelashvili Z.*, *Contract Law*, Tbilisi, 2010, 86.

party grants the hereof right to the third party when it derives from the essence of the obligations. In the event solely, if the person liable, as deriving from the essence of the Agreement, shall be responsible to the third party, the third party is equipped with the right on require.<sup>35</sup>

Should the third party acquire the right, that is whether we deal with the Agreement concluded in favor of the third party, shall be determined through definition of the Agreement. In this regards, the objective of conclusion of the Agreement is of utmost importance. The issue of acquisition of the right by the third party may be determined through extensive definition of the Agreement.<sup>36</sup>

In the event, if the Agreement has been concluded in view of provision of the third party or the interests thereof, there hereof person might acquire the right from the Agreement.<sup>37</sup>

Acquisition of the right by the third party depends on the will of the parties. In the event, if the Agreement fails to envisage special provision on the hereof issue, the issue of acquisition of the right by the third party shall be defined from the circumstances, namely from the objective of the Agreement,<sup>38</sup> and in case of unavailability of the hereof circumstances, which in line with the Article 350 of the Civil Code of Georgia, conditions opportunity of otherwise definition of the ruling stipulated under the Agreement between the parties,<sup>39</sup> the contractual terms shall apply.

Therefore, definition of the issue of acquisition of the right by the third party implies determination whether the Agreement has been concluded in favor of the third party on the basis of the independent require. Whereas, the third party is the party acquiring the right, and in the event if the right is determined not to be acquired, naturally the Agreement shall be considered concluded not with granting the right on independent require thereto.

## **2.2. Pre-conditions of Emergence of the Rights for the Third Party**

Deriving from the analysis of the Article 350 of the Civil Code of Georgia, the full right of the third party may not immediately emerge upon conclusion of the Agreement and realization of the right is related to existence of certain pre-conditions.<sup>40</sup> The Civil Code of Georgia fails to envisage the list of the pre-conditions and the pre-conditions shall be defined deriving from the circumstances, namely the objective of the Agreement in each case. Hence, when defining the Agreement concluded in favor of the third party it is important to correctly estimate the issue of acquisition of the right by the third party. Possibly, acquisition of the right by the third party may be conditional or depend on the term. Besides, the party may make the reservation on annulment or alteration of the third of the third party.<sup>41</sup> The hereof reservation may be directly provided in the Agreement or derive from the circumstances and the objective of the Agreement.<sup>42</sup>

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<sup>35</sup> Decision of the Chamber of Civil, Industrial and Bankruptcy Cases of the Supreme Court of Georgia of November 2, 2001, № 3j/804-01.

<sup>36</sup> *Palandt O., Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 3, 559.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ahlefeldt F.*, *Der Vertrag zugunsten Dritter unter besonderer Berücksichtigung der Rechtsprechung*, Hamburg, 1938, 7.

<sup>39</sup> Decision of the Chamber of Civil Cases of the Supreme Court of Georgia of December 15, 2011, № ar-995-1028-2011.

<sup>40</sup> Decision of the Chamber of Civil Cases of the Supreme Court of Georgia of July 29, 2011 № ar-796-850-2011; Decision of the Chamber of Civil Cases of the Supreme Court of Georgia of October 03, 2011 № ar-824-876-2011.

<sup>41</sup> *Palandt O., Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 4, 559.

<sup>42</sup> *Ibid.*; for instance, the Court of Appeals of Tbilisi in the Agreement on Health and Life Insurance Service concluded in favor of the Judges, considered one of the pre-conditions for emergence of the right of application of the Agreement to be the Judge occupying the position. Whereas, the Insurer, upon dismissal of the Judge, was to terminate insurance service (see, Decision of the Chamber of the Civil Cases of the Supreme Court of Georgia of October 03, 2011 № ar-824-876-2011).

The parties shall define when and upon what pre-conditions acquires the third party the right from the Agreement and whether the hereof right can possibly be annulled without the consent of the third party or changed by the signatory parties.<sup>43</sup>

### 3. Concept of the Third Party

Any natural person or legal entity can be the third party.<sup>44</sup> Personality of the third party may not be further specified upon conclusion of the Agreement. It would be sufficient to be definable.<sup>45</sup> The Article 836 of the Civil Code of Georgia, envisaging insurance in favor of another party, directly provides that the Insurer is entitled to conclude the Insurance Agreement with the Insured on own behalf in favor of another party. Identification of the hereof party is not mandatory. However, in line with the Article 844 of the Civil Code of Georgia, conclusion of the Agreement in favor of the third party requires written consent of the third party. Therefore, in separate cases, taking the peculiarities of the Agreement, acquisition of the right stipulated under the Agreement by the third party may require identification and consent of the hereof party.

