



## Third Parties without Independent Claims in Civil Proceedings

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### Abstract

The civil law process is based on the principles of adversarial proceedings and disposition. The principle of adversarial proceedings implies the exercise of the right of equality between the parties at any stage of the proceedings, and the equal distribution of the rights and duties conferred on them by this Code. The principle of disposition implies the freedom of expression of the will of the parties by the procedures established by this Code to know whether it is filling the claim, filing a motion, withdrawing the claim or other. In addition to the judge, the parties also ensure the running of the process. These are the plaintiff, defendant, and third parties. The institute of third parties in turn is divided into two branches: third parties with an independent claim and third parties without an independent claim. Third parties with an independent claim are almost equal in their rights and responsibilities to the plaintiff and the defendant, while third parties without an independent claim have certain restrictions. These restrictions put them under such legal pressure that in some cases easily regulated issues will, on the contrary, turn into difficult ones to regulate. For a third party without an independent claim to participate in the process, it requires the desire of one of the parties or of that third party itself. The issue of their involvement in the process largely depends on the reasoned reasoning of the parties, which is one of the shortcomings of the procedural order. It is true that without an independent claim, a third party is not the main subject of the case and is not directly involved in the decision. However, the purpose of the article is to prove the opposite of this fact. The article describes not only Georgian but also

civil procedure laws of different countries, which contain certain differences compared to Georgian civil procedure laws. The comparative legal research used in the paper presents the main idea of the paper and sheds light on the real possibility of its realization. The given is manifested in the possibility of granting certain rights to third parties. Based on the case law applied and the analysis of the existing scientific doctrine, the conclusions will be summarized according to which the object of the article, the third party, deserves such enabling rights. The research will help to develop civil procedural law in so far as it is a topical issue today. Both doctrinal and non-doctrinal, comparative-legal, and evaluative legal research methods are used in the paper.

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**Keywords:** Third Party, Claim, Independent Claim, Process, Parties

### **Introduction**

The civil proceeding is a key tool for the public among dispute resolution mechanisms. Following the requirements of the first paragraph of Article 2 of the Civil Procedure Code of Georgia, judicial protection of the rights of each person is ensured (Kharitonashvili, 2017). Under the rules of the Civil Procedure Code of Georgia, the court hears cases based on the application of the person who applies to protect his right or interest provided by law.

Due to the transition to market relations, a special role and importance are attached to the administration of justice in civil cases, as many civil cases arising from civil turnover are heard through the courts (Kurdadze & Khunashvili, 2015).

Civil rights exist from an early stage in the development of society. Social and political institutions such as the state and law were originally established in the countries of the Old East. The existence of civil law relations necessitated the existence of rules of due process in these countries. However, when talking about the trial of the mentioned period, it is noteworthy that the circumstance is remarkable. However, this circumstance is a proof that the ancient Eastern civilization still offers certain peculiarities. In particular, “in the trial of ancient Mesopotamia, there is no sharp distinction between criminal and civil proceedings” (Garishvili, 2008). It is noteworthy that in the history of ancient Athens, an important place was occupied by the mortgage of a plot of land (Garishvili, 2008). The multifaceted culture of ancient Athens is influenced by the loan and mortgage agreements of the time, which provided for the existence of a guarantor in transactions. This confirms the existence of many individuals in the processes. In addition to the fact that the plaintiff and the defendant were transformed, their guarantors were also added. The institute of third parties in civil proceedings was known in the early stages of

the development of law. This gives grounds to consider Roman civil procedural law as the homeland of the origin of third parties (Gorelov, 2012).

According to the Civil Procedure Code of Georgia, judges and parties are represented in the court of law. The parties are the plaintiff, defendant, third parties, and accomplices (co-plaintiff, co-defendant) (Civil Procedure Code of Georgia, 1997). Thus, in addition to the plaintiff and the defendant, a person who is interested in resolving this dispute may participate in the trial, as his interests and rights about other persons may be formed by the decision made.