“Another” party, prescribed under the Insurance Agreement – Insured is the third party in favor of which the Insurance Agreement is being concluded in this particular event. Insured is not the independent party of the Insurance Agreement.<sup>46</sup>

### 4. Subject of the Agreement

Taking the fact into account that any type of the Agreement may be concluded in favor of the third party, the subject of the Agreement shall be defined according to the type of the Agreement. However, regardless of the type of the Agreement, the subject of the Agreement shall always be delegation of any of the rights to the third party. Although, as we have already mentioned, the Agreement may not directly provide that implementation envisaged under the Agreement shall be delegated to the third party. In this event, the subject of the Agreement may provide delegation of the right to the third party.

### 5. Rights and Obligations of the Parties

There are three subjects participating in legal relations in the Agreement concluded in favor of the third party: debtor, as the “promisor”,<sup>47</sup> creditor, as the “promisee”,<sup>48</sup> and the third party, as the “beneficiary”<sup>49</sup>.<sup>50</sup>

The “promisor” is the party promising implementation of the Agreement to the party in favor of the third party. The “promisee” is the party, implementing the hereof promise in the Agreement in favor of the

<sup>43</sup> Jürgen H., *Der echte Vertrag zugunsten Dritter als Rechtsgeschäft zur Übertragung einer Forderung*, Münster, 1983, 14.

<sup>44</sup> Palandt O., *Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 1, 559.

<sup>45</sup> Brox H., Walker W-D., *Allgemeines Schuldrecht*, 39. Aufl., München, 2015, § 32, Rn. 8, 380; Palandt O., *Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 2, 559; *Chechelashvili Z.*, *Contract Law*, Tbilisi, 2010, 86.

<sup>46</sup> *Tsiskadze M.*, *Legal Regulation of Voluntary Insurance*, Tbilisi, 2009, 49; *Tsiskadze M.*, *Comment to the Civil Code of Georgia*, Book IV, Vol. II, Tbilisi, 2001, 159.

<sup>47</sup> “Versprechender=Promittent”, see Wall F., *Das Valutaverhältnis des Vertrags zugunsten Dritter auf den Todesfall – ein Forderungsvermächtnis*, Tübingen 2010, 4.

<sup>48</sup> “Versprechensempfänger=Promissar, Stipulant”, see Wall F., *Das Valutaverhältnis des Vertrags zugunsten Dritter auf den Todesfall – ein Forderungsvermächtnis*, Tübingen 2010, 4.

<sup>49</sup> “Begünstigter, Destinatar”, See Wall F., *Das Valutaverhältnis des Vertrags zugunsten Dritter auf den Todesfall – ein Forderungsvermächtnis*, Tübingen 2010, 4.

<sup>50</sup> Brox H., Walker W-D., *Allgemeines Schuldrecht*, 39. Aufl., München, 2015, § 32, Rn. 1, 377; Jousen J., *Schuldrecht I, Allgemeiner Teil 3. überarbeitete Aufl.*, 2015, 358; *Chechelashvili Z.*, *Contractual Law*, Tbilisi, 2010, 85.

third party. The third party is the person, not representing the signatory party and equipped with the right on require of implementation from the promisor.<sup>51</sup>

There are three categories of legal relations amongst the participants of the Agreement concluded in favor of the third party, where the third party is equipped with the right on independent require towards the debtor, (upon genuine Agreement): between the debtor (promisor) and the creditor (promisee); between the promisee and the third party; between the debtor and the third party.<sup>52</sup>

The debtor (promisor) and the creditor (promisee) enter so-called “implementation relationship”,<sup>53</sup> and the promisee and the third party enter so-called “monetary or transfer relationship”<sup>54, 55</sup>

The legal relations emerged between the debtor and the promisee is called implementation relationship due to the fact that the debtor, upon reimbursable agreement, assumes counter implementation for own implementation in favor of the third party.<sup>56</sup> That is, implementation of the obligation by the debtor is ensured with the counter implementation by the promisee for the debtor.<sup>57</sup>

Monetary relations indicate the type of the legal relationship serving the basis for the promisee to implement obligations through the promisor towards the third party,<sup>58</sup> “and why the promisee equips the third party with the right on require and whether the third party enjoys the right to preserve the hereof right on require”.<sup>59</sup>

The principle of freedom of the Agreement applies to the Agreement concluded between the promisee and the promisor.