Civil procedure law of Georgia gives every interested person the right to file a lawsuit to protect a violated or disputed right or an interest provided by law. The purpose of the claim or the legal interest of the action, in turn, leads to the existence of different types of lawsuits such as confessional, pecuniary, and transformational lawsuits. Through the correct individualization of the procedural form of the plaintiff's request, the precise selection of this or that type of claim and its submission to the court is a precondition for ensuring its proper trial.

The civil procedural law of Georgia is familiar with the institution of third parties which plays a rather important role in litigation. Third parties, in turn, differ in the process as evidenced by their rights and responsibilities. These are third parties with an independent claim and third parties without an independent claim who have the power to file a claim in civil proceedings.

For the research topic of the paper to be perfected and bring the desired result, several types of legal research methods were used within the framework of doctrinal research (often referred to as library research because of its normative nature) reviewed primary sources of law such as legislation, court decisions, legal manuals, and articles. Non-doctrinal research was conducted to investigate the practical problems of the research issue. For the issue raised in the paper not to be analyzed in one direction, comparative legal and evaluative research methods have been used as well, with the help of which happened according to the examples of different countries, logical analysis of legal facts and events, each separately and in relation to each other.

### **Third Parties without an Independent Claim**

According to Article 89 of the Civil Procedure Code of Georgia, all interested persons who do not assert an independent claim for the subject matter of a dispute or its part may apply to a court to allow him/her to engage as a third party in the proceedings in support of the plaintiff or the defendant because the court decision on this case may subsequently affect his/her rights and duties concerning one of the parties. The engagement of a third party in the proceedings shall be decided by the court which takes into consideration the opinions of the parties (Civil Procedure Code of Georgia, 1997).

Third parties without an independent claim have no independent demands or liability about the subject matter of the dispute. In other words, the court decision does not seem to apply directly to such persons. These are persons whose rights and obligations to one of the parties may be only influenced by a court decision. However, the probable impact that the decision may have on their rights and obligations does not equate to the impact implied by the term "directly related" in the term provided for in Article 422, Part 1, Subparagraph "c" (Civil Procedure Code of Georgia, 1997) of the Civil Procedure Code of Georgia. This is the reason third parties, without an independent claim, have limited access to the procedural rights of the parties. They may not increase or reduce the amount of the claim, change the grounds or the subject of the claim, acknowledge the claim, renounce the claim or settle on the claim amicably, file a counterclaim, and request enforcement of a court decision (Civil Procedure Code of Georgia; 1997) and most importantly, they cannot appeal court decisions on appeal or cassation (Civil Procedure Code of Georgia, 1997). Furthermore, they have the right to be involved in the case on their initiative or that of any party but are not a mandatory participant in the process. The issue of admission of third parties to the plaintiff's side or the defendant's side in the case is based on the opinions of the parties. However the court decides, the involvement of the mentioned persons in the case cannot be initiated by the court on its initiative (Civil Procedure Code of Georgia, 1997).

Third parties who do not have an independent claim on the subject matter or part of the dispute become participants in the ongoing litigation if the court decision can affect their rights and obligations towards one of the parties. The court decision of engagement of the third parties in the process, when a person addresses the court, is based on the views of the parties (Kurdadze, 2006). Third parties of a similar type may participate in the proceedings on the side of the plaintiff's or the defendant's side. Based on the above, they are called third parties without an independent claim (Kurdadze & Khunashvili, 2012). A third party participates in the case in favor of one of the parties. Thus, the benefit or uselessness received as a result of its participation is directly proportional to his rights or obligations to one of these persons. It is better to consider the present-day of other countries as an example to define the concept better. In German law, for example, the involvement of a third party without an independent requirement is called ancillary involvement. In the Netherlands, third parties, like the parties, engage in civil proceedings to disseminate facts and arguments in support of the position of one of the disputing parties. Such involvement is called a connection (Van Rhee, 2013). In German civil proceedings, if a dispute arises over the admissibility of a third party, the court will decide on a private matter with an interim decision on the immediate appeal (Baur & Grunsky, 2000).

A third party without an independent claim is often more active than the defendant during the proceedings. For example, if the defendant lost the dispute with the plaintiff and had to pay damages, he has the right of recourse against a third party and it is from this that the activity of a third party in a given process is derived, as he is very interested in the defendant not losing the process.

### **Grounds for the Engagement of Third Parties without an Independent Claim in the Case**

In court practice, third-party involvement in the review of civil cases by various state bodies is widespread (Liluashvili & Khrustali, 2007). There are also frequent cases when state bodies or officials themselves are involved in the case as third parties. At this point, the court must properly determine their legal interest in the case. In one of the cases, the appellant petitioned the court to involve the Tbilisi City Hall and the mortgagee M.K as the third parties. The first part of Article 90 of the Civil Procedure Code of Georgia defines the procedure of engagement of a third party without an independent claim on the initiative of the party. However, to resolve the issue, it is necessary not only to examine the formal-procedural issue of the request but also to analyze the concept of a third party without the independent claim. The decision of the court regarding the involvement of a third party in the case should be at least under Article 89 of the Civil Procedure Code of Georgia and the legal interest that this person has in the case should be examined (DSCG-სბ-1131-2020; 26/03/2021). The subjective interest of one of the parties in the involvement of a third party in the case is not sufficient. There are cases in practice when a third party is involved in a case, but the court does not indicate which party will be helped by the third party (LiluaShvili & Khrustali, 2007).

According to this norm, the involvement of a third party in the process by the initiative of one of the parties is allowed only when the main party is having a dispute, at the time of the announcement of the involvement of a third party in the proceedings, that he can alternatively exercise the right of claim against a third party if the process related to the main claim fails for him (DSCG-სბ-542-2021, 15/10/2021). To satisfy the motion for the involvement of a third party in the case, the court must determine that the decision will have some effect on the rights and duties of that person about any person involved in the other case. The purpose of involving a third party in a case should also be to assist the court in resolving the case in its favor. Otherwise, a third party may impose certain obligations on either party.

The opinion of Georgian practitioners on the existence of legal interest: "if all persons, that have a general legal interest in the dispute, will be engaged in the case as third parties without an independent claim by the court, it will not be correct as it will cause chaos in court practice because it will be difficult

to determine what is meant by legal interest in general” (Gabelaia, 2016). The interest of a person who does not have an independent claim on the subject of the dispute to enter the process of another should be objective. This means that his interest must be based on the connection of a third party with one of the parties according to the probable material legal relationship (Vikut, 2005). Accordingly, it will be correct to determine whether a third party has the right to participate in the case. The Civil Procedure Code of Georgia will indicate the impact of the court decision on the economic and legal status of the person (Kharitonashvili, 2017). In addition, the legal interest should not be general and it should be the bearer of the probable material-legal connection concerning the request of the claim. It should be noted that the existence of a legal interest, which is required by the Civil Procedure Code of Georgia, exists only when a court decision can affect the rights and duties of a third party (Liluashvili et al., 2014).

The purpose of involving a third party without an independent claim is to avoid consequences that are unfavorable to the decision. In basic cases, the involvement of a third party in the case serves as a basis for a party to file a recourse action against that person, which will impose an additional obligation on a third party. Participation of the third parties in the case allows a party to influence the outcome of a dispute by using the necessary procedural means to protect his rights and interests from the possible adverse consequences of a court decision. If these consequences may be reflected in a third party and become the basis for a recourse liability to a third party, the purpose of the party involved in the case is then to assist the party and the court as much as possible in deciding on their favor. He actually avoids further subsequent claims against himself because in the same lawsuit, he may find himself as a defendant. Accordingly, a study of recourse liability in civil law may conclude that the institution of third parties without an independent claim is a procedural guarantee of the recourse right (the right of one person to claim a return of something from another). Therefore, the basis for involving third parties in litigation is to avoid fulfilling the obligation by the rule of recourse. This circumstance has a significant impact on third parties in the process and determines their procedural capacity.