No contractual relationship exists between the third party and the debtor (promisor). The implementation relationship emerges between the third party and the debtor based on the Agreement concluded between the debtor and the creditor.<sup>60</sup>

### **5.1. Rights and Obligations of the Promisee (Creditor)**

The subject of dispute in the Agreement concluded in favor of the third party envisages who is to realize the rights of the creditor – promisee or the third party.<sup>61</sup>

The Article 349 of the Civil Code of Georgia grants the promise (creditor) with the right to require implementation of the Agreement concluded in favor of the third party. However, the hereof Agreement or the essence of the obligation as stipulated under the law may envisage derivation of the right of the third party instead of the right of the creditor. Therefore, the right on require of implementation of the Agreement concluded in favor of the third party is granted as to the promisee so to the third party but the hereof fact

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<sup>51</sup> *Wall F.*, Das Valutaverhältnis des Vertrags zugunsten Dritter auf den Todesfall – ein Forderungsvermächtnis, Tübingen, 2010, 4.

<sup>52</sup> *Brox H., Walker W-D.*, Allgemeines Schuldrecht, 39. Aufl., München, 2015, § 32, Rn. 7, 379; *Kroffholder I., Florian I., Heiden M.*, Comment to the Civil Code of Germany, Tbilisi, 2014, field 3-6, 233.

<sup>53</sup> “Deskungsverhältnis”.

<sup>54</sup> “Zuwendungs-oderValutaverhältnis”.

<sup>55</sup> *Chechelashvili Z.*, Contract Law, Tbilisi, 2010, 87; *Brox H., Walker W-D.*, Allgemeines Schuldrecht, 39. Aufl., München, 2015, § 32, Rn. 7, 379; *Joussen J.*, Schuldrecht I, Allgemeiner Teil 3., überarbeitete Aufl., 2015, Rn. 1172, 358.

<sup>56</sup> *Brox H., Walker W-D.*, Allgemeines Schuldrecht, 39. Aufl., München, 2015, § 32, Rn. 7, 379.

<sup>57</sup> Compare, *Kroffholder I., Florian I., Heiden M.*, Comment to the Civil Code of Germany, Tbilisi, 2014, field 4, 233.

<sup>58</sup> *Chechelashvili Z.*, Contract Law, Tbilisi, 2010, 87; *Brox H., Walker W-D.*, Allgemeines Schuldrecht, 39. Aufl., München, 2015, § 32, Rn. 7, 379.

<sup>59</sup> *Kroffholder I., Florian I., Heiden M.*, Comment to the Civil Code of Germany, Tbilisi, 2014, field 5, 233.

<sup>60</sup> *Ibid.*, field 6, 235-236.

<sup>61</sup> *Ibid.*, field 13, 18, 235-236.

does not imply possibility of simultaneous realization of the rights of the creditor and the third party, that is realization of the right on require of the promisee excludes the hereof right of the third party and vice versa.

In line with the Article 349 of the Civil Code of Georgia, the promisee (creditor) and the debtor grant the third party with the right on require of implementation of the Agreement but interesting is who is to enjoy the rest of the rights deriving from the Agreement as in the event of failure to implement the obligation stipulated under the Agreement – initial require – the secondary require issue shall be considered.<sup>62</sup> German legal literature provides the opinion that the promisee – the creditor enjoys the right on remuneration of the damage instead of implementation of obligation. He/she also enjoys the right on require of impugment, secession from the Agreement, termination of the Agreement, annulment of the Agreement,<sup>63</sup> and reduction of purchase price.<sup>64</sup> Although, the possibility of the third party may be determined through definition of the Agreement, to enjoy the full rights deriving from the Agreement. However, we might argue whether the promisee solely is entitled to impugn or the third party as well.<sup>65</sup>

The right on impugment, in line with the Article 59 (3) of the Civil Code of Georgia, is granted to the “person concerned”. Although, Georgian legal literature<sup>66</sup> provides the definition of the “person concerned” to be the “part of the transaction” and the third party, the interests of which may be infringed with the transaction,<sup>67</sup> but the position shall be shared envisaging the right on impugment is granted to the person expressing his/her will – that is the person, expressing the voidable will.<sup>68</sup> Whereas, the third party shall not express the will for conclusion of the Agreement, he/she shall not be able to enjoy the right on impugment.