### **Georgian and Foreign Practice regarding the Admissibility of Participation of the Third Party without an Independent Claim in the Process**

The admissibility of a third party without an independent claim to participate in the process depends on the initiative of one of the parties. In the case of a well-founded motion and the consent of a party, or based on a well-reasoned third-party motion, the court may include the above as a third party in the case. Third parties with an independent claim have relatively limited

rights and obligations under the Civil Procedure Code of Georgia. The purpose of third parties with an independent claim is to facilitate a positive decision for one of the parties in the case. It is for this purpose that they are involved in the case on their initiative or on the initiative of the party against whom the case is to be settled positively. However, this is in direct contact with a third party with an independent claim. The desire to get involved in the process is because the decision to favor one of the parties will not have any impact on a third party who does not have an independent claim. He has certain rights and responsibilities that change concerning one party to the process when making a decision. This definition rightly emphasizes the purpose of involving third parties in the case without an independent claim. However, there is a different opinion that third parties without an independent claim, as well as third parties with an independent claim, are considered parties to the disputed legal relationship and its subjects, but they do not have all the procedural rights that the parties have. Not all subjects in the process may have the same rights and responsibilities, but this does not mean that those with limited rights and responsibilities should not be considered participants in this relationship. The fact that these persons participate in the process with certain rights and responsibilities itself means that they are participants in this process (Kobakhidze, 2003).

## **Georgia**

According to the Supreme Court of Georgia, parties without an independent claim have no independent claim or liability about the subject matter of the dispute. As a result, such persons cannot be "directly" affected by the court decision. These are persons whose rights and obligations to one of the parties may be further influenced by a court decision. However, the probable impact that their decision may have on their rights and duties is not equal in its legal content to the impact implied in the term "directly related" to Article 422.1 (c) of the Civil Procedure Code of Georgia. That is why third parties without an independent claim have limited access to the parties' procedural rights. They have no right to increase or reduce the amount of the claim, change the grounds or the subject of the claim, acknowledge the claim, renounce the claim or settle on the claim amicably, file a counterclaim, and request enforcement of a court decision (Article 91 of Civil Procedure Code of Georgia). In addition, they have no right to appeal court decisions on appeal or cassation. They have the right to be involved in the case on their initiative or that of any party but are not a mandatory participant in the process. The issue of admission of a third party in the case is decided by the court taking into account the opinions of the parties. However, the court may not involve the mentioned persons in the case based on its initiative (DSCG- სბ-687-687-2018; 20/07/2018).

According to the Civil Procedure Code of Georgia, a third party without an independent claim is deprived of the opportunity to appeal a court decision, and under the same Code, he or she has the right to appeal against judgments rendered in the course of proceedings. The right to appeal to a court is not theoretical and not only ensures the recognition of the right through a final decision but also contains a legitimate expectation that the decision will be enforced (DSCG - სბ-256-256-2018; 18/07/2018). By filing a complaint, the said person can also take such action that will ultimately prevent the execution of the decision. For example, by appealing against the provisional measures the court should revoke that measure.

A third party without an independent claim has no right to appeal the decision to which the Supreme Court makes such an explanation. It is noteworthy that the LEPL Revenue Service requested to involve itself as the third party without independent request (it has not filed a claim on the subject matter of the dispute and has not filed a lawsuit against one or both parties under Article 88.1 of the Civil Procedure Code of Georgia). Even if his motion were satisfied, the LEPL Revenue Service would still not be able to file an appeal petition, as this type of the third party is not considered a subject of Article 364 of the Civil Procedure Code of Georgia (DSCG - სბ-949-899-2015; 23/10/2015).