German legal literature provides the presumptions that the third party is as well allowed conceding the require but on the basis of the concession, the third party shall not be granted the right on impugment inasmuch as the promisee is to enjoy the interest worth superior protection of expression of will.<sup>69</sup>

Although, as the Civil Code of Georgia so the Civil Code of Germany provide, upon infringement of the obligation by the debtor under the norms regulating infringement of the obligation, the right on require of remuneration of damage inflicted in this regards shall be granted to the creditor,<sup>70</sup> however neither the third party shall be restricted in realization of the hereof right. Upon insurance in favor of another party, all the rights reserved by the Insurer under the Agreement, reserved in favor of another person, shall be delegated to the Insured,<sup>71</sup> but the Insure is entitled to directly realize the rights granted under the Insurance Agreement in the event solely if the Insurer delegates the Insurance License thereto.<sup>72</sup>

<sup>62</sup> *Boeling H., Lutringhous P.*, System Analysis of the Basis of Separate Requirements of the Civil Code of Georgia, Bremen-Tbilisi, 2009, 30; *Macharadze M.*, Secession from the Agreement and Annulment of the Agreement – Difference and Legal Consequences (according to the legislation of Georgia and Germany), Overview of Georgian Law, special edition, 2008, 126.

<sup>63</sup> “Der Widerruf”.

<sup>64</sup> *Palandt O., Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 6, 559.

<sup>65</sup> See *Kereselidze D.*, The Most General Concepts of Private Law, Tbilisi, 2009, 360; *Zoidze B.*, Comment to the Civil Code of Georgia, Book I, Tbilisi, 2002, 196; *Chanturia L.*, Introduction to the General Part of the Civil Law of Georgia, Tbilisi, 2000, 390.

<sup>66</sup> *Kereselidze D.*, The Most General Concepts of Private Law, Tbilisi, 2009, 360; *Zoidze B.*, Comment to the Civil Code of Georgia, Book I, Tbilisi, 2002, 196; *Chanturia L.*, Introduction to the General Part of the Civil Law of Georgia, Tbilisi, 2000, 390.

<sup>67</sup> *Kereselidze D.*, The Most General Concepts of Private Law, Tbilisi, 2009, 360.

<sup>68</sup> *Ibid*; *Palandt O., Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 7, 559.

<sup>69</sup> *Palandt O., Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 7, 559.

<sup>70</sup> Article 394 of the Civil Code of Georgia. (1) Upon infringement of obligation by the debtor, the creditor is entitled to require remuneration of the damage inflicted in this view; § 280 of the Civil Code of Germany. (1) If the debtor infringes the obligations deriving from the mandatory-legal relationship, the creditor is entitled to require remuneration of the damage inflicted in this view.

<sup>71</sup> *Tsiskadze M.*, Legal Regulation of Voluntary Insurance, Tbilisi, 2000, 50.

<sup>72</sup> *Ibid*.



In line with the Article 350 (2) of the Civil Code of Georgia, the party making the reservation in the Agreement in favor of the third party, is empowered to alter the third party provided in the Agreement regardless of approval of the counter-agent. Whereas, the promisee (creditor) is to make the reservation in favor of the third party in the Agreement, he/she is authorized to change the third party. Obviously, the promisee enjoys the right to change the third party until obtainment of implementation by the third party as envisaged under the Agreement.

In the event, if the Agreement fails to envisage the special instructions, definition of the Agreement may facilitate to determination of the fact that the signatory parties are entitled to annul the right of the third party or change the right without approval of the third party. Although, the paragraph “c” of the Article 350 (1) of the Civil Code of Georgia grants the hereof right to the signatory parties, the parties shall not be entitled on annulment or alteration of the right of the third party without approval of the promisee inasmuch as the reservation in favor of the third party shall be made by the promisee and he/she is to have the right to annul or alter the hereof right.

In the event, if the third party waives the right acquired under the Agreement, the promisee is authorized to require implementation of obligations in own favor if no otherwise is stipulated under the Agreement or the essence of the obligation.

Therefore, in the event if the Agreement fails to provide the special instructions concerning the rights of the third party, the promisee enjoys all the rights and is imposed with the obligation that may derive from the Agreement.

Hence, in the Agreement concluded in the favor of the third party, the promisee is authorized to require implementation of the Agreement concluded in favor of the third party in own favor but the promisee enjoys the hereof right until the third party obtains envisaged implementation. He/she enjoys the right to annul or change the right of the third party without approval thereof. The promisee as well is authorized to change the third party. Naturally, the promisee enjoys the right to change the third party until the third party obtains implementation as envisaged under the Agreement. The promisee, upon obtainment of implementation, shall be entitled to change the third party or annul the rights thereof solely in the event of availability of the reasonable ground. The reasonable grounds shall be defined in every particular event deriving from the circumstances of the case. The promisee is as well empowered to implement the secondary requires deriving from the Agreement. However, the promisee shall enjoy the hereof rights in the event solely if no otherwise is stipulated under the Agreement, Law or the essence of the obligation.