The third party, who does not have the authority to appeal the decision, does not participate in the case with material and legal burdens and conditions as he/she mainly has procedural-legal burden. However, to establish the truth of the case, it is necessary to establish material-legal issues, for which purpose the Chamber of Cassation, taking into account the legal analysis. This explains that all registered co-owners of the land, in this case, the third party without an independent claim and the issue of the involvement of the defendant in the case of G.G, is primarily related to the clarification of material-legal issues (DSCG - სბ-1234-1175-2014; 23/02/2015).

### **United States of America**

According to FRCP 24(a)(2), the law protects third parties not initially named in a lawsuit. It permits intervention when a nonparty "claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." Provided that the existing parties do not already adequately represent that interest, intervenors may join the litigation and enjoy near-equal standing with the original parties. They may "participate in discovery, file motions and other papers, introduce direct testimony, conduct cross-examination at trial, and appeal adverse substantive determinations" (Villanueva, 2011).



## Japan

According to the Civil Procedure Code of Japan, when characterizing the procedural rights of third parties without an independent claim, it should be noted that the engagement of a third party in the proceedings does not create the status of a party for them, which is why their rights and the rights of the party do not coincide. Third parties engaged in the proceeding may not change the party on whose side they are engaged. However, a third party without an independent claim who is engaged in the proceedings on the side of the plaintiff or the defendant is also recognized by the law as their actions are independent of the party. The third party engaged in the case acts independently in the field of his rights. Procedural actions are not related to the will of the party. It carries out this or that act independently and can request their implementation even when the party does not request it (for example, requesting the interrogation of witnesses, etc.). Therefore, this is unlike the Japanese civil process which stipulates that the third-party proceedings cannot take effect if they contradict the actions taken by the party on whose side they are engaged (Code of Civil Procedure of Japan, 1996).

### **Appeal a Court Decision by a Third Party without an Independent Claim**

Both parties of the proceedings and the third parties with an independent claim are entitled to appeal the ruling of the court regarding the institution of provisional measures (kazhashvili, 2018). Due to the fact that a complaint subject to a time limit is a means of defense, and third parties without an independent claim participate in the proceedings, in that case, they should be legally equated with the parties of the proceedings and with the third parties with an independent claim which is similar to German civil procedure law. The Civil Procedure Code of the Federal Republic of Germany does not directly indicate who has the right to file a complaint subject to a time limit against a ruling, but it is implied that this right is enjoyed by third parties both with and without an independent claim. Nonetheless, the third parties, without an independent claim, use all means of judicial protection at all stages of the proceedings and, in effect, carry out all the procedural actions taken by the parties. They are the procedural accomplices of the party (Davtyan, 2000). Thus, a ruling which does not substantially decide the fate of the case can be appealed by a third party without an independent claim in the prescribed manner.

On the one hand, there are legally independent procedural relations in the case of procedural accomplices. On the other hand, the procedural accomplices may have an interest in assisting the other litigant, if necessary, the litigant in his litigation relationship with the other litigant (Hagenlokhi et al., 2020). If we essentially consider every action taken by a third party, which helps them to resolve a dispute, it is directly related to his rights or

responsibilities. Concerning it, a recourse right may then arise for one of the parties.

Appeals against court decisions are governed differently. This is because a third party without an independent claim is not the subject of the substantive legal relationship of the lawsuit (Treushnikova, 2007). It follows from the fact that the court has no right to reside anything to him or charge them to take any action or refrain from action. According to the construction of the Supreme Court of Georgia, for Article 89 of the Civil Procedure Code of Georgia, the existence of a subjective interest alone is not enough to consider the person as an interested person. Such a person will be considered among those whose rights and responsibilities will be affected by the court decision (DSCG - სს-949-899-2015; 23.10.2015). According to the procedural law, there can be no third party without an independent claim, a party directly affected by the decision, although this is not the case in practice. A third party who participates on the side of one of the parties without an independent claim will be reasonable if he or she will have the right to appeal the decision. His participation is formally perceived as help to a party to the proceedings and the third party himself as a helper. However, in terms of content, he is responsible for himself and takes action to avoid future obligations. The decision may affect his rights and obligations towards other persons and the right of recourse from him may be acquired by one of the parties. The engagement of a third party in the case without an independent claim serves as the basis for escape and release from the above. The position that the third parties are involved in the case on their initiative or the initiative of the parties exactly fits the principle of competition because the judge makes the decision based on the views of the parties.