The promisee, as well as the debtor but not the third party shall have the right to impugn in the Agreement concluded in favor of the third party.

The promisee reserves all the obligations deriving from the Agreement, however in the event if the third party has already obtained implementation as stipulated under the Agreement and in the event of disputability termination of the contractual relations envisages the obligation of remuneration of obtained implementation and the benefit, the hereof obligation obviously shall be granted to the third party but not the promisee.

In the event, if the third party waives the right acquired under the Agreement, the promisee on the basis of the approval of the third party solely shall be entitled to enjoy the right on implementation of the Agreement and in the event of failure thereof to implement – to enjoy the secondary rights,<sup>73</sup> whereas, the legal state of the third parties shall not admissibly be under constant dispute and the will of the promisee shall not define availability of his/her right. Although, the third party on the hereof basis acquires implementation envisaged under the Agreement but inasmuch as the promisee expresses the hereof will, the will shall be

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<sup>73</sup> *Krofholer I., Florian I., Heiden M., Comment to the Civil Code of Germany, Tbilisi, 2014, Field 18, 236.*

self-restricting. According to this logic, the promisee shall be entitled solely to require implementation of the obligations in own favor if the third party waives obtainment of implementation envisaged under the Agreement, other than the events if no otherwise is envisaged under the essence of the obligation.

Therefore, the promise/creditor shall be entitled solely without approval of the third party to enjoy the rights deriving from the Agreement concluded in favor of the third party if the third party waives the rights acquired under the Agreement or if the third party is not entitled to independently require implementation of the obligation from the debtor.

## **5.2. Rights and Obligations of the Debtor**

The primary obligation deriving from the Agreement concluded in favor of the third party, implies implementation of the obligation in favor of the promisee or the third party. The debtor shall implement the obligation in favor of the third party or the promisee in line with the directives of the latter.

Unlike the Civil Code of Germany, the Civil Code of Georgia fails to specify the rights of the debtor deriving from the Agreement concluded in favor of the third party.

In line with the Civil Code of Germany, the counter-claim deriving from the Agreement shall be appurtenant to the debtor towards the third party as well. However, the right on require of implementation of the right on secondary require shall be granted to the debtor from the promisee,<sup>74</sup> deriving that the contractual obligations shall not apply to the third party and hence, he/she shall not be imposed with the responsibility deriving from the secondary require.<sup>75</sup> Though, we shall discuss the target of the right of the debtor on remuneration of the damage upon delay of obtainment of implementation by the third party as defined below.

Although, the Article 350 (1), (2) of the Civil Code of Georgia considers the authority of the parties to imply annulment or change of the right of the third party, the debtor shall not be granted the opportunity of realization of the hereof right without approval of the promisee, whereas the reservation in favor of the third party shall be made by the promisee and he has the interest of implementation of the Agreement towards the addressee. Hence, equipment of the debtor with the right to annul or change the right of the third party is the unjustifiable contractual burden for the promisee having the interest worth implementation.

## **6. Rights and Obligations of the Third Party on the Basis of Independent Require**

### **6.1. Rights and Obligations of the Third Party with Independent Require towards the Debtor**

In line with the Article 349 of the Civil Code of Georgia, the third party, from the Agreement, shall acquire the right on require of implementation solely. German legal literature provides the presumption that failure or undue implementation of obligation, the third party shall not be entitled to require remuneration of damage instead of implementation<sup>76</sup> and to secede from the Agreement.<sup>77</sup> However, definition of the Agreement might determine that the third party enjoys the hereof rights as well. German legal practice provides that upon changing (infringement) the basis of transaction<sup>78</sup> the third party is entitled to require

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<sup>74</sup> *Krofholer I., Florian I., Heiden M.*, Comment to the Civil Code of Germany, Tbilisi, 2014, Field 14-15, 235.

<sup>75</sup> *Ibid.*

<sup>76</sup> §281 ff. BGB.

<sup>77</sup> *Palandt O., Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 5, 559.

<sup>78</sup> “Die Störung der Geschäftsgrundlage”.

adjustment of the Agreement to changed circumstances.<sup>79</sup> In the event if the third party enjoys the right to require adjustment of the Agreement to changed circumstances, it implies that the third party enjoys the right to require secession from the Agreement as well inasmuch as in compliance with the part three of the Articles 398 of the Civil Code of Georgia, adjustment of the Agreement to changed circumstances is the primary implementation requirement and secession from the Agreement is the secondary right.<sup>80</sup>

In the event, when the third party obtains implementation envisaged under the Agreement, he/she shall be immediately granted the right to enjoy the right implementable by the creditor towards the debtor inasmuch as with delegation of implementation envisaged under the Agreement the third party acquires the rights of the creditors towards the debtor. Though, as mentioned, the third party fails to enjoy the right of impugment. At that, the obligations shall not be delegated to the third party that might be envisaged under the Agreement, whereas the Agreement binding for the third party is not envisaged under the Civil Code of Georgia.

The Supreme Court of Georgia has defined that deriving from the context of the transaction concluded in favor of the third party, the third party entitled to require implementation was the creditor of the Agreement.<sup>81</sup> Although, deriving from the definition of the Agreement concluded in favor of the third party, the right to require implementation of the Agreement is granted not only to the creditor but to the third party as well in favor of which the transaction has been concluded but it shall not be interpreted in the manner that the third party occupies the place of the creditor in the Agreement substituting him/her but the rights shall be delegated thereto related to require of implementation of the obligation and infringement thereof.<sup>82</sup>

In the event of infringement of the obligation, the third party is empowered to require remuneration of damage instead of implementation of the obligation,<sup>83</sup> and therefore the third party enjoys the right to file the claim towards the promisor as well,<sup>84</sup> however he/she shall not enjoy the right that might be granted to the promisee deriving from the Agreement.

At that, the third party is eligible to enjoy the rights on implementation of the Agreement and the secondary rights in the event of infringement thereof solely in the event if obtains implementation as stipulated under the Agreement.

According to the Court of Cassation, in line with the part one of the Article 350 of the Civil Code of Georgia, upon conclusion of the Agreement in favor of the third party, in the event if the Agreement fails to provide the special reservation, the subject of assessment of the Court is to define as emergence of the right for the third party so annulment or change thereof.<sup>85</sup> Thus, in the event if the Agreement fails to directly provide the rights of the promisee or the third party, the rights of the third party shall be defined on the basis of the essence of the Agreement.

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<sup>79</sup> *Palandt O., Grüneberg Ch.*, BGB, 74. Aufl, München 2015, § 328, Rn. 5, 559.

<sup>80</sup> Article 398 (3) of the Civil Code of Georgia. The Parties shall attempt first to adjust the Agreement to the changed circumstances or if adjustment of the Agreement to the changed circumstances appears impossible, and if another party disagrees, then the party with infringed interests is entitled to waive the Agreement.

<sup>81</sup> Decision of the Chamber of Civil Cases of the Supreme Court of Georgia of May 13, 2015 № ar-274-262-2015.

<sup>82</sup> Compare, Decision of the Chamber of Administrative and Other Category Cases of the Supreme Court of Georgia of October 09, 2003, №3c-ad-185-j-03.

<sup>83</sup> Decision of the Chamber of Administrative and Other Category Cases of the Supreme Court of Georgia of April 16, 2003 № 3c-ad-537-j-02.

<sup>84</sup> Decision of the Chamber of Civil, Industrial and Bankruptcy Cases of the Supreme Court of Georgia of November 02, 2001 № 3j/804-01; Decision of the Chamber of Administrative and Other Category Cases of the Supreme Court of Georgia of April 16, 2003 №3c-ad-53-j-02.

<sup>85</sup> Decision of the Chamber of the Civil Cases of the Supreme Court of Georgia of July 29, 2011 № ar-796-850-2011.

Although, the Agreement concluded in favor of the third party imposes the obligations to the third party, however in the event when the third party waives the rights acquired under the Agreement we should ask who shall remunerate the damage inflicted to the debtor due to delay of implementation of the obligations.<sup>86</sup> In line with the Article 390 of the Civil Code of Georgia, the term shall be considered delayed by the creditor if the creditor fails to obtain implementation offered thereto the term of which has not applied yet. In this event, waiver of the offered implementation may imply the waiver of the rights acquired under the Agreement.