When considering the right to appeal the decision, the amendments made to the Civil Procedure Code of Georgia at different times should be taken into account. In particular, as it is known, the Code of Civil Procedure came into force on May 15, 1999. It was adopted on November 14, 1997. According to Articles 364 and 391 of the original wording of the Code, parties and third parties had the right to file an appeal and a cassation appeal. That is, a general reference to a third party in these norms meant both types of third parties. However, two days before the entry into force of the Code, on 13 May 1999, it was amended and Articles 364 and 391 were formulated as they stand today. The current regulation, according to which third parties without an independent claim have no right to appeal the decision under the law (despite the above legal practice), is incorrect; it is practically unjustified and leads to the violation of the rights of such persons. Citing a practical example will make clear the shortcomings of the existing rule. In particular, the victim was harmed by an increased source of danger. In such a case, the person responsible for the damage is the owner of the source of increased danger, and

the person who directly caused the damage will be engaged as a third party on the side of the defendant in the case. However, the defendant may not be interested in the successful completion of the case. If anything is imposed on him, he will get it from the defendant by a recourse suit. At this time, the victim may have the intention that the defendant will not be held accountable, as the court will even make a mistake and wrongly impose damages on the defendant. It turns out that if the defendant does not appeal the decision, neither can the third party appeal, and on a recourse claim, he/she will be stripped of rights as the decision on the claim for damages will have a predetermined force on the recourse claim for the ongoing case (Kharitonashvili, 2017).

## **Conclusion**

The participants in the civil proceedings are the judge and the parties of the proceedings. The parties are the plaintiff, the defendant, and the third parties. Third parties are divided into the third party with an independent claim and without an independent claim.

A third party without an independent claim does not enjoy the same amount of rights as a third party with an independent claim. According to the Code of Civil Procedure, the decision on the case may not be directly relevant to the above.

A third party who does not have an independent claim may not be engaged in the proceedings at the initiative of the court. A motion in this regard must be filed by one of the parties or this person himself must apply to the court. An important ground for engagement in legal proceedings is a legal interest which connects the third party to the claim, and which in turn indicates a material-legal connection of the third party with the case.

Giving more preference to a third party without an independent claim will further simplify litigation. There are several countries where these third parties enjoy the same rights as third parties with independent claims. This data is mainly typical for Anglo-Saxon countries. However, it is convenient in terms of practicality and is tailored to the parties. What puts the parties in a favorable position must be established in the legal process.

The number of rights of the third party without an independent claim should be refined and detailed. It would be better to make a direct reservation on the right of third parties without an independent claim to appeal a court decision. According to Articles 364 and 391 of the Code of Civil Procedure, the court decision can be appealed in the court of appeal or the Supreme Court of Georgia by the parties and the third parties with an independent claim within the time limit prescribed by law. It is advisable to grant a third party without an independent claim the right to appeal the decisions, and Articles 364 and 391 shall be formulated in such a way as to equip entirely third parties with

the right to appeal the decision. It is true that without an independent claim, third parties are not participants of the material relationship in the original case where they are only engaged as a third party but are participants in the litigation. The above change will give such a third party a full opportunity to protect himself from the future negative consequences caused by the decision made in the case. There are several countries where third parties enjoy this right. The above norm defines the circle of subjects who have the real right to file a claim and they include all persons whose rights are affected by the ongoing dispute in court.

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