In compliance with the paragraph 333 of the Civil Code of Germany, if the third party waives the right deriving under the Agreement towards the promisor, it shall imply that the right has not been acquired. Correspondingly, the person obliged to remunerate the damage towards the debtor shall be the promisee. Thus, solution of the hereof issue implies no complication in the German Law. Though, the Civil Code of Georgia, in the event of waiver by the third party of the right acquired under the Agreement, fails to envisage similar regulation. As stipulated under the Article 351 of the Civil Code of Georgia, in the event if the third party waives the right acquired under the Agreement, the creditor is entitled to require implementation of the agreement if no otherwise derives from the Agreement or the essence of the obligation. For more clarity, we shall indicate that in this event the creditor is empowered to require “in own favor” implementation of the obligation.<sup>87</sup> Hence, the Article 351 of the Civil Code of Georgia would expediently be formulated as follows: “In the event of waiver by the third party of the right acquired under the Agreement, the creditor is entitled to require implementation of the obligation in own favor if not otherwise stipulated under the Agreement or the essence of the obligation”.

In the event, when the third party enjoys the right of independent require in the Agreement, the hereof right shall not imply the right to require implementation of the Agreement solely but it shall be extensively elucidated. The third party enjoys almost all the rights that might related to implementation of the obligation, such are: filing the claim, remuneration of damage, secession from the Agreement, annulment of the Agreement, termination of the Agreement. However, the third party shall not enjoy the right to impugn inasmuch as he/she fails to express the will for conclusion of the Agreement and hence, shall not be considered as the person enjoying the right of impugment.

Thus, the third party holds certain rights solely, while the rest of the rights and obligation remain appurtenant to the promisee.<sup>88</sup>

## **6.2. Rights and Obligations of the Third Party towards the Promisee with the Independent Require**

The Civil Code of Georgia fails to provide the rights of the third party towards the promisee.

The rights of the third party as to the promisee so towards the debtor shall be defined deriving from the essence of the Agreement.

The Article 351 of the Civil Code of Georgia grants the third party with the right to waive the right acquired under the Agreement. The right of the third party to waive the right deriving from the Agreement is granted in the German Law as well.<sup>89</sup> The waiver by the third party of the right is expression of a unilateral

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<sup>86</sup> See Articles 390-393 of the Civil Code of Georgia.

<sup>87</sup> See *Chechelashvili Z.*, Contract Law, Tbilisi, 2010, 90.

<sup>88</sup> *Jürgen H.*, Der echte Vertrag zugunsten Dritter als Rechtsgeschäft zur Übertragung einer Forderung, Münster, 1983, 17.

<sup>89</sup> *Ibid.*, 14.

will authenticity of which requires acceptance of the expressed will by the addressee.<sup>90</sup> Though, the Civil Code of Georgia fails to define the addressee of the waiver by the third party.

The opinion has been expressed envisaging the third party to make the declaration towards the debtor as a rule inasmuch as the debtor is to ensure implementation in his/her favor.<sup>91</sup> Hereof considerations are justified deriving from the general principle of implementation of the obligation, whereas the debtor shall identify the addressee of the implementation of the obligation. However, it is important that the waiver of the right acquired under the Agreement concluded in favor of the third party to be declared by the third party towards the promisee as he/she is to implement the reservation in favor of the third party and he/she is to be entitled to change the third party. Hence, first of all the promisee shall be aware whether the third party is to accept implementation, inasmuch as in the event of waiver by the third party of offered implementation, responsibility for delay of acceptance of the offered implementation by the debtor shall be imposed to the creditor. As deriving from the contractual principle, it is expedient that the promisee shall be considered as the addressee of the waiver by the third party.

The Civil Code of Georgia fails to as well to define the term and the form of the waiver by the third party. In the event of the waiver by the third party, the Civil Code of Georgia is expedient to at least indicate to the reasonable term in order to allow the signatory parties timely defining the expected consequences. As to the form of the waiver, if adherence to any of the form was prescribed for acquisition of the right, then the form shall be observed in the event of waiver as well.<sup>92</sup>

Thus, the Civil Code of Georgia fails to regulate or define when the will expressed by the third party of the right acquired under the Agreement shall be considered authentic. It declines the practical and legal value of the Article 351 of the Civil Code of Georgia.

Deriving from the Insurance Agreement concluded in favor of the third party, conclusion of the Insurance Agreement solely is not enough for realization of the rights of the Insured and delivery of the Insurance Certificate solely serves the basis thereof.<sup>93</sup>

The third party, under the mandatory insurance, shall be granted with the right to require the responsibility report and in the event if the Insurer fails to implement obligation or improperly implemented the obligation, the third party is entitled to in judicial order require implementation of insurance from the Insurer, and in the event of failure of the Insurer to conclude or conclusion of the Agreement under undue conditions, the Insured (third party) is entitled to require remuneration of damage from the Insurer (creditor).<sup>94</sup>

#### **IV. Conclusion**

The Agreement concluded in favor of the third party serves for simplification of the negotiations as the third party, on the basis thereof, is allowed obtaining implementation envisaged under the Agreement without participation therein.

The subject of the Agreement concluded in favor of the third party shall be defined according to the type of the Agreement. However, regardless of whatever the type of the Agreement is appurtenant to, the subject thereof shall always be delegation of any of the rights to the third party. Though, in the event if the Agreement fails to directly provide that implementation as envisaged under the Agreement shall be dele-

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<sup>90</sup> *Chanturia L.*, Comment to the Civil Code of Georgia, Book III, Tbilisi, 2001, 228.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Tsiskadze M.*, Legal Regulation of Voluntary Insurance, Tbilisi, 2000, 51.

<sup>94</sup> *Ibid.*

gated to the third party, the subject of the Agreement may not provide delegation of the right to the third party.

The Agreement concluded in favor of the third party is not a separate type of the Agreement. Any typical or atypical Agreement (deed of purchase, lease, rent, contractor's agreement etc.) may be concluded in favor of the third party, including the public legal agreement.

The Agreement concluded in favor of the third party is not a trilateral but a bilateral agreement.

The general rules shall apply to the form of the Agreement concluded in favor of the third party.

All the Agreements with participation of three parties shall not be considered concluded in favor of the third party. The essence of the Agreement concluded in favor of the third party with the independent require lies in the fact that the promise and the debtor grant the third party with the right on require. Implementation of the hereof Agreement may be required as by the promisee so by the third party in favor of which the Agreement has been concluded. The hereof fact shall not imply the opportunity of the promisee and the third party to simultaneously realize the rights. Realization of right with requirement of the promisee shall exclude realization of the hereof right by the third party and vice versa.

The peculiarity of the Agreement concluded in favor of the third party lies in the fact that the third party is not a signatory party. He/she shall not express will for conclusion of the Agreement and hence, he/she shall acquire the right to require deriving under the Agreement without participation therein. The basis for the requirement thereof is the Agreement concluded between two other parties.

In the event, when the third party holds the right of independent require in the Agreement, the hereof right shall not imply the right to require of implementation of the Agreement solely but shall be extensively interpreted. The third party enjoys almost all the rights that may relate to the requirement of implementation of the obligation, such are: filing the claim, remuneration of damage, secession from the Agreement, annulment and termination of the Agreement. However, the third party shall not enjoy the right of impugment as he/she fails to express will for conclusion of the Agreement and neither shall be considered as the person holding the right of impugment. That is, the person holding the right of impugment may be as the promise, so the debtor but not the third party.

Definition of acquisition of the right by the third party implies determination whether the Agreement is concluded in favor of the third party with independent require.

Hence, the third party enjoys the certain rights solely, while the rest of the rights and obligations shall remain appurtenant to promisee.

In the event, if the Agreement fails to provide the special directives concerning the rights of the third party, the promisee enjoys all the hereof rights and is imposed with all the obligations that may derive from the Agreement.

In the Agreement concluded in favor of the third party, the promisee is entitled to require implementation in own favor of the Agreement concluded in favor of the third party but the creditor enjoys the hereof right until obtainment of implementation by the third party. He/she is entitled to annul the right of the third party or change it without consent of the third party. Naturally, the promisee is entitled to change the third party until the third party obtains implementation envisaged under the Agreement. Upon obtainment of implementation, the promisee shall be entitled to change the third party or annul the right thereof solely in the event of reasonable ground. The reasonable grounds shall be defined according to the circumstances of the case in every particular event. The promisee is as well empowered to implement the secondary requires deriving from the Agreement. Though, the promisee shall enjoy the hereof rights in the event solely if no otherwise is stipulated under the Agreement, Law or the essence of the obligation.

The promisee shall be entitled to enjoy the right deriving from the Agreement concluded in favor of the third party without consent of the third party solely if the third party waives the right acquired under the Agreement or if the third party is not entitled for independent requirement of implementation of the obligation by the debtor.

It is expedient the Article 351 of the Civil Code of Georgia to be formulated as follows: “in the event, if the third party waives the rights acquired under the Agreement, the creditor is empowered to require implementation of the obligation in own favor if no otherwise is stipulated under the Agreement or the essence of the obligation”.

Deriving from the principle of the contractual law, it would be expedient to consider the promisee as the addressee of the waiver by the third party of acquisition of the right.